

February 19, 2013

**Council Members**

**Fredric D. Bright**  
Chair  
District Attorney  
Ocmulgee Judicial Circuit

**Stephanie Woodard**  
Vice Chair  
Solicitor-General  
Hall County

**Denise Fachini**  
Secretary  
District Attorney  
Cordele Judicial Circuit

**Nina Markette Baker**  
Solicitor-General  
Troup County

**Richard Currie**  
District Attorney  
Waycross Judicial Circuit

**J. David Miller**  
District Attorney  
Southern Judicial Circuit

**Tasha Mosley**  
Solicitor-General  
Clayton County

**Danny Porter**  
District Attorney  
Gwinnett Judicial Circuit

**Brian Rickman**  
District Attorney  
Mountain Judicial Circuit

***Florida v. Harris******A Trial Court May Presume That A Properly Trained And Certified Drug-Sniffing Dog's Alert Provides Probable Cause To Search A Vehicle***

In *Florida v. Harris*, No. 11-817 (February 19, 2013), the U. S. Supreme Court granted certiorari to determine the proper test for determining whether a drug dog alert rises to the level of probable cause to search a vehicle. A K-9 officer while on routine patrol stopped Harris for driving with an expired tag. The officer noticed Harris' extreme nervousness and asked for consent to search his vehicle. When Harris refused, the officer walked his drug dog around the vehicle. The dog alerted on the handle of the driver's side door. The officer searched the vehicle and while he didn't find any drugs, he found many of the ingredients for manufacturing methamphetamine. Harris then admitted that he routinely "cooked" and used meth. He was convicted of possessing pseudoephedrine for use in manufacturing meth. At the motion to suppress, the prosecution showed that the dog was trained and certified, but did not show any evidence of the dog's performance in the field.

The Florida Supreme Court reversed his conviction. The Florida Court found that the fact that the dog was trained and certified was not enough to show reliability. Instead, the Florida Court held that the prosecution must show evidence of the dog's field performance history. The Court then established a detailed checklist of what is needed to establish a dog's reliability.

The U. S. Supreme Court reversed. The Court held that it has consistently rejected such bright-line tests and mechanistic inquires in favor of common-sense totality-of-circumstances review. Requiring evidence of how a dog performed in the field as the evidentiary "gold-standard" and precluding a finding of probable cause if such evidence is not shown, regardless of any other evidence produced by the prosecution, is the antithesis of a totality-of-the-circumstances approach. Moreover, the Court stated, field performance would not show reliability of the alert because such evidence may not capture a dog's false negatives or may markedly overstate a dog's false positives. Instead, the Court found, "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert. If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume.....that the dog's alert provides probable cause to search." A defendant can challenge the prosecution's case by disputing the reliability of the dog overall or in the particular alert (e.g. the officer cued the dog to alert). But, the test remains whether a reasonably prudent person, making a common sense inquiry, would believe that a search would reveal contraband or evidence of a crime. Thus, the unanimous Court concluded, "A sniff is up to snuff when it meets that test."