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6 ARIZONA SUPERIOR COURT
7 APACHE COUNTY
8

9 STATE OF ARIZONA,) Case No. CR2010-061
10)
Plaintiff,)
11 vs.) DEFENDANT'S REPLY TO STATE'S
12) RESPONSE TO DEFENDANT'S MOTION TO
[REDACTED]) SUPPRESS RE: UNRELIABLE DOG
13) (Evidentiary Hearing Requested)
Defendant.)
14

15 Defendant [REDACTED] (hereinafter [REDACTED]), by and through
16 undersigned counsel, replies to the State's Response to [REDACTED] Motion to Suppress re:
17 Unreliable Dog. The state has couched its Response as a "Motion to Deny Defendant's Motion to
18 Suppress." Pursuant to Rule 16.1(b), *Ariz. R. Crim. P.*, [REDACTED] assumes the state's filing is a
19 Response to his Motion and hereby replies:

20 *K-9 Rico's records, certificates, and logs.* The state has disclosed additional records on
21 Rico's training and performance. They do show that Rico was a fairly accurate dog at one time, but
22 make his declining performance very obvious. The Activity Log referred to in [REDACTED] motion
23 shows all real-life drug detection activity since Dep. Clark became employed with the Apache
24 County Sheriff's Office (per Dep. Clark's Rule 15 interview of December 20, 2010). This log is
25 evidence of Rico's declining, and poor, record for drug detection. It is notable that Rico was retired
26

1 and Dep. Clark got a new K-9 (Hammer) very soon after Rico's use during the traffic stop of [REDACTED]

2 [REDACTED]

3 **The 9/28/09 alert.** The state mentions an alert listed on the Canine Activity Log on 9/28/09
4 where it is noted that Rico alerted, no drugs were found, but apparently someone admitted to
5 previously smoking marijuana in the vehicle. This raises two issues: 1) It is not illegal to have an
6 odor of marijuana in one's vehicle, and, 2) Per Dep. Clark's Rule 15 interview, Rico was not trained
7 to detect the difference between the presence of marijuana and a "stale" odor. This shows that Rico
8 may falsely alert to an odor when no criminal activity is occurring, further showing Rico's
9 unreliability when using his alert as probable cause to believe a crime is being committed, justifying a
10 search based on probable cause.

11 **Rico's reliability training.** Many records of continuing "training" of Rico were provided
12 beyond the formal training done through an outside organization. What is remarkable about these
13 records is that Dep. Clark alone did the training and graded his and Rico's performance. In other
14 words, Dep. Clark knew in advance where there were and were not drugs and scored his own ability
15 to read Rico's "alerts" to those locations. This is not reliability training, it is self-delusion of training.

16 **Rico's alert to [REDACTED] vehicle.** The state mentions that one of Rico's corroborated alerts
17 led to the discovery of marijuana in [REDACTED] car. It is unbelievable that the state is apparently
18 making the argument that the 4th Amendment has some type of "ends justify the means" test.
19 Whether [REDACTED] had drugs or not is not the issue; whether Rico is accurate enough to establish
20 probable cause to search is the issue. After all, even a broken clock is right twice a day.

21 **[REDACTED] Motion to Suppress is not moot.** Black's Law defines "moot" as "To render a
22 question moot or of no practical significance." The state is apparently making the argument that,
23 since it disagrees with [REDACTED] motion, the Court should not consider it. If that were the case,
24 courts and attorneys for accused persons could just disappear from our judicial system and we could
25 let prosecutors determine all points of law. Instead of moot, [REDACTED] posits that the issues in his

1 motion are "ripe," defined in Black's Law as "The circumstance existing when a case has reached,
2 but not passed, the point where the facts have developed sufficiently to permit an intelligent and
3 useful decision to be made."

4 **CONCLUSION.** The issues presented in the Motion to Suppress are ripe for an evidentiary
5 hearing so the Court may determine facts in dispute and rule on the reliability of K-9 Rico. [REDACTED]
6 [REDACTED] requests the Court to determine that Rico's real-life performance fell short of an alert being
7 sufficient to rise to the level of probable cause justifying a search of his vehicle. [REDACTED] requests
8 the Court to suppress the search of [REDACTED] vehicle and suppress the use of any evidence
9 acquired from that search under the Fruit of the Poisonous Tree Doctrine.

10
11 RESPECTFULLY SUBMITTED this 23 day of December, 2010.

12
13 MARC J. VICTOR, P.C.

14 By:

15 
16 _____
17 Marc J. Victor
18 Attorney for Defendant

19 Original mailed to the Court and
20 a copy mailed December 23, 2010 to:

21 Joshua Osborn, Esq.
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