

1 UNITED STATES DISTRICT COURT
 2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
 3 HONORABLE GEORGE WU
 4 UNITED STATES DISTRICT JUDGE PRESIDING

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6 United States of America,)
 7 PLAINTIFF,)
 8 VS.) NO. CR 14-642 GW
 9 Jorge Louis Solorio-Mendoza,)
 10 DEFENDANT,)
)

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 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
 14 LOS ANGELES, CALIFORNIA
 15 THURSDAY, MARCH 1, 2016

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 19 KATIE E. THIBODEAUX, CSR 9858
 20 U.S. Official Court Reporter
 21 312 North Spring Street, #436
 22 Los Angeles, California 90012
 23
 24
 25

1 APPEARANCES OF COUNSEL:

2

3 FOR PLAINTIFF, UNITED STATES OF AMERICA:

4 U.S. DEPARTMENT OF JUSTICE
5 U.S. ATTORNEY'S OFFICE
6 BY: JOSEPH AXELRAD, AUSA
7 312 North Spring Street
8 Twelfth Floor
9 Los Angeles, CA 90012

7

8

9 FOR DEFENDANT:

10 SHERMAN AND SHERMAN PLC
11 BY: VICTOR SHERMAN
12 2115 Main Street
13 Santa Monica, CA 90405

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1 LOS ANGELES, CALIFORNIA; THURSDAY, MARCH 1, 2016

2 9:04 A.M.

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6 THE COURT: All right. Let me call the matter of
7 United States versus Mendoza.

8 Let me have appearances.

9 MR. AXELRAD: Good morning, your Honor. Joseph
10 Axelrad. With me at counsel table is Christina Shay also
11 from the U.S. Attorney's office.

12 MR. SHERMAN: Good morning, your Honor. Victor
13 Sherman on behalf of my client who is present in court.
14 He is using the services of the Spanish interpreter. And
15 I also have with me an investigator by the name of Andy
16 Falco.

17 THE COURT: All right. I presume we are holding a
18 hearing on the dog?

19 MR. SHERMAN: Yes, your Honor. Before we begin,
20 Mr. Axelrad, the prosecutor, brought up some point that I
21 hadn't considered.

22 Originally, the court had made a tentative
23 decision and the government had complained that we hadn't
24 filed a declaration of my client. And the court went
25 ahead and made a tentative decision in any event.

1 Subsequent to that, I did file a declaration of my
2 client.

3 The prosecutor has indicated now he wants to
4 call my client as a witness. And I am opposed to that.
5 And I have re-read the declaration, and he does have a
6 Fifth Amendment right. So I -- first of all, I don't
7 believe that it was necessary to do a declaration, but if
8 there was a declaration, I would like to amend the
9 declaration, withdraw the declaration that he has
10 presently filed.

11 And the only thing that I think I need to
12 do -- and I don't think I really had to do anything but
13 to show that the defendant was in possession of the car
14 at the time of the search. I think that is the only
15 thing that I am required to do in order to have standing
16 because I think the prosecutor intends to go into the
17 merits of the case with my client. And, obviously, I am
18 not going to permit him to testify about that.

19 THE COURT: Let me hear from the prosecutor.

20 MR. AXELRAD: Thank you, your Honor.

21 Your Honor, as is the practice and it is, in
22 fact, the local rule here in the Central District,
23 defendants have to file a declaration when they file a
24 motion to suppress as the defendant did in this case.

25 It was only after the government notified the

1 defendant in the government's opposition that there was
2 no such declaration that the defendant filed the
3 declaration. And, of course, as is the case with every
4 suppression motion, the government intends to
5 cross-examine the defendant. And, then, the defendant
6 because it is their motion can put on their witnesses
7 after which the government will put on their witnesses.

8 THE COURT: Let me stop. I thought the only issue
9 at this point in time was about the dog.

10 MR. AXELRAD: Your Honor, if that is the only
11 issue the court is interested in, we can certainly limit
12 today's evidentiary hearing to the dog.

13 THE COURT: If we limit it to the dog, why do we
14 need the testimony of the defendant?

15 MR. AXELRAD: If we are limiting the testimony to
16 exclusively the dog, I guess the only remaining question
17 is defendant's standing. Mr. Sherman seems to indicate
18 that --

19 THE COURT: Let me stop. There was no doubt that
20 he was in possession of the car at the time he was
21 stopped.

22 MR. AXELRAD: That's correct, your Honor. But he,
23 by his declaration, says he was given possession of the
24 car by someone who wasn't the car's owner. I am not sure
25 how it puts him in, but, in any event --

1 THE COURT: Put it this way, possession is
2 nine-tenths of the law unless the government is going to
3 make the argument that he shouldn't be prosecuted because
4 he wasn't the owner of the car and he was just driving
5 the car innocently, et cetera, et cetera, I don't
6 understand what the problem is.

7 MR. AXELRAD: Certainly, your Honor. And if today
8 is only limited to the dog --

9 THE COURT: Let me stop. Let me ask defense
10 counsel, it is only going to be limited to the dog I had
11 thought, and if it is not going to be only limited to the
12 dog, then we have a question as to where else it is going
13 to go. And if it goes to other places, then it might be
14 a situation where the defendant's testimony may become
15 relevant and then I have to resolve the issue.

16 MR. SHERMAN: Well, the only other issue in this
17 case is that the court did not make a final decision
18 whether or not this was a prolonged detention without
19 reasonable suspicion. So, certainly, I am going to argue
20 that point.

21 THE COURT: Let me stop. I thought I had made a
22 ruling in that regard in my tentative ruling.

23 MR. SHERMAN: You did in your tentative ruling,
24 and I intend to argue that point again.

25 THE COURT: Why am I allowing you to argue it

1 again since I allowed you to argue it the first time?

2 MR. SHERMAN: You didn't allow us to argue the
3 first time. You made a tentative ruling before we had a
4 chance to come into court.

5 MR. AXELRAD: Your Honor, in the government's
6 eyes, the issue of reasonable suspicion and the prolonged
7 detention is settled. The only reason that the
8 government thought that defendant might be trying to
9 bring this up is because, as the court is undoubtedly
10 aware, defendant filed some motions last night addressing
11 reasonable suspicion among other things.

12 So as far as the government is concerned, it
13 is all settled, but if the court would like to hear about
14 the dog today --

15 THE COURT: Well, let me put it this way, if you
16 do want to argue about that, why can't the government
17 inquire based upon your client's declaration?

18 MR. SHERMAN: The only thing about the stop, your
19 Honor, is I never had a chance to cross-examine the
20 officer about the stop. For instance, there is a
21 discrepancy between the court's ruling as to what the
22 officer said and what the underlying reports that I have
23 say the officer did at the scene of the stop.

24 One of the issues is, for instance, in the
25 court's opinion, it is not clear that my client gave the

1 name of the person that had dropped off the car and that
2 was the same last name as the registered owner of the
3 car. That wasn't part of the record. I just have a few
4 questions from the deputy that stopped the vehicle as to
5 what happened at the scene. That's the only question.

6 There is also the issue as to whether or not,
7 your Honor, this was a roving border patrol stop that the
8 court -- obviously, I haven't had an opportunity to
9 develop that evidence.

10 THE COURT: Let me stop you. You know, even if it
11 was a roving border patrol as you somehow describe it, if
12 the defendant did what the officer perceived him to have
13 done, there was a basis for a stop.

14 MR. SHERMAN: Okay. Well, that is an issue. That
15 is a factual issue that the court has made a tentative
16 ruling based upon the papers without my opportunity to
17 cross-examine the officer. Your Honor --

18 THE COURT: I don't understand. Why do you get
19 the opportunity to cross the officer, and the government
20 doesn't get the opportunity to question your client if
21 your client submits a declaration?

22 MR. SHERMAN: The only thing that my declaration
23 should have said was that I was in possession of the car
24 at the time of the stop. That is it. He can be
25 cross-examined about that question. That is, in fact, a

1 fact. He was in possession of the car. There should be
2 no other issue before the court other than he was in
3 possession of the car. But the point about the officer,
4 your Honor, is I don't believe this was an officer that
5 was there to write tickets. This was an officer that was
6 stopping vehicles along this corridor as many times as he
7 could until he may have found a hit. And he had no good
8 faith intention to ever give a traffic ticket.

9 THE COURT: You are conducting a fishing
10 expedition too, apparently. What evidence do you have
11 that even suggests that at this point in time?

12 MR. SHERMAN: Because we made a chart, your Honor,
13 that showed during this year period, he stopped something
14 like 400 people, and I don't think he gave any traffic
15 tickets to anybody that he stopped. Almost 400 people
16 and I have no evidence that he gave a traffic ticket to
17 anybody, and in his own police report in this case, he
18 indicates that he is driving up and down this corridor
19 not for the purpose for traffic stops but for the purpose
20 of interdicting, presumably, drug trafficker, kidnapping,
21 things of that nature. And I have no evidence he gave
22 traffic tickets to anybody, and, yet he stopped something
23 like 400 people which I have documented.

24 THE COURT: Let me hear from the government.

25 MR. AXELRAD: Thank you, your Honor.

1 So, your Honor, defendant is just relitigating
2 the same issue as it relates to racial discrimination
3 which the court in its tentative ruling made very clear.
4 That is a civil claim for the defendant to file against
5 the sheriff's department if they believe that they have
6 one but not in any way a basis for a motion to suppress.

7 And just going back to the question of
8 defendant's, the cross-examination of the defendant and
9 his declaration which apparently defense counsel now
10 wants to withdraw, and the reason is because, your Honor,
11 Paragraph 2 of defendant's declaration says, on
12 October 28, 2014, I was visited by a friend I know as
13 Marcos Macias who arrived in the Mercedes in which I was
14 stopped on the I5 while heading home. Marcos asked me to
15 drive him to Los Angeles International Airport in his car
16 and then take the car back to my house. I agreed.

17 Your Honor, that goes to the heart of what
18 Deputy Leitelt found was just absolutely ridiculous about
19 the defendant's story. Defendant now apparently wants to
20 withdraw that statement, and if defendant does withdraw
21 that statement, then there are simply no facts in the
22 record that contradict Deputy Leitelt and we have nothing
23 to talk about.

24 MR. SHERMAN: Your Honor, the question is not what
25 the defendant is saying what was in Deputy Leitelt's

1 point of view. He stopped his vehicle. My client told
2 him certain things. He formed an opinion as to what
3 those things meant. That is the issue in this case. The
4 deputy stopped my client. I don't believe it was for the
5 purpose of giving him a traffic ticket. I do believe
6 there was a discriminatory purpose in stopping this car.
7 There was no intention to ever give a traffic ticket.

8 He stopped some 400 vehicles, 90 percent which
9 were Spanish surname people during the year period
10 preceding this event. After he stopped the car, he asked
11 some questions, my client told him certain answers which
12 should not have led to anything other than a traffic
13 ticket. He prolonged the stop for more time for
14 Detective Price with the dog to come to the scene of the
15 location in violation of the U.S. Supreme Court decision
16 in Rodriguez.

17 That is the only thing that I want to get into
18 with Leitelt is, you know, whether he really had
19 reasonable suspicion to keep this defendant for a period
20 of time while he called Detective Price.

21 Now, some of what he put forth in his
22 declaration is not accurate as to the facts. And I only
23 want to establish the facts as to why Leitelt kept him
24 there. It has nothing to do with my client's statements,
25 has nothing to do with my client's declaration. It is

1 what he was told by my client, true or false, as to what
2 Leitelt did. That is the issue before the court.

3 Now, the court made a ruling that Leitelt had
4 reasonable suspicion to keep him there, but that was
5 based on some facts that are not accurate. And I just
6 want to put in the file, what the accurate facts are.
7 And I also want to put in the record because I have never
8 had a chance to cross-examine the officer as to the fact
9 that his real purpose -- and I think it goes to his
10 credibility -- was not to give traffic tickets during
11 this year period because I don't believe he gave any and
12 yet he stopped hundreds of vehicles. That is my point.

13 MR. AXELRAD: Your Honor, defense counsel seems to
14 be confusing the issues a little bit. The reasonable
15 suspicion that was developed by the deputy is what
16 allowed the deputy to transform the stop from a traffic
17 stop into an investigatory stop. And one of the many,
18 many observations that the deputy made as has been
19 briefed in this case a thousand times at this point is
20 that the defendant had a ridiculous, implausible story
21 about his travels.

22 The car was not registered to the defendant
23 himself, and these are all things that in the deputy's
24 training and experience are part of, are suggestive of
25 drug trafficking, people trying to disassociate

1 themselves with the cars and what might be found in them.
2 And defendant has this sort of fanciful story about where
3 he was going and why he was going there. And in his
4 declaration, he addresses the heart of that. And, now,
5 out of convenience, defense counsel wants to withdraw
6 that declaration so he doesn't have to put his client on
7 the stand.

8 THE COURT: Well, I think, actually, the
9 withdrawing of the declaration is kind of like a red
10 herring. The real issue is whether or not the defendant
11 should be allowed, prior to trial, to examine the officer
12 in the context of a motion to suppress when I mean --
13 well, let me just ask. Is it normally a defendant's
14 right to move to suppress?

15 MR. AXELRAD: Your Honor, the government has no
16 problem with defense counsel -- one second.

17 THE COURT: Sure.

18 (Government counsel confer.)

19 MR. AXELRAD: Your Honor, thank you for a moment
20 to consult with cocounsel. Your Honor, if the
21 declaration is withdrawn, there are no facts that
22 contradict Deputy Leitelt. And as much as defense
23 counsel is trying to make this about an issue of
24 credibility and racial discrimination, what it really
25 comes down to is contested facts and whether there are

1 any. And at this point, there are simply not.

2 So if defense counsel plans to cross-examine
3 Deputy Leitelt, so be it. But it will have to be limited
4 to reasonable suspicion, and, of course, it only come
5 after the defendant has put on his case, the defendant
6 has himself been cross-examined, the defense experts have
7 been put on and then Deputy Leitelt and Deputy Price will
8 testify because this is, of course, defendant's motion.
9 And they can put on their case first as it is their
10 motion. Defendant will be cross-examined. Presumably,
11 they will put on their defense experts after that.

12 THE COURT: Why couldn't they call the officer in
13 their, as an adverse witness in their case?

14 MR. AXELRAD: They could, but they certainly
15 couldn't call them before the defendant was
16 cross-examined because the defendant would just tailor
17 his testimony to whatever the deputies had to say.

18 MR. SHERMAN: Your Honor --

19 MR. AXELRAD: And you can't -- and just to be
20 clear, your Honor, you can't call someone, my
21 understanding is that you cannot call someone for the
22 specific purpose of cross-examining them.

23 THE COURT: Well, I mean, it is done all the time
24 in terms of trials. They are called as adverse witnesses
25 by the other side. It is the trend these days.

1 MR. AXELRAD: Be that as it may, your Honor, the
2 defendant would undoubtedly have to testify before.

3 THE COURT: Well, not necessarily before, but
4 probably during. I mean, I understand the point is that,
5 you know, it is, you know, the motion to suppress, if the
6 defense wants to suppress, defense has to present the
7 evidence of it.

8 MR. SHERMAN: And I am prepared to call Deputy
9 Leitelt.

10 THE COURT: The government is prepared to call
11 your client.

12 MR. SHERMAN: Well, he has a Fifth Amendment right
13 that Leitelt doesn't.

14 THE COURT: The problem is the declaration.

15 MR. SHERMAN: As I said, I would withdraw the
16 declaration as it goes to the merits of guilt or
17 innocence.

18 THE COURT: Well, let me put it this way, the
19 problem I have is that, but for your client's
20 declaration, you are basically attempting to conduct a
21 fishing expedition with the officer. The reason why we
22 are here, originally, was because of the issue about the
23 dog.

24 MR. AXELRAD: That is what the government
25 understood.

1 THE COURT: And I don't understand where you raise
2 this issue as a matter to be heard at the hearing.

3 MR. SHERMAN: I have.

4 THE COURT: Where?

5 MR. SHERMAN: Well, first of all, I filed numerous
6 motions to suppress throughout this case, and I filed
7 something, in fact, last night regarding this motion to
8 suppress. But I filed numerous motions to suppress the
9 evidence, and I have never had the chance to
10 cross-examine the arresting officer.

11 I am only asking to be able to cross-examine
12 the officer as to what happened at the scene of the
13 arrest, of the stop of the vehicle. That is all I am
14 asking to do. That happens in every single motion to
15 suppress where you are entitled to cross-examine the
16 officer that made the stop to challenge whether or not
17 the stop was proper. That is all I am asking to do. It
18 is hardly something unusual. We even have a video, your
19 Honor, of the stop.

20 MR. AXELRAD: Your Honor, if I could just jump in
21 here. What defense counsel is talking about is
22 cross-examining an officer where there are facts at issue
23 where there are contested facts. Defendant has no
24 contested facts. Defendant is now trying to withdraw his
25 declaration so there are absolutely no contested facts.

1 Defendant is just going on a fishing expedition into his
2 theories about racial discrimination of the sheriff's
3 department, a roving border patrol, whatever the sort of
4 argument du jour is for defense counsel.

5 So, you know, it is just the latest iteration.
6 I think if your Honor is looking at the docket in this
7 case, there are upwards of a hundred filings now.

8 THE COURT: Well, there is 97.

9 MR. AXELRAD: Excuse me.

10 THE COURT: But most of those don't necessarily
11 relate to this motion. The problem is, again, is that I
12 held a hearing on this matter, and I had thought that the
13 only thing that really was at issue was the records as to
14 the dog. And, also, I thought that I had issued a
15 scheduling for briefing on this, and I don't receive the
16 briefs that were filed pursuant to that schedule and
17 so --

18 MR. SHERMAN: I think we did file briefs, your
19 Honor.

20 THE COURT: Let me put it this way, there was
21 supposed to have been -- originally, this matter was set
22 for an evidentiary hearing on November 10th. And it was
23 continued; is that correct?

24 MR. AXELRAD: That's correct, your Honor.

25 THE COURT: And the defendant filed something.

1 Defendant filed Docket No. 79. Let's see.

2 MR. AXELRAD: Your Honor, if I might make a
3 suggestion, cocounsel just suggested to me that maybe
4 what we could do just for the court's time, we could
5 handle the dog stuff today. And to the extent that
6 defendant believes that there are contested issues that
7 relate to the traffic stop that remain after all the
8 briefing and the court's tentative ruling, then we could
9 brief those issues and the court could decide whether or
10 not it wants additional testimony.

11 But, at least this way, we could handle the
12 dog stuff today. I think -- certainly, the government's
13 witnesses are here. I believe defendant has some -- the
14 witnesses that we have been waiting for many months are
15 here, so that way we might be able to at least use the
16 court's time effectively.

17 THE COURT: Let's put it this way, I would agree
18 in the sense that let's get the dog stuff out of the way
19 first, and then we will decide later on either today or
20 whenever to do the other portion.

21 MR. SHERMAN: I will agree with that.

22 THE COURT: Okay.

23 MR. AXELRAD: So, your Honor, my understanding is,
24 again, because it is defendant's motion, the defendant
25 will be putting on his experts.

1 THE COURT: I thought we also have the person, the
2 dog handler.

3 MR. AXELRAD: We do have the dog handler.

4 THE COURT: With the records.

5 MR. AXELRAD: Sorry?

6 THE COURT: With the records?

7 MR. AXELRAD: With the records?

8 THE COURT: Of the dog's training.

9 MR. AXELRAD: The dog's training logs have all
10 been produced to the defendant.

11 THE COURT: Okay. All right.

12 MR. AXELRAD: I would note, your Honor, defendant
13 had a filing last night that related to a whole slew of
14 stuff, and I only had a chance to briefly glance through
15 it, but one of the many things that defendant was
16 requesting in there was the dog's deployment records.
17 And those are records that the government has not
18 produced to the defendant to this point.

19 The government's reading of Florida versus
20 Harris, the Supreme Court case, indicates that those
21 records are sort of --

22 THE COURT: Well, if you -- you haven't finished
23 your sentence, but I don't know if you are correct
24 because it is the totality of circumstances situation.
25 That is what the Supreme Court loves to set up. They

1 don't tell you what the circumstances are, but they like
2 to have the totality of them triggered.

3 MR. AXELRAD: Certainly. And, your Honor, to the
4 extent that the deployment records which the government
5 doesn't believe have any bearing on the dog team's
6 reliability --

7 THE COURT: Well, when you say deployment, maybe I
8 am thinking of a different thing. There are references
9 to -- what is it?

10 MR. AXELRAD: The training logs.

11 THE COURT: Well, it is not only the training but
12 his on field performances. You know, that is what I
13 would refer to as deployment, what his track record is
14 when he is working out in the field. So, that, you are
15 saying the government does not have at this point?

16 MR. AXELRAD: The government has those records as
17 they go back, one year before this stop. I don't think
18 that anymore could even arguably be relevant, and the
19 government has not at this point produced those records
20 because in the government's mind they just don't have any
21 bearing on reliability.

22 But, certainly, it sounds like defense counsel
23 is asking for it, and to the extent that the court is
24 inclined to agree with defense counsel, because these
25 records contain so much sensitive information as it

1 relates to ongoing investigations, what I would propose,
2 your Honor, is that the government produce those
3 deployment records for the year prior to the stop in this
4 case to your Honor, in camera, and then to the extent
5 that your Honor thinks they have any bearing on the dog
6 team's reliability whatsoever, then they could be
7 produced to defense counsel.

8 THE COURT: All right. Well, let me put it this
9 way, I think that the Supreme Court does say that the
10 field records are not necessarily the best that you can
11 look at, but it doesn't say you can't look at them.

12 MR. AXELRAD: That's correct, your Honor. I just,
13 you know, our reading of Florida versus Harris was that
14 Justice Kagan had a sort of a long discussion of how
15 these deployment records are fraught with peril and sort
16 of not to be trusted because they contain so many things
17 in them that are subject to misinterpretation.

18 And, as a result, because defense counsel and
19 the defendant haven't articulated any sort of theory of
20 relevance at all as to how these deployment records would
21 relate to the dog's reliability, they are just fishing
22 for stuff, the government relied in Florida versus Harris
23 on saying these deployment records are not within the
24 scope of what we are going to be producing. But, again,
25 if your Honor is inclined to take a look at them, we

1 could produce them in camera for your Honor's review.

2 THE COURT: All right.

3 MR. SHERMAN: Your Honor, the government makes
4 these arguments that I haven't given reasons why these
5 field records are important. I sent him an e-mail back
6 in December explaining exactly why these field records
7 are important, and I have attached it as an exhibit to
8 the motion that I filed yesterday. So I don't know where
9 he is coming from where I have indicated that they are
10 not important.

11 But, any event, your Honor, so we can get into
12 the case, the dog, you know, the normal course, unless
13 the court changes the way we do it is the government has
14 the burden of proving that the dog handler properly used
15 the dog and the dog is certified, et cetera, and was
16 properly trained to presumably alert on the drugs that
17 were in the car.

18 THE COURT: Let me stop you. I don't understand
19 what the problem is. We are going to hold a hearing. I
20 don't really care who goes first, who goes second, but
21 let me take a step back.

22 It is a motion to suppress. So it is the
23 defense burden at this point in time, and so if you want
24 to call the dog handler, you can call the dog handler,
25 and you can ask him the questions. And then you can put

1 on your expert thereafter.

2 MR. SHERMAN: Well, maybe we can start with my
3 expert, then.

4 THE COURT: All right. That is fine. I mean,
5 again, it is not like you only have five or ten minutes.
6 I have given you the whole morning. Now, I regret it, of
7 course, but I gave it to you.

8 (Laughter.)

9 MR. SHERMAN: Well, then, I guess I will start
10 with Mr. Falco.

11 THE COURT: All right.

12 (The witness was sworn.)

13 THE CLERK: Have a seat. State your name and
14 spell your last name for the record.

15 THE WITNESS: My name is Andre Falco Jimenez.
16 Last name is J-I-M-E-N-E-Z.

17

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19

DIRECT EXAMINATION

20 BY MR. SHERMAN:

21 Q Mr. Falco, what is your present occupation?

22 A I am a business owner. I own Falco Canine Academy
23 which is also Falco Enterprises, Inc., where we train
24 police dogs, bomb dogs, narcotics dogs and pet dogs.

25 Q And how long have you been doing that?

1 A Since 2001 when we were incorporated, and, then,
2 before that, it started as a sole proprietor business in
3 1995.

4 Q And before you started your own business, what was
5 your occupation?

6 A Police officer with the City of Anaheim.

7 Q And how long did you do that?

8 A For 24 years.

9 Q When did you start?

10 A As a reserve in 1984, and then full time in 1987.

11 Q And when you first started, what was your job --
12 which police department was that again?

13 A Anaheim Police Department in California.

14 Q What did you start as?

15 A A patrol officer.

16 Q And before you started for the police department,
17 did you have, or when you started for the Anaheim Police
18 Department, did you go through any training?

19 A Yes, I did.

20 Q For how long?

21 A It was at that time a five month academy.

22 Q And you worked for the Anaheim Police Department
23 for almost 20 years?

24 A 24 years.

25 Q And give us a short summary of what you did for the

1 Anaheim Police Department as you progressed through the
2 police department?

3 A I was in patrol. After patrol, I got selected to
4 the canine unit. During the time that I was a handler
5 with the police canine unit, I was also on the SWAT team.

6 After my dog retired from the service, I went
7 into the sex crimes detail in detectives. At the same
8 time as I was in detectives, they brought me back into
9 the canine unit as the canine trainer for the city.

10 Q And how long were you the canine trainer at the
11 police department?

12 A From 2000 -- wow, I am having a blank. About
13 2000 -- actually, it was 1999 until 2005 when I retired.

14 Q And during that period of time, what were your
15 duties as far as a canine trainer?

16 A My job was to select the dogs for the unit, thereby
17 traveling throughout the United States and Europe to find
18 dogs for the department. Once I found a dog that passed
19 all of our tests, then I would train the dog for both
20 patrol and narcotics and train the handlers that they
21 would be assigned to after that.

22 Q Now, how many dogs during this period of time did
23 you actually purchase, would that be the correct phrase?

24 A Well, selected. The city purchased the dogs.

25 Q How many dogs do you say you selected?

1 A During that period of time, just for the City of
2 Anaheim, was seven dogs.

3 Q And how many people did you train during this
4 period of time?

5 A Nine handlers.

6 Q And it was all for the Anaheim Police Department?

7 A Yes.

8 Q Did you either select dogs or train people for
9 other police departments during that period of time?

10 A Yes, I did.

11 Q For which other police departments?

12 A I may not be able to name all of them, but Orange
13 Police Department, Tustin Police Department, Bend,
14 Oregon, St. Louis, Indiana, some dogs in Texas.
15 Connecticut. There is a few that I can't remember, but
16 they were all over the United States.

17 MR. SHERMAN: Your Honor, I can go into more if we
18 want, but his curriculum vitae is attached to -- I think
19 it was Document 87.

20 THE COURT: All right.

21 MR. SHERMAN: It is about, I don't know,
22 five pages long. I will go through it if the court wants
23 or if the government feels necessary.

24 Q After you left the Police Department in, I guess it
25 was around 1995, did you say?

1 A 2005.

2 Q 2005. So you have been in your own business for
3 approximately 10 years?

4 A 16 or, actually, 15 years, 2001.

5 Q Okay. 2001. And since you left, how many various
6 police officers that work for other police agencies have
7 you either trained or certified?

8 A Nearly 200.

9 Q And of that number, how many would you say you have
10 trained and how many would you say you have certified?

11 A All of those. I have also been asked to certify
12 other teams throughout the United States.

13 Q By other police agencies?

14 A Yes.

15 Q And how many different police agencies without
16 naming them all, would you say that you have been asked
17 to certify by?

18 A Gosh. Over the years, I would have to say 500 to
19 600.

20 Q Okay. Have you written any books about training of
21 dogs?

22 A Yes, sir.

23 Q How many?

24 A Five books.

25 Q And starting when and up to what period of time?

1 A That started about six years ago. I have
2 everything from pet dog training to police dog training.
3 Another book called Dog Sniff Evidence for the specific
4 issues involving dog sniff evidence.

5 Q And I understand one of those books has been a
6 number one bestseller?

7 A Actually, five are number one best sellers.

8 THE COURT: Stop. What is the list?

9 THE WITNESS: Amazon.

10 Q BY MR. SHERMAN: And have you been an instructor at
11 any conferences or seminars regarding your expertise?

12 A Yes.

13 Q And where has that taken place?

14 A I would say most of my time was involving the
15 International Police Canine Conference which traveled
16 throughout the United States and Canada training handlers
17 from all over the world.

18 Q So you have spoken in many cities in the United
19 States and given seminars?

20 A Yes, sir.

21 Q Do you have any idea about approximately how many?

22 A I don't. Maybe 25 to 30.

23 Q And have you testified in court before?

24 A Yes, sir.

25 Q On about how many occasions?

1 A Again, probably, I would have to give a range
2 between 25 to 30 cases where I have had to testify in
3 court.

4 Q And have you been recognized by the court as a
5 canine expert?

6 A Yes.

7 Q And you have listed the various cases that you have
8 been certified by the court as a recognized canine
9 expert, and that is Page 3 of your five-page resume?

10 A Yes, sir.

11 Q And I see that that is in multiple jurisdictions
12 throughout the United States?

13 A Yes.

14 Q And are you a member of various organizations
15 having to do with dog sniffing or canine training?

16 A I have been a member or an administrator of certain
17 organizations.

18 Q And have you received various awards and citations?

19 A Yes.

20 Q Again, that is listed at Page 4 of your resume?

21 A Yes.

22 Q I believe you have been president of the Orange
23 County Police Canine Association?

24 A Yes.

25 Q And you have been designated as a person that can

1 issue certificates for dog training?

2 A Yes. For the California POST as a certified police
3 canine certifier.

4 Q Any other organization?

5 A Over the years on and off between the United States
6 Police Canine Association, NAPWDA -- I will never be able
7 to remember their acronym -- National Association of
8 Working Dogs of America I think is what it stands for
9 and, of course, the Orange County Police Canine
10 Association.

11 Q All right. Now, when you go about certifying a
12 handler for scent detection, would that be the proper way
13 of putting it?

14 A Yes.

15 Q Do you have a certain protocol or procedure by
16 which you utilize to certify a handler and his dog?

17 A Yes. I would say there is a couple procedures.
18 One of those would be the California POST certification
19 that we are mandated to follow. It is a voluntary
20 standard, not a mandatory standard. And then I have
21 one that I wrote for the World Detector Dog Organization
22 which is based on the ATF standard but probably would be
23 considered more difficult.

