



What Does It Take To Become A True Court Expert?

By, Linda Porter

It is becoming more and more common for handlers to find themselves testifying in court. Questions have been raised recently as to what the courts actually consider an expert as it applies to Man-Trailing, so I researched the term expert and what criteria some courts use to establish someone as an expert. Surprisingly, what I found was that there *is* a significant difference between being reliable and highly qualified as apposed to a true court expert as it applies to K-9 Man-Trailing and scent evidence.

According to the Encyclopedia (2014), the definition of an expert in condensed terms is (a) an individual recognized as a reliable source of techniques or skill whose faculty for judging or deciding rightly, justly, or wisely is accorded authority and status by their peers or the public in a specific well-distinguished domain. An expert, more general is a person with extensive knowledge or ability based on research, experience, or occupation and in a particular area of study. The definition continues, but that is the gist of it.

Now what was interesting is some courts have similar definitions, but have made a clear distinction between a reliable or highly qualified handler with experience compared to a Court expert. According to my research, in the case of People v. Oudin & Gibbs, Sup. Court of Calif., INF1101884, establish a decision regarding expert in the ruling of Canine Scent Evidence. This case involved two court recognized experts, Dr. Larry Myers and Dr. Coby Webb along with a handler. The dog handler had numerous walk up finds, was a certified instructor, and had received numerous awards, but in this case was not determined to be an *expert*. Instead, he was considered as highly qualified and reliable. The component missing to be considered an expert in this case was the academic understanding that comes with being involved in, or having knowledge of correlation studies. Although this is just one case, it shows us that the courts are taking into

consideration a person's knowledge of, or participation in, relevant studies when establishing someone as an expert.

It would be reasonable to assume a K-9 expert's perspective on an issue is directly associated with experience and practical application, knowledge of case law, statutes, regulations and requirements, handling skills, deployment experience, certifications, awards, training experience and, if applicable, academic studies. Terry Fleck, a well-known and respected expert on K9 case law, (K9Fleck.org) is a prime example of these qualifications. Fleck was a police dog handler and then went on to earn the degree of Doctor of Education in Criminal Justice and he is now considered an expert in the field of canine legality. Dr. Coby Webb is another example of an experienced Police K9 handler with a Doctorate in Business who earned expert status by the courts through her real world experience, numbers of successful finds, years of experience, academic accomplishments, and knowledge of scent studies and K9 case law.

This is not to say that a doctorate or any degree is required to be deemed an expert by the courts. Many handlers without these credentials have earned expert status. For example: Retired K9 Officers Douglas Lowry and John Lutenberg were deemed experts by the court based their extensive deployment history, actual finds, and training background. Neither of these officers held degrees, however, numerous documented actual finds proved that their training methodology was, indeed successful. Years of working experience, awards, publications, commendations, and proof that they had trained numerous types of K9s in different disciplines were also used to establish both officers as experts. In both cases, the court also took into consideration the numerous actual deployments and finds as true tests that proved their expertise. Lowry was also required to submit a CV that included his training and deployment history for the Judge.

There are also scientists who have been granted expert status based on their knowledge of scent theories, published scent studies, and academic achievements alone. They have no actual dog handling or

deployment experience in their backgrounds. They are testifying as experts for complicated cases where scent theory or training methodology was the subject of debate. Then on the other side of the spectrum, I have seen dog handlers with no higher education or formal experience with scientific studies, but plenty of real experience that have also been deemed experts.

Daubert Standard

The Daubert Standard provides a rule of standard regarding the admissibility of expert witness testimony during US and Federal proceedings. The Daubert Standard is used by a trial judge to make a preliminary assessment of whether an expert's scientific testimony is based on reasoning or methodology that is scientifically valid and can properly be applied to the facts at issue. Under this standard, the factors that may be considered in determining whether the methodology is valid are: (1) whether the theory or technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community. See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The Daubert Standard is the test currently used in the federal courts and some state courts. In the Federal Courts, it replaced the Kelly Frye standard. The state for California still uses the Kelly Frye standard which is very similar.

In Academia, a doctor may provide an opinion recognized by the courts with being able to articulate the research limitations of a study due to their experience with Academic Review Board standards.

That being said, courts are obviously taking a good hard look at individuals with academic and scientific backgrounds to qualify them as experts in man-trailing practices and, in some cases, courts are allowing individuals with very little or no practical experience to be deemed an expert simply because of their higher education and

involvement in published scent studies. There should, in my opinion, be a middle ground and I am sure some courts agree.

The ideal K9 court expert (as it applies to man-trailing) and according to some courts, appears to be an individual with dog handling experience in real world deployments for a good number of years, actual finds to establish a background of successful training, certifications and awards *along* with some experience or knowledge of scent studies and case law and a degree to support their knowledge and understanding.

This was an interesting research project since I have seen two very different sides when it comes to establishing a person as an expert as opposed to just being held reliable. If you are in doubt about whether or not you are considered an expert, I strongly recommend you find out before you proclaim yourself one. You also need to be aware of what standards the courts are looking for to establish you as an expert. Just because your testimony has been accepted in court or you have been determined to be highly qualified and reliable doesn't make you a court expert.

Why is this subject so important to dog handlers? I am hoping that this will compel some of you to learn as much as you can about your craft and blow them away next time you are called to testify. The more you learn, the more credible you will become. Who knows, it may even qualify you as an expert one day.