

VOIR DIRE ON EVIDENCE OF TRACKING BY BLOODHOUNDS AND OTHER DOG BREEDS

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I. Legal Background. The court held in *State v. McLeod*, 196 N.C. 542, 545 (1929), that tracking by a bloodhound may be admitted in evidence when it is properly shown that the dog:

1. is of pure blood and of a stock characterized by acuteness of scent and power of discrimination;
2. possesses these qualities and has been accustomed and trained to pursue the human track;
3. has been found by experience to be reliable in the pursuit;
4. in the particular case the dog was put on the trail of a particular person that was pursued and followed under such circumstances and in such a way to afford substantial assurance, or permit a reasonable inference, of identification.

Cases since *McLeod* have admitted evidence by tracking dogs other than pure bloodhounds, although a dog must still have the training, experience, and proven tracking ability as set out in the final three *McLeod* foundation requirements set out above. *State v. Green*, 76 N.C. App. 642, 644-45 (evidence of tracking by Doberman and Rottweiler was admissible); *State v. Yates*, 159 N.C. App. 231, *2 (2003) (unpublished) (evidence of tracking by German Shepherd was admissible).

Tracking evidence may be admissible even if there was not a positive identification of the defendant. For example, a dog could track to an apartment building where the defendant was located but lose its scent to enable tracking to the defendant's specific apartment. See *Yates*, 159 N.C. App. 231, at *3.

II. Findings of Fact. Findings of fact must be supported by a preponderance of the evidence. The trial court should include all relevant facts, and be sure those facts support the conclusions of law. Finding of fact should include:

1. Breed of the dog.
2. Age and health of the dog.
3. Training to track the human scent—length of training, where trained, certification, and qualifications of trainer.
4. Whether the dog had ability to discriminate among different human scents.
5. Performance record—number of previous successful trackings.
6. Maximum age of scent that the dog is able to pick up.
7. Any continuing practice when not tracking.
8. Where the dog picked up scent in this case.
9. Tracking of the defendant—trail followed, conduct of the dog.

10. Conduct of the dog at end of trail (e.g., whether dog bayed or identified defendant).

III. Conclusions of Law. A sample form for the trial court's conclusions of law is provided below.

Upon the foregoing findings of fact, the court concludes as a matter of law that:

1. *the bloodhound [or name other breed] was [of pure blood] [and/or] [of a stock characterized by acuteness of scent and power of discrimination];*
2. *the bloodhound [or name other breed] was accustomed to and trained in pursuit of the human track;*
3. *the bloodhound [or name other breed] has been found by experience to be reliable in such pursuit;*
4. *in this case the dog was put on the trail of the defendant, who was pursued and followed under circumstances that offer substantial assurance, or permit a reasonable inference, of identification.*

If evidence is to be excluded, modify the above form order accordingly.

IV. Order. A sample form for the trial court's order is provided below.

It is now therefore ordered that defendant's objection to bloodhound [or name other breed] evidence is [overruled] [allowed] and that the evidence [is] [is not] competent in the trial of this case.