24 Q Okay. You say you wrote this, it is like a
25 standardized test for some kind?

1 A For certification of detection dogs, yes.

2 Q For what organization?

3 A The World Detector Dog Organization.

4 Q And tell us a little bit about that organization.

5 A It is simply just like any other organization where
6 you have a group of professionals, hopefully, that have
7 been involved in training of detection dogs. They can or
8 cannot. They either are or are not law enforcement which
9 in the World Detector Dog Organization, it was myself and
10 the Chief of Police of another department in Alabama and
11 then a civilian which is in Washington, DC. And it is
12 just an organization that felt that it was needed to have
13 a certification that would truly test a detector team
14 which is, of course, the handler and the dog.

15 And considering that the number of
16 organizations that are out there, some are merely just
17 organizations that kind of, more along the lines of just
18 involved in training the detection dogs, not necessarily
19 testing the dogs for accuracy and reliability. We wanted
20 our certification to be one that tested reliability and
21 accuracy.

22 Q Is it important that the people that certify the
23 dogs be different than the people that train the dogs?

24 A Absolutely.

25 Q Why is that?

1 A There can be an issue with because you have either
2 some type of monetary connection to the dog or that the
3 organization that you are working for, it could be looked
4 at as unreliable because, of course, any dog that you
5 have selected and trained and been a part of, you want
6 the dog to pass because, of course, you selected it and
7 you have trained them. By having a disassociation with
8 the team you are certifying, there is no connection in
9 that manner. All you are going to do is really, truly
10 focus on whether the team is reliable and effective in
11 doing their job.

12 Q Okay. Now, as I said, you have a certain protocol
13 that you go through to certify dogs; is that correct?

14 A Yes.

15 Q And you have had a chance to look at the standards
16 and training of this organization, the National Police
17 Canine Association?

18 A Yes.

19 Q And are you familiar with that organization?

20 A Yes.

21 Q And I am going to ask you to look at certain
22 exhibits and I want to go through down the standards and
23 training of the National Police Canine Association. I
24 want you to tell us how it either conforms with or is
25 different than the way you do your certification and

1 explain to us what is good or bad about what they do or
2 what you do. Okay?

3 A Yes.

4 THE COURT: Let me stop. Are you saying his
5 standards, his own standards versus like POST standards
6 versus ATF standards? So, in other words, we are just
7 saying what his standards are?

8 MR. SHERMAN: Well, what I am saying is that he is
9 going to go through the standards of the National Police
10 Canine Association, and I believe his testimony is going
11 to be that based upon various factors, these are totally
12 insufficient to be able to give any reliability to the
13 certification of the particular dogs that they train and
14 the particular dog in this case, that the standards
15 established by this organization are not sufficient to
16 give any reliability to the dog.

17 THE COURT: All right.

18 MR. AXELRAD: Your Honor, I don't know how the
19 expert or defense counsel's expert can opine on the
20 standards here when he has just testified that there are
21 a variety of different standards. And I would just note
22 for your Honor this is a little curious because
23 Mr. Jimenez's CV says that he is a member both
24 individually and through his corporation of the very same
25 association that we are talking about.

1 THE COURT: You have already blown your
2 cross-examination now.

3 MR. AXELRAD: Yes.

4 THE COURT: The problem I have is this: The way
5 you phrased the question, you are asking him to opine
6 about the differences between the standards utilized by
7 the National Canine Organization and his standards, and,
8 again, I don't know why I would utilize his standards.
9 So, in other words, if he testifies as to the differences
10 between the National Canine Organization and the POST
11 standards or the ATF standards which he himself adopts or
12 otherwise explains the basis for his standards, then I
13 can understand the line of questioning. But if you are
14 just asking going to ask what is the difference between
15 what they do and what you do, it doesn't do much for me.

16 MR. SHERMAN: No. I understand that. I probably
17 phrased the question wrong. I just want him to go
18 through the standards and training of the NPCA, the
19 National Police Canine Association, to go through their
20 certification process to indicate why it is insufficient.

21 THE COURT: So you used National Police rather
22 than National Canine.

23 MR. SHERMAN: It is called the National Police
24 Canine Association, NPCA.

25 THE COURT: Okay. All right. Well, let me just

1 ask like a foundational question, how many organizations
2 are there that certify canine detection dogs for various
3 police entities, let's say, within the State of
4 California?

5 THE WITNESS: Well, there is several, but I would
6 say there is probably five that are the most popular.

7 THE COURT: Okay.

8 THE WITNESS: This would be one of them.

9 THE COURT: So there is National Police Canine
10 Organization is one of them. What are the other four,
11 then?

12 THE WITNESS: United States Police Canine
13 Association, California Narcotics Canine Association,
14 NAPWDA which I said it is the National Association of
15 Police Working Dogs or something like that. I only know
16 the acronym.

17 THE COURT: And the fifth one would be?

18 THE WITNESS: I would say probably the World
19 Detector Dog Organization.

20 THE COURT: Let me also ask, you also referenced
21 in the beginning the POST standard training and ATF
22 standard training in this area. Do they have their own
23 standards or do they adopt one of the standards from
24 one of these five organizations or what?

25 THE WITNESS: This is a very tricky area.

1 California POST has a voluntary standard --

2 THE COURT: Okay.

3 THE WITNESS: -- that is very minimal in its
4 requirements.

5 THE COURT: All right.

6 MR. SHERMAN: And if you are a canine handler, you
7 would go through that certification, but to add
8 credibility, you would want to obviously be a part of
9 one of those other organizations. It gives you more,
10 like, for instance, the California Narcotics Canine
11 Association has training, they have competitions and they
12 have other stuff that will help a team be more reliable
13 and more accurate in what they are training on a regular
14 basis.

15 THE COURT: Okay. And in terms of the ATF
16 standard, do they have their own standards that are
17 separate from these five organizations?

18 THE WITNESS: Yeah. It is just, again, there is
19 recommendations. I would say like California POST is
20 more a recommendation than an organization that has a
21 standard because, again, they are voluntary. They are
22 not mandated by the State of California. And so they
23 have these guidelines that say, at minimum, you should be
24 doing these things.

25 THE COURT: Okay. And when you say now that you

1 do training, both, I guess, dogs and officer handlers, do
2 you do it according to one of these five, or does it
3 vary, or how do you do it?

4 THE WITNESS: Well, I would say that you have your
5 minimum standards.

6 THE COURT: Which are the POST standards.

7 THE WITNESS: Right. POST and ATF. And so the
8 difference with ATF is they have what is called an odor
9 recognition where you have any number of containers that
10 have to be exactly the same. In ATF, you can go as many
11 as 50 paint cans that are empty, right, and then you put
12 the substance the dog is trained to find in five or
13 six of those cans. And the rest have distractions or
14 they are empty, and that is to show that the dog
15 recognizes the odors that you want the dog to find. The
16 ATF has that where the State of California does not have
17 that.

18 THE COURT: Okay.

19 THE WITNESS: And, then, so you can, I would look
20 at it as a way of making sure that we are testing our
21 dogs more accurately is that we would add something
22 called a double blind where a lot of organizations don't.
23 A double blind test is where I, as the proctor, you know,
24 conducting the test would come into a room like this
25 courtroom and place any number of hides. It could be

1 one to four or five, and then I would leave.

2 The team comes in with somebody else that has
3 no idea where those finds are and then conducts the test.
4 The handler searches, tells the person in the room this
5 is where the finds are.

6 Again, the person in the room doesn't know.
7 They are just there to make sure the handler doesn't look
8 underneath a chair or open a drawer, and then they go
9 outside and they ask the person who hid the finds is this
10 where they are. And, then, they either confirm or show
11 that they are saying that they are not there. That is
12 called a double blind test.

13 The organization involved in this case does
14 not do that. So that is one of the differences. And
15 there is a few other differences between the World
16 Detector Dog Organization and my certification that would
17 test a dog to be more reliable if they went through
18 one of our tests.

19 THE COURT: When you were with the Anaheim Police
20 Department, the Anaheim Police Department certification
21 was under -- was only under the POST standard? Did the
22 Anaheim Police Department require compliance with any of
23 these five organizations.

24 THE WITNESS: Well, essentially, we did three. We
25 did POST, again, which was voluntary. We were all

1 members of California Narcotics Canine Association, and,
2 then, they had to pass my certification which was the
3 more difficult of the three.

4 THE COURT: All right.

5 MR. SHERMAN: Okay. Is there an exhibit book?

6 MR. AXELRAD: I have ours.

7 (Counsel confer.)

8 Q BY MR. SHERMAN: You have -- first of all, you have
9 seen and it has been marked Exhibit 8 by the government
10 in their exhibit book, your Honor, and I believe --

11 MR. SHERMAN: Do you have that in front of you,
12 your Honor?

13 THE COURT: Yes, I have it.

14 Q BY MR. SHERMAN: It is called the Nation Police
15 Canine Association standards and training. You have seen
16 that, haven't you Mr. Falco?

17 A Yes.

18 Q And do you have a copy of that in front of you?

19 A Give me the exhibit number again.

20 THE COURT: It is 8.

21 Q BY MR. SHERMAN: Yes. It is Exhibit 8.

22 A Yes. The standards and training.

23 Q And you have looked at that?

24 A Yes.

25 Q And you have also looked at Exhibit 9 which is the

1 certificate of training for the dog handler in this case,
2 Kenneth Price?

3 A Yes.

4 Q And I think it is also in Exhibit 10 which is the
5 certifications for the National Police Canine Association
6 for the years 11, 12, 13 and 14, I believe.

7 A Yes.

8 Q And, in addition, you have looked at the training
9 records which was some hundred and 20 pages or the dog,
10 Charlie, in this case?

11 A Yes.

12 Q Now, first of all, let's go to Exhibit 10 first
13 which is the certification for the year 2011.

14 By the way, in your declaration in this case,
15 you did indicate that you were aware of this
16 organization; correct?

17 A Yes.

18 Q And you also state in your declaration that these
19 certificates seemed to be in order; correct?

20 A Yes.

21 Q What did you mean by that, when you said it seemed
22 to be in order?

23 A That within their guidelines, that it is in order
24 with what they expect.

25 Q Okay. And you weren't trying to indicate that you

1 felt the guidelines were sufficient to show reliability
2 of the dog, did you?

3 A No.

4 Q Now, looking at exhibit --

5 THE COURT: Let me ask you a question, in terms of
6 your experience in this area as a police officer now, is
7 there a requirement? In other words, I presume that to
8 be a handler you have to meet at a minimum the POST
9 standards which are voluntary.

10 THE WITNESS: No.

11 THE COURT: You don't have to meet that? In other
12 words, law enforcement agencies can -- there is no
13 guidelines as to being canine handlers for a law
14 enforcement agency in the State of California?

15 THE WITNESS: Technically, no. If you end up in
16 court, you surely want some support by being members of
17 associations, attending training and that kind of stuff,
18 but there is no requirement in any statute regarding
19 police dogs.

20 THE COURT: All right. Has there ever been any
21 court that has held that the standards for any of these
22 five organizations is insufficient.

23 THE WITNESS: I am sure there is. I wouldn't be
24 able to tell you where that is written or tell you with
25 any reliability.

1 THE COURT: Okay. Is there any cases that say
2 that the standards of any of these five organizations is
3 sufficient?

4 THE WITNESS: I am sure there is too, but, again,
5 I could not tell you which ones.

6 THE COURT: All right. Thank you.

7 Q BY MR. SHERMAN: Okay. Looking at, okay, just to
8 follow-up on the court's questions, so there is no
9 standard either by the State of California or by the
10 federal government that says in order for a dog to be
11 certified, he has to pass a certain test, and then it
12 sets forth what the guidelines for that test are?

13 A No, there is not. A department's policy, just
14 simply the department's policy will say if the supervisor
15 says we want all of our members to be members of the
16 California Narcotics Canine Association, that will be the
17 policy, but that is an individual policy with the
18 departments.

19 Q And so an organization like National Place Canine
20 Association that issues a certificate for a dog, that is
21 just something that as far as you know, that organization
22 just does, and they are not meeting any particular
23 standard set by some national group of any kind other
24 than their own internal guidelines?

25 A No. Essentially, it is a business where a group of

1 men and women get together and say this is what we think
2 our standard should be, they all vote on it and say let's
3 not have that, let's have this. And they create an
4 organization. It is just a group of people.

5 Q And are there any publications that you know of
6 that have been generally accepted within the community
7 that compare the standards by various organizations and
8 there is some consensus among their certification groups
9 that certain standards have to be met?

10 A Over the last several years, they have attempted to
11 get canine handlers and trainers to agree on something,
12 and it has never happened up to this point where you can
13 get anybody to agree that one standard is better than the
14 next or should be.

15 There is understandings that the double blind
16 is probably the best way to certify the team in addition
17 to, again, some other rules that we put into place.

18 Q Okay. So I take it there have been articles
19 written, however, by various individuals that discuss
20 these various standards or rules set forth by these
21 various organizations?

22 A Of course.

23 Q Okay. But as you are saying, there is no consensus
24 among canine handlers as to the standard is better or,
25 excuse me, that this is the standard that everybody

1 should at least meet throughout the United States before
2 you can say you are certified?

3 A There is no consensus. No.

4 Q Okay. Now, looking at the certificates which are
5 part of Exhibit 10, let's just go through the first
6 one that says August 17, 2011. Do you see that?

7 A Yes.

8 Q Okay. Now, what is that -- this is a document that
9 presumably was used to verify the certification by that
10 organization dated August 17, 2011; is that correct?

11 A Yes.

12 Q Now, what does that document tell us that Kenneth
13 Price did on that particular occasion, August the 17th,
14 to supposedly get a certificate from this organization.

15 Can you go through it and tell us what this
16 document shows?

17 A Well, it says on this date that Deputy Kenneth
18 Price and police dog Charlie achieved the national
19 standard of certification for narcotics certificate set
20 forth by the National Police Canine Association. And then
21 it lists contain, heroin, opium, methamphetamine and
22 marijuana.

23 Q Now, let's just look at the first one. It says
24 hide No. 1. It says cocaine. And, apparently, it says
25 28-grams; is that correct?

1 A Yes.

2 Q And then it says located and a check mark?

3 A Yes.

4 Q First of all, is it as important to know in order
5 to -- in your expert opinion to properly qualify the dog
6 to know where that cocaine came from?

7 A Yes.

8 Q Why?

9 A To know if it is actually cocaine, how much -- what
10 is the percentage of the illegal substance in that
11 substance they are searching for. If it is the handler's
12 cocaine that he has been carrying around for a year or
13 two in his trunk, a dog will become used to finding its
14 own training aid and not that of something that may be
15 found on the street. So knowing where it came from,
16 whose it is and whether it has been tested for the
17 percentage of the substance would be important.

18 Q Why is the percentage important?

19 A Again, as a law enforcement officer, I have
20 arrested people who had substance that we believed to be
21 a narcotic that either wasn't or cut so thinly, that it
22 just had a very little amount, and so to train a dog
23 reliably, you want to know exactly what you are training
24 the dog on and what you are testing the dog for.

25 Q And why would it be important to know whether this

1 is cocaine that had been in the possession of the handler
2 for some period of time rather than cocaine being
3 supplied by the person doing the certification?

4 A Well, having worked with L.A. County Sheriff a
5 number of times and used their training aids myself, it
6 is often in a paper manila envelope is what I have
7 experienced most often. As a handler uses that for his
8 regular training and maintenance training, it simply just
9 soaks up the odor of the handler's hands, the dogs nose
10 goo, there is no other way to put it, slobber and becomes
11 essentially very easy for the dog to find because he is
12 similarly looking for the envelope that has that odor on
13 it as opposed to in a reliable certification you would
14 want to use somebody else's narcotics that has been
15 tested and put in a container like a jar or something
16 else that the dog doesn't have a ton of experience
17 finding because, essentially, if you are using your own,
18 you might as well put a tennis ball or something that the
19 dog chews on to find because there is so much of the
20 dog's odor on their own finds that it can't be a reliable
21 test.

22 Q Then the next check mark, it says located, does it
23 indicate on this document where the drugs were hidden?

24 A No.

25 Q Is that important?

1 A Yes.

2 Q Why?

3 A Because you want it to be realistic. If you were
4 to take, again, an envelope of cocaine, for instance, and
5 just simply put in the hubcap or behind the wheel on the
6 axle, I would say that that should be fairly easy for the
7 dog to eventually find especially given that they give
8 him eight minutes to find this narcotic on these
9 vehicles. So that is a really long time. At some point,
10 your dog will simply just run into it. So a more
11 reliable test would be maybe hide it in the carburetor,
12 for instance, or somewhere that has a little bit more
13 like actually somebody trying to hide something.

14 Q So the fact that it doesn't indicate where the
15 drugs were located, assuming it was really cocaine, that
16 is an important omission. So it is difficult to look at
17 this document and give it any reliability?

18 A Correct. I can't tell you based on this document
19 the reliability of the team.

20 Q Now, does it indicate who was present during the
21 search other than the handler?

22 A Well, there is a name scribbled at the bottom, but
23 I can't tell who that is or what that writing says.

24 Q Okay. And that just means that there was a
25 certifying official; correct?

1 A Correct.

2 Q Does that indicate that he was necessarily present
3 or we don't know by looking at the document?

4 A Well, based on the standards that they wrote, I am
5 assuming he would be present if they are following their
6 standard.

7 Q Now, in looking at this document and then also
8 looking at Exhibit 8 which is the scent detection
9 certifications of this organization.

10 Do you see that exhibit?

11 A Yes.

12 Q Halfway down that page, it says search. It says
13 search shall consist of three indoor rooms and
14 four vehicles with a total of four finds; is that
15 correct?

16 A Yes.

17 Q Okay. Now, looking at that and then looking at
18 Exhibit 10, was there apparently three indoor rooms
19 searched and four vehicles?

20 A I'm sorry. Give me your numbers again.

21 Q Exhibit 8 says the search. So the organization had
22 set out what search is going to be conducted; correct?

23 A Yes.

24 Q And it says search shall consist of three indoor
25 rooms and four vehicles with a total of four finds; is

1 that correct?

2 A Yes.

3 Q What does that mean?

4 A Exactly what it says, that they are searching
5 three rooms and four vehicles for four finds.

6 Q Okay. Now, in your opinion, apparently, this
7 organization, NPCA, has told the handler that there are,
8 in fact, going to be four finds; is that correct?

9 A Yes.

10 Q Okay. So that is telling the handler that now he
11 is going to search these vehicles and he is going into
12 these rooms and we are telling you in advance that there
13 are drugs in these locations; correct?

14 A Yes.

15 Q And by four finds, does that mean that there is
16 going to be four locations where the drugs are going to
17 be found?

18 A Yes.

19 Q Okay. Now, is that a good practice or a bad
20 practice as far as testing the reliability of the dog?

21 A That would be a bad practice.

22 Q Why?

23 A Because given the amount of time that you have to
24 search, you are going to use that entire time to find.
25 So, for instance, if you know there is two finds inside

1 of the building, you are going to search for 10 minutes
2 until you find two finds. That is just human nature.

3 Q Well, I guess my better question is should the
4 handler be told in advance how many finds there are going
5 to be in either the room or the vehicle?

6 A No. It should be unknown.

7 Q Why?

8 A For the very reason, I just stated that you have a
9 limited time in a room to find potentially something or
10 nothing. In our certification, we have rooms where there
11 is nothing. So by a roll of the dice at the time the
12 certification is taking place, we determine how many
13 finds are going to be in an individual room.

14 And, so, but the handler is never told. So
15 coming into the certification, they know where to report,
16 but they don't know if there is going to be one find in a
17 room or four finds in a room. And that, again, is a more
18 reliable test because the handler just simply doesn't
19 know. He searches the room. His dog either indicates
20 twice or once or three times, and then he has got to
21 confidently come out and say my dog found these finds in
22 these locations. And based on that information is how we
23 determine the reliability of a team.

24 Q So if the handler is told in advance there is going
25 to be one find in the room, then he knows definitely

1 there is going to be drugs somewhere. So I am going to
2 keep looking until I find that one and once I find that
3 one, I am going to stop. So he has been told in advance
4 what the goal is, and once he reaches that goal, that is
5 it?

6 A Correct.

7 Q And that is a bad practice?

8 A Very bad practice.

9 Q And that is not something that you do when you do
10 your certification, I take it?

11 A Correct.

12 Q And below where it says search, it says indoor
13 search. Again, on Exhibit 8, it says search shall
14 consist of three indoor rooms and two finds.

15 Again, is that an example of a bad practice?

16 A Yes.

17 Q And what I mean bad practice, it is really not
18 testing the reliability of the dog because the handler of
19 the dog or the handler has been told in advance exactly
20 what the situation is, and that is just a bad idea?

21 MR. AXELRAD: Your Honor, I am going to object.
22 Defense counsel is just testifying at this point.

23 THE COURT: Rephrase the question.

24 Q BY MR. SHERMAN: Okay. Tell us why you think that is
25 a bad idea?

1 A The preexisting knowledge of knowing what you are
2 going to go in there to find is a bad practice because
3 that is what the handler will do. Again, we talked about
4 the reliability of the dog, but it really is the
5 reliability of the team. And I think it is just simply
6 that the handler is going to instruct the dog to continue
7 to search until he has at least come up with a couple of
8 locations where he thinks the two finds might be.

9 And that is just simply guessing with some,
10 you know, some preexisting knowledge that there is going
11 to be two in here somewhere. So I am going to point at
12 the two most logical places, and hopefully I will be
13 right. If his dog is searching and not coming up with
14 anything, he is still going to try to guess where the
15 two spots are where the dog at least showed a change of
16 behavior or then again might be the most likely location
17 for those finds. And with the experience of a handler
18 who has done probably hours of training and working with
19 trainers and handlers, other handlers, he is going to be
20 right more than half the time just by guessing.

21 Q Does the size of the room make a difference as far
22 as the search area?

23 A In relation to the time, I would say yes. If you
24 have 10 minutes to search this courtroom, for example,
25 that is a really long time. You should be able to clear

1 this room in about two to three minutes.

2 Q You will see below the indoor search in Exhibit 8,
3 it talks about each room shall be at least 300 square
4 feet but not more than 600 square feet.

5 Why is that either an appropriate square
6 footage or not?

7 A It is a very small room for the amount of time that
8 they are giving a team to search. A room, at the
9 maximum, a 600-square foot room should maybe take a
10 minute-and-a-half to two minutes at most, and two minutes
11 would be a long time to search a room that size.

12 Q When you do your training and your certifications,
13 do you use a larger area?

14 A We do a number of things. We use a small room to
15 ensure that the dog can search in tight places and, you
16 know, varying different types of environmental issues
17 that are involved in a small room. And, then, we also
18 search a larger room or a warehouse.

19 Q And why is that?

20 A Again, it is just testing the reliability of the
21 dog. The larger room is going to allow for the odor to
22 move throughout the room and cause different issues than
23 the same find in a small room. In a small room, it is
24 actually contained. It is easier for the dog to find
25 something in a small room because it is just a smaller

1 environment for the dog to work within.

2 Q And I take it the smaller the room, the less time
3 the dog should take before finding the item?

4 A Correct. The time allowed for the search should
5 vary based on the size of the room.

6 Q Now, you talked about a double blind search;
7 correct?

8 A Yes.

9 Q So what is a double blind search?

10 A It is where you have somebody who has experience
11 and knowledge in the training of detection dogs goes in
12 and places hides within a room. In our certification,
13 based on the roll of the dice, it could be one to four.
14 So let's say there is three.

15 So the person comes into this room, hides
16 three of those finds and then leaves the room. A second
17 person who is also part of the certification team who
18 does not know where those finds are enters the room with
19 the team and conducts the test.

20 Q So the drugs are hidden by somebody not associated
21 with the certification process or observing what the
22 handler does in the room; is that correct?

23 A Well, they are involved in the certification
24 process, but they are not in the room when the team is
25 searching simply because they have the knowledge of where

1 the finds are. So whoever hides them, you don't want
2 them in the room when the team is doing the search.

3 Q Why is it important that the person that hides the
4 drugs is different than the person in the room observing
5 the handler?

6 A There is a couple of training, important training
7 facts that are always considered in this issue. One of
8 them is a study that was done by Lisa Lit at U.C. Davis
9 and another thing called the Clever Hans effect.

10 Clever Hans was a horse that they believed
11 could count and do math and what ended up happening was
12 that the dog was both reading the body language and
13 chemistry of not only the horse's handler but also the
14 other people, the audience.

15 The people, as the horse would get closer to
16 the correct number, people would begin to breathe in or
17 they would begin to fidget, like, oh, my gosh, the horse
18 is going to get this right. And then the horse got
19 really good at reading the humans that were in the
20 environment.

21 And so where they thought the horse could
22 actually count and do math was the fact that the horse
23 could actually just read the energy in the room based on
24 when the horse got close to the correct number. So that
25 is called a Clever Hans effect.

1 And so to bring that to detection dogs, that
2 has also been found to be true that if a trainer is in
3 the room and places the hides and then calls the dog team
4 in, that the dog will look at both the handler and the
5 trainer as it gets in certain places and when there is a
6 fidgeting or change in breathing habits of the humans in
7 the room, the dog will sometimes alert. And we call it
8 guessing. The dog will begin to guess based on what he
9 feels from the humans in the room. And so to guard
10 against that, the double blind test was created to keep
11 that from happening.

12 Q Would you say that although there doesn't seem to
13 be a consensus standard for all dogs that at least the
14 double blind is considered within the community much the
15 preferable way of conducting these certification process?

16 A Those trainers and certifiers in our business know
17 that that is the best way to handle a certification or a
18 test.

19 Q Okay. And that is because neither the certifier
20 that is in the room or the handler know where the drugs
21 have been hidden. So they can't give either intended or
22 unintended body language to the dog?

23 A And they also don't know how many finds are in the
24 room.

25 Q Now, was that something that National Police Canine

1 Association set forth in its certification process that
2 there would be a double blind process?

3 A No, they do not.

4 Q And do you consider that a major failure of this
5 organization in certifying dogs?

6 A Yes.

7 Q Now, what is extinction?

8 A Extinction, in relation to scent detection dogs, is
9 that you want the dog not to continue to associate an
10 object with the narcotics you want them to alert on.

11 An example would be we learned long ago that
12 because we are keeping narcotics in plastic bags that the
13 dogs were not only alerting to marijuana,
14 methamphetamine, cocaine and heroin but also plastic bags
15 because that was a common theme between all the odors
16 because that is what we kept them in. Where that became
17 apparent is that we had a search where there was a box of
18 plastic baggies or sandwich bags within a search area,
19 and then all the dogs were alerting on the plastic bags
20 just as they would have for cocaine, for instance.

21 So extinction would be to take the plastic
22 bags and begin to teach the dog to ignore the plastic
23 bags. So we would put plastic bags all over the place to
24 the point where the dog would come to the point where he
25 would ignore or go into extinction that odor in the

1 fingerprint of odor in his brain for narcotics detection.

2 Q How do you accomplish extinction?

3 A Just by doing that. You put the odor that you
4 don't want him to find in the room, and if he alerts on
5 it you ignore him and wait for him to move on. And when
6 he gets to the cocaine or the heroin, he sits, and you
7 reward him for that. And you do that over and over again
8 until the dog finally just stops going to the things you
9 don't want him to alert to.

10 Q In the Exhibit 8 which is the scent detection
11 certifications, is anything said about extinction?

12 A I don't believe so.

13 Q There is on the right-hand column, it says all
14 search areas must be contaminated and finds proofed by a
15 canine prior to cert, if available. What does that mean?
16 It is right above the phrase additional substances. Do
17 you see where I am reading?

18 A No. Can't find it.

19 Q Okay. It is on Exhibit 8, the second column. You
20 see toward the bottom, it says in bold letters,
21 additional substances?

22 A Yes, sir.

23 Q So the paragraph right above that.

24 A Yes. It talks about contaminated and finds proofed
25 by a canine.

1 Q Do you know what that means?

2 A Yes.

3 Q What does that mean?

4 A That you must have within that area that the dog is
5 going to be searching those things that can be considered
6 contamination or things that will distract the dog.

7 Q Is that a good idea?

8 A Yes.

9 Q So that is one thing that this organization did?

10 A Yes.

11 Q Okay. But it doesn't say anything, is that similar
12 to extinction or not?

13 A Well, you conduct extinction on those things that
14 what they are considering contamination. So whatever
15 that would be for narcotics detection dogs which could be
16 tennis balls, if the dog is rewarded with tennis balls.
17 And then the finished part of that is that before you do
18 the hides, you bring a dog in to search it to make sure
19 there is no contamination in regard to other narcotics.

20 So that is making sure that when -- if we were
21 to conduct certification in this room, you would want to
22 bring a dog in to do a search to show that there is
23 nothing in here. So you would want to bring a reliable
24 dog in here to make sure that it is not contaminated with
25 training that took place previously in this room. So if

1 somebody brought marijuana in here and spilled it on the
2 ground where I am sitting, it would be contaminated with
3 the odor. That is what it is saying.

4 Q So, basically, before you certify a particular dog,
5 you bring another dog in earlier to be sure that the room
6 is not contaminated?

7 A Right. With something that was previously left
8 behind or hidden and forgot about which happens all the
9 time.

10 Q Okay. Looking at Exhibit 10 which is the one we
11 have been talking about August of 2011, does it indicate
12 that that was done, that a dog was brought in beforehand?

13 A No.

14 Q And certainly it doesn't indicate any double blind
15 protocol; correct?

16 A Correct.

17 Q From your knowledge of what this organization does,
18 do you know if they do any double blind searches?

19 A They do not.

20 Q And when you do your certification, where do you
21 get your drugs from?

22 A There is a lab called Sigma where we get some of
23 our narcotics from. We have used narcotics from BLM,
24 from the DEA that we can be sure that they are certified
25 at least 70 to 80 percent of the drug that we want them

1 to be searching for. The only thing we don't do is use
2 the drugs that are found in the handler's trunks.

3 Q And do you keep some documentation so you can later
4 determine where you got your drugs from and its purity,
5 et cetera?

6 A Yes. When you get drugs from either the DEA or
7 Sigma, they would send a piece of paper that shows what
8 the substance tested for, and so it has the numbers and
9 the percentages on those pieces of paper.

10 Q And when you certify people, sometimes they bring
11 in their own drugs?

12 A Yes.

13 Q Do you tell them that they should keep some kind of
14 documentation to verify what the drug is, the purity, et
15 cetera, and where it came from?

16 A In all of my teachings, we tell the handlers that
17 they need to have their drugs tested just in case they
18 get -- not only so that their dogs can be trained
19 reliably but, also, in the case they get called into
20 court, they will have that documentation.

