

murphy

IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

STATE OF IOWA	2010 FEB 17 PM 12:58	)	
Plaintiff,		)	
	KAFI	)	No. FECR016978
vs.	CLERK OF DISTRICT COURT	)	
	CERRO GORDO COUNTY, IOWA	)	
HOLLY AERA YOON STOCKER,		)	RULING ON MOTION TO
Defendant.		)	SUPPRESS

**BE IT REMEMBERED** that on the 14<sup>th</sup> day of July, 2009, the above-entitled matter came on for hearing on the MOTION TO SUPPRESS EVIDENCE filed by the defendant on November 21, 2008, and the RESISTANCE filed by the State on November 24, 2008. The hearing continued on the 20<sup>th</sup> day of October, 2009. The State was represented by County Attorney Paul Martin on July 14 and by Assistant County Attorney Steven Tynan on October 20. The defendant was present at each hearing and represented by her attorney, Colin Murphy.

On or about March 9, 2008, Iowa State Trooper Keith Duenow made a traffic stop on Interstate 35 south of Clear Lake in Cerro Gordo County after observing the vehicle speeding and the passenger having her seat belt under her arm. After stopping the vehicle, the trooper became suspicious that the occupants may be transporting narcotics. He summoned Clear Lake Police Officer Ryan Eskildsen with his service canine, Bora.

Upon arrival, Eskildsen stimulated Bora with a toy and walked her around the car several times. Eskildsen may have taken Bora into the ditch and restimulated her with a toy. At some point, Bora became interested in the vehicle and made telltale noises of a "clicking" nature while breathing and stuffing her nose into the seams of the car as if trying to pinpoint a location within. Eskildsen, who worked with Bora since 2007, is familiar with these signs as a positive response to the presence of narcotics. Bora never made a final responsive scratching, which is her normal "final response." The officers searched the car based on Bora's indication, which convinced them they had probable cause that narcotics were being transported in the vehicle and exigent circumstances because of the mobility of the vehicle. They did find narcotics.

Other facts as may be relevant to this ruling may be included in the conclusions of law.

CONCLUSIONS OF LAW

Stocker moves the court suppress evidence obtained as a result of the dog sniff and subsequent search of the vehicle. She generally disputes Bora's reliability. The state resists. It is the state's burden to prove exceptions to the warrant requirement by a preponderance of the evidence. The presence of probable cause and exigent circumstances can justify a warrantless search. *State v. Nitcher*, 720 N.W.2d 547, 554 (Iowa 2006). A reliable drug dog alert is enough to establish probable cause to search. *State v. Bergmann*, 633 N.W.2d 328, 338 (Iowa 2001) (citations omitted). The mobility of a vehicle provides the necessary exigent circumstances. *State v. Allensworth*, 748 N.W.2d 789 (Iowa 2008).

The court has considered the arguments and authority asserted by both parties. The court agrees with and adopts the arguments asserted by the defendant in its memorandum of authorities. Given Bora's failure to make a "final response," the possible restimulation in the field and the questions raised as to her training and certification, the court concludes that the state has not sustained its burden of proof to show that Bora's response was objectively sufficient to constitute probable cause for the subsequent search.

The defendant's motion is therefore **GRANTED**.

**IT IS SO ORDERED.**

Dated this 17 day of February 2010.



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Colleen D. Weiland  
Judge of the Second Judicial District of Iowa

Clerk to provide copies to:  
Paul Martin and Steven Tynan for the state  
Colin Murphy for defendant