

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 10th day of December, 2015.

Coreleone Michael Latimer, Appellant,

against Record No. 150013
Court of Appeals No. 0334-14-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the Commonwealth's evidence was sufficient to establish the reliability of a drug detection dog's ability to locate illegal drugs. Therefore, the circuit court did not err in denying a defense motion to suppress evidence seized in this case, and the Court of Appeals did not err in denying the petition for appeal.

Coreleone Michael Latimer appeals from convictions of possession with intent to distribute heroin and cocaine in violation of Code § 18.2-248, entered on conditional guilty pleas reserving his right to appeal the denial of his motion to suppress the evidence seized based upon the drug detection dog's alert response. He argues that the reliability of the dog, whose positive alert led to the search of his vehicle and recovery of drugs and other evidence, was not sufficiently established to provide probable cause for the search.

Probable cause to conduct a search exists when “there is fair probability that contraband or evidence of a crime will be found in a particular place.” Jones v. Commonwealth, 277 Va. 171, 178, 670 S.E.2d 727, 731 (2009) (quoting United States v. Grubbs, 547 U.S. 90, 95 (2006)). This is a flexible and common-sense standard that considers “the totality of the circumstances.” Florida v. Harris, 568 U.S. ___, 133 S. Ct. 1050, 1055-56 (2013); see also Jones, 277 Va. at 178-79, 670 S.E.2d at 731-32. With specific regard to the reliability of a drug detection dog's alert, “[t]he question – similar to every inquiry into probable cause – is whether all the facts

surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." Harris, 568 U.S. at ___, 133 S. Ct. at 1058. "Specific certifications and the results of field testing are not required to establish a sufficient foundation." Jones, 277 Va. at 181, 670 S.E.2d at 733. Rather, "the trial court may consider any relevant evidence in determining whether the Commonwealth has established the dog's reliability in detecting narcotics." Id.

The facts in this case support the trial court's determination that the drug detection dog's alert was sufficiently reliable to provide probable cause for the search of Latimer's vehicle. The search was conducted after the dog, Falco Two, accompanied by his handler, Officer Boyd of the Hampton police department, alerted to the odor of a narcotic by biting and scratching at the door handle of Latimer's vehicle. Officer Boyd testified that Falco Two was in service with the Hampton police department for five years prior to the date of the search. For the last three of those years, Falco Two lived and trained with Officer Boyd, a canine handler certified by the American Society of Canine Trainers (ASCT). During that time, Falco Two and Officer Boyd participated in eight-hour training sessions twice a month with the other members of the K-9 division under the supervision of a master trainer. Also during that time, Officer Boyd personally trained with Falco Two for approximately 30 minutes every day.

Officer Boyd testified that Falco Two was trained to detect the odors of ecstasy, marijuana, heroin, cocaine, methamphetamine, and mushrooms. Falco Two is an "aggressive alert dog," meaning he bites and scratches upon detecting the odor of any of these substances. Officer Boyd did not experience any problems or issues with false alerts from Falco Two during training sessions. Furthermore, he testified that Falco Two had correctly alerted to drugs between 150 and 200 times in the field in the three-year period he worked with Falco Two.

In consideration of the evidence of Falco Two's training and experience, the Commonwealth sufficiently established Falco Two's reliability. See Harris, 568 U.S. ___, 133 S. Ct. at 1059 (evidence of training established drug detection dog's reliability); Jones, 277 Va. at 181, 670 S.E.2d at 733 (evidence of training and experience established drug detection dog's reliability). Accordingly, "the facts surrounding [Falco Two's] alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." Harris, 568 U.S. at ___, 133 S.Ct. at 1058. Therefore, the

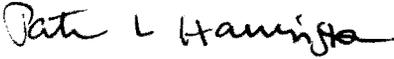
trial court did not err in concluding that Falco Two's alert provided probable cause for the search of Latimer's vehicle.

For the foregoing reasons, we affirm the judgment of the Court of Appeals. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Hampton.

A Copy,

Teste:

A handwritten signature in black ink that reads "Pat L. Hamington". The signature is written in a cursive style with a large initial "P" and a stylized "H".

Clerk