21 Q And do you see any documentation here from Price,
22 Deputy Price, to indicate the source of the drugs or any
23 documentation of where it came from?

24 A I do not.

25 Q Now, rather than going through each of the

1 certificates individually from 2011 through 2014, they
2 are all consistent, I take it?

3 A Yes.

4 Q And in all instances, do you find them wanting, as
5 you have testified today, as to what in your opinion is
6 the way a dog should be certified and a handler and
7 certified?

8 A They are missing some of the components that I
9 would look at as being reliable.

10 Q Including the double blind?

11 A Yes.

12 Q And the fact that it doesn't indicate the purity of
13 the drugs or where it came from; correct?

14 A Correct.

15 Q Or that they were even drugs?

16 A Correct.

17 Q Or where it was located within the room?

18 A Correct.

19 Q Now, I take it as far as the location, there,
20 again, I mean, theoretically, it could be, without
21 knowing where it was located, it could be very obvious to
22 the handler and the dog so the more obvious, then the
23 less reliable; is that true?

24 A Correct.

25 Q And I take it it would be better if it was hidden

1 in such a way that it would make it more difficult for
2 the dog to find the item?

3 MR. AXELRAD: Your Honor, I imagine there is a
4 question in there somewhere, but at some point --

5 THE COURT: You are leading the witness, and you
6 don't lead an expert because that makes his opinion
7 pretty much worthless.

8 Q BY MR. SHERMAN: Okay. Is it important where the
9 drugs are located within the room?

10 A You want it to be realistic, and you don't want it
11 to be so simple that, like I said, the dog just runs into
12 it. You want it to be a true test of the dog's ability
13 to scent the odor whether it is in a cabinet or behind a
14 picture frame on the wall. It can't just simply be on
15 the single desk in the room underneath it. Should be
16 something where the dog actually has to find the odor in
17 a realistic environment.

18 Q Does it matter if the dog, the certification
19 process is conducted with the dog on leash or off the
20 leash?

21 A I would say you should do both. You should have
22 scenarios where it is done on leash and scenario where is
23 it is done off leash, but there are some departments that
24 don't do off leash searches. So we ask the handler how
25 do you normally conduct the search, and he would tell us.

1 And what is the dog alert, and he will tell us what the
2 dog alert is and then we conduct the test based on that
3 information.

4 Q Why is it better to do both?

5 A Because you are going to need a dog to do searches
6 on leash and off leash. The off leash is more reliable
7 because there is less of a connection between the dog and
8 the handler. With the leash it is a little bit of what
9 we would call an umbilical cord in relation to there is
10 a -- this is going to sound a little bit strange, but
11 there is an energy connection. The dog learns a lot by
12 what is happening on the other end of the leash. There
13 is a lot of communication that takes place. So to remove
14 that is simply to remove the leash and having the dog
15 search independent of the handler.

16 Q So it is more reliable to have the dog off leash
17 when looking for the drugs?

18 A I don't know if that is, if I can say that. I am
19 just saying that I know for sure when a dog is working
20 independent with the handler that I feel much more
21 comfortable that the handler is not influencing the dog.

22 Q What is cueing?

23 A Cueing is any body language, hand position change
24 on the leash all the way to slowing down when the handler
25 has preexisting knowledge that there may be something

1 present. So if the handler, for instance, is searching
2 this room, and comes near the defense table and either
3 has preexisting knowledge that there is something there
4 or believes that there may be something there, he may
5 slow down. If he slows down, then that would be looked
6 at as cueing the dog that there may be something there.
7 And thereby the dog would alert based on the cue not
8 based on the odor that is coming from the table.

9 Q Can you think of any other things that you feel
10 that this organization does or doesn't do that would make
11 the dog either more or less reliable other than what you
12 have already testified about?

13 A I think we have already talked about it, but it is
14 just lacking information as to the hide. So on this
15 form, I would suggest which I think I have suggested to
16 them is that there should be something to show whether
17 the hide was high or whether it was at a medium level or
18 a low level. So knowing where on the spectrum where the
19 hide is would be important.

20 And then another thing would be the set time.
21 How long was the time from when they placed the finds
22 that they actually conducted the search, that would be
23 important information. Set time is important to know how
24 long the narcotics have been sitting there because the
25 longer it sits, the more it will permeate the room. So

1 it is important information not only for the
2 certification but for the handler to know.

3 Q And none of that information is on the notes that
4 go along with the certificates?

5 A No. That is not on there.

6 Q Now, you also have reviewed the training records of
7 Charlie, have you not?

8 A Yes.

9 Q And what is your opinion about these training
10 records as far as whether or not the dog was properly
11 trained or at least as far as the documentation showing
12 the dog was properly trained?

13 A It just, again, same thing as I just talked about
14 with these forms here is just lacking information. We
15 don't know where the drugs came from, we don't know the
16 circumstances of the scenarios that they mention in their
17 forms. We don't know the outcomes. We do know, in some
18 of the cases, there were, for instance, nine finds
19 hidden, and the dog may have only alerted on seven. But
20 we don't know what happened on those other two. Did the
21 dog show a change of behavior but not give the final
22 indication? Did the dog just completely ignore them and
23 go past them? We don't know what happened.

24 Q Are deployment records or field records important
25 to determine the reliability of the dog?

1 A To get a full picture of what is going on with this
2 team, you have to have the deployment records.

3 Q And why is that?

4 A Because training can be set up in a way that just
5 is very simple for a team. The one thing about training
6 and often certification is that you are there with a
7 bunch of your buddies, you are having a good time, and
8 there is not a stress. Certification will have a little
9 bit of stress, but training is just training. We come in
10 here. We talk about what we did at the river the week
11 before. We put a couple of hides. The dog does the
12 search. The dog finds it. We pat the dog on the head,
13 and we go away.

14 So we can have a high level of success. We
15 can even have dogs that are hundred percent because it
16 can just be simply mundane and easygoing. But where you
17 see the dog's effectiveness is on the deployment, and if
18 we see a huge difference between what happens in the
19 street and what happens in training, then we know that we
20 have an issue.

21 And that would be important not only for us
22 here in court, but also for the handler to really look at
23 and say, it is funny, in training we are about 90 percent
24 accurate and sometimes higher, but out in the field we
25 are only about 40 percent accurate. And how do we know

1 that? We have 700 something searches and we only have a
2 hundred times where something was found or fifty times
3 where something was found.

4 And we need to look at why do we have a
5 difference. Is our training not reflecting what is
6 happening on the street, or our dogs really good at
7 finding our own dope and not dope that is on the street.
8 So without the deployment records, there is no way of
9 telling that our training is reflecting what is happening
10 in the street. We could have a huge discrepancy in
11 effectiveness in how the dog is being used. Sometimes
12 handlers use the dogs entirely different than they do on
13 the street or in training, and that becomes an issue.

14 Q Now, in this particular case, the government has
15 represented in a search warrant affidavit or some
16 document that Charlie had been involved in 775 searches,
17 some number like that. Would it be important to know
18 what the results of those searches were to determine
19 Charlie's reliability?

20 A Yes.

21 Q And, obviously, what is a false positive alert or a
22 false alert?

23 A A false alert is when a dog is searching, alerts,
24 and upon searching that area where the dog alerted, we
25 find nothing.

1 Q So in the 775 searches if there was a number of
2 false alerts, that would be important for you as an
3 expert in determining the reliability of this dog?

4 A Yes.

5 Q And without the results of those searches, would
6 you be able to make that determination?

7 A Without the deployment records, I could not.

8 Q So you feel that is an important part of any
9 analysis?

10 A Yes. Of course.

11 Q Do you know of an organization called Scientific
12 Working Group on Dog and -- the word is
13 O-R-T-H-O-G-O-N-A-L, I am not sure how to pronounce it --
14 Detector Guidelines referred to by the acronym SWGDOD.

15 Do you know that organization?

16 A We call it SWGDOG.

17 Q And what is that organization?

18 A It is a group of professionals in the dog industry
19 that have either been police officers or have been
20 trainers for police officers that, again, they are trying
21 to come up with standards and information that will help
22 us make sure that we are not only training our dogs more
23 effectively but testing them for certification more
24 effectively.

25 Q And have they come up with at least some

1 suggestions as far as you know?

2 A Yes.

3 Q Okay. One of them I believe establishes the dog's
4 baseline performance, to evaluate handler influence. Do
5 you know about that?

6 A Yes. That wording is a little odd, but it is,
7 again, just simply setting up some very easy tests that
8 just give us a baseline for that doing. So the only
9 thing I can compare it to, at least what I think they are
10 trying to say there, is that when I conduct monthly
11 training like I did last Thursday, one of my first
12 exercises of the day is a very baseline search to tell me
13 if at least the dog knows the odor and is alerting
14 properly, in other words, sitting all the way down when
15 it finds the odor and pinpointing the source. Once I get
16 that, then I can conduct the rest of the training to
17 reflect what needs to be done.

18 MR. AXELRAD: Your Honor, I am just going to
19 object. At this point we are not talking about Detective
20 Price or Charlie. We are just talking about what that
21 particular witness feels are his best practices or some
22 literature he has read that he thinks are best practices
23 in the industry. And his testimony has identified
24 throughout the morning that there are a variety of
25 different opinions as to what the best practices are.

1 THE COURT: Let me stop. Is this an objection?

2 MR. AXELRAD: This is an objection.

3 THE COURT: And the single word that describes the
4 objection is?

5 MR. AXELRAD: Relevance.

6 THE COURT: Okay. I would agree.

7 MR. SHERMAN: Well, your Honor, this is apparently
8 a working group.

9 THE COURT: There are lots of working groups. The
10 real question here is, again, if there is a wide variety
11 of opinions in this area, and no one is adhered to by a
12 majority, and even if there were a group that, position
13 that was the majority, on what basis is the court
14 supposed to decide whether or not compliance with that is
15 necessary, noncompliance shows that there is an
16 insufficiency.

17 I mean, that is the problem here is that,
18 again, you are talking a lot about standards, but there,
19 apparently, are no standards.

20 MR. SHERMAN: Well, your Honor, I am bringing this
21 up because in the Harris case, the Supreme Court talked
22 about a -- if I can just have a moment. Let me get the
23 Harris case in a moment, your Honor, because it talks
24 about -- Excuse me for one second.

25 Here, I have it. Well, the Harris case

1 doesn't really give any guidelines as to what is
2 considered a bona fide organization setting forth
3 standards for certifying dogs. So the purpose of the
4 hearing this morning, your Honor, is that we just can't
5 have an organization that sets itself up as saying, okay,
6 we are an organization that is going to certify dogs and
7 then issues a certificate like it did in this case if, in
8 fact, that certification process is not generally
9 accepted within the community as being reliable for dogs.

10 THE COURT: Even if I were to rely on that last
11 statement on your part, you haven't shown me that the
12 National Police Canine Association is not accepted as a
13 sufficient basis for certification.

14 Now, again, what you are trying to do is
15 trying to do I guess an across-the-board attack here.
16 But, again, what can I say. This witness is not
17 necessarily helping you in that regard. He has opined
18 about certain standards that he thinks are the best ones
19 to use, and maybe they are, but there is no indication
20 that if an organization does not adopt his standards that
21 that organization's certification is insufficient.

22 MR. SHERMAN: Well, I don't know how anybody would
23 prove that one way or the other whether it is sufficient
24 or insufficient other than they don't use a process by
25 which one can have faith that they are certifying a

1 reliable dog. And I think that is really the issue.

2 I mean, if an organization --

3 THE COURT: Well, let me stop. The fact that a
4 dog is certified by an organization doesn't establish
5 that the dog, that a search by that dog is sufficient.
6 The mere fact that the dog is certified doesn't
7 necessarily show that its searches can be relied upon.
8 That is obvious. Because I would agree. There might be
9 some hole in the wall that issues out certifications, and
10 why should the court find that because a dog got
11 certified at one point in time that that dog is going to
12 be sufficient to, you know, smell and detect contraband.

13 I mean, certifications, it is nice to have,
14 but it is not the be-all and end-all. It is just a
15 factor in the totality of the factors that the Supreme
16 Court loves to parade when it creates these tests.

17 MR. AXELRAD: Your Honor, if I could just jump in
18 here. The court is absolutely right.

19 THE COURT: I love to hear that when the attorneys
20 say that the court is absolutely right. It makes my day.
21 I don't hear that often enough that so every time I do
22 hear it from an attorney, it is a special day. I circle
23 that on my calendar.

24 (Laughter.)

25 MR. AXELRAD: Your Honor, you will be happy to

1 hear that Justice Kagan agrees with your Honor.

2 THE COURT: I love it when a Supreme Court justice
3 agrees with me too. That makes it even better.

4 MR. AXELRAD: Certainly. And I am quoting from
5 Harris here on Page 1057: If a bona fide organization
6 has certified a dog -- which is what we are talking about
7 here, and then Justice Kagan goes on to say -- the same
8 is true even in the absence of formal certification if
9 the dog has recently and successfully completed a
10 training program that evaluated his proficiency in
11 locating drugs.

12 So either way, here, it is in law
13 enforcement's best interest to have a dog that is
14 adequately trained because otherwise they are just
15 wasting their time. So the training of a dog, the
16 certification of a dog is squarely addressed here by
17 Florida versus Harris. And your Honor is absolutely
18 correct.

19 THE COURT: Gee. Great.

20 Q BY MR. SHERMAN: Okay. Let me ask you this bottom
21 line question, Mr. Falco, based upon your looking at the
22 records in this case where we just have the training
23 records and the certification, is there any way for you
24 to say this dog was adequately trained?

25 A No.

1 Q Based upon the certification process, do you feel
2 that this dog was certified in such a way that one can
3 rely upon the certification process to come to the
4 conclusion this is a reliable dog. And by reliable, that
5 is that he has been properly trained and certified to do
6 what his job is?

7 A Not given the documents I was given.

8 Q And is that based upon your 25 year's experience in
9 this field?

10 A Yes.

11 MR. SHERMAN: I have nothing further.

12 THE COURT: Why don't we take a break, and then I
13 will hear from the government's direct examination.

14 MR. AXELRAD: Thank you, your Honor.

15 (Recess from 10:40 to 10:50 a.m.)

16 THE COURT: All right. Let's have the
17 cross-examination of the witness.

18 MR. AXELRAD: Thank you, your Honor.

19

20 CROSS-EXAMINATION

21 BY MR. AXELRAD

22 Q Good morning, Mr. Falco.

23 A Good morning.

24 Q Mr. Falco, you run the Falco Canine Academy, Falco
25 Canine Security Services and Investigation and Falco

1 Enterprises, Inc.; is that right?

2 A Yes. The security company is closed.

3 Q The security company is closed?

4 A Yes.

5 Q But you still have your Canine Training Academy?

6 A Yes.

7 Q And your Canine Training Academy, you train dogs
8 for people's pets?

9 A Yes.

10 Q And for other law enforcement officers?

11 A Yes.

12 Q And you have testified before in various cases. I
13 think you said about 35 times?

14 A Approximately. That is about as close as I can
15 come to exact.

16 Q And that is for defendants; right?

17 A In some cases, it has been prosecutions, but
18 obviously the more, the last three or four years have
19 been mostly defendants.

20 Q And you were an Anaheim Police Department officer
21 from 1984 to 1996; is that right?

22 A 2005.

23 Q So 1989 to 1986, you were a canine handler?

24 A Yes.

25 Q Okay. So that is about what, seven years as a

1 canine handler?

2 A Yes.

3 Q And 1996 was the last time you were a canine
4 handler; right?

5 A For law enforcement, yes.

6 Q It has been about 20 years since you have been a
7 handler?

8 A Yes.

9 Q So you haven't worked with narcotics canines in a
10 law enforcement function for about 20 years?

11 A Correct.

12 Q And in terms of the agencies and people that you
13 work, with, you work with other law enforcement officers
14 here in Southern California; right?

15 A Yes.

16 Q And in other places as well?

17 A Yes.

18 Q And you also work with the Los Angeles County
19 Sheriff's Department; right?

20 A I have in the past, not currently.

21 Q So I want to talk to you just briefly about
22 narcotics detecting canines in general. You agree,
23 obviously, because you trained them that narcotics
24 detecting canines are a very valuable law enforcement
25 tool; right?

1 A Yes.

2 Q And that is because they can detect scents that
3 humans can't; right?

4 A Yes.

5 Q They can detect scents to I think one part per
6 billion?

7 A Correct.

8 Q I think in some cases even one part per trillion?

9 A Yes.

10 Q And they can detect some I think very important
11 scents, right, like explosives?

12 A Yes.

13 Q Firearms?

14 A Yes.

15 Q Other sort of more niche things like bed bugs;
16 right?

17 A Yes.

18 Q Termites?

19 A Yes.

20 Q E. Coli in some cases?

21 A Yes.

22 Q These are, in fact, things that you train dogs to
23 detect; right?

24 A Yes.

25 Q And dogs can certainly detect narcotics; right?

1 A Yes. Just to make sure that I am being truthful,
2 they don't detect the E. Coli. They detect the
3 contamination that leads to E. Coli.

4 Q They detect some sort of odor emitted by E. Coli.

5 A The substance that causes E. Coli which is fecal
6 matter.

7 Q And this is all because a dog's sense of smell is
8 very acute; right?

9 A Yes.

10 Q I want to talk just about the acuteness of a dog's
11 smell, and I know you were discussing this with defense
12 counsel. A dog might detect the scent of something that
13 is present here. For instance, if we had a pile of
14 heroin sitting on the Elmo here, the dog might detect
15 that heroin here sitting on the Elmo; right?

16 A Yes.

17 Q But if I were to pick up that heroin and whisk it
18 away and put it in another room, the dog might also alert
19 to this Elmo because it has the scent of heroin on it;
20 right?

21 A Depending on the time space between it leaving and
22 doing the search.

23 Q And that would still be a good alert, right,
24 because the dog was alerting to at least the residues of
25 heroin; right?

1 A Yes. The dogs are trained to alert to odor not
2 necessarily substance.

3 Q That is what I want to talk about. So odor lingers
4 beyond when the time at which the narcotics are present
5 or when it is spirited away; right?

6 A Yes.

7 Q And you have heard the sort of familiar example or
8 analogy that if you walk into a room that smells like
9 popcorn, it doesn't mean that there is actually popcorn
10 in there. It means that there could have been popcorn in
11 there just before; right?

12 A Correct.

13 Q Or sometime before; right?

14 A Yes.

15 Q And we as humans might detect the popcorn smell
16 after a period of time but dogs might detect the popcorn
17 smell in a much greater length of time afterwards; is
18 that correct?

19 A Yes.

20 Q Okay. So I want to just go through your resume
21 just for a moment and talk about the various
22 organizations that you are a member of. And I am looking
23 at your resume.

24 So I can just jump ahead, and I'm sorry to
25 pause here. You are a member of a variety of different

1 membership organizations; right?

2 A Yes, I have been.

3 Q Like some of the ones that you were mentioning, the
4 North American Police Working Dog Association, the
5 NAPWDA?

6 A Yes.

7 Q The California Narcotics Canine Association?

8 A Yes.

9 Q The United States Police Canine Association; right?

10 A Yes.

11 Q These are all organizations that you associated
12 with yourself as a member of the industry; right?

13 A Yes.

14 Q Because these are reputable, upstanding
15 organizations; right?

16 A Yes.

17 Q And one of these organizations that you, as an
18 individual, are a member of, and then it sounds like also
19 your company, is the National Police Canine Association,
20 the one that you were just discussing with Mr. Sherman;
21 is that right?

22 A Yes.

23 Q Let's just zero in here. And I am talking, sir,
24 just about these two, just to make sure we are talking
25 about the same thing. You are a member of the National

1 Police Canine Association?

2 A I have been yes. Not currently.

3 Q And your company is as well?

4 A Was. Yes.

5 Q And, you know, the NPCA is an organization you are
6 familiar with?

7 A Yes.

8 Q It is one of the I think you mentioned top
9 five organizations in California for certifying canines?

10 A It is, yes, one of the most popular of the
11 five that I mentioned are the most popular in the United
12 States.

13 Q In the United States not just California, but in
14 the entire United States?

15 A Yes.

16 Q And the National Police Canine Association
17 certifies dogs for the Los Angeles County Sheriff's
18 Department?

19 A Well, at the time that they were -- at the time
20 these certificates were written, they were, yes.

21 Q And you are familiar with other law enforcement
22 agencies that the National Police Canine Association
23 certifies; right?

24 A I know there are others. I couldn't name them with
25 reliability, but I know there are others.

1 Q Would it surprise you to learn that the Los Angeles
2 Police Department is also one of the law enforcement
3 agencies that uses the National Police Canine
4 Association?

5 A No. That is one I know.

6 Q That is one that you know?

7 A Yes.

8 Q So not just the Los Angeles Sheriff's Department,
9 the largest sheriff's department in the world, but also
10 the Los Angeles Police Department, they both use the
11 NPCA; is that right?

12 A Yes.

13 Q And they are recognized in the industry just like
14 industry leaders like yourself as a reputable
15 organization. That is what you said before; right?

16 A Yes.

17 Q And that is why you were a member, and that is why
18 your organization, your company was a member as well;
19 right?

20 A Yes.

21 Q Okay. So I want to go through, now that we have
22 gotten that out of the way, I want to go through your
23 declaration a little bit and talk a little bit about what
24 it is you reviewed when you reached your conclusion or
25 lack thereof, and I will get back to that. You said

1 that -- and I am looking at Paragraph 3 of your
2 declaration, and I will just put it up here so you can
3 see what I am talking about.

4 You said on October 15th, 2015, I received a
5 and reviewed a Los County Sheriff's Department police
6 report. And you list a code number. The National Police
7 Canine Association Standards and Training, NP
8 certificates for Deputy Price and canine Charlie and
9 several pages of training logs for canine Charlie; is
10 that correct?

11 A Yes.

12 Q And you said, then, in Paragraph 4, upon review of
13 the included police reports, I found only the original
14 report written by Deputy Leitelt. This only describes
15 the search by Deputy Price and canine Charlie and an
16 alert on the suspect vehicle trunk; correct?

17 A Yes.

18 Q And then you go on to say, I found no report
19 written by Deputy Price. Therefore, there is not
20 description of the search and related conditions
21 concerning the search of this vehicle. There is also no
22 first-hand description. You go on to talk about the
23 eventual alert in this case. So I want to talk to you a
24 little bit about that and see if you have taken a look at
25 this report.

1 Did you have a chance to take a look at that
2 report?

3 A No.

4 Q And just based on what you can see in front of you,
5 this is a report that describes Charlie's positive alert
6 on October 28, 2014, the alert that is at issue in this
7 case; is that right?

8 A I'm sorry. I am reading.

9 Q Take your time.

10 A Okay.

11 Q Okay. And you didn't have a chance to review that
12 report?

13 A I did not.

14 Q Did you ask defense counsel for that report?

15 A I asked for all the documents that they have for
16 discovery.

17 Q So let me -- you only got the documents that
18 defense counsel gave you?

19 A Yes.

20 Q And he didn't give you this report?

21 A It was not in the collection that I had.

22 Q Okay. Let me show you another document that it
23 doesn't sound like you had a chance to see. Let me just
24 back this up so we can all look at the same thing here.

25 This looks, and I will let you take a look at

1 it, Officer Expertise Canine Training and Certification.

2 Did you have a chance to look at that
3 document?

4 A I do not recognize it.

5 Q Okay. And, again, you only have the documents that
6 defense counsel gave you; right?

7 A Correct.

8 Q And you didn't ask for any additional documents?

9 THE COURT: Counsel, I am not a juror. Just ask
10 the question.

11 MR. AXELRAD: Sorry, your Honor. I just fall
12 into, slip into mode.

13 Q So you have never seen any of those documents?

14 A No.

15 Q Okay. So I want to just then take a second and go
16 through the NPCA standards and training that you talked
17 about. You said in your declaration that the
18 certificates in NPCA standards and training seem to be in
19 order. The three certificates supplied were from 2012,
20 2011, 2014. You had the certificate from 2011 as well,
21 didn't you?

22 A Yes.

23 Q So that is just a typo here?

24 A It came later, I think.

25 Q Okay. So I want to sort of skip over and talk

1 briefly about some of the standards that you were
2 discussing with defense counsel. You mentioned a number
3 of these organizations, the U.S. Police Canine
4 Association, the NAPWDA, the Canine Police Association,
5 the World Detector Dog Organization, these
6 five organizations that to you are the most popular that
7 include the National Police Canine Association; is that
8 right?

9 A Yes.

10 Q And you talked about some of the stuff that you
11 thought was lacking from the NPCA certification. I
12 think, in particular, you mentioned a double blind
13 certification; is that right?

14 THE COURT: Double blind test.

15 MR. AXELRAD: Double blind test. Excuse me, your
16 Honor.

17 Q So looking at the five marquis certification
18 organizations, the National Canine Association and these
19 others, how many of the others do a double blind test?

20 A I believe right now only one. That would be the
21 World Detector Dog Organization.

22 Q Okay. So of the five, only one does this double
23 blind test that you say makes the NPCA certification,
24 quote, very bad.

25 A Well, bad as compared as to how it can be handled.

1 Q Okay. So just the one organization. Okay.

2 I want to talk just about the ATF
3 certification. You mentioned that the World Detector Dog
4 Organization is certified by the ATF; is that right?

5 A No. They follow the -- at minimum, the ATF
6 standard is part of -- when we were creating the standard
7 for the World Detector Dog Organization, we wanted to
8 make sure that, at minimum, it covered all the
9 requirements but, then, the ATF, then, went beyond.

10 Q I want to just drill down on that. You said we.
11 You were part of creating the World Detector Dog
12 Organization?

13 A I was part of the creation of the certification,
14 yes.

15 Q So that was an organization that you were not just
16 a member of, but that you have a vested interest in;
17 right?

18 A No. I am not a member. They asked me to help them
19 with the certification to make sure that it covered what
20 I believe to be necessary to certify a dog.

21 Q Sure. But you are a member of this industry, and
22 your reputation is important to you; right?

23 A Of course.

24 Q So you want to make sure that their certification
25 is up to what you consider to be snuff; right?

1 A Yes.

2 Q So you said there are ATF guidelines that the World
3 Detector Dog Organization abides by?

4 A I don't know if abides by is correct. We look at
5 those standards and say do we at least cover what is
6 mentioned as far as an ATF standard, and, then, again, do
7 we go beyond what it is that they ask.

8 Q So you are informed by the ATF standards?

9 A Yes. I have an ATF license, and so I want to make
10 sure that whatever I do complies with the ATF.

11 Q And these other of the five marquis organizations,
12 the National Police Canine Association, are their
13 guidelines informed by the same ATF guidelines as well?

14 A I am sure that they look at them, but, for
15 instance, the odor recognition test isn't done by, at
16 least three of them, I know for sure. And I know that
17 the organization in question does not do that.

18 Q Okay. So some organizations sort of pick and
19 choose from the ATF guidelines. Your organization
20 seems -- the World Detector Dog Organization seems to be
21 informed by them, but that isn't fatal to any of these
22 organizations?

23 A Fatal. No. It just depends on how difficult and
24 how accurate you want to make your test.

25 Q So you believe that double blind is something that

1 should be included in a certification process; is that
2 right?

3 A Yes. Every standard should have it.

4 Q But you, it sounds like you fully recognize that of
5 the five marquis organizations, only one uses the double
6 blind; is that right?

7 THE COURT: Counsel, again, you don't think I hear
8 the first time you asked that question.

9 MR. AXELRAD: Your Honor, I just want to make sure
10 that we understand that this witness isn't suggesting
11 that the --

12 THE COURT: Now, you are making an argument.
13 Again, I haven't asked for an argument. I listened to
14 your questions when you asked it the first time. I don't
15 need you to do it three or four times like you would in
16 front of a jury which is also unnecessary, but attorneys
17 always like to do that in front of juries too.

18 MR. AXELRAD: Fair enough, your Honor.

19 Q Mr. Jimenez, you discussed, on direct examination,
20 the source of narcotics to be used in the test; right?

21 A I'm sorry?

22 Q The source of narcotics used in a test, whether
23 those narcotics were pseudo narcotics or fake narcotics,
24 something that just had the odor of, is that right?

25 A You just want to be sure that they have been tested

1 so that you are actually using narcotics.

2 Q Just want to talk about the -- I am looking at
3 Exhibit 8 in the binder in front of you, the search
4 protocol, the detection certification for the National
5 Police Canine Association.

6 A Okay.

7 Q And it says in the search column there, we will
8 just put it up in front of you. It says, search shall
9 consist of three indoor rooms and four vehicles with a
10 total of four finds; is that right?

11 A Correct.

12 Q Okay. And you had talked about on direct how you
13 thought it was problematic if you were telling a handler
14 and his team how many finds there would be in a
15 particular, in the same number of rooms. So if you had
16 four rooms and four finds, that would be a problem;
17 right?

18 A Yes.

19 Q But, in this case, it looks like there are
20 three indoor rooms and four vehicles. That is a total of
21 seven; right?

22 A Yes.

23 Q So there are three rooms in the certification
24 process that contained nothing; right?

25 A If there is --

1 Q Or one room that contains more than one?

2 A It could happen if they set it up that way.

3 Q Right. Well, it looks like they do set it up that
4 way; right?

5 A Yes. But they are allowed to continue their search
6 until they make that number of finds. When they leave
7 the room, doesn't mean they can't go back.

8 Q But based on the way that this is set up, there
9 could very well be a room that doesn't have any narcotics
10 in it; right?

11 A Right.

12 Q In fact, that is the way that is set up?

13 A Correct.

14 Q So I want to just skip ahead to the training logs
15 that it sounds like you had a chance to review in this
16 case. You did have a chance to review those; right?

17 A Yes.

18 Q And you said when you were testifying on direct
19 that one of the various things that you thought was
20 problematic about the training records was that, for
21 instance, you couldn't tell where the narcotics came from
22 or who else was present there; is that right?

23 A There was some questioning that went between the
24 certification forms and the training records. So some of
25 those questions were asked of the certification records

1 but not of the training form.

2 Q Okay. So, for instance, on this training log form,
3 it says in miscellaneous, it says crook meth. And then
4 you see here, it says hash crook. You understand that to
5 mean those are narcotics that came from a criminal
6 suspect; right?

7 A Yes.

8 Q And in the proof distractions column, this is what
9 you were talking about proofing. This is proofing on
10 clean currency; right?

11 A Yes.

12 Q And that would be to ensure that the dog is not
13 alerting to the scent of currency but is instead alerting
14 to the scent of the narcotics that it is trained to alert
15 to; right?

