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## [Use of K-9 Units at Traffic Checkpoints](#)

Posted on February 16, 2011 by [Brandy M. Wingate](#)

***Lujan v. State*, No. PD-0303-10, 2011 WL 93025 (Tex. Crim. App. Jan. 12, 2011).**

On petition for discretionary review, the Texas Court of Criminal Appeals approved the use of K-9 units at a stationary traffic checkpoint implemented with the stated purpose of merely identifying unlicensed and uninsured drivers.

Lujan was traveling through El Paso with a passenger, when he came upon a stationary traffic checkpoint set up by local police. Lujan did not have a driver's license. He was asked to pull over and was questioned about his activities that night. The officers discovered that Lujan's passenger had outstanding warrants, and the passenger was removed from the vehicle.

Deputy Hernandez, who was assigned to the checkpoint, testified that the checkpoint's purpose was to detect unlicensed and uninsured drivers. Hernandez's police unit included a K-9 handler, who was also present at the checkpoint. According to one of the officers, Lujan began acting extremely nervous. A pat-down search revealed over \$1,000 in Lujan's pockets. The officers obtained permission to search the vehicle, and the K-9 unit immediately alerted to the presence of drugs. Drugs were then discovered hidden in the car's door panel. On cross-examination, Deputy Hernandez testified that his unit is not merely a traffic unit but is a criminal interdiction unit that handled "multiple tasks including racing, DWI, traffic enforcement, and narcotics." Another officer testified that the unit would investigate any violations they uncovered, not just unlicensed or uninsured motorists.

The trial court denied Lujan's motion to suppress, and the El Paso Court of Appeals reversed. The El Paso court cited the well-established rule that a traffic checkpoint may be used to detect unlicensed or uninsured motorists, but a checkpoint whose primary purpose is to detect general criminal wrongdoing is impermissible under the Fourth Amendment. The court determined that the use of K-9 units and the testimony that any violations uncovered would be investigated rendered this traffic checkpoint unconstitutional.

A majority of the Court of Criminal Appeals disagreed in an unsigned, per curiam opinion, with Judge Johnson concurring and Judge Meyers dissenting. The majority held that the trial court's duty was to inquire of the checkpoint's "primary" purpose, and because this question was a mixed question of law and fact, the trial court was within its discretion to determine that the primary purpose was to detect unlicensed and uninsured drivers. While the officers' testimony

conflicted, the trial court had discretion to resolve the conflict. Because the primary purpose of the checkpoint was permissible, the officers were entitled to consider other violations that they discovered.

Judge Johnson concurred, noting that the presence of the K-9 unit undermined the State's alleged primary purpose:

El Paso County deputy sheriffs set up a checkpoint, ostensibly to target uninsured and unlicensed drivers. That claim is undermined by the presence of a drug dog at a checkpoint near the Mexican border and I-10, a known route for drug transport. Drug dogs are trained to detect the presence of illegal drugs; they are less useful for sniffing out expired driver's licenses. Mere membership in the assigned unit does not adequately explain the dog's presence. The assigned unit was not a traffic unit; as the majority notes, it had multiple duties, including racing prevention, DWI, traffic enforcement, and, notably, narcotics. The deputies' regular responsibilities and specialized training were not relevant to a checkpoint for only licenses and insurance, and if the checkpoint were truly for only licenses and insurance, the dog would be a valuable resource wasted and better used at a location where its specialized skills were in demand. I agree with the court of appeals that the checkpoint was a subterfuge for general criminal enforcement.

Judge Johnson concurred with the result, however, because Lujan was subject to arrest for driving without a license. Thus, further detention was justified, and thereafter, a reasonable suspicion of criminal activity developed due to Lujan's possession of a large amount of cash and his nervous behavior. Furthermore, he consented to the search, so the drugs would have been discovered even if the K-9 unit had not been present.

Judge Meyers dissented, believing that the primary purpose of the checkpoint was to detect evidence of ordinary criminal wrongdoing:

The checkpoint in this case included a K-9 unit. So, if the primary purpose of this checkpoint program was, as the majority concludes, to check drivers' licenses and insurance, then the deputies did not need drug-sniffing dogs. This was akin to bringing a gun to a knife fight, and from then on, it was officially a gun fight. Based upon the facts of this case, I disagree with the majority and would conclude that the primary purpose of the checkpoint was to "uncover evidence of ordinary criminal wrongdoing," in contravention of the Fourth Amendment.