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POLICE OFFICER'S HANDBOOK

PART XXIX

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STATE DOCUMENTS

SEARCH WARRANTS...

CANINE INFORMER

(United States v. Meyer)

VEHICLE STOP BASED

ON APB...BACKUP INFORMATION

(United States v. Robinson)

FLEMING'S NOTEBOOK...Chapter 129:

FEDERAL BENEFIT TO OFFICERS

AND FIREMEN KILLED ON DUTY...

1976 Act of the U.S. Congress...

Signed into Law by President Ford

on September 29, 1976

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LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

SEARCH WARRANTS...
CANINE INFORMER
(United States v. Meyer)

VEHICLE STOP BASED
ON APB...BACKUP INFORMATION
(United States v. Robinson)

By

Joseph C. Coleman
Deputy Attorney General
State of South Carolina

Endorsed by

South Carolina Governor, James B. Edwards
South Carolina Law Enforcement Division
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina FBI National Academy Associates
South Carolina Southern Police Institute Associates



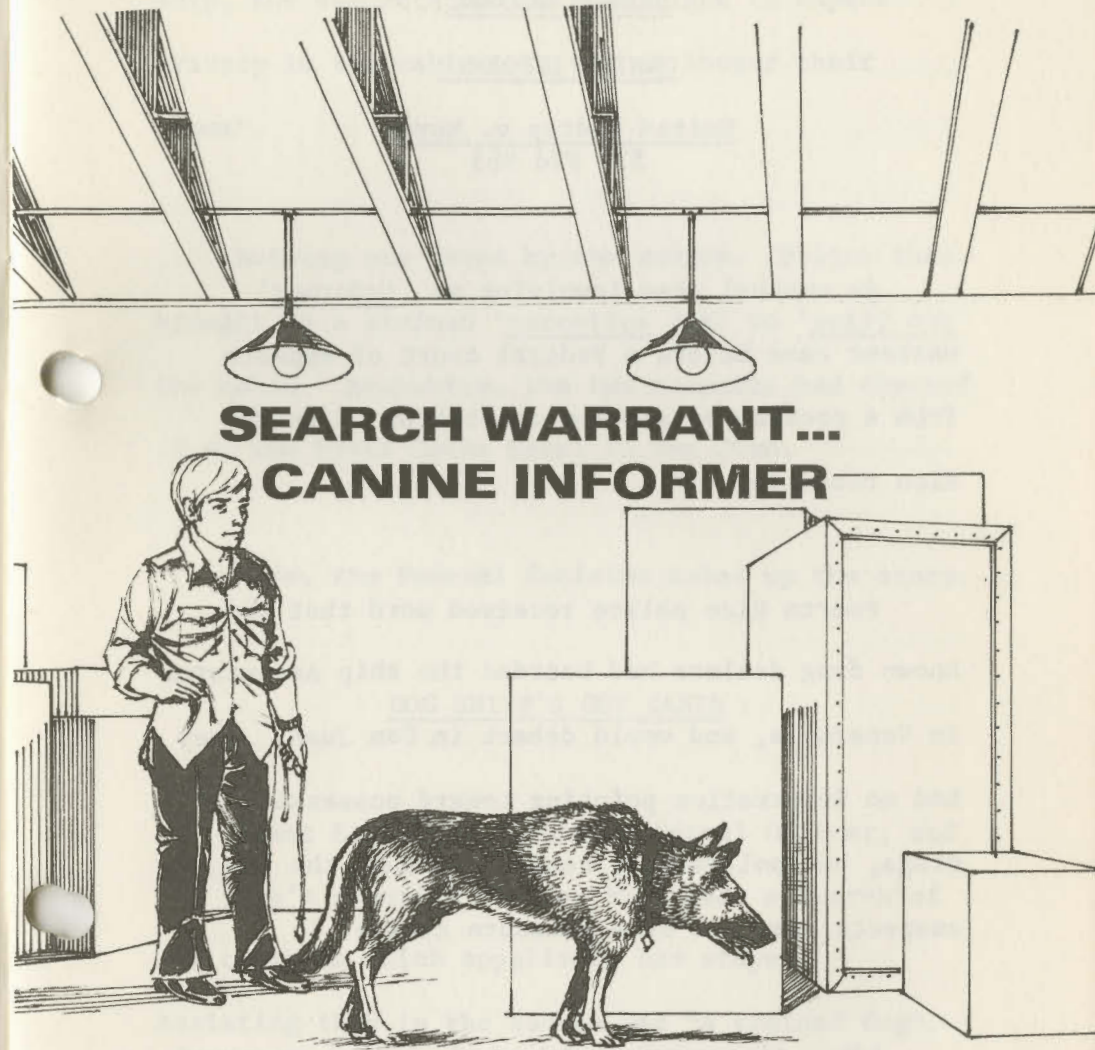
Hon. Randolph Murdaugh, III
State Circuit Assistant Solicitor
14th Judicial Circuit
Allendale - Beaufort - Colleton
Hampton - Jasper Counties
State of South Carolina