16 A Yes.

17 Q And in this training log here, we see proof
18 distractions was proofed off of currency. There were
19 four blind finds. That is what you were talking about
20 with blind searches; right?

21 A Yes.

22 Q And, then, in terms of proof distractions, we have
23 outdoors, wind and dirt. And, then, here is what I want
24 to note with you, miscellaneous, AMS, with training of
25 kilo; right?

1 A Yes.

2 Q That would suggest to you that there were other
3 people present; right?

4 A Yes. Just in regard to the people searches?

5 Q Sure.

6 A Yes.

7 Q And looking at this one, and just go through one or
8 two more, this miscellaneous note has, blind, three set
9 of three cars, interior, exterior, one find per set. And
10 that is important because we were talking about these
11 blind searches.

12 So three sets of three cars, that would be
13 nine cars; right?

14 A Yes.

15 Q And there is one find per three cars so two cars
16 within each set of three are going to be empty cars;
17 right?

18 A Yes.

19 Q Okay. So that would be what you are talking about,
20 those blind searches; right?

21 A Yes.

22 Q Okay. And just below that, training with GE, set
23 up blind finds. That is what you are talking about;
24 right?

25 A In regard to blind finds, yes.

1 Q You did have a chance to review these records?

2 A Yes.

3 Q So wanted to skip back to your declaration where
4 you talked about the things that weren't present in the
5 training logs, the source of the training narcotics. We
6 just saw the notations in there. That was just a sample
7 of the source of the training narcotics. So that is in
8 there; right?

9 A On that one training day.

10 Q On that one day, but that was just a sample. You
11 saw the whole 142 pages; right?

12 A Yeah. But it says it is the crook. So we don't
13 know what it is cut with. We don't know the percentage
14 of the narcotics. Again, it is about the totality of the
15 information. It is just not giving us all the
16 information.

17 Q But the source of the narcotics is that it came
18 from a criminal suspect; right?

19 A Which can't be reliable, but sure.

20 Q You said form of narcotic, powder versus tar, for
21 instance. Well, for instance, this case is about
22 methamphetamine; right? And you would normally have a
23 dog trained on powder meth; right?

24 A No. You do ice.

25 Q Hard substance meth; right?

1 A There is all kinds of different types of meth.

2 Q And you wouldn't have a dog trained with liquid
3 meth, would you?

4 A If you could set it up safely, you could do it.

5 Q Because that could kill the dog?

6 A Anything other than marijuana will kill the dog.

7 Q So other people present during the training. We
8 saw from the sample notes that other people were present
9 during some of the training; right?

10 A Sure. On one of the days.

11 Q But, again, that was just a sample. You had a
12 chance to review all of them. We can go through all 142
13 pages.

14 A Sure. There is a lot of blank spots. Again, it is
15 about the totality of the information.

16 I'm sorry, your Honor.

17 THE COURT: All right. Fine. Slow down.

18 Q BY MR. AXELRAD: Who hid the training aids, you also
19 saw those representative notations; right?

20 A On occasion.

21 Q And whether the handler knew the training aids were
22 there or not, you saw all those references to blind?

23 A No. That doesn't talk about whether he knew where
24 the finds were or not or it was mentioned during the
25 search. It just means that there were some rooms that

1 were used that didn't have anything in it.

2 Q Even if it says blind find and someone else set the
3 narcotics there?

4 A Yeah. But, again, we are talking about
5 one occasion or two occasions. As I go through things, I
6 am looking at all the information, the total amount of
7 information.

8 Q Okay. So just want to wrap up here a little bit.
9 You talked about in your declaration this study by the UC
10 Davis professor Lisa Lit that demonstrated the problems
11 with handler cueing; is that right?

12 A One of the issues she brought up, yes.

13 Q You know that that study has been pretty thoroughly
14 debunked by the scientific community; right?

15 MR. SHERMAN: Objection, your Honor. No
16 foundation.

17 THE COURT: Well, I will allow him to ask the
18 question. I am not assuming the truth of the question,
19 but the witness can answer the question if he understands
20 it.

21 THE WITNESS: Depends on which people you talk to.
22 The people that are involved in many of the universities
23 that I have worked with find it reliable.

24 Q BY MR. AXELRAD: Well, for instance, you were
25 discussing with defense counsel the Scientific Working

1 Group on Dog and Orthogonal Detector Guidelines. Slow
2 dog; right?

3 A SWGDOG.

4 Q That is a reputable organization; right? You
5 before were testifying that their standards are the ones
6 that you think all dogs should be trained to; right?

7 A Yeah. I think the president said he doesn't
8 necessarily agree with it, but I know the other people
9 that are on the board think that it is reliable enough to
10 change some of the things they were doing.

11 Q Let's just back up. So the president of the
12 Scientific Working Group on Dog and -- I am not going to
13 get that word right. They think the Lisa Lit study is
14 not to be relied on as science; right?

15 A Well, the president, yes.

16 Q Okay. So, you know, I just want to touch on one or
17 two last things here. In your declaration, you say that,
18 and I am looking at Paragraph 6, based on what you have
19 in front of you, it does not allow me to determine the
20 reliability of this team based on the documents that you
21 had in front of you, the training logs, the NPCA
22 certifications, that did not allow you to determine the
23 reliability of the team; is that right?

24 A Correct.

25 Q And then when I skip ahead to the last page of the

1 declaration, you say that if these are the only documents
2 that are available for this team, my determination is
3 that this team is not reliable; is that right?

4 A Yes.

5 Q So on the one hand, you are saying that you don't
6 have enough information to determine the team's
7 reliability, but, on the other hand, the team is not
8 reliable?

9 A Yes.

10 Q Okay. You will have to explain that to me, but I
11 guess what I would come back to is now that you have seen
12 all the additional documentation, the report of the
13 positive alert from Charlie, the training and experience
14 that we put up for you, with all the training that
15 Detective Price and his canine handler had in front of
16 him, wouldn't that have changed your position on the
17 reliability of the dog team?

18 A Probably on the last part of it. I still don't
19 have enough information to make that determination based
20 on any of the forms that I saw as far as training or
21 certification.

22 Q So at best, right now, you just cannot say one way
23 or the other whether the dog team is reliable?

24 A Correct.

25 MR. AXELRAD: No further questions, your Honor.

1 THE COURT: All right. Redirect?

2

3 REDIRECT EXAMINATION

4 BY MR. SHERMAN:

5 Q Sir, when you say you can't say whether the team is
6 reliable or not, can you say that based solely on this
7 certification, that the certification did not adequately
8 test the reliability of the document?

9 A It did not.

10 Q So, that, you have no doubt about?

11 A Correct.

12 Q Now, these various organizations that are set up
13 for the purpose of issuing certification, these are all
14 basically police organizations, are they not?

15 A Yes.

16 Q And it is, basically, would it be fair to say that
17 it is police policing police?

18 A Yes.

19 Q And, in your experience, what are the reasons for
20 these organizations to set up this system where
21 one police organization is certifying another police
22 organization?

23 A What is the reason?

24 Q Yes. If you can give it.

25 A Well, I know that in many aspects, it is to provide

1 a service that will allow us to find out how well we are
2 doing with training dogs and somewhat testing the dog's
3 reliability, but, unfortunately, often comes, and I have
4 been involved in several organizations as you can see, is
5 that it becomes a business. And so when you are setting
6 up a certification, you want that certification to be,
7 you know, at least have them go through some tests to
8 show that the dog is searching and that they are at the
9 minimal aspect that they have some recognition of the
10 odors.

11 But you don't want to make it too difficult or
12 else you won't have membership. So when it comes to the
13 double blind, I think that is where things begin to
14 change. In the beginning, they want to do the right
15 thing and have a certification that can test the
16 reliability of a team. But they soon realize that you
17 can't make it too hard or else you won't have any
18 members. So that is where they have to kind of make a
19 choice. Do we want membership, or do we want a true test
20 of the teams that are a part of our membership.

21 Q And do these organizations charge money for
22 certifying dogs?

23 A Yes.

24 Q And that is why you say it is a business?

25 A Yes.

1 Q One of the reasons you say it is a business?

2 A Absolutely.

3 Q Now, in looking at the few documents that the
4 prosecutor showed you from the training records, he
5 showed you maybe five or six documents, but you looked at
6 more than 140 or something like that; correct?

7 A I am not sure the exact number, but it was in the
8 hundreds.

9 Q And it was on the totality of looking at all these
10 documents that you came to the conclusion that the
11 records were insufficient to show that Charlie was
12 properly trained?

13 A Yes. There was not enough information.

14 Q Do you know if the National Police Canine
15 Association ever looked at the training records in this
16 case to see whether Charlie was properly trained?

17 MR. AXELRAD: Objection, your Honor. Calls for
18 speculation.

19 THE COURT: Rephrase the question.

20 Q BY MR. SHERMAN: Well, is it your experience that the
21 agency that issues a certificate looks at the training
22 records?

23 MR. AXELRAD: Objection, your Honor. Relevance.
24 I am not sure where we are going here.

25 THE COURT: I don't understand the question.

1 Rephrase it.

2 Q BY MR. SHERMAN: Well, is there any indication in any
3 of the documentation that the National Police Canine
4 Association looked at any of the training records for
5 Charlie?

6 A They do not.

7 Q And would it be important to determine the
8 reliability of the dog that an organization look at the
9 training records?

10 A It is not their job. Their job is just to conduct
11 a certification of that team based on what is before them
12 at the time.

13 Q I take it that in your professional opinion,
14 however, to determine the reliability of the dog, that
15 would be something that one should look at?

16 A Definitely. Yes.

17 Q And I think in the break, you discussed, again, the
18 importance of deployment records?

19 A To get a full picture, you have to see the
20 deployment records.

21 Q Tell us again why?

22 A Because that is where you see the difference
23 between what happens in training and what happens in the
24 field. And I know people will discuss a lot of
25 variables, but that is exactly why you have to look at

1 deployments.

2 Again, it is not just for court cases but a
3 handler needs to understand why if he is getting alerts
4 with nothing being found, why is that happening. And the
5 old fallback is to say there must have been something
6 there at some point, but you can't say that with every
7 search.

8 If you are seeing that, then you need to
9 change what you are training on and some of your training
10 practices because that should not be happening to the
11 point where you have way too many alerts where nothing is
12 actually found.

13 Q In your opinion, is it easier -- does a dog usually
14 have a higher rate of success in the certification
15 process versus maybe in the field?

16 MR. AXELRAD: Objection, your Honor. The
17 government is producing these in camera to the court. I
18 don't know --

19 THE COURT: Well, also, I don't understand the
20 question because are you saying certification for all
21 five organizations, for all organizations? Or I don't
22 understand what the question is.

23 MR. SHERMAN: All right. I will rephrase it.
24 Well, your Honor, one of the things --

25 THE COURT: Don't give me an argument. I asked

1 you to rephrase the question.

2 Q BY MR. SHERMAN: In this particular case, Charlie
3 supposedly was involved in 775 searches. You are aware
4 of that fact?

5 A Yes.

6 Q And would it be important to know the times that
7 drugs were actually found in those 775 searches to test
8 Charlie's reliability?

9 A Yes. It would be helpful to have that information.

10 Q Why?

11 A Again, to, just as I explained before, just to know
12 how things are different for this team in deployments,
13 what is it that is happening in the field. If we are
14 having a high number of searches and alerts and only a
15 few times narcotics are found, then that is probably
16 based on more what the handler is doing in regard to
17 profiling and making sure they are stopping and searching
18 the right vehicles to have a higher chance of finding
19 something inside because the dog obviously is not working
20 the way that he should be working.

21 Q So you say that the deployment records could partly
22 be based upon the quality of the searches initiated by
23 the handler?

24 A It can. Again, we only know it by looking at the
25 deployment records what is happening. They could have a

1 very high percentage. They could have seven of those
2 searches where the dog is alerting and something is
3 found. And that way I would be able to tell you if the
4 training and the certification goes hand in hand with the
5 deployments. Without that, I can't tell you.

6 Q The prosecutor talked about these few occasions
7 where these blind -- blind is different than double
8 blind, isn't it, as far as a testing process?

9 A A blind just simply means the handler doesn't know
10 what has been hidden and how many aids had been hidden if
11 any. The blind is that they don't know.

12 THE COURT: A double blind is the same as a blind?

13 THE WITNESS: Double blind means the person that
14 is in the room with them, as far as a trainer or a
15 certifier, doesn't know either. So the double is the
16 handler doesn't know. I guess you could do triple if you
17 include the dog. But as far as human beings, the handler
18 doesn't know and the person who is conducting the test
19 does not know. That is what make it is a double blind.
20 A single blind would be that the handler doesn't know,
21 but the person inside the room does.

22 THE COURT: Okay.

23 Q BY MR. SHERMAN: So a blind, there could be
24 two people involved plus the dog, and the person that hid
25 the drugs may very well be in the same location where the

1 dog is.

2 A That is probably what happens more than -- that is
3 what happens all the time.

4 Q And a double blind, whoever hid the drugs is not
5 anywhere around, well, is not in the room where the dog
6 is conducting the search; is that correct?

7 A Correct.

8 Q The prosecutor also asked you about these searches
9 where in looking at the exhibit. I think it is Exhibit
10 8. It says the search shall consist of three indoor
11 rooms and four vehicles with a total of four finds.

12 And then below that it says that there will be
13 two finds in the three rooms; correct?

14 A Yes.

15 Q And then it tells you in the vehicle there are
16 going to be four vehicles and two finds?

17 A Yes.

18 Q So the document is telling you exactly where the
19 finds are going to be in either the room or the vehicle,
20 exactly how many.

21 A Exactly how many.

22 Q So the handler knows beforehand that there is going
23 to be three rooms involved, and in those three rooms,
24 there is going to be two finds. So he knows exactly how
25 many finds within those three rooms. He is being told

1 that?

2 A Yes.

3 Q And the same thing with the vehicles, there is
4 four vehicles but he knows there is going to be
5 two finds?

6 A Yes.

7 Q And, in your opinion, is that the appropriate way
8 to give advanced notice to the handler as to what he is
9 looking for and what he is going to find?

10 A No. Because you just keep searching until you find
11 two things or at least get your dog to alert twice.

12 Q And it would be much more, would it be much more
13 reliable if he was not told in advance how many finds
14 would be within either the room or the vehicles?

15 A Yes.

16 Q Now, you indicated that this organization that we
17 spoke about, I think it was SWGDOG?

18 A SWGDOG.

19 Q There were members of the board that agreed with
20 the study by this, Mrs. Lit, was that her name?

21 A Lisa Lit.

22 Q Lisa Lit. What was the basis of Lisa Lit's
23 article?

24 A It is a long article, but it is just that the
25 handler has influence on a dog during a search to alert

1 or not alert, and the study was basically putting the
2 dogs and handlers in different situations that prove that
3 point.

4 Q And as a result of that search or that article, did
5 you know within the community if certain things changed?

6 A Yeah, I believe so. I mean, some of the members of
7 swig dog I know personally have worked with them and
8 trained with them. I know that they know that what was
9 found in that study is true because we work on that all
10 the time, you know, about how a dog is influenced by the
11 handler, don't change positions on the leash, don't slow
12 down when you are coming to a place where you think there
13 might be a find. That is all basically what the study
14 says.

15 So for anyone in the industry to say that they
16 find that study to be unreliable or to disagree with it
17 is speaking out of both sides of their mouth. We know
18 that what she found in that study is true. We just don't
19 like it, or they don't. I think it is fantastic. But I
20 think what they are upset about is that it was put into a
21 scientific study that can be used against them in court.
22 Simply, you should just train better and make sure that
23 you are not influencing your dog.

24 Q Do you know if the training today is that before a
25 search is conducted, there should be some kind of video

1 so that it later can be confirmed whether the dog
2 actually did alert without cueing from the officer?

3 A We use video all the time in our training, and I
4 know other trainers that do. One specific thing that we
5 do is that we will put a video camera in a room and then
6 tell the handler to go search and I won't go inside to,
7 again, just reinforce some of the things we talked about
8 because we will see the handler slow down at certain
9 locations and change his behavior when he gets to things
10 where he thinks it might be. So we just guard the
11 handler from doing that through video because they don't
12 always believe me. They think I am just picking on them.
13 So the video helps us make that point when they don't
14 believe us as trainers or evaluators.

15 Q So the video is the best evidence of exactly what
16 happens at the scene?

17 THE COURT: Counsel, you know, this is getting
18 really far afield.

19 MR. SHERMAN: Fine. I have no other questions,
20 your Honor. I only bring this up because --

21 THE COURT: You are making an argument again.

22 Any other questions from the government?

23 MR. AXELRAD: Your Honor, just very briefly. It
24 fits on a sticky note. Very briefly, your Honor.

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RECROSS-EXAMINATION

BY MR. AXELRAD:

Q Mr. Falco, you were talking about these deployment records and how you think they are necessary for you to determine the reliability of a dog team?

A Yes.

Q And just to be clear, as of right now, you cannot determine the reliability of the dog team; right?

A Not based on what I have seen.

Q And you were with the Anaheim Police Department for several years; right?

A Yes.

Q And you were a canine handler?

A Yes.

Q And you did narcotics investigations?

A Yes.

Q And you generated deployment records; right?

A Yes. All the time.

Q And did you routinely turn them over in court cases?

A I was only on the stand for my dog once in L.A. federal court. It might have been in this room for all I know, but, at that point, we did. But I didn't find myself in court very often.

1 Q So only one time did you ever turn over deployment
2 records?

3 A That was the only time we were ever asked.

4 Q Only time you were ever asked. Okay. And you,
5 through your company, Falco Training Academy, you certify
6 dogs; right?

7 A I do.

8 Q And when you certify dogs, you don't see their
9 deployment records, do you?

10 A That is not part of the certification. No.

11 Q That has nothing do with the certification; right?

12 A It does not.

13 Q So you can certify a dog and never have seen their
14 deployment records, and that certification is still good
15 right?

16 A Correct. To say that on that day the dog met the
17 standards that we set forth for our certification.

18 Q Much like in this case, the NPCA certified Charlie
19 2011 through 2014?

20 A Yes.

21 Q Without having seen his deployment records?

22 A Not for the certification test, no.

23 MR. AXELRAD: No further questions, your Honor.

24 MR. SHERMAN: Nothing, your Honor.

25 THE COURT: Let me ask a question. Did you

1 testify that you said you could not determine whether or
2 not Charlie was properly trained? Was that your
3 testimony?

4 THE WITNESS: I can not one way or the other. The
5 dog could be trained very well. The dog could be
6 horribly trained.

7 THE COURT: Okay. Is that because certification
8 that he obtained was from the National Police Canine
9 Association which doesn't have all of the steps that you
10 think are appropriate in that situation?

11 THE WITNESS: No. I look at them as
12 two completely different things. So the training is
13 one aspect. I -- for instance, just one little detail,
14 if we can just focus on one thing is that the aids that
15 they are using for training, I don't know what those are
16 in. I don't know if they are the handlers that they are
17 using all the time through the life of the dog. If that
18 is the case, then that is bad training. If it said in
19 the records that they were using multiple sources for
20 their narcotics, then, that would be much better.

21 THE COURT: So, in other words, the problem really
22 is that the information that is provided in the records
23 isn't sufficient to indicate whether or not the tests
24 that were done were up-to-snuff in your opinion because
25 they don't include all the information. It may very well

1 have all the tests that you think are necessary, but from
2 the documents that have been provided, all those things
3 aren't noted in the records.

4 THE WITNESS: We are talking about certification?

5 THE COURT: And training. Both.

6 THE WITNESS: Well, yes. There is not enough
7 information. I think if certification had the double
8 blind, I would feel a lot better about saying, well, that
9 is really good practice that they at least did that.

10 THE COURT: Okay. Thank you. All right. The
11 witness is excused. Thank you very much.

12 Do we have another witness?

13 MR. SHERMAN: Yes, your Honor. I have another
14 witness. Call, Dr. Woodford.

15 (The witness was sworn.).

16 THE CLERK: Have a seat. State your name and
17 spell your last name for the record.

18 THE WITNESS: My name is Warren James Woodford,
19 W-O-O-D-F-O-R-D.

20

21 DIRECT EXAMINATION

22 BY MR. SHERMAN:

23 Q Dr. Woodford, you are a doctor of what?

24 A Chemistry.

25 Q And when -- do you have a Ph.D.?

1 A Yes.

2 Q And when did you obtain your Ph.D.?

3 A 1973.

4 Q From where?

5 A Emory University in Atlanta, Georgia.

6 Q And was there a specialty with your degree?

7 A Yes. I was trained at that time as a flavors and
8 fragrance chemist. I was preparing to work for
9 Coca-Cola. My education was being paid in part by
10 Coca-Cola for that purpose. However, I -- when I got my
11 Ph.D., I decided I wanted to go into forensic chemistry
12 instead. But during that time I was doing my Ph.D. work,
13 I was using, what do you call, gas chromatographs to
14 analyze odor, principles that make up scents and odors.

15 Q So that is a separate, there is actually a science
16 of that?

17 A Yes. There is a huge science of that. It is a
18 major part of chemistry is the scents and odors.

19 Q When you say scents and odors, from a scientific
20 point of view, what do you mean by that?

21 A Well, a scent is generally --

22 THE COURT: Let me stop. Aren't we getting so
23 basic here? I mean, I understand what scents are. I
24 understand what the science of scents are.

25 MR. SHERMAN: Well, it is going to tie up to what

1 I am going to later question him about, but if the court
2 feels --

3 THE COURT: Why don't you ask what are the
4 questions here.

5 Q BY MR. SHERMAN: Okay. Just going into a little bit
6 more of your background first. You got your Ph.D. in
7 chemistry. You decided to be a forensic chemist;
8 correct?

9 A Yes.

10 Q And what year was that?

11 A That was in 1975. This is after I did a post
12 doctoral study at Kansas University. And then I was
13 invited to be a visiting scientist at Scotland Yard
14 laboratories in London where I started out my work in
15 forensic science. And then, after '75, I came back to
16 Atlanta which had just built a state-of-the-art crime
17 laboratory.

18 And I was allowed to use the crime laboratory
19 as an independent doing contract retesting of evidence.
20 And from 1975 to present, I still do that. And I have
21 tested, also, evidence at the U.S. Army forensic testing
22 laboratories, U.S. Customs laboratories, many crime labs
23 throughout the country. And during that time, I have
24 gained experience on the odors of the drugs.

25 Any time I was working with testing drugs, a

1 large quantities of meth or cocaine or marijuana, I have
2 paid particular attention to that and patented the odor
3 of cocaine and made the other odors of controlled
4 substances which I have supplied to law enforcement for
5 many years. And it is my patented material.

6 Methylbenzoate is the basis for the U.S.
7 government's theory of, the two-hour theory of residual
8 odor that we have been talking about. The basis of the
9 popcorn analogy that I heard given minutes ago is based
10 on my patented material which I have allowed the
11 government to use freely ever since I got it for training
12 dogs. And there is a training facility in Front Royal,
13 Virginia, run by the government that is manufacturing my
14 patented material using it worldwide for training dogs,
15 used as a standard in dog science for training dogs.

16 And it is my main discovery in all my work is
17 that dogs do not smell the drug itself, they smell the
18 odor, the volatile odor substance that is a noncontrolled
19 substance that comes off the drugs. Dogs do not smell
20 methamphetamine. They smell benzaldehyde. And I can
21 just narrate and go on and do this very quickly.

22 Q Let's try to do it question and answer.

23 A Okay. Do it like that.

24 Q Okay. So at some point in your research, you
25 determined that dogs don't actually smell the illegal

1 drug but the odor of the drug; is that correct?

2 A That's correct.

3 Q Now, when did that happen that you made that
4 determination?

5 A That was in the late '70's, and I received a
6 patent, I believe, in 1981.

7 Q Now, before that time, what was the generally
8 accepted viewpoint as to dogs hitting on drugs?

9 A That was that dogs were approved and accepted by
10 the courts because it was thought at that time that dogs
11 only alert to contraband, controlled substances, and my
12 research proved that that is not the case, that dogs
13 alert to noncontrolled substances to non contraband.

14 And this has been confirmed by various other
15 scientists including the president of the SWGDOG people
16 we have been talking about, and the other organizations
17 have confirmed my research and have expanded my research
18 to all drugs. It is now a basic principle of dog science
19 that started with my research and publications.

20 Q Okay. So Dr. Woodford, explain to me again,
21 sometime in the early '80's, you got a patent and
22 determined that the dogs alert to the odor of the drug
23 rather than the drug itself; correct?

24 A Correct.

25 Q Now, when you say the odor of drugs, what creates

1 the odor that the dogs alert to?

2 A It is created by a process when drugs come in
3 contact with moisture and heat in the environment, there
4 is a chemical degradation process akin to fermentation
5 like food goes bad and starts to give off an odor, or a
6 dead body gives off an odor. When we smell a dead body,
7 of course, pieces of skin and stuff doesn't go into our
8 nose. What happens is cadaverring, comes off, vapors off
9 the body. And with a little training, you can train a
10 dog to learn to smell that. You buy it from Sigma
11 Corporation that sells my material. We heard here that
12 is where you can purchase these things.

13 These odors are not controlled substances. It
14 is not a dead body, but yet it is indicative of a dead
15 body and same with drugs. The odor, a noncontrolled
16 substance is indicative of each of the controlled drugs.

17 Q Now, for instance, you have got your first patent
18 having to do with cocaine; correct?

19 A Yes.

20 Q And what was the noncontrolled substance that
21 emitted the odor that was associated with the cocaine?

22 A Methylbenzoate.

23 Q And what is methyl --

24 THE COURT: Let me stop. Let me ask the question.
25 When you say patent, what exactly do you mean?

1 THE WITNESS: United States Patent.

2 THE COURT: What is the invention?

3 THE WITNESS: The invention is I discovered a
4 chemical process by which the odor is emitted from
5 contain, and it is patentable because it is a process.
6 You can't patent a naturally occurring odor. You can
7 patent the process of the odor.

8 THE COURT: Is it the process of detection, or is
9 it just the fact that drugs give off this particular
10 substance which is detectable?

11 THE WITNESS: It is both.

12 THE COURT: Okay.

13 Q BY MR. SHERMAN: Do you have a patent on the idea or
14 the process?

15 A I have a patent on the disclosure of the process
16 that leads to a material substance which is
17 methylbenzoate which as soon as I discovered that, the
18 FBI contacted me. They were head of the training dogs in
19 the United States and the dog program and asked if I
20 would be willing to allow the government to use it which
21 I did. And then the government funded numerous other
22 scientists to check it out and numerous publications on
23 it by other people confirming that the material that I
24 patented and the process by which it is made from cocaine
25 is indeed, after being tested on numerous dogs, shown to

1 be the material that dogs alert on.

2 And it is a training aid being manufactured by
3 the government at a facility in Front Royal to this day
4 and that it is valuable for its use as proficiency
5 training of dogs. I could bring a dog into this room,
6 and I could -- we could bring Charlie right here. And in
7 other federal courts, they have subpoenaed dogs for this
8 very purpose to bring to the court for me to demonstrate
9 and to test the dog's proficiency and training using my
10 patented material.

11 Q Okay.

12 MR. AXELRAD: Your Honor, just going to object to
13 this line of questioning as irrelevant. This case is
14 about methamphetamine.

15 MR. SHERMAN: We are going to get to that in a
16 moment.

17 THE COURT: Well, let's see where it goes. I will
18 give you three minutes. If you are not there by that
19 point in time, then it is over.

20 MR. SHERMAN: Okay.

21 Q So let's take methamphetamine. Is there some odor
22 associated with methamphetamine, some chemical that
23 through your research and through the research of others
24 associated with methamphetamine?

25 A Yes.

1 Q What is that?

2 A Benzaldehyde.

3 Q And what is benzaldehyde?

4 A Benzaldehyde is a noncontrolled substance that is
5 made through a process of the chemical decomposition of
6 methamphetamine as it comes in contact with air and
7 moisture, and it will liberate as a gas off of the
8 methamphetamine. And the dogs will smell it, and it is a
9 noncontrolled material.

10 Q Okay. So, then, are dogs somehow trained to
11 identify benzaldehyde?

12 A Yes, it is a training aid.

13 Q Okay. And this training aid that you refer to that
14 is manufactured by this company back east, is this
15 something that some agencies used to train the dogs?

16 A They could. I don't know who does that, but, I
17 mean, it is out there with all the other various training
18 aids. For each of the drugs, cocaine, methamphetamine,
19 heroin, opium, cocaine, crack, all the drugs that Charlie
20 in this case are trained on, he is smelling an
21 associative odor being liberated by those drugs and not
22 the drugs themselves. And each of those noncontrolled
23 substances can be used as a training aid.

24 Q Now, benzaldehyde, is that a legal substance?

25 A Yes, it is.

1 Q And benzaldehyde is contained in what other legal
2 products?

3 A It is contained in many cosmetic products, men's
4 shaving cream, soaps, woman's facial creams, various food
5 products. It is contained in numerous non contraband
6 materials.

7 Q Okay. So, then, if a dog is alerting to a drug,
8 let's say methamphetamine, he is really alerting to the
9 benzaldehyde which is contained within the
10 methamphetamine or is the odor that the methamphetamine
11 is emitting; is that correct?

12 A Yes.

13 Q Okay. And this is a legal substance?

14 A Yes.

15 Q Now, how are dogs trained to distinguish between,
16 if you know, between the smelling the legal odor of
17 benzaldehyde as compared to the methamphetamine itself?

18 A By exactly the same process that we heard when the
19 government's attorney asked, pointed out about the
20 currency.

21 Currency is used, clean currency is used to
22 so-called proof the dog, that the dog is not alerting to
23 the ink on the currency or the drug residue on the
24 currency. And it is called proofing. And so what you do
25 is in your training procedures, you take the legal

1 products known to contain benzaldehyde and you proof the
2 dog on those to teach it, as we heard the testimony of
3 Mr. Falco, you teach them not to alert to those products.

4 And it is just a -- it is all the same simple,
5 simple process called proofing, and it has to be done for
6 each drug. Each drug that the dog is trained to detect,
7 each must have its own proofing associated with it. And
8 that would be shown in the records. The proofing against
9 benzaldehyde and legal products would be shown just like
10 the currency was shown in the records in this case.

11 Q Now, in this particular case, did the training
12 records indicate that any proofing was done in the
13 training of Charlie to distinguish between a legal
14 product that might contain some quantity of benzaldehyde
15 and methamphetamine?

16 A No.

17 Q Okay. And is that, in your opinion, something that
18 should be done or could be done, so that the dog would be
19 able to make that distinction?

