

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2011

MARVIN JOE,

Appellant,

v.

Case No. 5D10-800

STATE OF FLORIDA,

Appellee.

Opinion filed September 16, 2011

Appeal from the Circuit Court
for Seminole County,
Debra S. Nelson, Judge.

James S. Purdy, Public Defender, and
Susan A. Fagan, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

MONACO, J.

Originally we affirmed this case *per curiam*, citing *State v. Coleman*, 911 So. 2d 259 (Fla. 5th DCA 2005), as the basis for our determination. In *Harris v. State*, 36 Fla. L. Weekly S163 (Fla. April 21, 2011), however, the Florida Supreme Court disapproved of *Coleman*, and specifically approved *Matheson v. State*, 870 So. 2d 8 (Fla. 2d DCA 2003), the case relied on by the appellant, Marvin Joe, in the appeal of his judgment

and sentence to this court. *Harris* was decided a day after the mandate in the present case was issued. Accordingly, at Mr. Joe's request we recalled the mandate and reconsidered his appeal. We now withdraw our previous opinion in this case and substitute this opinion for it. Having done so, we conclude that an affirmance is still in order because under the totality of circumstances, the requisites of *Harris* were met in the present case.

The issue raised by Mr. Joe is whether the trial court erred in denying his motion to suppress evidence seized as a result of a search based on a dog sniff alert. Mr. Joe postulated that the information concerning the training of the dog that was presented to the court was insufficient to satisfy the requirements of probable cause.

The information that must be presented by the State to justify the admission of the fruits of a seizure based on a dog sniff alert was set forth in *Harris*. The supreme court there first pointed out that it was adopting a "totality of the circumstances approach" in conducting its probable cause analysis. *Harris*, 36 Fla. L. Weekly at S163. It went on to say the State bears the burden of establishing probable cause, and that:

[T]he State must present the training and certification records, an explanation of the meaning of the particular training and certification of that dog, field performance records, and evidence concerning the experience and training of the officer handling the dog, as well as any other objective evidence known to the officer about the dog's reliability in being able to detect the presence of illegal substances within the vehicle.

Id. at S163.

We have concluded that the evidence presented by the State at the hearing on the motion to suppress in Mr. Joe's case satisfied the requirements of *Harris*. The

supreme court pointed out in that case that the drug dog's "records were neither produced prior to hearing nor introduced at the hearing." *Id.* at S164. The records are important in the view of the supreme court so that the trial court can make an "objective evaluation" of the reliability of the dog based on the totality of the circumstances. *Id.* at S166.

In the present case the dog's handler gave extensive testimony about his and the dog's training, testing and certification. In addition, he testified regarding the dog's history and search record, including ample information concerning both accurate alerts and false alerts. While the training and field records were not specifically introduced into evidence, they had been provided to the defense, and defense counsel used them frequently to cross examine the handler.¹ In fact defense counsel actually refreshed the memory of the dog handler by presenting him with copies of the officer's own records of the dog's performance.

While it is made clear by *Harris* that the better practice would be to admit the records into evidence, we think any such failure to do so here was, at worst, harmless error. The records were made available by the State, the defense was provided with them, and both sides used them during the presentation of evidence at the hearing on the motion to suppress. The issue of the dog's reliability was fully explored and the trial court had ample information upon which to determine that probable cause was established.

¹ Oddly enough, it appears from the transcript of the hearing that while the defense had the records prior to the hearing, the prosecutor had apparently not earlier seen them.

Thus, we conclude that based on the totality of the circumstances, the minimum requirements of *Harris* were met and the trial court properly denied the motion to suppress. Accordingly, we once again affirm Mr. Joe's judgment and sentence.

AFFIRMED.

GRIFFIN and TORPY, JJ., concur.