"It is well-established by court decisions that in doubtful or marginal cases a search with a warrant may be upheld while one without a warrant would fail."

Randolph Murdaugh, III
State Circuit
Assistant Solicitor
14th Judicial Circuit
Allendale - Beaufort
Colleton - Hampton
Jasper Counties
State of South Carolina

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SEARCH WARRANT...

CANINE INFORMER

United States v. Meyer
536 F2d 963

An unusual case involving an 'informer' warrant came before a Federal court of appeals from a cocaine possession conviction in Puerto Rico recently.

Puerto Rico police received word that two known drug dealers had boarded the ship Adventurer in Venezuela, and would debark in San Juan. They had no information pointing toward possession of drugs, but police were reasonably sure the two suspects were not on a pleasure cruise.

After the suspects debarked, police received permission from the ship's officers to search the cabin they had occupied. This was lawful without a search warrant because, having cleared off the

ship, the suspects had no more right to expect privacy in the cabin. It was no longer their "home".

Nothing was found by the search. Police then brought in a trained 'narcotics dog' to 'sniff out' the cabin. Meanwhile, the two suspects had checked in at the Hyatt House Hotel in San Juan.

Here, the Federal decision takes up the story:

DOG SNIFF'S OUT CABIN

"Agent Santiago, a Customs Patrol Officer, and the ship's security officer then made a search of the cabin in which appellants had stayed. Assisting them in the search was "a trained dog". Agent Santiago stated that the dog reacted positively to the scent of narcotics "in certain camera boxes and plastic bags that were found in the cabin".

After leaving the ADVENTURER for the third and final time, appellants did not return to the Hyatt House Hotel room. Instead, they were observed at the Holiday Inn in Isla Verde, where they rented a room, and at the Isla Verde International Airport.

"On the basis of these facts, the magistrate concluded that there was probable cause to search for cocaine and other narcotics and issued a warrant commanding a search of Room 456 of the Hyatt House Hotel. The search that followed resulted in seizure of approximately ten pounds of cocaine."

GROUND OF APPEAL

"Further delineating their attack, appellants argue that the use of the canine to detect the scent of narcotics is akin to the use of an informer and that the affidavit is fatally defective for the reason that it fails to demonstrate the "informant's" reliability."

COURT RULING...TRAINED
DOG WAS RELIABLE INFORMER

"An affidavit in support of an application for a search warrant may be based on hearsay, but the magistrate must be informed (1) of the underlying facts upon which the informer has based his conclusions and (2) the circumstances from which the affiant has concluded that the informant was credible or his information reliable."

"Here, there is no difficulty with respect to the first prong of the AGUILAR test. Appellants theorize, however, that the affidavit failed to sufficiently describe the dog's proficiency in the detection of narcotics. We are not impressed with this argument. A magistrate's determination of probable cause is based upon a common sense and realistic reading of the entire affidavit. From the record it is evident that affiant was an experienced DEA agent and that the dog had been "trained" and used in drug investigations. Thus the magistrate could reasonably infer that the "trained dog" had attained a high degree of proficiency in detecting the scent of narcotics. The same concerns that would be present in a human informant are simply not relevant here. An acute sense of smell is characteristic of canines, but out of the ordinary in humans. Moreover, a canine, when trained, reacts mechanically to certain cues in his environment."

IN DOUBTFUL CASES
WARRANT MIGHT UPHOLD SEARCH

"It is well-established, by now, that in doubtful or marginal cases a search with a warrant may be sustainable while one without it would fail."

RIGHT TO STOP VEHICLE
BASED ON RADIO DISPATCH



**RIGHT TO STOP VEHICLE
BASED ON RADIO DISPATCH**



STOP OF SUSPECT VEHICLE...