20 A Yes. It definitely needs to be done. Especially,
21 if there is an airport. If there's any talk of an
22 airport or luggage because this is where these
23 benzaldehyde products are usually put into luggage so at
24 airports when the luggage goes through the cargo part
25 where the pressure is reduced, the odor of benzaldehyde

1 can come out of legal products, come out of the luggage,
2 get on the outside of the luggage, get from other
3 people's luggage onto your luggage. So in an airport
4 context situation, you need to have a dog that has gone
5 through proofing to make sure that it is alerting to
6 actual methamphetamine, benzaldehyde rather than
7 benzaldehyde from luggage. It is commonly found in
8 luggage in airport situations.

9 Q Now, you have seen the certifications that make up,
10 from the National Police Canine Association; correct?

11 A Excuse me?

12 Q You have seen the certifications issued by the
13 National Police Canine Association in this case? I
14 believe it is Exhibit 10.

15 A Yes, I have.

16 Q And it indicates that a certain quantity of
17 methamphetamine was utilized in the testing process;
18 correct?

19 A Correct.

20 Q And, for instance, it says for the year 2011, it
21 says 14-grams?

22 A Okay. I don't remember, but you are looking at the
23 document, I am assuming.

24 Q Now, is it important to know, first of all, when
25 they are using methamphetamine in that situation, what

1 you were saying, I believe is that it is the chemical
2 odor that the dog is recognizing rather than
3 methamphetamine itself?

4 A Correct.

5 Q Okay. And would it be important to know the
6 quality of the actual methamphetamine as part of the
7 14-grams?

8 A Yes. That is important. Yes.

9 Q Why?

10 A Well, because depending upon the -- methamphetamine
11 will age. It will -- if it is kept in an evidence room
12 for months, it will gain odor. If it is brand new
13 methamphetamine, it doesn't have as much odor.

14 So a little tiny bit of methamphetamine could
15 have an odor much stronger. I am talking about less than
16 a gram of actual methamphetamine could have much stronger
17 odor than, say, a pound of methamphetamine. It just
18 depends on the degradation just like a dead body smells
19 more a week later than it does than when it was just shot
20 or murdered. So there is this odor build up.

21 So when they are talking about training dogs
22 on an amount of material, the amount of material is not
23 as relevant as the amount of odor that is coming from
24 that material. Is it an odoriferous training aid, or is
25 it a pristine, nonodorous 14-grams. You wouldn't have

1 totally nonodorous, but you would have some odor of
2 benzaldehyde coming from brand new methamphetamine.

3 And you might have the same amount of odor
4 coming from those 14-grams as coming from a bottle of
5 shaving cream that is giving off the benzaldehyde odors.
6 So these things start to overlap. The noncontrolled
7 benzaldehyde --

8 THE COURT: Let me ask you, benzaldehyde can be
9 used to manufacture methamphetamine; is that correct?

10 THE WITNESS: That's correct. But in chemistry,
11 your Honor, you remember when you have precursors and you
12 manufacture from precursors to a material, A goes to B by
13 the arrow in chemistry. Then, also, with age, B goes to
14 A. It reverts. So that is what happens. That is why it
15 is there coming and going. That is why the precursor
16 is -- can be there be and set off the dog.

17 Q BY MR. SHERMAN: All right. Bottom line, if a dog
18 alerts in a particular situation and has not been, let's
19 call it proof trained, is it then your opinion that --

20 THE COURT: I don't understand. What do you mean
21 by proof trained?

22 THE WITNESS: You want me to answer that, your
23 Honor?

24 THE COURT: No. I am asking him to explain what
25 he means by the question.

1 THE WITNESS: Oh. Okay. Sorry.

2 MR. SHERMAN: Maybe I should add, I think he
3 answered that. So may I ask that question of the witness
4 then?

5 THE COURT: I want to know what you mean by the
6 term.

7 MR. SHERMAN: Proof trained, in other words, that
8 the dog has been trained to not alert to an item that has
9 benzaldehyde in it as compared to a certain percentage of
10 benzaldehyde in methamphetamine. In other words, let me
11 say it a different way. In a legal product, there is a
12 certain amount of benzaldehyde.

13 THE COURT: Apparently, you don't understand the
14 question yourself. So let me ask, do you understand his
15 question?

16 THE WITNESS: No. I would rather hear from you.

17 THE COURT: That is why I am saying, rephrase the
18 question.

19 THE WITNESS: You got to rephrase it. Yes.

20 Q BY MR. SHERMAN: Okay. What do you mean by -- what
21 does the phrase proof training mean to you?

22 A Proofing. It isn't called proof training. It is
23 called proofing. Proofing is a part of training.
24 Proofing is to teach a dog not to alert to certain
25 circumstances. Like explained in the prior testimony,

1 you don't want the dog to alert to the odor of the
2 plastic baggy. So there are procedures for teaching the
3 nothing dog not to do that.

4 Q And what would be the point of teaching the dog
5 proofing as it relates to benzaldehyde as part of the
6 training to alert on methamphetamine?

7 A Well, you can do what is called extinction. If you
8 do the proof testing, if the dog is alerting to shaving
9 cream, then you put him through extinction steps of
10 training to teach him not to do that.

11 And it is based on the quantity, the amount
12 and also associated odors that might be in there that the
13 dog could recognize in shaving cream but would not be in
14 illegal meth. In other words, there are methods of
15 training to teach a dog not to alert to the presence, to
16 small quantities of drugs in legal products.

17 Q All right. So was that done in this case in
18 Charlie's training?

19 A No.

20 Q So we know that there was a large quantity of
21 methamphetamine found in this case. Does that
22 automatically mean that Charlie was alerting to the
23 methamphetamine, or does it mean that he was alerting to
24 the benzaldehyde -- well, let's just ask that question
25 first.

1 What was he alerting to?

2 A What was he alerting to?

3 Q Yes.

4 A I don't know what he was alerting to or even if he
5 alerted. If we had some evidence that to have a
6 foundation and to know that he was trained to alert and
7 was proofed properly, then we would assume that he
8 alerted. You could assume that he alerted to the
9 methamphetamine. But then you have got to think, well,
10 the methamphetamine was in the trunk of the car, and it
11 was in -- I thought it was vacuum-sealed plastic
12 containers.

13 Well, it turns out that when you have a vacuum
14 plastic that is made of the vacuum material, construction
15 is made of nylon and polyethylene, that is how you can
16 heat seal it and put a vacuum on it. If it is vacuum
17 sealed, that means air is not going in or out of the
18 bags. The largest molecule in air is carbon dioxide. It
19 has a particle size of 44. But benzaldehyde has a
20 particle size of 106. It is similar to relating to
21 body's odor.

22 So 106 particle size cannot go through
23 material that won't let 44 through. It is like stepping
24 on a drain grate. You don't fall through the grate
25 because your body is too big to fall through the holes.

1 So if the bags were vacuum sealed as we said, as I
2 understand, and that means that there was no
3 benzaldehyde, odor of methamphetamine emitting from
4 inside those bags with the, holding the powder.

5 Now, of course, in packaging --

6 Q Doctor, just try to answer this question.

7 A Okay.

8 Q My question is without the dog going through a
9 proofing process so it can distinguish between
10 benzaldehyde in legal products and that same chemical in
11 methamphetamine, is there any reliable way to say that
12 the dog is necessarily alerting on an illegal substance?
13 That is my question.

14 A No.

15 Q Okay. And the reason for that is because
16 benzaldehyde is in a legal product as well as an illegal
17 product, and without the proper training, there is no way
18 for the handler to know one way or the other?

19 A Correct.

20 Q And I take it that depending upon the packaging of
21 the methamphetamine, the purity, et cetera, unless the
22 dog has been properly trained, he can't distinguish
23 between the two items either the legal or the illegal
24 product?

25 A Correct.

1 Q And that, in your opinion, based upon the training
2 logs, the dog was never given the training to make that
3 distinction; is that correct?

4 A Correct.

5 Q And, yet, there is a way to train the dog to make
6 that distinction; is that correct?

7 A Correct.

8 MR. SHERMAN: Thank you.

9 THE COURT: We will go until 12:30, and if it is
10 not over by 12:30, then we will stop at 12:30.

11 MR. AXELRAD: Thank you, your Honor.

12 THE COURT: Okay.

13

14 CROSS-EXAMINATION

15 BY MR. AXELRAD:

16 Q Good morning, Dr. Woodford.

17 A Good morning.

18 Q So Dr. Woodford, I just want to just dive right
19 into what you were just discussing with defense counsel.
20 You had a chance to review some of the reports that
21 defense counsel provided to you in this case?

22 A Yes.

23 Q And just want to notice, did you see a picture of
24 the packages in this case that you described as vacuum
25 sealed?

1 A I did not see the packages. I just, as I said, it
2 was -- I was told that. I have not seen the packages.

3 Q You were told they were vacuum sealed?

4 A That's correct.

5 Q Would it surprise you to learn that they were not
6 vacuum sealed?

7 A It wouldn't surprise me. No.

8 Q Okay.

9 A But I just don't know. I don't know if they were
10 or not.

11 Q But that would be whether they were vacuum sealed
12 or not would be important to your analysis?

13 A Well, yes. If they weren't vacuum sealed, then,
14 the odor could get out. Sure.

15 Q The odor of the methamphetamine?

16 A Yes.

17 Q Which is what the dog alerted to in this case.

18 So I want to just dive right into your CV, if
19 we can because there is a couple of things in there that
20 I think I would like to talk about, the first of which,
21 and I am looking at the license and certificates section
22 that you have in here. And I want to just draw your
23 attention, Dr. Woodford, you are familiar with a case
24 United States versus Ingram?

25 A Ingram and Battle, yes.

1 Q Out of the Seventh Circuit?

2 A I do. I know it.

3 Q And that was a case in which Judges Posner and
4 Easterbrook and a district court judge said that, and I
5 am quoting, and in addition, it turns out that the
6 curriculum vitae which he submitted -- and they were
7 referring to you, Dr. Woodford -- to the court contained
8 the false representation that he is licensed by the DEA
9 to conduct tests on controlled substances. We are
10 surprised the Federal Public Defender would rely on
11 Woodford.

12 Are you familiar with what I am talking about?

13 A I am familiar with what you are talking about. May
14 I address that?

15 Q We are going to get there. So I am looking at the
16 licenses and certificates section of your CV in this
17 case.

18 A Yes.

19 Q And the Ingram decision by the Seventh Circuit
20 Court of Appeals was in 1999; is that right?

21 A Right.

22 Q And I am reading your licenses and certificates,
23 and the second entry says controlled substances
24 registration certificates, United States Department of
25 Justice, August, 1989, through May, 1997, for analytical

1 lab activities regarding testing of controlled substances
2 from June, 1997, to present and permitted to conduct
3 independent examinations and testing of controlled
4 substance. Isn't that what the Seventh Circuit was
5 referring to?

6 A No, it was not.

7 Q It wasn't?

8 A May I explain now?

9 Q Let me just jump up to the researcher license that
10 you have here with the State of Tennessee Department of
11 Health, License No. 10410?

12 A Yes.

13 Q Okay. Is that a current license that you have?

14 A Yes.

15 Q If we called the Tennessee Department of Health
16 right now, they would say that there is a current
17 researcher license for Dr. Warren James Woodford?

18 A They should. I have an original copy of it with me
19 in my book bag, that says it is original, and it expires
20 the end of this year. I can show you. I have it here if
21 you want to see it.

22 Q We will come back to that.

23 A Okay.

24 Q So I want to go through now some of the testimony
25 that you say that you have been a part of as an expert

1 testifying, and I am looking at your CV here. So I went
2 through and I counted up in the last four years because
3 you only listed for us four years of testimony, there
4 were 102 instances in four years that you testified as an
5 expert; is that right?

6 A No. That is not right. You are wrong about that.

7 Q It is not 102?

8 A 102 in four years? No, you looked at -- maybe you
9 looked at a document that contains a lot more cases than
10 four years.

11 Q I'm sorry. You said four years. I apologize. You
12 said you provided four years?

13 A No. I didn't. Read it carefully.

14 Q 2006 to -- apologize. You are correct. 2006 to
15 2015, you testified 102 times?

16 A I didn't. I haven't counted them, but if you
17 counted them, I will take your word for it.

18 Q And from 2006 to 2015, it looks like the vast
19 majority, maybe over 90 percent of those cases are DUI
20 cases; is that right?

21 A Yes. Involving infrared testing of breath which
22 infrared is used for testing odor on breath. That is a
23 common method, and my expertise of testing odors in air
24 relates also to the testing equipment for DUI which is
25 basically odor testing devices testing for the volatile

1 odor of alcohol in human breath. It is all the same.

2 Q That is your area of expertise?

3 A Yes.

4 Q DUI's and blood alcohol content?

5 A No. It is testing volatile organic compounds in
6 air which just happens to be odors and also related to
7 DUI.

8 Q Okay. So I want to get into how your expert
9 testimony relates to dogs. You are not a dog trainer;
10 right?

11 A I am not.

12 Q You don't have any real experience with dogs, do
13 you?

14 A Lots of experience with dogs working with trainers
15 and handlers, but I am not a principal.

16 Q You are not an expert in dogs. I have a dog. I am
17 not an expert in a dog; right?

18 A I am not an expert, but I am a go-to guy for dog
19 trainers and handlers calling me and asking and for
20 advice about the chemistry and the olfaction and how dogs
21 smell and why the dogs aren't working on this and that
22 and would I supply odors and these kind of things.

23 Q Let me just interrupt.

24 A Just a go-to guy in the area.

25 Q You are the go-to guy in the area?

1 A Yes.

2 Q So I went through, and I looked at some of these
3 cases that you said you testified to, quote, canine
4 olfactory observations?

5 A Correct.

6 Q So I looked at some of these cases. I didn't look
7 at every one of them because I couldn't pull up every
8 one, but, for instance, in 2007, the State of Oregon
9 versus Peterson. Do you recall that case?

10 A No, I don't.

11 Q Well, take my word for it, you described it here as
12 a canine olfactory observation is the subject of the
13 case.

14 A Yes.

15 Q But I looked up that case and that was a DUI case
16 about blood alcohol content that had nothing to do with
17 dogs; right?

18 A Maybe it is an error. I did testify in Oregon, but
19 maybe I have mixed up the cases. I'm sorry. I am not
20 trying to mislead you there. So what was the name of it
21 again? I will have to correct that.

22 Q State of Oregon versus Peterson?

23 A Peterson. Okay. I am glad you found that. Thank
24 you.

25 Q So I looked through, you said that you were

1 qualified as an expert multiple times in district court
2 here in California. I couldn't find any references in
3 2006 to 2015 to that. I looked at United States versus
4 Duncan which was in the Western District of Missouri.
5 And that was a case where you testified that 90 percent
6 of currency is contaminated with the scent of cocaine; is
7 that right?

8 A I can't remember these -- I can't remember them all
9 but --

10 Q Would it jog your memory that the court found your
11 theories questionable?

12 A No. This happens. Sometimes it happens.
13 Sometimes it doesn't. The California federal court case
14 with the dog was up in San Francisco. I don't remember
15 the name of the case. Maybe I have neglected to list it.

16 Q You didn't list that United States versus Ingram
17 case either, though, did you.

18 A That was before 2006. That was before the rule,
19 was it 50 something -- requires the cases in the last
20 four years. I only started keeping records to turn in
21 for my -- when I turn in a report in a federal case, I
22 have to give my cases in the last four years. And so I
23 don't have that listed, but that 90 percent goes way back
24 to my discovery. I was the one who discovered that the
25 U.S. currency is contaminated with these drugs. And it

1 is in that case out of Washington in the '80's that has
2 been put into numerous cases and has just recently been
3 confirmed by 90 percent. It is now in a recent article
4 in Scientific American on new studies that were done that
5 have confirmed that my testimony all these years, that
6 90 percent, has been confirmed over and over again. So I
7 am very proud of that.

8 Q Okay. Well, let's move on.

9 A It is not idiosyncratic. There is nothing
10 idiosyncratic about that theory, and there is nothing
11 idiosyncratic about the methylbenzoate theory that Judge
12 Posner and Easterbrook wrote about on the heels of that,
13 the one that you mentioned, where they totally accepted
14 my methylbenzoate two hour theory. The government's
15 two hour theory of methylbenzoate is based on my patent.

16 It is just that Judge Posner and Easterbrook
17 don't know that my name is the same as methylbenzoate.
18 They don't realize -- I don't think they realize I am the
19 guy who patented that. So they are saying on the
20 one hand it is idiosyncratic, but, now, it is not
21 idiosyncratic because Congress agrees with me. And now
22 President Obama agrees with me. And over 12,000 people,
23 talk about a habeas situation, 12,000 people are affected
24 and being helped by the testimony that the Seventh
25 Circuit said was idiosyncratic. Well, it was

1 idiosyncratic back then, and I did not give a false CV.
2 If you read that, we had a hearing, and the Federal
3 Public Defender apologized to the court for putting in an
4 old CV that was perfectly true that I did have the DEA
5 licenses and the court was told that. And we had a
6 hearing on it, and I have --

7 Q Okay. Dr. Woodford, I will ask you some questions.

8 A Well, thanks for letting me clear this up a little
9 bit as much as you have.

10 Q Sure.

11 THE COURT: Let me stop. This is going to take
12 more than 10 minutes. Let me ask the doctor, just a
13 couple of quick questions, before we take our lunch
14 break? What is your patent number?

15 THE WITNESS: May I step down?

16 THE COURT: Sure.

17 (Pause in proceedings.)

18 THE WITNESS: Okay. 4260517.

19 THE COURT: 4260517?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Why don't we start again at
22 1:30.

23 MR. AXELRAD: Thank you, your Honor.

24 Your Honor, we have the deputy from the
25 traffic stop here as well. Is it okay to have him take

1 off, or would you like him to remain?

2 THE COURT: What?

3 MR. AXELRAD: The deputy from the traffic stop
4 that was dealing with reasonable suspicion which I think
5 we dispensed with this morning. I was going to let him
6 go as well.

7 MR. SHERMAN: No. As far as I am concerned, I
8 intend to call him.

9 THE COURT: All right. He intends to call him.

10 (Recess from 12:19 to 1:30 p.m.)

11 THE COURT: All right. Let's have the witness
12 back on the stand.

13 Let me ask counsel, you have been abandoned?

14 MR. AXELRAD: Thank you, your Honor. I should
15 have alerted the court. Ms. Shay had other matters to
16 attend to this afternoon.

17 THE COURT: If I had known that, I would have just
18 gone forward. All right.

19 MR. AXELRAD: Thank you, your Honor.

20 Q So, Dr. Woodford, we left off, we were talking
21 about the hundred or so cases that you have testified in
22 or provided some sort of testimony or affidavit in, and
23 in the last couple of years only, looks like less than
24 10 of which involve canine, what you describe as canine
25 olfactory observations; right?

1 A Yes.

2 Q And just to be clear, I know we talked about this
3 for a moment before, but you have no experience training
4 dogs; right?

5 A That's right. I am not a trainer.

6 Q And you are not familiar with canine narcotics
7 detection for purposes of law enforcement, are you?

8 A I am very -- I am very knowledgable about that from
9 my working with handlers and trainers and reading and
10 study and doing -- that is my activity that I do is
11 chemistry, as a chemist, providing odors, making odors --

12 (Counsel and witness talking over each other.)

13 THE COURT: Let him finish his answer.

14 THE WITNESS: -- for that purpose. That is my
15 field of research and training.

16 Q BY MR. AXELRAD: Is odors?

17 A Odors. And measuring volatile organic chemicals in
18 air.

19 Q But you have no training in, let's say, animal
20 biology as it relates to animals detecting odors?

21 A I have no -- I have no degree in that, but I have
22 taken courses in physiology, and, you know, what I am
23 saying, I don't have a degree or a certificate in that,
24 but I know a lot about how smell works.

25 Q Okay. So, you know, I went through looking through

1 your CV and your declaration, and you seem to have
2 authored, excuse me, a number of articles. They seem to
3 be exclusively about DUI and blood alcohol levels; is
4 that right?

5 A That's correct.

6 Q And that is your area of specialty? I know we
7 talked about that before.

8 A Yes.

9 Q And there is nothing in there about methamphetamine
10 or the odor of methamphetamine or canine detection of the
11 odor of methamphetamine, is there?

12 A That's correct.

13 Q Because you haven't authored anything about that?

14 A I have not.

15 Q And, in fact, it seems like, I know you were
16 discussing this at length before our break, your
17 experience is in the odor of cocaine and your patented
18 methylbenzoate; is that right?

19 A That was my -- yes, it is. That was my first
20 experience, and then that led to other, many other
21 scientists researching the area and actually discovering
22 these other odors that match this -- my discovery that
23 dogs do not smell the cocaine itself but smell the odors
24 emitted.

25 Q And we will come back to your discovery, but I want

1 to talk just for a moment about the odor of cocaine, this
2 theory and patent that you have that dogs detect the odor
3 of cocaine. And you have patented and presumably sold
4 this technology to law enforcement agencies so they could
5 train dogs on the odor of cocaine; is that right?

6 A No, it is not correct. I have not -- from day
7 one of getting it, I was approached by the government and
8 agreed to allow the government to use it freely which I
9 have all these years. I have never charged the
10 government for anything. And then I have also supplied
11 freely odors of methamphetamine, cocaine, marijuana and
12 heroin to law enforcement training agencies. They will
13 write to me. I have mailed it back. I send it to them.
14 Here, in California, for example.

15 Q Okay. Thank you?

16 A Freely.

17 Q So you patented and then you apparently use the
18 various different odors of these drugs, you said cocaine,
19 marijuana, sounds like methamphetamine as well?

20 A Yes.

21 Q And you provide those odors of these drugs to
22 various different law enforcement agencies so they can
23 train their narcotics detecting canines; is that right?

24 A I have done that. I am now retiring. I am not
25 doing that anymore because the government is making --

1 now, the facility the government facility is producing
2 these, my stuff plus the other odors, and I am just, I am
3 not doing it any more.

4 Q Okay. So these odors of cocaine that you and these
5 odors of methamphetamine, these odors of these various
6 illegal narcotics that you have supplied in the past to
7 various law enforcement agencies, those are used by those
8 law enforcement agencies to train their dogs to detect
9 the actual narcotic; right? Not the odor of cocaine but
10 actual cocaine; right?

11 A Yes. Because it is the odor of actual cocaine.

12 Q And the same thing for methamphetamine. The odor
13 of methamphetamine is methamphetamine?

14 A No. The odor of methamphetamine is not
15 methamphetamine. It is a chemical that is off-gassed
16 from methamphetamine.

17 Q But it indicates the presence of methamphetamine?

18 A It can. Or it can indicate the presence of a
19 completely legal noncontrolled substance also.

20 Q We will get back to that. So I want to just jump
21 into your declaration here, and I am looking at
22 Paragraph 4 of your declaration. And, here, you take
23 issue with the Ninth Circuit's decision in United States
24 versus Beale, a decision that held that dogs only detect
25 the scent of contraband; is that correct?

1 A Correct.

2 Q And I will just skip ahead here to Paragraph 21
3 where you say that, and I am quoting, thus, although dog
4 alerts have been accepted in courts since the 1980's,
5 this judicial endorsement has been based on the flawed
6 premise as stated in Beale 1, that dogs alert, quote,
7 only to contraband; is that correct?

8 A Correct.

9 Q So from the early 1980's until today in 2016, all
10 of the judicial decisions that have related to narcotics
11 detection in canines are based on a flawed premise?

12 A Yes. As pointed out in Beale 1 that if science
13 were in the future to show that this is not true and that
14 the courts would then be going back and reconsidering the
15 use of drugs but nobody -- I am the only person that has
16 brought this up for all these years. And it is like you
17 say, everybody is working on a false assumption about
18 these dogs. Inaccurate scientific fact as known now that
19 if it had been known back in Beale, they wouldn't have
20 even allowed dogs back in the '80's.

21 Q So you are the only one that subscribes to this
22 theory; right?

23 A No. The government now subscribes to it because
24 Front Royal, the ATF and everybody knows now that dogs do
25 not alert to just contraband. They alert to non

1 contraband also, and, frankly, I think that is the reason
2 for lot of false positives.

3 And the problem in Harris was Judge Sotomayor
4 says, oh, these dogs, I looked at them and some of these
5 dogs are like 10 to 70 percent accurate. And she said, I
6 don't understand this, I don't get this, whatever her
7 words were. I don't want to say what her words were, but
8 it was something to the effect that that is kind of
9 alarming.

10 Well, I believe that the answer to her is it
11 is because dogs are not alerting to just contraband as
12 assumed back in the '80's and assumed in Harris, the
13 latest decision in Harris. It is just that is why it is
14 so confusing. That is why it is hard for anybody to make
15 any decisions on these things and go towards these
16 certifications and stuff because it is a dog science. It
17 is a science now that I helped start with my work, and a
18 lot of other scientists have jumped on what is a dog
19 science. It is a science now. And somehow it needs to
20 be accepted as a science and not as just some sort of
21 bureaucratic -- you know, some sort of thing that is just
22 out of control, has no basis. Ignoring the science, I
23 guess I should say.

24 Q Okay.

25 A You can't do that anymore. I don't think.

1 Q Okay. So I will speed up here. We don't have to
2 go through all of your declaration, but just to be clear,
3 you, through your testimony today, are contesting the
4 science that has underpinned all judicial decisions for
5 the last I guess that is 34 years or 36 years?

6 A No, I am not.

7 MR. SHERMAN: Excuse me. I will object. That is
8 certainly not what he testified, and it is calling for a
9 conclusion of the witness.

10 THE COURT: Well, I think you misstated the
11 question. Why don't you rephrase the question.

12 Q BY MR. AXELRAD: I will read from your declaration,
13 and just tell me if this continues to be right today.

14 Thus, although dog alerts have been accepted
15 in courts since the 1980's, this judicial endorsement has
16 been based on the flawed premise as stated in Beale 1
17 that dogs alert to, quote, only contraband.

18 Do you still believe that today?

19 A I do believe that.

20 Q Okay. So what I want to go through here now is
21 just a couple of the things that you reference in your
22 declaration, and I will admit I had some trouble with
23 them. In Paragraph 9, you state the NIOSH report,
24 Exhibit E, affirms the widely held acceptance that dogs
25 do not alert to only contraband.

1 And I have got to be honest with you,
2 Mr. Woodford, I looked through the NIOSH report. The
3 NIOSH report is a report from the National Institute for
4 Occupational Safety and Health, and it was a report done
5 evaluating what looks like workplace concerns and
6 exposure to chemicals. I don't see anything in here,
7 and, in fact, it does not include anything that relates
8 to canines, does it?

9 A Well, I don't think you have read it properly. I
10 have it in my hand, and as I look at it, it certainly
11 does. It is making, manufacturing the actual training --
12 it says on the second sentence of the report, the U.S.
13 Customs and Border Protections Canine Enforcement
14 Training Center. That is why this thing exists. You
15 know, you only have to read like two sentences on the
16 first page to see that you are wrong about that.

17 And that it mentions benzaldehyde. That is
18 the odor of methamphetamine on the table of contents. I
19 don't know how you are reading this or how you are
20 interpreting this, but it is certainly exactly what I am
21 saying in my declaration that it is. It is a government
22 facility manufacturing training aids, but the
23 government's facility doesn't want to poison the workers.
24 You remember Mr. Falco said you would kill the dogs if
25 the dogs bite the drugs.

1 By using this, you don't have to worry about
2 that. You train the dog specifically, and you don't take
3 the worry about killing the dogs. And you don't have to
4 know about something that came out of the crime lab and
5 what the percentage is and all this stuff. That is what
6 this whole thing is about.

7 THE COURT: Let me stop you.

8 THE WITNESS: Okay.

9 THE COURT: But if the -- what is it,
10 benzaldehyde?

11 THE WITNESS: Benzaldehyde, yes.

12 THE COURT: If that is the substance that comes
13 off of methamphetamine, and it is also the substance that
14 occurs in other products, what is the difference between
15 the smell of benzaldehyde that comes off of
16 methamphetamine versus benzaldehyde as it exists in other
17 products?

18 So I don't understand why would you train
19 something with a smell that is supposedly non
20 distinguishable from other smells of the same substance.
21 So why would you train a dog with that? It is kind of
22 like a self-defeating purpose. And in order for you to
23 say that you would have to have some sort of proofing,
24 you would have to find the other substances that contain
25 them, and train the dog to avoid those smells, but it

1 would be the same smell, in essence, unless maybe you are
2 saying the other thing would have some other smell like
3 it would be like a shaving cream, maybe there would be a
4 soap smell that you would turn the dog from smelling.

5 But, then, I guess all the traffickers would
6 have to do is just combine the smell of methamphetamine
7 with soap, and then it would defeat the dog's being able
8 to smell it. So all of this is kind of like a
9 self-defeating purpose, it seems to me.

10 THE WITNESS: You are right on it, Judge.

11 THE COURT: I understand that.

12 THE WITNESS: You have answered your own question,
13 Judge. That is the way you do it. You do extinction
14 training.

15 THE COURT: The only problem I have basically is
16 that apparently there is no scientific report that
17 basically says that when dogs alert to methamphetamine,
18 they are alerting to benzo --

19 MR. AXELRAD: Benzaldehyde, your Honor.

20 THE COURT: There is no scientific report that
21 says that. I mean you have that as a theory. We
22 understand that. But there is no report that says that.
23 In other words, it is just you. There is no accepted
24 report from scientists that agree with you. Now, that
25 may come in the future, but it is not here now.

1 THE WITNESS: I think if you look online, you will
2 find that it is generally accepted that benzaldehyde is
3 the odor of methamphetamine, and that is why the
4 government is making it here.

5 THE COURT: No, I actually --

6 THE WITNESS: You couldn't find it.

7 THE COURT: That is not how it works in the court
8 system. In other words, if somebody wants to propose
9 that, in fact, what dogs smell when they smell
10 methamphetamine is benzaldehyde, you have to basically
11 come up with a report that more or less says that and
12 says that it has been established sufficiently in the
13 particular area that we are talking about.

14 And you don't cite to any such studies that
15 have been published and have been, you know, warranted
16 and found to be substantial. Although, again, maybe in
17 the future, that will happen, but, apparently, it is not
18 true now.

19 Is there anything else?

20 MR. AXELRAD: Your Honor, I have no further
21 questions.

22 THE COURT: Okay. Anything else from the defense?

23 MR. SHERMAN: Very briefly.

24

25

REDIRECT EXAMINATION

1 BY MR. SHERMAN:

2 Q Dr. Woodford, besides your opinion about
3 benzaldehyde, are there other scientists or other
4 individuals that take -- that make the same theory.

