



**LGIT'S ROLL CALL REPORTER
APRIL 2009**

It Cannot be Judicially Noticed (Accepted by the Court as Fact) That Currency Contamination is so Widespread as to Require Exclusion of Canine Scan Evidence

QUESTION: Can a Court Automatically Exclude Evidence of a Positive “Alert” on Currency in a Narcotics Case Because of the “Currency Contamination Theory”?

ANSWER: No. At this point in time, canine scan of currency evidence in narcotics cases still has some probative value.

**CASE: *Ronald Eugene Johnson v. State of Maryland*, Court of Appeals
Decided April 8, 2009**

In *Johnson v. State*, the Court of Appeals considered whether a trial court can “notice”, *i.e.*, accept as established fact, that currency contamination is so widespread as to require the exclusion of canine scan evidence. The facts in the case establish that on April 12, 2005, Ronald Eugene Johnson was wanted by the Annapolis City Police Department. He was spotted by Officer Christopher Kintop fleeing on foot from Copeland Street towards Royal Street. Johnson turned the corner and Officer Kintop lost sight of him. About twenty minutes later, Officer Kintop and other officers gathered in front of a residence on East Royal Street where they suspected Johnson was hiding. The officers knocked on the door and shouted, “Police department.” Johnson opened a second-floor bedroom window and demanded to know what the officers wanted. They told him to come outside. A few minutes passed, during which time the officers heard “commotion” in the bedroom where Johnson had appeared. Johnson then shouted from the window a second time at the officers. Seconds later, several officers entered the residence and arrested Johnson. The officers then proceeded to the second-floor bedroom where they found strewn on the bed a plastic bag containing 1.41 grams of marijuana, another bag containing 12 methamphetamine pills, and a small bottle containing 0.024 grams of PCP. Next to the drugs was a Nextel cell phone. Johnson was transported to the Annapolis police station and searched. Police found \$845.00 in cash in his pants pocket, as well as a Motorola cell phone clip that fit the Nextel cell phone found in the bedroom. The pants Johnson was wearing were also seized.

Later that day, an Annapolis police dog named “Aries” was brought in to conduct canine scans of Johnson’s pants and the currency found inside. The dog was trained to detect the scent of marijuana, heroin, cocaine, methamphetamine, and related drug derivatives. According to the dog’s handler, Officer Christopher Tucker, the dog had successfully

identified drug tainted currency on 40 to 50 prior occasions. In two separate scans, the dog “alerted” to Johnson’s pants and the currency inside.

Johnson was convicted by a jury of possession of cocaine with intent to distribute and several other offenses. Johnson appealed, seeking a new trial on grounds that he was unfairly prejudiced by the introduction of evidence that a drug-sniffing dog “alerted” to the currency seized from his person incident to his arrest. The Court of Special Appeals affirmed the conviction and the Court of Appeals subsequently agreed to review the case.

The Court of Appeals reversed the lower court on grounds unrelated to the admission of the canine scan evidence and remanded the case for trial. Discussing the admission of the canine scan evidence the Court said it found no error in the fact that Officer Tucker had been allowed to testify that the drug-sniffing dog “alerted” to Johnson’s pants and the currency found in them. In reaching this conclusion, the Court rejected Johnson’s contention that because of “currency contamination”, the canine “alerts” were misleading and any testimony concerning them should have been excluded. The currency contamination theory is based upon the assumption that a high percentage of paper currency in circulation in the United States contains trace amounts of cocaine and/or other drug residue. As such, Johnson argued that the trial court should have “judicially noted” (accept as proven fact) the currency contamination theory, and ruled that the “alert” on the currency found in his pants did not support the conclusion that the currency was derived from narcotics trafficking. The Court of Appeals held that the mere fact that *most* currency in circulation contains detectable traces of controlled dangerous substances does not require Maryland courts to judicially accept as fact the currency contamination theory and thereby exclude evidence of “alerts” on currency in narcotics cases. To the contrary, the Court ruled that a properly conducted canine scan test of currency does have *some* probative value.

The court’s ruling means that a canine “alert” on currency in a narcotics case will be treated as another piece of evidence tending to show that money retrieved from a suspect was derived from illegal drug trafficking. In this regard, the United States Court of Appeals for the First Circuit has said it best: “Even though widespread contamination of currency plainly lessens the impact of dog sniff evidence, a trained dog’s alert still retains some probative value. Ordinary experience suggests that currency used to purchase narcotics is more likely than other currency to have come into contact with drugs.”

NOTE: The Court of Appeals limited its holding to “this point in time.” Expect this issue to be revisited in the not too distant future.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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