RELIANCE ON POLICE RADIO

United States v. Robinson
536 F2d 1298

A squad car (Arizona State Police) on routine patrol duty received an APB from his department dispatcher to be on the lookout for a 1976 Oldsmobile Cutlass, Nevada license CKC 434, possibly stolen. Spotting the suspect car soon thereafter, the officer stopped it. The facts as reported by the United States Court of Appeals, Phoenix, Arizona:

SITUATION DEVELOPS

"On the evening of September 25, 1975, Officer Holland received a radio message from the Kingman, Arizona police dispatcher advising him to be on the lookout for a possible stolen 1976 Oldsmobile Cutlass, Nevada license CKC 434. Officer Holland testified that at the time he received the message, he believed

that the dispatcher had obtained some information from an inspector at the Agricultural Inspection Station located at the Nevada-Arizona border. The Government did not call either the dispatcher or the inspector to testify. Officer Holland knew nothing more about the information upon which the dispatcher relied, and he knew none of the facts upon which the inspector relied to transmit the message. Based solely on the dispatcher's report, and not upon any observations of his own to justify the stop, Officer Holland saw the described vehicle and stopped it. Robinson was unable to produce his driver's license or the vehicle registration. A search of the automobile followed, during the course of which a bill of lading was discovered showing that the automobile had been shipped to a dealer in Las Vegas. The speedometer registered the exact mileage between Las Vegas, Nevada, and Kingman, Arizona. Officer Holland arrested Robinson for driving without a license. While Robinson was in custody, after effectively waiving his MIRANDA

rights, he confessed the theft and the interstate transportation of the automobile."

GROUND OF APPEAL

"Robinson moved to suppress all of the evidence obtained after the stop as fruit of the poison tree of the illegal stop. Because we agree that the stop was illegal, the evidence should have been suppressed."

CONVICTION REVERSED...
REASONS

"Officer Holland had no personal knowledge of any facts upon which to found suspicion. The foundation, if any, had to be supplied by the person whose observations and information generated the suspicion. The dispatch to Officer Holland, standing alone, does not prove the existence of founded suspicion. A facially valid direction from

one officer to another to stop a person or a vehicle insulates the complying officer from assuming personal responsibility or liability for his act done in obedience to the direction. But the direction does not itself supply legal cause for the detention, any more than the fact of detention supplies its own justification.

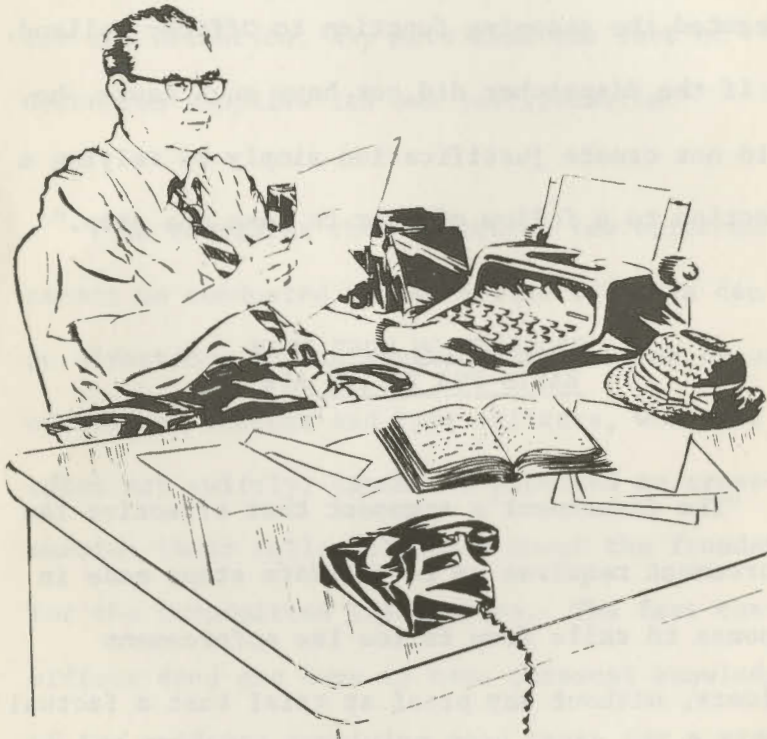
"We recognize that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information. The fact that an officer does not have to have personal knowledge of the evidence supplying good cause for a stop before he can obey a direction to detain a person or a vehicle does not mean that the Government need not produce evidence at trial showing good cause to legitimate the detention when the legality of the

stop is challenged. If the dispatcher himself had had founded suspicion, or if he had relied on information from a reliable informant who supplied him with adequate facts to establish founded suspicion, the dispatcher could properly have delegated the stopping function to Officer Holland. But if the dispatcher did not have such cause, he could not create justification simply by relying a direction to a fellow officer to make the stop."