5 A Yes, there are. And based on those other
6 scientists that have that theory, this facility at Front
7 Royal makes the odors of heroin, methamphetamine, cocaine
8 and MDMA, and those are acetic acid, benzaldehyde and
9 methylbenzoate.

10 And it is inherent -- They don't quote me.
11 They say methylbenzoate, here, for these dog training
12 aids for the U.S. Customs and Border Protection Canine
13 Enforcement Training Center, and they are giving them my
14 patented, my methylbenzoate for cocaine. And they are
15 giving them acetic acid for heroin, and they are giving
16 them benzaldehyde for methamphetamine. And so there is a
17 certain kind of knowledge that they have, and they don't
18 really come out and put it in.

19 Q Okay. Doctor, let me just interrupt you. What
20 document are you heading from?

21 A I am reading from the NIOSH Health Hazard
22 Evaluation, U.S. Customs and Border Protection, Canine
23 Enforcement Training Center in Front Royal, Virginia.

24 Q Let's just stop for a moment. Now, give us a
25 little bit of knowledge that you have about this center?

1 A The knowledge I have about the center comes out of
2 basically out of this report because they are making the
3 training aids. They want to protect the workers and
4 NIOSH was there when they were making huge amounts of
5 benzaldehyde odor methamphetamine. They don't want the
6 workers to get sick. So they went through the facility,
7 to see if these were poisoning the workers, making dog
8 training aids, is that dangerous occupational hazard.
9 And that is what this report is about.

10 But when you know the science, and you know
11 what odors go with which drugs for canine, that other --
12 me, myself, and other scientists have established firmly
13 in science to this day, this is why this exists. This is
14 why this document exists in this facility to manufacture
15 these materials.

16 Q Okay. So they are manufacturing in this facility,
17 training material for dogs so that they can alert to the
18 chemicals that you are referring to?

19 A Yes.

20 Q So, in your mind, that is proof that, in fact, the
21 chemical that odor comes from methamphetamine, since they
22 are using it as a training aid for dogs that, in your
23 mind, proves that that is, in fact, what the dog is
24 smelling?

25 MR. AXELRAD: Objection, your Honor.

1 THE COURT: Frankly, all this is hearsay.

2 You know, I still don't understand why is the
3 government training dogs with a substitute for the
4 contraband substance itself when you would have to do
5 proofing in order for those dogs to have been trained
6 correctly. If doesn't seem to make any sense.

7 Q BY MR. SHERMAN: Can you explain to the judge.

8 A Yes. The reason you do that is because the actual
9 drugs that were used in this particular case from the
10 crime lab, actual evidence is untrustworthy. It has no
11 scientific baseline that you can rely on that the odor
12 being strong or weak.

13 THE COURT: Well, it doesn't make any difference,
14 though. If whatever -- it pretty much has been
15 recognized that dogs can detect methamphetamine. Now, I
16 understand your position is that what dogs detect when
17 they smell methamphetamine is not methamphetamine itself
18 but is an off-gas from it which is this benzaldehyde or
19 however you want to pronounce it. But you are also
20 saying that that is a substance and smell that occurs in
21 a lot of other things, for example, cosmetics and maybe
22 food products and things of that sort.

23 So the question I have is why is the
24 government, according to you, training dogs not to smell
25 methamphetamine itself but to focus on this benzaldehyde

1 when it occurs in other situations, and therefore it
2 makes the test unreliable from the start, from the
3 get-go. I don't understand why the government does that.
4 You haven't explained it to me.

5 And if you are talking about some health
6 hazard about using the substance, the officers in this
7 area come into contact with these drugs all the time, and
8 they know how to take precautions in dealing with those
9 drugs. So I don't understand why for safety reasons, you
10 are manufacturing something that is problematic to train
11 dogs when there is access to the real thing and,
12 apparently, they have been trained prior to this point in
13 time without any ill effects on the dogs as long as the
14 handlers are careful insofar as their training methods.

15 Q BY MR. SHERMAN: I am going to rephrase the question
16 unless you understand the question, Dr. Woodford.

17 A I don't -- there are a whole bunch of questions. I
18 don't know which one you would like me to address.

19 Q I believe what the court is asking is rather than
20 using methamphetamine itself, they are using one of these
21 training aids. And the question is why use a training
22 aid when you can use the methamphetamine.

23 But I think maybe it will put you in the right
24 direction, is it easier to control with the training aid,
25 the amount of the odor or anything in that regard that is

1 better for training purposes than actually using the drug
2 itself? Is there a reason to use the training aid rather
3 than the methamphetamine?

4 A Yes.

5 Q Okay. Explain why.

6 A Because it is a science. And you want all dogs all
7 over the country to be on the same baseline training, all
8 trained alike. And that when you have the training aids,
9 you can do interesting things. You can use these
10 training aids to test the proficiency of dogs. So when a
11 question comes up like you have in this court, is Charlie
12 a good dog or not, using the Front Royal training aid for
13 methamphetamine, we can find out real quick whether
14 Charlie is capable of doing it.

15 Now, the thing is officers aren't coming in
16 contact with these training aids and poisoning
17 themselves. They are making vats of this stuff. I don't
18 know maybe huge vats, and these workers making the vats,
19 they are the ones who might get poisoned by making the
20 training aids not the officers using the small amounts of
21 training aids.

22 THE COURT: But the problem is we don't
23 understand, first of all, you assume that there is a
24 desire for uniformity in training. The other expert has
25 already testified there is no uniformity in training

1 dogs, the standards aren't the same, et cetera, et
2 cetera. So there seems to be a conflict there.

3 And the other thing is that the only reason
4 you are saying they are making this substitute for the
5 drugs is to avoid health problems for someone which
6 arises from making these huge vats of these things where
7 I don't understand why are you making these huge vats to
8 substitute for the real thing, when there is access to
9 the real thing. And, apparently, if you treat it with
10 some modicum of care which the officers are experienced
11 in doing there is no health hazard.

12 THE WITNESS: Okay. Well, I could -- let's talk
13 about somebody with aids. I could train, we talked about
14 E. Coli. I could bring a human in that has E. Coli, and
15 I could have a dog sniff him. Or I could make some
16 E. Coli smell and put it in a scratch and sniff that
17 wouldn't poison anybody like they do these, they take
18 these vats, these tiny amounts of these materials and put
19 it into a scratch and sniff format. And instead of like
20 exposing the hazard of E. Coli, instead of exposing
21 there, it would all be under control. It would all be
22 packaged. It would all be uniformly packaged. And it
23 would get around this problem of Mr. Falco saying it is a
24 dog science and yet there is no science to it.

25 This would get around all that. There would

1 be a dog science that has science to it rather than no
2 science. And you would be able to make decisions. You
3 wouldn't be saying there is no uniformity in all the
4 things instead of saying there is no uniformity, there
5 would be a uniformity.

6 THE COURT: The government is not arguing
7 necessarily for uniformity, and there is a desire on
8 Mr. Falco Jimenez's part for uniformity, but, again,
9 there is no uniformity in the area, apparently.

10 Q BY MR. SHERMAN: Going one other issue, on these
11 training aids, since a dog might alert to a legal and
12 illegal substance based upon this chemical that is in
13 methamphetamine, do you have better control over the dog
14 only alerting to the illegal drug if, in fact, you do it
15 the way you are suggesting because somehow you control
16 the odor in some way that the dog will only pick it up if
17 there is, in fact, methamphetamine present rather than
18 some legal substance?

19 A Yes.

20 THE COURT: No. The only way you can do that is
21 by proofing.

22 THE WITNESS: And extinction. Proofing and
23 extinction.

24 THE COURT: Extinction in what sense?

25 THE WITNESS: Extinction, that you teach the dog

1 not --

2 THE COURT: In other words, then, you would have
3 to find everything that has this substance in it, and,
4 therefore, extinction, do an extinction process as to all
5 those items is what you are saying. And so, therefore,
6 that substance occurs, you know, in food products
7 according to you. It occurs in cosmetics, and so every
8 single time something comes out with the product, in
9 order to verify this test, you would have to train every
10 single dog constantly and do an extinguishing on the dogs
11 for these things which would basically render the dogs
12 more or less otherwise occupied because there would be so
13 much training time for extinction, that they wouldn't
14 really get a lot of field practice.

15 THE WITNESS: Do I answer or not?

16 THE COURT: No.

17 Q BY MR. SHERMAN: let me ask you this, Dr. Woodford.
18 Is there a certain level --

19 THE COURT: Let me just stop. All this is based
20 upon the court's accepting his argument that what dogs
21 smell is this substance rather than something else from
22 the methamphetamine, and he hasn't established that to my
23 satisfaction. There is no published report that he is
24 citing to. He is saying that he believes it. And there
25 might be other scientists who believe it, but, again, I

1 have a situation where as pointed out by the government,
2 the Ninth Circuit has said dogs seem to smell these
3 things, and, you know, if it is somehow proven later on
4 that it is false, then it is proven later on it false.
5 To my mind, it hasn't been proven false at this point.

6 MR. SHERMAN: I take it the court is referring to
7 Footnote 14 of the Beale case where the Ninth Circuit
8 said, and I am quoting, our decision is expressly
9 premised on the concept of canine reliability and on the
10 fact that the government must establish the dog's
11 reliability as part of its showing to support the
12 issuance of a warrant or finding of probable cause.
13 Should either of these premises prove inaccurate, the use
14 of dogs to sniff luggage would not be condoned by the
15 court.

16 THE COURT: Let me put it this way, not only Beale
17 but there are cases which are legion up to the Supreme
18 Court. Florida versus Harris is premised on that. I
19 mean, why if there wasn't an acceptance of the underlying
20 premise that dogs can detect the odors of narcotics, I
21 mean, they wouldn't get to all the other discussion.
22 They would just concentrate on that particular point.

23 Q BY MR. SHERMAN: All right. Lastly, you know, can you
24 name just for the record other scientists or institutions
25 other than yourself that have this same theory?

1 THE COURT: Not have him name them. Have him cite
2 to a published work.

3 Q BY MR. SHERMAN: Can you cite to any published work?

4 A That dogs don't smell drugs.

5 THE COURT: No. That dogs, when they are alerting
6 to methamphetamine that they are not alerting to the
7 substance of methamphetamine, they are in fact alerting
8 to the out-gas of benzaldehyde, whatever it is, the B
9 smell.

10 THE WITNESS: I don't have the reference with me.
11 That is inherent in the NIOSH publication that the
12 prosecutor has in hand.

13 MR. SHERMAN: All right. We have already
14 discussed that.

15 THE WITNESS: So that is as far as I can go with
16 it. And just, you know, I can't imagine the government
17 manufacturing it for any other purpose than that, than
18 the dog, I can't imagine the Canine Enforcement Training
19 Center of U.S. Customs making benzaldehyde for any other
20 reason. And they know it, and I know it. And I just
21 don't have the reference at hand at this moment. And
22 that is all I can say about it.

23 MR. SHERMAN: All right. Thank you.

24 THE COURT: Why are they manufacturing it? Why
25 aren't they just buying it? It is a common substance.

1 Why are they manufacturing it?

2 THE WITNESS: Because they are putting it in dog
3 training format.

4 THE COURT: Why not just buy it? There are a lot
5 of -- you can buy it quite easily.

6 THE WITNESS: Can you make sense out of what the
7 U.S. government does? You know what I am saying? You
8 got it.

9 THE COURT: All right. Thank you.

10 MR. SHERMAN: I have no other questions.

11 THE COURT: All right. Thank you. I presume
12 there are no other questions from the government.

13 The witness is excused.

14 THE WITNESS: Thank you, sir.

15 THE COURT: The next plaintiff's witness. Sorry.
16 The next defense witness.

17 MR. SHERMAN: Well, your Honor, on this issue, I
18 am assuming the government is going to call the dog
19 handler.

20 MR. AXELRAD: Your Honor, the government is
21 planning on calling the dog handler as it relates to the
22 dog.

23 THE COURT: I thought you said you wanted to call
24 the arresting officer.

25 MR. SHERMAN: I do, but that is not on the dog

1 portion. So I thought --

2 THE COURT: But that is what we asked you before
3 lunch. He wanted to let that guy go.

4 I don't want to because, again, if we are
5 going to address that issue later on, there is no sense
6 in doing it today and then also another day because I
7 will forget everything that the witness said today for
8 purposes of this hearing.

9 So if it is all agreed that we are going to on
10 another day hear the issue of the propriety of the stop
11 and the detention, all the other stuff, that is fine. We
12 will just do all the witnesses on that other date.

13 MR. SHERMAN: Then I prefer to do that.

14 MR. AXELRAD: Then I suppose we are just calling
15 Detective Ken Price, the dog handler.

16 THE COURT: Okay. That is fine.

17 Does he have the dog too?

18 MR. AXELRAD: He does not have the dog, your
19 Honor. Not here in the courtroom.

20 (The witness was sworn.)

21 THE CLERK: State your name and spell your last
22 name for the record.

23 THE WITNESS: It is Kenneth Price, P-R-I-C-E.

24 MR. AXELRAD: May I proceed, your Honor?

25 THE COURT: Yes.

CROSS-EXAMINATION

1
2
3 BY MR. AXELRAD:

4 Q Good afternoon, Detective Price.

5 A Good afternoon.

6 Q Detective Price, where do you work?

7 A Los Angeles County Sheriff's Department.

8 Q And how long have you worked for the sheriff's
9 department?

10 A Just over 27 years.

11 Q And with your 27 years on the force, what have been
12 your assignments during those 27 years?

13 A I worked in the custody facilities. I worked
14 four different patrol stations. I was a narcotics
15 investigator for almost, just over 11 years, and,
16 currently, I am a canine handler for the last
17 four-and-a-half years.

18 Q So just let me double back on your time as a
19 narcotics investigator, do you have an approximate sense
20 of how many narcotics investigations you worked as a
21 narcotics investigator?

22 A At least 3,000.

23 Q And how about as a canine handler, do you work
24 narcotics cases?

25 A Yes.

1 Q And do you have a sense of about how many narcotics
2 cases you have worked as a canine handler?

3 A In excess of -- well, I mean, I don't like work
4 cases. I do investigations in the cases. So but over
5 900 searches.

6 Q And can you just sort of briefly describe for us
7 what your duties are as a canine narcotics handler with
8 the sheriff's department?

9 A I am responsible for the training and the
10 maintenance of the department's canine. Travel around
11 the county using him to conduct searches at the request
12 of our station narcotics units, at other agencies that
13 request, other units within the department.

14 Q And you talked about your canine. Just to be
15 clear, your canine in this case is Charlie; right?

16 A Yes.

17 Q And just so we are all on the same page here, and
18 Charlie is a Springer Spaniel; is that right?

19 A Yes.

20 Q And how old is Charlie?

21 A He is five-and-a-half.

22 Q And how long have you had him for?

23 A Just over four-and-a-half years since June of 2011.

24 Q And when you started working with Charlie, was that
25 at the beginning of Charlie's career?

1 A Yes.

2 Q And when you -- when you and Charlie began your
3 career together as a team -- is that the right way to
4 refer to it, a team?

5 A Yes.

6 Q So when you began your career together as a team,
7 did you have an initial training course?

8 A Yes.

9 Q And was that training course with the Los Angeles
10 County Sheriff's Department?

11 A Yes.

12 Q And can you describe for us what was involved in
13 that training course with the Los Angeles County
14 Sheriff's Department?

15 A It consisted of approximately 300 hours of
16 training, and we both started from the beginning, me
17 being a new handler and him being a brand new dog. And
18 we imprinted the five odors that he is trained on, and
19 then continued to teach him searching patterns and how to
20 search and under various different conditions.

21 Q And so the 300 hours, the initial training that you
22 had, that was with you and Charlie together?

23 A Yes.

24 Q And you talked about the odors that were imprinted
25 on Charlie, those five odors, did you mention what they

1 were?

2 A No.

3 Q Could you tell us what those five odors are?

4 A Methamphetamine, marijuana, cocaine, heroin and
5 opium.

6 Q And as a trained narcotics detection dog -- I say
7 this because I have a dog and all she wants to do is eat
8 squirrels and birds -- is Charlie trained differently
9 than you would train a house dog?

10 A Yes.

11 Q And is Charlie trained to alert to those odors and
12 not to, for instance, the odor of a cat?

13 A Yes.

14 Q And how do you do that? How do you go about
15 training Charlie to not alert to the odor of a cat but
16 only alert to the five odors that you have imprinted him
17 on?

18 A The only time he gets a reward is when he alerts to
19 one of the odors that he has been trained on. He doesn't
20 get a reward or toy for anything else.

21 Q Is this a concept that is known as proofing?

22 A Yes.

23 Q And I will skip ahead here just a little bit, but
24 is proofing something that you continually engage in with
25 Charlie as you train him on a continuous basis?

1 A Yes.

2 Q And are you familiar with the concept of minimal
3 odor training?

4 A Yes.

5 Q Can you tell what that is?

6 A That is basically training him down to very small
7 odors as minimal as possible or as minimal as what we use
8 is down to a toothpick.

9 Q And is that a toothpick, when you say a toothpick,
10 is that a tooth pick that has come into contact with
11 one of the five odors that Charlie is trained with?

12 A Yes.

13 Q So you might have a toothpick that is in a small
14 jar along with, let's say, methamphetamine, and then you
15 might hide that toothpick somewhere?

16 A Yes.

17 Q And Charlie would be expected to alert to that?

18 A Yes.

19 THE COURT: Let me ask you a question, when you
20 train the dog, do you ever use a substitution for one of
21 the five odors?

22 THE WITNESS: No.

23 THE COURT: In other words, you don't use for
24 methamphetamine, you don't use benzaldehyde.

25 THE WITNESS: No.

1 THE COURT: All right.

2 Q BY MR. AXELRAD: And so just to be clear to follow-up
3 on the court's questions there, you only use real
4 narcotics; is that right?

5 A Yes.

6 Q And can you tell where during your continual
7 training of Charlie you get these real narcotics?

8 A From previous cases that have been closed. Instead
9 of them being destroyed, we do ex parte orders, and the
10 courts allow us to use them.

11 Q And why would you want to use, for lack of a better
12 term, and I know this is something that is referenced in
13 the training logs, crook meth? Why would you want to use
14 crook heroin? What is the benefit of using narcotics
15 that have been taken off the street?

16 A It is just more realistic. It basically teaches
17 them real life odors.

18 Q So I want to just double back and talk about,
19 again, the initial training that you engaged in with
20 Charlie. This case involves Charlie's positive alert to
21 24 pounds of methamphetamine.

22 Can you describe for us what a positive alert
23 is and what Charlie's looks like.

24 A Well, I mean, I guess a positive alert would be
25 kind of a misnomer. I mean an alert is an alert.

1 Q So can you describe for us an alert?

2 A Charlie is trained to, we call it focus alert.
3 Basically, he will put his nose as close as he can get or
4 to the strongest source of the odor and then just hold
5 his nose there.

6 Q And that is something that you know to be unique
7 and distinctive to him alerting to one of those
8 five odors?

9 A Yes.

10 THE COURT: Let me stop. Let me also ask you,
11 when you talk about this 300 hours of training, obviously
12 it is not just you and the dog in these 300 hours of
13 training, is it?

14 THE WITNESS: No. While I went through my
15 training, there was another handler and dog team who went
16 through it at the same time. And then our two head
17 trainers were directing the training.

18 THE COURT: So, in other words, at the time that
19 you were trained with Charlie, there was another officer
20 who was also training with another dog?

21 THE WITNESS: At the same time, yes.

22 THE COURT: And both of you had trainers, had
23 mentors who were training you simultaneously?

24 THE WITNESS: Yes.

25 THE COURT: Was it always two mentors together or

1 sometimes one mentor and the other mentor, or how was
2 that done?

3 THE WITNESS: Yeah. Sometimes one or the other,
4 sometimes both together because we still had, at the same
5 time, they were responsible for going out and doing
6 search warrants and searches for the department and
7 stuff. We are for kind of a small unit.

8 THE COURT: Were the 300 hours consecutive or were
9 they broken up, or how was the 300 hours done?

10 THE WITNESS: Pretty much consecutive because
11 until he got trained and certified, he wasn't allowed to
12 go out and to searches.

13 THE COURT: Okay. And over what period of time
14 was the 300 hours of training?

15 THE WITNESS: About two months, almost
16 eight weeks, something like that.

17 THE COURT: All right.

18 Q BY MR. AXELRAD: And Detective Price, just to
19 follow-up on some of the judge's questions, in addition
20 to the 300 hours, and we can go over this in some more
21 detail, in addition to that initial 300 hours, do you and
22 Charlie engage in continual training all year, every year
23 since he became deployed?

24 A Yes. We do a minimum of four hours training per
25 week.

1 Q And are you sometimes training with other handlers
2 and their dogs?

3 A Yes.

4 Q So just want to --

5 THE COURT: While he is looking, what do those
6 four hours consist of normally?

7 THE WITNESS: Basically, we try to recreate actual
8 searches that we have done in the past, you know, like
9 building searches, cars, sometimes open fields.

10 THE COURT: In those four hours, is it just you
11 and the dog, or are there other persons involved in the
12 training?

13 THE WITNESS: It depends. Sometimes it is just me
14 and him just based on where we are at in the county and
15 what time we have available. As much as possible, we try
16 to train with other handlers.

17 THE COURT: Is it ever a situation where -- do you
18 know what the term blind test is or double blind test?

19 THE WITNESS: Yes.

20 THE COURT: Do you ever do double blind tests?

21 THE WITNESS: We have done quite a bit of blind
22 testing.

23 Q BY MR. AXELRAD: And Detective Price, looking at the
24 screen in front of you, is this certificate of training
25 the certificate that you received after the 300 hours of

1 initial training?

2 A Yes.

3 Q And that is a certificate you received in September
4 of 2011; right?

5 A Yes.

6 MR. SHERMAN: Excuse me. Is that an exhibit you
7 are referring to, which one?

8 MR. AXELRAD: That is Exhibit 9 for the record.

9 Q So in addition to the certificate that we just
10 looked at, that certificate for your initial 300 hours
11 with Charlie, does Charlie have other certifications.

12 A Yeah. The NPCA, National Police Canine
13 Association.

14 Q And can you tell us a little bit about the National
15 Police Canine Association?

16 A It is a national association that conducts training
17 and recognizes certifications for not only narcotic
18 canines, I think they do patrol dogs, firearms dogs and I
19 think explosives dogs also.

20 Q And do you know approximately how many member
21 agencies are part of the NPCA?

22 A There is over five hundred agencies represented.

23 Q And are you, yourself, a member of the NPCA?

24 A Yes.

25 Q And is the Los Angeles County Sheriff's Department

1 a member of the NPCA?

2 A I don't know if they are as a department member,
3 but all of our narcotics detection canines are members,
4 yes.

5 Q Same with the Los Angeles Police Department canine
6 dogs?

7 A Yes.

8 Q Okay. And are you familiar, Detective Price, with
9 the standards and training protocol for the NPCA, the
10 scent detection certification?

11 A Yes.

12 Q Just want to just briefly go through that document
13 with you.

14 Is that up on the screen there for you?

15 A Yes.

16 Q Okay. So Exhibit 8, so just going through,
17 Detective Price, a couple of questions in here. Here at
18 the top, it says a minimum of two certified detector
19 officials are required for certification. And this is
20 the annual certification that Charlie has gotten every
21 year since he became deployed with you; is that right?

22 A Yes.

23 Q And the minimum of two certified detector
24 officials, are those officials who are certifying
25 Charlie, are they ever members of the Los Angeles County

1 Sheriff's Department?

2 A No.

3 Q And is that so there is no conflict of interest?

4 A Yes.

5 Q And going down here to the section marked search.

6 It says search shall consist of three indoor rooms and

7 four vehicles with a total of four finds. You, as the

8 handler, never know where those finds are going to be

9 placed; right?

10 A Correct.

11 Q And the search of the rooms and the search of the

12 vehicles, that is all timed; is that right?

13 A Yes.

14 Q And going to the section here where it says all

15 finds shall consist of controlled substances classified

16 by law.

17 Does the NPCA use real narcotics when they are

18 certifying dogs?

19 A Yes.

20 Q And just so we can skip to the side for a second,

21 has Charlie ever been exposed to any of these pseudo

22 narcotics or, you know, impression narcotics or anything

23 that sort of mimics the odor of something, or has he only

24 been exposed to real narcotics?

25 A As far as I know, he has only been exposed to real

1 narcotics.

2 Q Okay. The section in the finds where it says find
3 shall be concealed by a certifying official or another
4 person directed by the certified official, that would be
5 a blind test; is that right?

6 A Yes.

7 Q And all search areas must be contaminated and finds
8 proofed by a canine prior to search if available. Is
9 that to ensure that there is nothing else that could
10 alert the dog in there?

11 A Yes.

12 Q And if I could just, now, looking at Exhibit 10.
13 This is the National Police Canine Association
14 certification that Charlie received in 2011; right?

15 A Yes.

16 Q And just to be clear here, for the court, the
17 scents located on the bottom corner those are all the
18 scents that Charlie was trained to alert to and was
19 certified to alert to in 2011; is that right?

20 A Yes.

21 Q And so we don't have to look at every one of them,
22 every year since 2011, has Charlie been certified to
23 these same five odors?

24 A Yes.

25 Q I want to talk to you for a second about what are

1 the score sheets. And this is one of the score sheets
2 that corresponds to the 2011 certification.

3 And it says here that, and I will just go
4 through, Hide No. 1 was cocaine, and that looks like it
5 was 28-grams. And it was located by Charlie, and it says
6 time used, two minutes and 30 seconds.

7 And in the section below, it says three
8 minutes and five seconds for a different building search.
9 Can you tell us about the times that it takes a dog to
10 find something, why might those times vary from 10
11 seconds to four minutes?

12 A Just depends on where the dog starts, you know,
13 when they enter a room or they get to, like, the
14 vehicles. If the hide was on the first vehicle and that
15 is where they started and they found that one first, and
16 then it was a blank vehicle and a blank vehicle and then
17 another find, it would obviously take them longer
18 searching all those to get there. In a room, if it is
19 happened to be concealed close to the door or, you know,
20 there is a draft or something blowing the odor right to
21 him, he could go in and go straight to it. If he starts
22 on one side of the room and has to work all the way
23 around the room, it could take longer.

24 Q So if Charlie was in here and he started in the
25 back right corner and the drugs were hidden let's say in

1 the front right corner and he went all the way around the
2 room, that would be the time that was represented by
3 Charlie's search as opposed to if Charlie just ran
4 straight to that corner; is that right?

5 A Yes.

6 Q So just looking at a couple more of these score
7 sheets. This is a score sheet from 2012. And I want to
8 just note again for the record, it says here in these
9 two sections certifying official's initials and NPCA ID
10 number. Are those like you noted before, are those
11 members of the Los Angeles County Sheriff's Department?

12 A Not that I am aware of.

13 Q And they wouldn't be because that would be a
14 conflict of interest?

15 A Correct.

16 Q To your knowledge, those standards and training,
17 these are the standards and training that were in place
18 and in effect in 2011, 2012, 2013, 2014, and for that
19 matter 2015. I guess just this year where Charlie has
20 been certified by the NPCA; is that right?

21 A As far as I know, yes.

22 Q So looking at these score sheets again, and the
23 score sheets are, I believe, at Exhibit 10. The score
24 sheets seem to indicate that Charlie successfully passed
25 every time at a hundred percent; is that correct?

1 A Yes.

2 Q So Charlie got a hundred percent passing rate for
3 each certification in 2011, '12, '13 and '14; that's
4 right?

5 A Yes.

6 Q And if Charlie had ever failed a certification,
7 would he be working at the sheriff's department?

8 A No.

9 Q So just want to sort of briefly touch on before we
10 get into the additional training that you do with Charlie
11 or, excuse me, the training logs, but the additional
12 training that you do with Charlie, since that 300 hours
13 that you started off with with Charlie back in 2011,
14 approximately how many additional hours of training have
15 you and Charlie engaged in as a team?

16 A Probably about 1500.

17 Q And you received that additional training from --
18 can you describe what some of that additional training
19 is?

20 A It is members of our department, experienced
21 handlers that have been doing it a lot longer than I have
22 within our unit and outside our unit, members of the Los
23 Angeles Police Department that we work with and train
24 with, some people from Europe that came over and did some
25 training for us. I have been to numerous seminars

1 throughout the country, Washington D.C., Florida, Texas,
2 Oklahoma, St. Louis and Arizona, and, you know, hundreds
3 of hours of classroom instruction. And experts from all
4 over the country have taught the classes.

5 Q And can I ask you, some of this training sounds
6 like it is classroom work? Do you attend some of this
7 training without Charlie?

8 A A majority of it is. It is not dog -- I mean, it
9 is not with the dog in training. I did go to one seminar
10 in Texas where I did take Charlie.

11 Q But a lot of this additional training is to train
12 you on how to be a canine handler and to avoid problems
13 that canine handlers can run into?

14 A Yes.

15 Q And, in addition to this training, you and Charlie
16 continually train all year, every year; is that right?

17 A Yes.

18 Q Okay. I want to talk about that training, this
19 sort of continual training that you and Charlie engage
20 in. Can you describe for us just briefly, you know, I
21 know you were speaking with the judge about it a moment
22 ago, can you describe for us what that continual training
23 is like?

24 A Like I said, we do four hours a week minimum.
25 Sometimes, it is more. You know, it could be anything

1 from after we have conducted a search at a house, you
2 know, in relation to a search warrant. You know, I will
3 put something out for him to find or I will have somebody
4 else put an item out that he is trained on.

5 Could be out in an open field, in a park.
6 Could be an abandoned office building that we use. Could
7 be at a tow yard. Could be vehicles in the station
8 parking lot. We try to train as much as we can wherever
9 we can.

10 Q And you, again -- I want to make sure we are clear
11 about this -- you are using real narcotics to train
12 Charlie; right?

13 A Yes.

14 Q And you have to have a DEA license to do that;
15 right? The sheriff's department?

16 A As far as I know, yes.

17 Q And when you train Charlie, you use, I think, like
18 you mentioned before, samples that you have taken off the
19 streets in various different ways and something that has
20 come up earlier today was the staleness of those samples.
21 Do you change out those samples to ensure that they don't
22 become stale?

23 A Yes.

24 THE COURT: How often?

25 THE WITNESS: Once a year.

1 Q BY MR. AXELRAD: And this continual training that you
2 do with Charlie and other canine handlers and other
3 canines, do you keep a training log of that?

4 A Yes.

5 Q And so turning your attention now to what is marked
6 as Exhibit 11.

7 MR. AXELRAD: And, your Honor, for the court's
8 purposes, Exhibit 11 is a CD that is actually at Exhibit
9 2?

10 THE COURT: All right.

11 MR. AXELRAD: And the entire -- the entirety of
12 Detective Price's training logs are contained on that CD
13 along with Exhibit 2.

