

Ask the Attorney

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Is certification of the bloodhound being required in trailing court cases in Kentucky?

First we must determine in what jurisdiction the case occurred. The laws of the several states vary greatly from inadmissible, admissible with severe limitations, and admissible with a proper foundation. The laws of the federal court following the federal rules of criminal procedure are somewhat liberal on admissibility. The case law in Kentucky requires a strict foundation based on the expertise and training of the handler, the work and training of the particular hound by the handler, the reliability of the canine, and the work being within the limits of the training and experience.

The recent case of *Debruler v. Kentucky* (2005 SC 989), an August 2007 Kentucky Supreme Court decision of that state is instructive from two of the issues raised. The first was whether or not a Daubert hearing is necessary for the admissibility of canine trailing evidence. The issue turned on whether or not evidence of trailing and the necessary foundation is scientific or novel. The Kentucky Supreme Court determined that the knowledge of the ability of canines to follow the trail of human scent is common knowledge rather than scientific knowledge. That being established, the analysis was of the training and work done by the two German shepherd dogs that worked this particular case. In its reasoning the court considered that both dogs were certified on a regular basis; one by a national police dog organization and the other by the police department to which the dog was attached. It seems to a reasonable observer that certification by the local police department is not very impressive. Mentioning the certification in the court's opinion lends credence to the proposition that some form of objective observation to corroborate the work of the dog and the testimony of the handler.

Maybe I am an alarmist, but I see the beginning of a trend. A Supreme Court, which since 1898 has been very favorably disposed to the admissibility of trailing evidence is now, in 2007, mentioning with approval certification. If certification is an additional requirement to admissibility, a whole new organization and structure is going to be required to do the work of certifying the hounds and police dogs working in the jurisdiction. Just who and with what qualifications will be setting up the tests required to be given? How are these tests going to be administered? What are the required elements of performance?

Just food for thought.