PROSECUTION MUST SHOW
BASIS FOR POLICE APB

"The Government's argument that effective law enforcement requires us to validate stops made in response to calls from fellow law enforcement officers, without any proof at trial that a factual foundation existed to support the call, was made and firmly rejected in Whiteley v. Warden (1970) 401 U.S. 560."

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK, Chapter 129:

Two more civil rights suits in Federal court have resulted in verdicts in favor of the law enforcement officers involved. In both trials, the defendant police officers were represented by J.C. Coleman, Deputy Attorney General, who is the regular guest on Crime-to-Court programs.

In one suit, tried before Federal Judge Sol Blatt, Jr., in Columbia in September 1976, Lt. Bobby Mickle of the Camden, S.C. Police Department was charged in a civil suit with 'police brutality' in effecting an arrest. The jury was out less than an hour before returning a verdict in favor of Lt. Bobby Mickle. Attorneys William Wilson, City Attorney of Camden, and Senator Don Holland of Camden were associated in the defense.

In another such suit tried in October, 1976, in Florence, S.C. before Judge Robert Chapman, U.S. Federal Judge charging civil rights violations by former Chief Highway Commissioner S.N. Pearman, Colonel P.F. Thompson, Major W.J. Seaborn, and Captain Cecil Dilworth (State Highway Patrol), the Judge dismissed the suit without sending the jury out. Assistant Attorneys General Paul League and Kim Joyner were associated with the defense in this case.

FEDERAL BENEFITS TO FAMILIES
OF OFFICERS AND FIREMEN KILLED IN LINE OF DUTY

The OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 was amended by Act of Congress (HR 366), signed into law by President Ford on September 29, 1976, to provide a payment of \$50,000 to the wives and children, or dependent parents, of law enforcement officers and firemen killed in line of duty.

THE ACT

PUBLIC SAFETY OFFICERS' DEATH BENEFITS

"PAYMENTS

"SEC. 701. (a) In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer had died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of \$50,000 as follows.

"(1) if there is no surviving child of such officer, to the surviving spouse of such officer;

"(2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares and one-half to the surviving spouse;

"(3) if there is no surviving spouse to the child or children of such officer in equal shares; or

"(4) if none of the above, to the dependent parent or parents of such officer in equal shares.

"(b) Whenever the Administration determines, upon a showing of need and prior to taking final action, that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding \$3,000 to the person entitled to receive a benefit under subsection (a) of this section.

"(C) The amount of an interim payment under subsection (b) of this section shall be deducted from the amount of any final benefit paid to such person.

"(D) Where there is no final benefit paid, the recipient of any interim payment under subsection (b) of this section shall be liable for repayment of such amount. The Administration may waive all or part of such repayment, considering for this purpose the hardship which would result from such repayment.

"(e) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, but shall be reduced by -

"(1) payments authorized by section 8191 of title 5, United States Code;

"(2) payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, sec. 4-531 (1)).

"(f) No benefit paid under this part shall be subject to execution or attachment.

"LIMITATIONS

"SEC. 702. No benefit shall be paid under this part -

"(1) if the death was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death;

"(2) if voluntary intoxication of the public safety officer was the proximate cause of such officer's death; or

"(3) to any person who would otherwise be entitled to a benefit under this part if such person's actions were a substantial contributing factor to the death of the public safety officer.

"DEFINITIONS

"SEC. 703. As used in this part -

"(1) 'child' means any natural, illegitimate, adopted, or post-humous child or step child of a deceased public safety officer who, at the time of the public safety officer's death, is -

"(A) eighteen years of age or under;

"(B) over eighteen years of age and a student as defined in section 8101 of title 5, United States Code; or

"(C) over eighteen years of age and incapable of self-support because of physical or mental disability;

"(2) 'dependent' means a person who was substantially reliant for support upon the income of the deceased public safety officer;

"(3) 'fireman' includes a person serving as an officially recognized or designated member of a legally organized volunteer fire department;

"(4) 'intoxication' means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body;

"(5) 'law enforcement officer' means a person involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws.

This includes, but is not limited to, police, corrections, probation, parole, and judicial officers;

"(6) 'public agency' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any unit of local government, combination of such States, or units, or any department, agency, or instrumentality of any of the foregoing; and

"(7) 'public safety officer' means a person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a fireman."

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