14 THE COURT: All right.

15 MR. AXELRAD: I plan on just showing him a couple
16 of samples rather than the whole 142 pages.

17 THE COURT: All right.

18 Q BY MR. AXELRAD: So, Detective Price, I just want to
19 take you through here so we can see some of the notations
20 that you make on your training log and what they mean just
21 to help us interpret it.

22 So this is a training log here, and maybe we
23 can just walk straight through it. This is for what
24 looks like May 12th, 2013, through May 1st, 2013; is that
25 right?

1 A Yes.

2 Q And can you sort of walk us through the top line
3 here and what all this means?

4 A A date, hours used, how many hours that we trained,
5 location type, and then it has heroin, cocaine, meth, MJ
6 which is the abbreviation for marijuana and opium. And
7 then they are classified into S for small, M for medium,
8 L for large. And then the T is total, and FA is focus
9 aids. And proofs, distractions, and then miscellaneous.

10 THE COURT: Let me stop you. Are the numbers
11 hours?

12 THE WITNESS: Yes. Hours used, like two hours.

13 THE COURT: Okay.

14 Q BY MR. AXELRAD: And if I could just clarify,
15 Detective Price, the hours used isn't the amount of time
16 it took Charlie to find those things. That is just the
17 amount of time you spent training that day; is that
18 right?

19 A Yes.

20 Q The miscellaneous section where you refer to
21 two blind MS, can you describe for us what that means?

22 A It means that of the four finds, under T, where it
23 says four, that is total finds, two of them were blind
24 meaning I did not know where they were. MS is the
25 initials of the other canine handler that hid them.

1 Q So where we see initials like that throughout the
2 training log, that indicates the presence of another
3 canine handler or another sheriff's department official
4 that was working with you on the training?

5 A Yes.

6 MR. SHERMAN: Your Honor, excuse me, I am not sure
7 where in the document he is referring to. May I see?

8 THE COURT: Sure.

9 Actually, let me ask him, if you look at the
10 monitor, the monitor will show what is on the screen.

11 MR. AXELRAD: Your Honor, may I proceed?

12 THE COURT: Yes.

13 Q BY MR. AXELRAD: So just looking at a couple more of
14 these training logs, Detective Price, on this one, it
15 looks like you did some training for two hours in a tow
16 yard. You had Charlie look for quantities of
17 methamphetamine, and it looks like this was blind. And
18 can you explain for us the miscellaneous here?

19 A The blind indicates that I did not know where they
20 were. And then there was three sets of three cars,
21 interior and exterior, and one find per set. So there
22 was -- in a section of the tow yard, three cars. I don't
23 know if they were side-by-side or adjacent to each other,
24 very close, and the object was search those three cars
25 and then tell me where the one find is of the three cars,

1 and that was done three separate times.

2 THE COURT: FA, again, is what?

3 THE WITNESS: Focus aid.

4 THE COURT: What is a focus aid again?

5 THE WITNESS: A focus aid is basically like we
6 have pelican cases that we keep the narcotics in. We put
7 cotton balls and Q-tips and toothpicks in. At times we
8 will use those because it is a focus aid and not having
9 the live narcotics out.

10 THE COURT: So rather than using narcotics, you
11 use a focus aid like the tooth pick or --

12 THE WITNESS: That has absorbed the odor yes.

13 THE COURT: Again, the T is what, again?

14 THE WITNESS: The T is total finds. And then the
15 focus aid is, of the total finds, how many were focus
16 aids. Like in Line 1 on the fourth, there was
17 three total finds, and they were all live
18 methamphetamine. And then on the fifth vehicle,
19 two total finds, and they were both focus aids.

20 THE COURT: All right.

21 Q BY MR. AXELRAD: And, Detective Price, is one of the
22 reasons that you would use a focus aid in some
23 circumstances and not live narcotics for safety reasons?

24 A Yes.

25 Q And so, just, last example here. We have just a

1 sample from the training log here. This is from
2 November 17th, 2013, to November 23rd, 2013, and in the
3 miscellaneous column, it seems to indicate blind. Can
4 you explain for us what is in the miscellaneous column?

5 A It says blind NP, and then blind NP, crook dope,
6 and then blind MK.

7 Q Can you tell what that stuff means?

8 A Well, blind meant that I did not know where the
9 finds were, and the handler that hid them, that is their
10 initials. And the one that says crook dope would be
11 drugs that were found at the location.

12 Q And is this --

13 THE COURT: Let me stop. What is Stars?

14 THE WITNESS: Stars is our headquarters in
15 Whittier, the sheriff's training center. That is where
16 our main office is.

17 THE COURT: Okay. Thank you.

18 Q BY MR. AXELRAD: And, Detective Price, that is a good
19 point. Do you -- when you are out in the field with
20 Charlie, do you train where you can when you can, under
21 various different circumstances?

22 A Yes.

23 Q So if you were to execute a search warrant at a
24 home, for instance, and Charlie was used on the search
25 warrant, might you then train there as well?

1 A Yes.

2 Q Can you tell us why or what the value is in doing
3 that?

4 A Just because it recreates the best case scenarios.
5 I mean, we are limited on training locations as far as
6 that will allow to us train. And so, I mean, we have a
7 couple of office buildings that are empty, but they are
8 kind of, we call them sterile. But they are just old and
9 dirty, but a real life house, if you can, has all the
10 real live odors and freshness and stuff. Same thing with
11 cars that are driven every day.

12 Q And while we are on the subject of searching houses
13 because this issue came up earlier, has Charlie ever
14 searched bathrooms?

15 A Yes.

16 Q Has he searched bathrooms that contain shaving
17 cream or perfume or other products that you know to have
18 benzaldehyde in them?

19 THE COURT: Well, you assume a fact not in
20 evidence.

21 MR. AXELRAD: Excuse me. That is exactly correct.
22 I apologize, your Honor.

23 Q Detective Price, are you familiar with this
24 component benzaldehyde?

25 A Yes.

1 Q And do you have a sense of what sort of products
2 benzaldehyde can be found in?

3 A Like shaving cream, aftershaves, lotions, like
4 fragrance, perfumes.

5 Q Stuff that is commonly found in bathrooms?

6 A Yes.

7 Q Has Charlie ever searched a bathroom?

8 A Yes.

9 Q Approximately how many times?

10 A Well, conservatively, I would say probably at least
11 500.

12 Q And has he ever alerted to shaving cream or
13 aftershave, those products that you described?

14 A No.

15 Q Another question that was brought up earlier is
16 where you might hide, during your continual training of
17 Charlie, where you might hide the focus aids or the live
18 narcotics. So, for instance, if you were doing some
19 training with a car, what are some of the places that you
20 might hide narcotics to make it real life for Charlie?

21 A Well, I will do it in the corners of the, like the
22 taillights. I mean, it is mostly focused on him keeping
23 his search patterns, and we call it wrapping the corners.
24 So that he sniffs all the way around the car, the corners
25 and stuff like that.

1 At times, we will put it underneath with a
2 magnet. I have even taken the stereo out and put in
3 large amounts inside the dash to recreate that.
4 Underneath seats. I have taken seats apart, stuck it
5 inside seats. In the trunk, underneath the spare tire.
6 In the seams of the doors, in the headliner.

7 Q Might you bury it deeper in the car?

8 A Well, I mean, in the dash. Like I said, I have
9 taken the stereo apart and stuck it in the dash deep.
10 Deep in the corners of the trunk.

11 Q So, Detective Price, I just want to wrap up here by
12 talking about Charlie's positive alert in this particular
13 case. On October 28th, 2014, did you receive a radio
14 call from Deputy John Leitelt?

15 A Yes.

16 Q And can you describe for us what that was about and
17 what happened after that?

18 A He just called and said can you bring Charlie over
19 to sniff the outside of a car.

20 Q And was that the outside of the car located on the
21 I-5 near Castaic, California?

22 A Yes.

23 Q And when you and Charlie arrived, what did you do?

24 A I just got Charlie out, got to the downwind side of
25 the car and had him start searching.

1 Q Can I interrupt you there. What is it about
2 starting at the downwind side of the car, why would you
3 do that?

4 A It just, it helps the dog pick up odor if there is
5 any because it is blowing into their face instead of
6 blowing from them. If it is blowing away from them, they
7 might not even smell it.

8 Q And what happened after you started Charlie with
9 the search of the car?

10 A Like I said, I started at I believe it was the
11 front, the downwind side, and then worked around the
12 side. And when he got to the rear wheel well on the, I
13 want to say it was the left side first, he got underneath
14 there, and then his behavior changed. He started
15 sniffing really hard. His tail started wagging. His
16 body posture changed. He went around to the back of the
17 car. Went around to the other wheel well. Had the same
18 behavior. Went back and forth between the two wheel
19 wells, twice, the rear wheel wells twice. And then
20 finally sniffed the seam of the trunk between the bumper
21 and the trunk where they meet. And then a final response
22 or settled right there. Stuck his nose to it, and then
23 stopped moving.

24 Q And in your experience, what is the importance of
25 that seam between the trunk and the bumper? What is

1 going on right there?

2 A I mean, that is just a spot where air can come out.
3 Basically, he was trying to find the strongest sort
4 source of the odor. I believe he was picking up odor
5 already when his body posture, his behavior changed. He
6 was just going back and forth trying to find the
7 strongest point or source of it. And then he alerted
8 there or finally came to a final response there.

9 Q And after his final response, what happened?

10 A I told Deputy Leitelt he was alerting to the trunk.
11 I think I had the key thing to open the trunk, and he
12 jumped into the trunk.

13 Q Charlie jumped into the trunk?

14 A Once the trunk was open. Yes.

15 Q And what happened there?

16 A There was a tire in a rim sitting there, right in
17 front, I mean, right up against the latch and the edge of
18 the trunk. And he jumped right in, basically, right on
19 the top of it. And almost did a headstand because he was
20 trying to get his nose as close as we could to it.

21 Q And this isn't a picture of Charlie alerting at the
22 scene there, but is this a picture of Charlie alerting to
23 the tire at a later time?

24 A Yes.

25 Q And that is Charlie?

1 A Yes.

2 Q Okay.

3 MR. AXELRAD: One moment, your Honor.

4 Q So, Detective Price, just last couple of questions.

5 If you have, let's say, a package, for instance, a
6 vacuum-sealed package that has been handled by someone
7 who has been touching methamphetamine, for instance,
8 would Charlie alert to that package even though it was
9 vacuum sealed?

10 A If there was odor contamination on the outside,
11 yes.

12 MR. AXELRAD: No further questions, your Honor.

13 THE COURT: All right. Just before defense
14 counsel, let me ask you another question. You talked
15 about the certification from the -- Charlie's
16 certification from the L.A. County Sheriff's Department.
17 That is his initial certification. Is that correct?

18 THE WITNESS: Yes.

19 THE COURT: And then you talked about the other
20 certification that he received from the NPCA; is that
21 correct?

22 THE WITNESS: Correct.

23 THE COURT: And you also talked about the 300
24 hours of training that you initially had with Charlie and
25 then also approximately four hours per week since, I

1 guess, the original certification that you have with
2 Charlie as well?

3 THE WITNESS: Yes.

4 THE COURT: Is there any other training that you
5 have gone through with Charlie other than those? In
6 other words, for example, are there periodic refresher
7 courses and things on a formal basis that is done or
8 anything of that sort?

9 THE WITNESS: Our department has a quarterly
10 training we set up for all of our department detector
11 dogs that we do quarterly. We do train occasionally with
12 LAPD.

13 THE COURT: But I am talking about you with
14 Charlie. In other words, the quarterly training is
15 something you would do with Charlie four times a year?

16 THE WITNESS: Yes.

17 THE COURT: What else?

18 THE WITNESS: I mean, other than just our normal
19 daily training, weekly training stuff like that.

20 THE COURT: I am not sure. In other words, I just
21 want to make sure that I have covered all the training
22 that he received. He received the initial 300 hours?

23 THE WITNESS: Correct.

24 THE COURT: You talked about the four hours per
25 week minimum that you have with him, and sometimes it is

1 just by yourself and sometimes it is with other dog
2 handlers?

3 THE WITNESS: Correct.

4 THE COURT: And then there is the quarterly
5 training that you do with him as well. And, then, you
6 talked about the certifications that occur, and those
7 were not really training, they are testing. And then in
8 terms of the stuff you do weekly, those are those charts
9 that we have been looking at.

10 THE WITNESS: Correct. I think also I include in
11 my total training hours, training, canine-related
12 training that I do, like the seminars that I have gone
13 to.

14 THE COURT: So you have additional training?

15 THE WITNESS: Yeah. I have additional training
16 that is not always with Charlie. The training seminars
17 out of state, stuff like that.

18 THE COURT: How many of those do you think you
19 have gone to?

20 THE WITNESS: Probably six. At least one a year.
21 Sometimes twice a year.

22 THE COURT: All right. And in terms of the tests
23 that Charlie has taken and the training that you have
24 done with Charlie, has he ever failed the criteria that
25 is utilized in the training?

1 THE WITNESS: No.

2 THE COURT: And do you have records of his, what
3 is sometimes referred to as deployment records.

4 THE WITNESS: Yes.

5 THE COURT: All right. That is it.

6 MR. AXELRAD: Thank you, your Honor.

7 THE COURT: Let me hear from defense.

8 MR. SHERMAN: Your Honor, can we take a short
9 recess so I can use the restroom?

10 THE COURT: Sure. I am always sensitive about
11 that. Not just in your case. I am talking about
12 everyone. So, yes. Let's take a 10-minute break.

13 MR. SHERMAN: Thank you.

14 (Recess from 2:49 to 2:59 p.m.)

15

16 DIRECT EXAMINATION

17 BY MR. SHERMAN:

18 Q Deputy Price, how do you know about the drug
19 benzaldehyde?

20 A Never heard about it until Dr. Woodford's
21 declaration that he wrote in this case.

22 Q That is the first time you knew about it, just in
23 this last, once you read his declaration?

24 A Correct.

25 Q Okay. Are you aware that benzaldehyde is, in fact,

1 in some of the items that you suggested, like shaving
2 cream, et cetera?

3 A I have heard that. Yes.

4 Q And where have you heard that from?

5 A Just from my research and his declaration and then
6 on the Internet.

7 Q All right. So you were able to confirm that
8 benzaldehyde is, in fact, in the various items that he
9 said it was in?

10 MR. AXELRAD: Objection. Misstates the testimony.

11 THE COURT: Rephrase.

12 Q BY MR. SHERMAN: Well, what did your research
13 disclose to you as far as when a benzaldehyde is
14 utilized?

15 A That it is utilized in numerous amounts of items,
16 shaving cream, lotions, aftershave, food products.

17 Q Did you do any research or talk to anybody about
18 whether benzaldehyde is also a component of
19 methamphetamine?

20 A No.

21 Q Do you know if it is or it isn't?

22 A I do not.

23 Q So you had received no training as to that fact
24 one way or the other?

25 A Correct.

1 Q What training have you received as far as what the
2 dog is alerting to when he alerts to methamphetamine, if
3 any?

4 A Just that he is alerting to methamphetamine.

5 Q Have you received any training in any way that the
6 dog is alerting to a chemical that makes up the drug?

7 A No.

8 Q Does that go for all five substances, the cocaine,
9 heroin, opium, marijuana, et cetera?

10 A Yes.

11 Q In these hundreds of hours of seminars, et cetera,
12 that you have gone to, no one has ever brought up the
13 issue as to what actually the dog is alerting to?

14 A Not that I remember. No.

15 Q Do you know whether or not the drug, like
16 methamphetamine, emits an odor?

17 A At times it does, yes.

18 Q And is it something that at times you have been
19 able to smell?

20 A Yes.

21 Q And, in your experience, if you have an experience
22 in this area, do you believe that the dog is alerting to
23 the odor or the drug? Or do you know?

24 A The odor.

25 Q The odor?

1 A Yes.

2 Q And when did you learn that?

3 A I am not sure what you mean.

4 Q Well, you say the dog is alerting to the odor, when
5 did you come to that conclusion?

6 A From the start of my training, they have always
7 said that the dogs alert to the odor not the actual drug
8 itself.

9 Q And was there any discussion as to any specifics
10 about the odor itself?

11 MR. AXELRAD: Objection. Calls for hearsay.

12 THE COURT: I will allow it in if the witness
13 understands the question, not for the truth.

14 Q BY MR. SHERMAN: Let me rephrase it. When you --
15 from the beginning of your training, you were told that
16 the dogs alert to an odor and not the substance itself;
17 is that correct?

18 A Yes.

19 Q Okay. Now, who told you that, if you recall, or
20 how was it part of your training?

21 A Our head trainer told me it, and then it has been
22 reinforced at most of the training I have gone to.

23 Q So that is a well accepted fact?

24 A Yes.

25 Q As to the specific odor that the dog is alerting

1 to, have you received any information from your police
2 agency or through your training as to what the odor is
3 that the dog is alerting to?

4 A No.

5 Q Was that ever even brought up as a question?

6 A Not that I can remember, no.

7 Q All right. I understand that -- or maybe you have
8 had some training about masking agents?

9 A It has been discussed. Yes.

10 Q In what way?

11 A At training seminars and amongst other handlers.

12 Q And tell me what way other than it has been
13 discussed?

14 A I mean some questions have been asked about masking
15 agents like coffee and mustard and stuff like that,
16 whether that will mask the odor.

17 Q Is that a regular discussion you have with other
18 handlers or within your agency?

19 A I wouldn't say regular, no.

20 Q Okay. So there are things called -- there has at
21 least been discussion about masking agents?

22 A Yes.

23 Q Okay. And has there been any specific masking
24 agent that has been referred to, agent or agents, among
25 yourself and other handlers?

1 A I mean, typically, what we will find is dryer
2 sheets, mustard, coffee.

3 Q And there has been discussion that somehow that
4 will mask an odor?

5 A That it is attempting to mask the odor. Yes.

6 Q And, in your experience, have you used these other
7 items to see whether or not it does, in fact, mask the
8 odor when you have trained Charlie?

9 A On a few occasions, yes.

10 Q What have you used?

11 A We put out dryer sheets. We have put out like
12 packing tape. We have put out cell phone or like shrink
13 wrap stuff.

14 Q And has it worked?

15 A He has not alerted to it. No.

16 Q So what kind of training would you call that?

17 A I refer to it as proofing. You know, to proof that
18 he does not alert to those items.

19 Q Is that part of your training logs?

20 A It should be, yes.

21 Q Can you refer to any page in your training log in
22 which, in fact, you did something like that?

23 A I believe there is at least one in there, yes.

24 Q Can you pick it out, or are you capable of doing it
25 or not?

1 MR. AXELRAD: Your Honor, the 142 pages of his
2 training log are electronically available.

3 THE COURT: No. I don't think we are going to
4 have him look at 142 pages now. Is that what your
5 question is?

6 Q BY MR. SHERMAN: Well, off the top of your head, do
7 you know if that is anywhere because I couldn't find it
8 in the logs. It may be. Do you know if it is anywhere
9 in your logs?

10 A I believe so. Yes. There is one that I remember
11 seeing that says MSM, I think baby powder, plastic
12 gloves, rubber gloves?

13 Q So being more specific, on that one occasion that
14 you can recall in which you did something like you tried
15 to do a masking agent and Charlie was unable to find the
16 drug. Is that what you are saying?

17 MR. AXELRAD: Objection. Misstates the testimony.

18 THE COURT: I will sustain the objection. You can
19 ask him to explain his last his prior answer.

20 Q BY MR. SHERMAN: Explain what you did on this
21 one occasion and what happened, what were the results?

22 A They weren't used as masking agents like to try to
23 disguise the drugs. We used them to prove that he is not
24 alerting to those items because they are commonly found
25 with drugs.

1 Q What is that process called? Is that called
2 extinction?

3 A We call it proofing.

4 Q Proofing?

5 A Yes.

6 Q And how often would you do that, or did you do that
7 during your training these four or five years of training
8 with Charlie?

9 A I mean, to an extent, once a week, not always all
10 the items, you know, sometimes we will do once or twice a
11 year with certain items. Like to prove that he doesn't
12 alert to cotton balls and Q-tips that we use as focus
13 aids. That is done almost every time we search a house,
14 and there is cotton balls and Q-tips laying on the floor.
15 That proves to me he doesn't alert to those because those
16 were previously there in the house.

17 Q And you use Q-tips or cotton balls because you use
18 those in your training?

19 A Yes.

20 Q And what other items do you use besides -- these
21 are focus aids?

22 A Yes.

23 Q What other focus aids do you use?

24 A Toothpicks. You mean as far as the items that we
25 use as focus aids? That is pretty much those three.

1 Q Okay. Toothpicks, cotton balls and what was the
2 third?

3 A And Q-tips.

4 Q So it would be fair to say that you proofed those
5 items somewhere in your training that he would not alert
6 specifically to those three items; correct?

7 A Yes.

8 Q Any other items?

9 A Our actual narcotics are wrapped in like paper,
10 computer paper, regular white paper, and then they are in
11 a manila envelope. And then they are in Kyvex, like the
12 kind of paper Fed Ex bags. And we do put out clean Fed
13 Ex bags at times, plain, clean manila envelopes.

14 Q Anything else?

15 A Not that I can think of. No.

16 Q Okay. But I thought you said there was something
17 about masking agents that you use or something that
18 someone might refer to as masking agents?

19 A With, like MSM is a common cutting agent for
20 methamphetamine. We will put that out to make sure that
21 the dog is not alerting to MSM, that they are actually
22 alerting to the methamphetamine.

23 THE COURT: What is MSM again?

24 THE WITNESS: I don't know what exactly. It is
25 monosodium something, but I think it is a joint compound.

1 THE COURT: You mean like for spackling walls?

2 THE WITNESS: No. No. Like for your body.

3 THE COURT: It is like a medicine?

4 THE WITNESS: I think it is used more in horses.

5 Q BY MR. SHERMAN: So and what drug are you referring
6 to?

7 A Methamphetamine.

8 Q So then you understand that methamphetamine may be
9 made up of a number of different chemicals or compounds?

10 A Yes.

11 Q And that is one of the mixtures -- correct -- what
12 you just referred to?

13 A Yes.

14 Q And what was those initials again?

15 A MSM.

16 Q Okay. Any other, especially relating to
17 methamphetamine, that you proof with a dog to see if he
18 will alert to what might be in the methamphetamine?

19 A No.

20 Q Just that?

21 A Yes.

22 Q Okay. So you never had a chance obviously to this
23 benzaldehyde, but you have never tried to proof that out
24 for Charlie, have you?

25 A No.

1 Q Your training logs don't indicate as far as I can
2 tell when or whether or not Charlie actually was able to
3 find an item that may have been hid either by you or
4 others.

5 Is there somewhere on the chart that tells us
6 that?

7 A I am not sure what you mean.

8 Q Okay. So why don't you look at Exhibit 11. Let's
9 just take the ones that the government picked out. The
10 first one, I guess, is dated October the 15th. It is
11 Bates stamped, well, 1353.

12 A Okay.

13 Q Okay. Apparently, that was on October the 15th; is
14 that correct, two hours?

15 A Yes.

16 Q And that was done at the station?

17 A At the sheriff's headquarters. Or the Stars center
18 in Whittier.

19 Q And when you say heroin, S, and then you have a
20 number 3 under that, what does that mean again?

21 A Small.

22 Q What do you mean by small?

23 A Could be focus aid up to 7-grams.

24 Q Why do you pick the figure 7-grams?

25 A I didn't pick it.

1 Q Who does?

2 A Our head trainer picked that out, and it was that
3 way when I came to the unit.

4 Q So how do you know it was 7-grams? Is that the
5 maximum for considered small?

6 A For our unit, yes.

7 Q Okay. Throughout the years that you have been
8 doing this, have you had any control over the quantity
9 that you are dealing with when you try to train Charlie?

10 A Yes.

11 Q And in what way?

12 A Well, because I -- when I hide the training aids,
13 either for myself or for other detectives, I can decide
14 if I want to make it small, medium or large.

15 Q But as to what makes up small, medium and large,
16 are those set?

17 A Yeah. I have no control over that.

18 Q Okay. What is -- small is up to 7-grams

19 A Small is focus aid up to 7-grams.

20 Q And medium?

21 A Is 8-grams to 14-grams.

22 Q And large?

23 A 15 grams and above.

24 Q Do you know why there is this distinction between
25 small, medium and large?

1 A I do not.

2 Q Do you ever have any training on that, as to why
3 there is a difference between small, medium and large as
4 far as training the dog?

5 A No.

6 Q And is that true for all five drugs, heroin,
7 cocaine, meth, marijuana and opium?

8 A Yes.

9 Q So, in all these hundreds of hours, that never came
10 up?

11 A I don't recall if I ever asked. I believe that it
12 is so that they are exposed to different amounts,
13 different, you know, very small amounts to larger
14 amounts.

15 Q But never had any formal training about that point?

16 A No. No formal training.

17 Q Right. Have you had any training as to when you do
18 this four hours a week as to which drug you are supposed
19 to train the dog on?

20 A No.

21 Q That is strictly your choice?

22 A Yes.

23 Q So it is your choice as to the drug and your choice
24 as to the quantity that you are going to train the dog
25 on?

1 A Yes.

2 Q Is it your choice also where to hide the drug?

3 A If I am the one hiding it, yes.

4 Q Most of the times are you the one hiding the drug?

5 A I don't know if most of the time.

6 Q Well, let's just take this one, October the 15th,
7 the first one. Can you tell by looking at this whether
8 you were the person that hid the drug?

9 A I cannot tell, no.

10 Q Well, is there any way of looking at -- let's use
11 this as an example. Is there any way in any of these
12 charts that you can tell who hid the drugs on any
13 particular occasion?

14 A Well, the ones that say blind, I know I did not
15 hide.

16 Q All right. Other than those?

17 A They could be that I hid them or I knew where they
18 were hidden so I didn't write blind on it.

19 Q So if it doesn't say blind, it means you knew where
20 the drug was hidden?

21 A Most likely, yes.

22 Q Okay. And I am not sure if I counted it all, but
23 of the 140 some pages, I think there were less than 20
24 times of any blind. Does that sound about right or not?

25 A If that is what it says, then, yes.

1 Q Well, in your recollection, does that sound about
2 right? Let me put it another way, most of the time you
3 would be the one that either you hid the drug or you knew
4 where the drug was hidden? Was that most of the time?

5 A Probably, yes.

6 Q And why is that?

7 A Because a lot of times I am by myself, training by
8 myself.

9 Q Now, when you would ask Charlie to find the hidden
10 drug, would it on leash or off leash?

11 A The majority of the time it is on leash.

12 Q And why is that?

13 A Just so he doesn't run into traffic or go to an
14 area that I don't want him to search.

15 Q So when you say not to go in an area that you don't
16 want him to search, at least in some degree, you are
17 controlling the area that he is going to search?

18 A In some degree, yes. I mean, I don't want him to
19 bounce back and forth all over the house. I want him to
20 like, okay, let's search this area, and then we will move
21 to this area and then that area.

22 Q Do you have any guidelines set forth by the
23 sheriff's department as to how you are supposed to
24 conduct these searches when it is just you and Charlie?

25 A I don't think there is guidelines written. No.

1 Q Did you ever have any training about how you are
2 supposed to perform that function?

3 A It was just the recommended practice from the
4 experienced handlers.

5 Q So there is no formal training?

6 A I mean, that is the way I was trained to do it.

7 Q Which is what, again?

8 A To search on leash and kind of, you know, do
9 systematic searching, not just ping ponging all over a
10 room.

11 Q Any other guidelines or directions other than keep
12 the dog on the leash and start at one part of the room,
13 and, you know, go around the room, I guess is what you
14 are saying; is that correct?

15 A Yeah. There is no other guidelines as far as how
16 to search.

17 Q And no guidelines as to which drug to hide or the
18 quantity or anything of that nature? Pretty much, it is
19 all left up to you?

20 A Correct.

21 Q And how about the column, how about where it says
22 focus aids, were you told how often to use a focus aids
23 versus the real drug or anything of that nature?

24 A No.

25 Q So, again, that is all left up to you?

1 A Yes.

2 Q Now, most of the time, would the drugs that you
3 would be utilizing, would it be drugs that you would have
4 obtained, let's pretend that you say you changed drugs
5 once a year; correct?

6 A Yes.

7 Q So let's start with January 1st of the year. Let's
8 just make that as a date. So you started with the drug
9 January 1st. And you used that drug, let's assume it was
10 heroin, the same heroin throughout the entire year?

11 A Yes.

12 Q And that would be true also for the cocaine, meth,
13 marijuana, opium?

14 A Yes.

15 Q And then when a year goes by, you would then use a
16 different drug, a new drug; is that correct?

17 A Well, I am not sure that we are talking about the
18 same thing. We -- we have a set of training aids. I
19 mean, I have meth, marijuana, cocaine, opium and heroin.
20 Every year we replace all of those.

21 Q All right. So, then, the training aid that you
22 use, you use consistently for the entire year?

23 A Yes.

24 Q So every time you would hide meth somewhere for the
25 entire year, that would be the same training aid?

1 A Yes.

2 Q And that would be true to the other four drugs too?

3 A Yes.

4 Q And where do you get that training aid at the
5 beginning of the year, say, on January 1st?

6 A Well, it is not always January 1.

7 Q I understand. I just made that up.

8 A They -- we identify cases in our central property
9 evidence section that have been completed and the
10 evidence is set for disposal. And then we write ex parte
11 orders to be able to use it for training purposes.

12 Q And let's say at the beginning of the year and,
13 again, we are just arbitrarily saying January 1st, how
14 much meth would you be given as a training aid?

15 A Me personally?

16 Q Well, yes. You personally.

17 A It is -- there is a 1-gram package, a 7-gram, a
18 14-gram and a 28-gram. I think it is 51-grams total.

19 Q So you would get four packages of meth?

20 A Yes.

21 Q And those are the four packages of meth that you
22 would use every time you train Charlie on
23 methamphetamine, for instance?

24 A Yes.

25 Q And it was 1-gram?

1 A 7-grams, 14-grams and 28-grams.

2 Q And would you put these quantities in a -- how
3 would you package it? Would you say you put it in a
4 training aid? I am not sure what a training aid is.

5 A Well, overall, everything, we consider training
6 aids, the aids that we use for training. So I am not
7 sure what you mean how do we package them?

8 Q Well, you have a gram of meth?

9 A Right.

10 Q You have to put it in something, don't you?

11 A Well, I don't. It comes from our crime lab. The
12 chemist at the lab divided it up into the different
13 packages, and then they wrap it in paper, they seal it in
14 an envelope. And then we take the envelope they sealed
15 it in the Fed Ex -- I think they are called Kyvex bags --
16 just so they are stronger just in case by chance the dog
17 were to bite one or keep it from leaking or whatever.
18 Just so it is safer for the dog.

19 Q So, ultimately, let's say the 1-gram that you get
20 from the lab, you put it in, ultimately, in some kind of
21 a box or an envelope?

22 A Well, it is in an envelope, and then it is stored
23 in a pelican case. Yes.

24 Q Pelican case?

25 A Yes.

1 Q What is that?

2 A It is a -- it is like an air tight, water tight,
3 plastic, sealable case.

4 Q It is something that you can see through?

5 A No.

6 Q Okay. Pelican case.

7 I am not sure, again, what a pelican case is.
8 Is it like a baggy of some kind?

9 A No. It is a hard plastic like it is not a
10 briefcase, but it is a hard molded plastic with a rubber
11 seam around it. It seals air tight and water tight also.

12 Q All right. And each of the drugs are all in the
13 same kind of container?

14 A Yes.

15 Q And those are the containers that they use
16 throughout the entire year?

17 A Yes.

18 Q Do you have or have you ever seen a chemist report
19 that goes along with the drugs that you received?

20 A No.

21 Q So, basically, you are taking the word that, in
22 fact, what they are giving you is what you believe it to
23 be?

24 A Yes.

25 Q And is it marked in some way that says this is

1 meth?

2 A All of the meth comes in one bag, and then all of
3 the heroin comes in a different bag.

4 Q And do you then separate -- oh, and these bags are
5 already separated into the various quantities, 1, 7, 14
6 and 28-grams?

7 A Yes.

8 Q And then you remove -- do all four bags come in
9 one bigger bag and then you take each of those bags and
10 put them in this plastic container like you have told us?

11 A Well, typically, they will put all the 1-gram
12 packages in one bag, the 7-gram in one bag, the 14-gram
13 in a bag, the 28-gram in a bag. They are all meth or
14 heroin or cocaine whichever the drug is that they have
15 done first. We put all that into one bag so that all the
16 meth is together, all the heroin is together.

17 Q Okay. Now, during the times that -- well, first of
18 all, in looking at the log, do you mark down on the log
19 when Charlie has been successful or not?

20 A Well, the total that were found, they are
21 successful, yes.

22 Q When you say the total that were found, that goes
23 under the T column?

24 A Yes.

25 Q So I take it you compare the total column to the

1 amounts under each of the individual columns, and that
2 tells you whether it was successful, like, for instance,
3 if you go down four lines on this first exhibit, October
4 the 16th, it says location type PDC. You see that?

5 A Yes.

6 Q So it says meth, 2 and 1, two small, one large,
7 total three, focus aids two. So the three tells you that
8 he was successful in finding the three?

9 A Yes.

10 Q Are there any instances that you can recall offhand
11 where Charlie, in this entire year, ever failed to find
12 the item?

13 A No.

14 Q So for an entire year, every single time you or
15 someone else hid the item, Charlie was a hundred percent
16 successful?

17 A Yes.

18 Q Have you ever been told that the success rate,
19 anything above 75 percent is considered very good?

20 A No.

21 Q So were you ever given any training or at any
22 seminars that a hundred percent success rate -- I don't
23 know how to describe this -- is, like, not realistic for
24 a dog? Ever been told that?

25 A No.

1 Q So, in your experience you have with Charlie, he is
2 a hundred percent correct every single time?

3 A Yes.

4 Q So in four-and-a-half years of dealing with
5 Charlie, he has never made a mistake as far as you know?

6 A As far as I know.

7 Q Now, you said that he was involved in deployment
8 of -- you and he were involved in 900 different searches?

9 A Yes.

10 Q Were most of those searches drug related?

11 A They are all drug related.

12 Q Every one of them?

13 A Yes.

14 Q So is it fair to say that in the 900 times that
15 Charlie has been utilized by you to search drugs, drugs
16 have been found 900 times?

17 A No.

18 Q So what is your experience in that regard?

19 A There are times that he has conducted searches and
20 not found drugs.

21 Q Were drugs later found at that location to your
22 knowledge?

23 A Occasionally, yes.

24 Q So there have been errors by Charlie? Is that what
25 you are now saying or not?

1 A No. It is not an error. If he didn't get close
2 enough to the odor to smell it, or you know with wind
3 conditions or me as a handler, I didn't take him into the
4 correct room or get him to the correct spot or give him
5 the opportunity to smell it, he might not have gotten to
6 the odor.

7 Q So there has never been an instance in which
8 Charlie was in the vicinity, close enough to the vicinity
9 of the drugs, that you would feel comfortable that he
10 should have found the drugs that he has never found
11 drugs?

12 A Well, because he alerts to odor doesn't always mean
13 that the drugs are there.

14 Q Okay. What I am saying is has there ever been an
15 instance in the four-and-a-half years or five years you
16 have been training with Charlie that he was close enough
17 to drugs that he should have found them, but didn't?

18 A Not that I remember. No.

19 Q And of these 900 times that you have used Charlie,
20 I know it may be difficult, but can you estimate how
21 many, what percentage of the time he actually found drugs
22 in those 900 times?

23 A I mean it would be hard to say because I don't
24 know -- you know, there is quite a few search warrants
25 that the station crews and guys do where they don't find

1 anything there. There is a lot of cars that he searches
2 where nothing is ever found. So it is hard to say. To
3 put a percentage on it, I don't know.

4 Q Do you know what a false alert is?

5 A I have heard that term, yes.

6 Q And what is it you understand a false alert to
7 mean?

8 A Well, a false alert would be alerting to something
9 that is not there, that he is not trained to alert on.

10 Q Has Charlie ever false alerted to your knowledge?

11 A No.

12 Q And, again, to your knowledge he has never not
13 alerted to drugs in a location where he was close enough
14 that he should have alerted?

15 A No.

16 Q Is that correct?

17 A I believe so if I understand what you are saying.

18 Q All right. Now, I think from an affidavit or
19 something that I have seen, I think the figure was 775
20 times he has searched, Charlie was used for the purpose
21 of a search warrant affidavit on six occasions?

22 A Yes.

23 Q And to the best of your knowledge, that is the only
24 time Charlie has been utilized for the purposes of search
25 warrant?

1 A At that time, yes.

2 Q All right. And do you know the results of those
3 times when Charlie was used for the purposes of a search
4 warrant?

5 MR. AXELRAD: Your Honor, I am going to object
6 here. We are just a little far afield.

7 THE COURT: What is the relevance of this?

8 MR. SHERMAN: I want to see his success rate.

9 THE COURT: How would you know the success rate
10 from the results they used for six search warrants?

11 MR. SHERMAN: Well, it is preliminary to that, but
12 I basically want the records.

13 THE COURT: Well, he is going to give you whatever
14 the deployment records he has. He is going to give them
15 to you.

16 MR. AXELRAD: We have the deployment records for
17 the year before the stop in this case. We were going to
18 provide those in camera to the court. Those six search
19 warrants, your Honor --

20 THE COURT: I don't understand. I mean, he was
21 utilized to provide evidence for the search warrant. I
22 don't understand. He would have been either successful
23 or unsuccessful in that regard.

24 MR. SHERMAN: I will withdraw the question.

25 Q In any event, at the time these computations came

1 out, I think it was a few months ago, charley had been
2 used about six times in gaining search warrants; is that
3 correct?

4 MR. AXELRAD: Objection. Misstates the record.

5 THE COURT: Let me ask the witness. Do you
6 understand the question?

7 THE WITNESS: Yes.

8 THE COURT: I will allow him to answer the
9 question if he understands it.

10 THE WITNESS: Yes.

11 MR. SHERMAN: All right.

12 Q Have you ever been trained on a double blind
13 search, what that is?

14 A I ever been told what it is. Yes.

15 Q When was that?

16 A Couple of times during the last four-and-a-half
17 years.

18 Q And what do you understand a double blind search to
19 mean?

20 A Double blind would be where the handler and the
21 evaluator or the rater who is observing the search,
22 neither of them know where the find is.

23 Q And you have never utilized or been part of that
24 procedure?

25 A No.

1 Q Have you been told by your superiors or as part of
2 your training why not?

3 A No.

4 Q And you have heard about double blind searches in
5 the context of what? How did it come up?

6 A Just in my initial training, you know, in initial
7 learning phase. This is what a blind search is. This is
8 what a double blind search is.

9 Q Did you ever or were you ever told that a double
10 blind search was more security proof or had a better
11 value than just having a search where the handler
12 actually hid the drugs himself?

13 A I don't think I was ever told that. No.

14 Q All right. Let's look at the training records, I
15 mean, the certification records which I believe is
16 Exhibit 9. Excuse me. Exhibit 10.

17 And let's go to August 17th, 2011 which is the
18 first or the second document in the package but the first
19 one. Do you see that document, 8/17/11?

20 A Yes.

21 Q Now, on that particular day, first of all, do you
22 have a recollection of that?

23 A Yeah.

24 Q You do remember that specific day?

25 A Yes.

1 Q Do you remember the other days in which you
2 received certification from the National Police Canine
3 Association?

4 A Not specifically those, no.

5 Q Okay. Do you remember this one specifically
6 because it was the first one?

7 A Yes.

8 Q And the other ones became more routine? Is that
9 why you don't recall them maybe?

10 A No. I wouldn't say routine.

11 Q Okay. But anyhow this particular one, you
12 remember?

13 A Yes.

14 Q Now, the cocaine that was I guess provided that
15 day, it says 28-grams, correct?

16 A Yes.

17 Q That was on the higher end of small, medium and
18 large; correct?

19 A Yes.

20 Q And did you understand that, in fact, that was the
21 larger quantity that you were going to be searching for
22 that day with your dog?

23 A I was not told that, no.

24 Q You were -- what were you told before the process
25 began as to what was going to happen that day?

1 A Just that there was a certification and that, you
2 know, there is these four cars, there is two finds in the
3 four cars. You have, I think it is 8 minutes. And when
4 you start, the time starts and when you say done, then
5 the time is done. And then identify where your
6 two alerts were.

7 Q Did they tell you what drug your dog was going to
8 be looking for?

9 A No, they did not.

10 Q They just told you that these four vehicles, there
11 were going to be two finds in these four cars?

12 A Yes.

13 Q And that you were given a certain amount of time?

14 A Yes.

15 Q And these four cars were located in what kind of an
16 area?

17 A The parking lot.

18 Q Was that outside?

19 A Yes.

20 Q And the parking lot of what establishment?

21 A It was at the LAPD canine office.

22 Q And the four cars lined up right next to each
23 other?

24 A I don't remember that.

25 Q All right. Do you remember the kinds of vehicles

1 or anything of that nature? If you remember. I am just
2 trying to test your recollection, that is all.

3 MR. AXELRAD: Your Honor, I would just object to
4 the relevance here. We are just rereading.

5 THE COURT: I will allow him to answer that
6 question, but it is getting kind of far afield.

7 Q BY MR. SHERMAN: Do you have a recollection?

8 A No.

9 Q Do you recall who the certifying official was at
10 that occasion?

11 A No.

12 Q Okay. How do you know that he wasn't a member of
13 the L.A. County Sheriffs?

14 A Well, I know he wasn't a member of the L.A. County
15 Sheriffs, but they were members of the Los Angeles Police
16 Department. But I don't know exactly who the two guys
17 were.

18 Q And you know that they were LAPD because that is
19 where the testing took place?

20 A Yes.

21 Q Do you recall if they were in uniform or anything
22 of that nature?

23 A They were not in uniform.

24 Q But you are confident they weren't members of the
25 L.A. Sheriff's Department?

1 A Yes.

2 Q Turning the page to the next document, also,
3 August 17th, 2011, do you see the initials for the
4 certifying official? Well, I don't know if it is
5 initials. It says D179. Is that a badge number?

6 A I think that is his ID number with NPCA.

7 Q And do you know who that individual was?

8 A I do not.

9 Q Do you know the names of any of the individuals
10 that were the certifying officials for any of the times
11 that you received a certificate?

12 A Yeah, I know a couple of the guys.

13 Q Can you tell me which particular certificate?

14 A I don't know. I don't know what their number is
15 corresponding to which, you know.

16 Q Okay. And these other individuals, what
17 organization do they belong to, what police department?

18 A Los Angeles Police Department.

19 Q So as far as you know, was it always an LAPD that
20 tested? Was the certifier for your program?

21 A As far as I know, yes.

22 Q And, again, who supplied the drugs for the purpose
23 of their certification?

24 A I do not know.

25 Q Okay. So did you ever bring the drugs to the

1 location to be certified when you were being certified?

2 A No.

3 Q They were always supplied by whoever was doing the
4 certification?

5 A Yes.

6 Q And, again, I will just ask in general because I
7 doubt if you remember, but do you recall, for instance,
8 where the cocaine and marijuana was hidden that first
9 time in August of 2011 in the vehicle, where it was
10 hidden in the vehicle? Do you have a present
11 recollection of any of that?

12 A I do not know.

13 Q Did you keep any notes of what occurred at any of
14 these certification processes, events?

15 A No.

16 Q In this particular case, was the methamphetamine
17 found at the scene or at the police station?

18 A At the scene.

19 Q And it was found inside the tire?

20 A Yes.

21 Q Okay. So I saw a picture of -- was that a picture
22 of that tire on that day that the prosecutor showed you?

23 A I believe so. Yes.

24 Q And it seems like the tire was still on the rim at
25 the time. How was the -- how was the drug removed from

1 the tire on that day?

2 A It was taken to a tire shop.

3 Q It was taken to the tire shop?

4 A Yes.

5 Q Is that when the drug was found?

6 A No. I mean, it was already known that it was
7 inside the tire.

8 Q How?

9 A One of the deputies cut it open.

10 Q Cut the tire open?

11 A Yes.

12 Q At the scene?

13 A Yes.

14 Q Were you present when that happened?

15 A Yes.

16 Q And was a bag removed from the -- from the tire?

17 A No.

18 Q It was left in the tire?

19 A Yes.

20 Q And were you present when the tire was taken to a
21 tire shop?

22 A Yes.

23 Q And did you see the bags being removed from the
24 tire at the tire shop?

25 A Yes.

1 Q I take it, clearly, there was no warrant at that
2 time, was there?

3 A Excuse me?

4 Q There was no warrant?

5 A Not that I know of.

6 Q How was the methamphetamine packaged?

7 A It was in plastic.

8 Q The report says it was in vacuum-packed, sealed
9 bags; is that true?

10 A I don't know.

11 Q Would you look at Exhibit 1, please. The last
12 sentence?

13 MR. AXELRAD: Your Honor, just object to this.
14 This is not Detective Price's report. This is another
15 deputy's report.

16 THE COURT: Let me ask, why are you asking him to
17 look at another deputy's report?

18 MR. SHERMAN: Well, it might refresh his memory,
19 and I think he was present.

20 THE COURT: He testified he was present, and he
21 testified what he saw. Are you asking whether or not it
22 is vacuum packed as opposed to being in plastic.

23 MR. SHERMAN: Maybe I can just ask if it refreshes
24 his memory on that point.

25 THE COURT: All right.

1 MR. AXELRAD: I think the detective already
2 testified that he does remember that it was in plastic.

3 THE COURT: But he is asking whether or not he
4 recalls it was vacuum packed rather than regular plastic.

5 MR. SHERMAN: It is at Page 4 of the report, the
6 last paragraph.

7 Q Do you see that?

8 A Yes.

9 Q Does that help refresh your memory that the
10 methamphetamine was in vacuum-sealed bags?

11 A The last paragraph?

12 Q It says, I later removed 11 plastic packages. Do
13 you see that?

14 A No.

15 Q It is at page --

16 A Oh. I was on the wrong page. Sorry. I mean, it
17 doesn't help me to say, yeah, it was vacuum packed or
18 not. I just remember they were in plastic.

19 Q Okay. Has your dog been certified by any other
20 organization other than National Canine Police
21 Association?

22 A The National Police Canine Association, no.

23 Q And do you know who picked that organization to
24 certify your dog? Was that a decision you made, or did
25 that come from your department?

1 A I believe it was the decision that our head
2 trainers made prior to my coming to the unit.

3 Q And have they consistently used that organization
4 since you have been there?

5 A Since I have been there, yes.

6 Q Do you know if they ever used, before you got
7 there, if you know, some other organization to certify
8 dogs?

9 A I believe they were with California Narcotics
10 Canine Association.

11 Q And do you know when they switched?

12 A I do not know.

13 Q The 1500 hours that you have done additional
14 training, what percentage of that was by yourself at
15 these seminars or with other handlers, and what
16 percentage of that, if you know, was with you and the
17 dog?

18 A I don't know.

19 Q Did you ever keep track of the hours that you
20 actually spent with the dog training?

21 A Well, that is what my training logs are, those
22 hours. I mean, in a two hour, like a two hour training
23 session, how much time he is actually on the end of the
24 leash searching? Is that what you are talking about?

25 Q Yes.

1 A No.

2 Q Did you ever train him off leash?

3 A Yes.

4 Q How often would that happen?

5 A Not too often. The only time I let him search off
6 leash is if it is in a closed room or, you know,
7 contained environment.

8 Q When you did this certifying program with NPCA, was
9 he on leash?

10 A Yes.

11 Q And was that in a -- I believe the guidelines say
12 that it is a fairly small room, 300 by -- well, let me
13 look. 380 square feet by 600 square feet would be the
14 maximum of an indoor room.

15 Do you recall it being a fairly small room
16 like that?

17 A I believe so. Yes.

18 Q And even though it was a small room, it was always
19 on leash?

20 A Yes.

21 Q Now, when you would do that, obviously, there would
22 be no danger that the dog would be running away into
23 traffic or anything?

24 A Correct.

25 Q So why would you keep him on leash rather than off

1 leash?

2 A Just so he will stay in the room that I want him to
3 search in and that I can go from room to room.

4 Q So you were directing the dog, during that period
5 of time at least, what room to search in?

6 A Yes.

7 Q And then once he would complete a search of
8 one room, you would take him by the leash and move him to
9 another room?

10 A Yes.

11 Q And that would also be true when you did the
12 outdoor searches, same process?

13 A Yes.

14 Q You would take him by leash to a particular vehicle
15 and then keep him on leash, and then you would take him
16 to the second vehicle and so on?

17 A Yes.

18 Q Did you ever have any training that it would be
19 more effective if the dog would be off leash because it
20 would obviate the possibility that the trainer would be
21 cueing the dog?

22 A No.

23 Q Did you ever hear about the potential of a trainer
24 cueing a dog?

25 A I have heard about it. Yes.

1 Q Did you ever get any training to try to avoid that
2 situation?

3 A Yes.

4 Q When?

5 A Basically, from the start. When I first started,
6 the experienced handlers would talk about it, and that is
7 one of the reasons why we do the blind searches so the
8 handler doesn't know.

9 I always carry his reward toy in my hand, so
10 he doesn't think -- there is no chance of me making a
11 movement to grab it or unzip a pocket or Velcro or
12 something. So it is always right there when I am going
13 to give him his reward.

14 Q So would you always carry with you in your
15 possession his reward?

16 A Yes.

17 Q What has that got to do with cueing?

18 A Well, because if the dog alerts, and every time he
19 does that, you have to unzip a pocket or put your arm
20 behind your back or something, there is a possibility the
21 dog could start picking up body movement. And every time
22 you do that he knows or thinks that maybe you are going
23 to give me my reward.

24 MR. SHERMAN: Can I have just a moment, your
25 Honor?

1 THE COURT: Yes.

2 (Pause in proceedings.)

3 MR. SHERMAN: Nothing further, your Honor.

4 THE COURT: All right. For the government?

5 MR. AXELRAD: Just very briefly, your Honor.

6

7

CROSS-EXAMINATION

8 BY MR. AXELRAD:

9 Q Detective Price, just want to talk just about a
10 couple of the things that you mentioned with defense
11 counsel. Talked about the vacuum-sealed packages. If
12 the vacuum-sealed packages have been touched by someone
13 who has methamphetamine on their hands or come into
14 contact with anything else and the scent of
15 methamphetamine is on the vacuum-sealed packages, that
16 wouldn't be a problem, Charlie, could still alert to
17 those; right?

18 MR. SHERMAN: Objection, your Honor. No
19 foundation.

20 THE COURT: Well, it is also leading.

21 Q BY MR. AXELRAD: If the scent of methamphetamine is
22 on a vacuum-sealed package, could Charlie still alert to
23 the vacuum-sealed package?

24 MR. SHERMAN: Same objection, your Honor. No
25 expertise in that area.

1 THE COURT: Let me put it this way. There has
2 already been testimony that if methamphetamine rests in a
3 particular location, that the dog can pick up the scent.
4 So I don't understand.

5 MR. AXELRAD: No need to retread, your Honor.
6 Thank you.

7 Q Detective Price, you mentioned with, on
8 cross-examination, that you have proofed Charlie off of
9 masking agents. Do you recall that?

10 A Yes.

11 Q And one of those was MSM, excuse me, a cutting
12 agent used in methamphetamine?

13 A Yes.

14 Q And you also proofed him off of baby powder and
15 packaging and Kyvex and Fed Ex and manila envelopes, and
16 is that all to ensure that Charlie doesn't alert to those
17 things but only to the scents he is trained to?

18 A Yes.

19 Q And just to be clear, these masking agents, coffee
20 and mustard and chili paste and fabric softener, those
21 don't affect Charlie, do they?

22 A No.

23 Q So if the presence of the scent of methamphetamine
24 or heroin or whatever it is is there, the fact that the
25 fabric softener is also there, that doesn't matter;

1 right?

2 A Correct.

3 Q Last couple of questions here. We talked about
4 your training logs and the amount of training that you do
5 every week with Charlie. That is in addition to you and
6 Charlie full time and over time working all day, every
7 day throughout the course of a week; right?

8 A Yes.

9 Q So you are fitting in the training while you are
10 also working all day every day?

11 A Yes.

12 Q Okay.

13 MR. AXELRAD: No further questions, your Honor.
14 Thank you.

15 THE COURT: All right. Anything else?

16 MR. SHERMAN: No, your Honor.

17 THE COURT: All right. The witness is excused.
18 Thank you very much.

19 Anything else?

20 MR. AXELRAD: Your Honor, assuming that we are not
21 covering the traffic stop today, I don't believe so.

22 THE COURT: Okay. When do you want to do the
23 traffic stop?

24 MR. AXELRAD: Assuming that your Honor believes
25 that it is necessary --

1 THE COURT: Well, I want a little bit of briefing
2 on the issue.

3 MR. AXELRAD: Your Honor, I have right here
4 several Ninth Circuit cases that address this question of
5 no facts that have been directly contested and especially
6 now, if defendant is --

7 THE COURT: Well, what I want is two things:
8 One is -- well, I guess the government is going to open
9 with that, that if the defendant withdraws his
10 declaration, there is no evidence I guess is what your
11 argument is. And I will take a look at that argument,
12 and I will give the defense an opportunity to respond.

13 MR. SHERMAN: If they can file something by
14 Thursday.

15 MR. AXELRAD: Your Honor, I may need a little bit
16 more time than Thursday. If we could have until next
17 Wednesday would be terrific.

18 THE COURT: So you are talking about until the
19 9th?

20 MR. AXELRAD: Yes, your Honor.

21 THE COURT: I will give you until the 8th. A week
22 is fine. And response from the defense by the 15th. And
23 I will have you guys back hear on the 21st on the issue.
24 The hearing itself won't be on the 21st.

25 When is the trial on this?

1 MR. AXELRAD: We don't have a currently set date,
2 and that was our last order of business.

3 THE COURT: Give me also your proposed schedule
4 for purposes of trial.

5 MR. AXELRAD: Okay.

6 THE COURT: Give me that on the 16th.

7 MR. SHERMAN: 21st is a good day. I have to be
8 here, your Honor, anyhow.

9 THE COURT: I am always happy to accommodate you.
10 Let me just ask this: In the issue, also, I want there
11 to be some discussion as to what the scope is. In other
12 words, I guess the defense wants to open up all of the
13 arresting agent's prior stops I guess. But I think I
14 have ruled that even if you were right, that he has done
15 these stops, there is no basis for me to dismiss the case
16 because of that. I mean, you might have a 1983 action,
17 but there is no case law insofar as --

18 MR. AXELRAD: And if the government is briefing
19 that, the government will just be quoting back the
20 court's tentative ruling.

21 THE COURT: And also a basis to suppress.

22 MR. SHERMAN: I don't intend to do that.

23 THE COURT: In that case, I don't understand.

24 MR. SHERMAN: Okay. My intention is that in
25 this -- not going into the prior arrest because you have

1 ruled on that.

2 THE COURT: Okay.

3 MR. SHERMAN: My position is that this officer is
4 a roving border patrol. He is not a person that intended
5 to ever to give a traffic ticket to anybody.

6 THE COURT: Let me stop you. Actually, he has an
7 argument. I guess his argument is that if, in fact, the
8 officer is acting as a roving checkpoint stop, he
9 wouldn't have had any basis. What he is arguing is he
10 had no basis to originally stop.

11 MR. AXELRAD: I think what he is contesting is the
12 traffic stop, saying that the officer didn't have
13 probable cause to believe a traffic violation occurred.

14 MR. SHERMAN: But even more than that.

15 THE COURT: But the problem, though, is the
16 government's response is if your client doesn't testify,
17 then, on what basis would there be argument that --
18 because the officers is obviously -- assuming the officer
19 gets up on the stand and testifies, as I said in my
20 report, I got up next to him, he saw me, he slammed on
21 his brakes, did an unsafe stop on the freeway or slowing
22 down on the freeway, et cetera, et cetera, et cetera,
23 which gives rise to a basis for the traffic stop.

24 MR. SHERMAN: Okay. First of all, by some
25 miracle, I will get him to say something different. But

1 assuming that doesn't happen, what really is important,
2 your Honor, is that we have a video which is a two minute
3 video that you can see. The officer then makes
4 determinations, for instance, that the defendant was very
5 nervous.

6 Now, I believe he was using that as a tool
7 because this is what he does for a living. He is a
8 roving border patrol. He is not there to give traffic
9 tickets. He is there to create a fiction to search.
10 Now, let's assume for the sake of argument that there was
11 a traffic violation. We have a video where you can
12 hear --

13 THE COURT: I don't know the government is going
14 to object to that aspect of it, but the problem is,
15 though, if you are going to want to get into the
16 officer's prior stopping in that location, you are not
17 going to be able to use it for any purposes in this
18 matter it seems, is what the government is arguing unless
19 your client is willing to testify and saying, well, he is
20 wrong, I didn't stop my vehicle.

21 MR. SHERMAN: I am not going to do that.

22 THE COURT: So in that case --

23 MR. AXELRAD: Just to be clear, we are not going
24 to be getting into any of the deputy's prior arrests or
25 prior stops because they just are not relevant.

1 MR. SHERMAN: I am not going to contradict the
2 officer to say that there was a traffic violation.

3 THE COURT: Okay. But, then, again, okay, if that
4 is the case, then I don't understand what his prior
5 record -- because even if he had a bad motive in the
6 particular instance, the fact that there is not going to
7 be dispute that he saw the defendant, in fact, slow down
8 improperly, et cetera, et cetera, would give rise to the
9 traffic stop. Now, what happens after the traffic
10 stop --

11 MR. SHERMAN: That is where I want to go.

12 THE COURT: Okay. That is fine.

13 MR. AXELRAD: And just to be clear, your Honor,
14 your Honor is just quoting directly from Whren. Even
15 assuming, which is obviously not the case here, assuming
16 there was some other motive, if the defendant is not
17 contesting the legitimacy of the traffic stop, that it
18 was a lawful traffic stop, then, the traffic stop
19 proceeded apace, and he developed reasonable suspicion.

20 So long as defense counsel is only planning on
21 discussing with Deputy Leitelt, the reasonable suspicion
22 that he developed and not about any other stops that he
23 made because they are just simply totally irrelevant to
24 this case, and the court has previously ruled in its
25 tentative written order that they just have no relevance

1 to a suppression motion, then we are certainly in
2 agreement.

3 MR. SHERMAN: Fine. You made that ruling. I may
4 disagree with that ruling, but I abide by that ruling and
5 I will go along with what the prosecutor just said and
6 limit my examination in that regard.

7 THE COURT: Okay.

8 MR. AXELRAD: Just to be clear, if we are going to
9 be talking about reasonable suspicion and the video and
10 all that stuff, then the defendant will certainly be
11 testifying as well.

12 THE COURT: Maybe yes. Maybe no.

13 MR. AXELRAD: I think that is where I am confused
14 because the declaration deals specifically with one of
15 the most important aspects of Deputy Leitelt's reasonable
16 suspicion. He submitted that declaration in this case
17 talking about this person who allegedly gave him the car
18 to drive so he could drive them to the airport. That is
19 a declaration submitted in the case. The government has
20 to have an opportunity to cross-examine him.

21 THE COURT: Well, no, but either the declaration
22 remains in the case in which case you are right, you will
23 have an opportunity to cross-examine, but it is my
24 understanding the defense is going to withdraw the
25 declaration in which case, then, it will just depend upon

1 the questioning that is done and also I guess the video,
2 et cetera.

3 MR. AXELRAD: I guess, your Honor, the part I
4 would quibble with here and just point your Honor to
5 several Ninth Circuit cases is that if the defendant
6 withdraws his declaration, then there are no contested
7 facts. The defendant hasn't put forth any fact to
8 contest Deputy Leitelt's narrative. His arrest report
9 and the video of the --

10 THE COURT: Well, I have to take a look at the
11 video, don't I?

12 MR. AXELRAD: Certainly. It is in Exhibit 2 in
13 your binder, your Honor, but without a declaration, there
14 are simply no contested facts.

15 MR. SHERMAN: Of course, there are.

16 THE COURT: Let me just stop you guys. I guess
17 this is what you guys are going to be briefing. So give
18 me the briefs. I am limiting the briefs to 12 pages
19 each. So just give it to me and I will read it, and I am
20 sure I will be just educated and well-versed in the area
21 after I have read your wonderful, wonderful tomes.

22 MR. AXELRAD: Last point here, your Honor. The
23 deployment records, the government will be producing
24 those in camera to the court. So if the court can
25 determine whether or not they are, in fact, relevant at

1 all to defendant's theory. While we have deployment
2 records for every year, we plan on producing in camera to
3 the court the year before the stop.

4 THE COURT: Thank you. Have a nice day everybody.

5 (Proceedings concluded.)

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CERTIFICATE

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I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: July 11, 2016

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR

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