

Wisconsin v. Zapata

On a beautiful October day in 1976, Jeanette Zapata, a dedicated flight instructor and mother of three, went missing from her home in a quiet neighborhood in Madison, Wisconsin. Madison Police investigated her disappearance briefly, but although Jeanette was in the middle of a bitter divorce and custody battle with her husband Eugene, the investigation quickly waned with the assumption that Jeanette had left on her own, abandoning her career and the three children she loved dearly.

In 2004, after twenty-seven years of mystery, the cold case was reopened and a lengthy investigation ensued. Detectives utilized human remains detection dogs, which were unavailable to the department in 1976. Canine Search Solutions provided HRD dog teams which illuminated leads via indications that ultimately helped to solve the case.

Despite lacking the most crucial piece of evidence, the victim's body, Eugene Zapata was eventually arrested and charged with first-degree murder.

The admission of the cadaver dogs' residual odor indications became a significant issue during the suppression hearing. Armed with a list of canine search case law, the Dane County District Attorney's Office argued for the admission of this important information. This compilation of case law is available upon request.

Brooks v Colorado, 975 P.2d 1105, 81 ALR 5th 779 (S. Ct. Colo. 1999) was the case most heavily relied upon by the circuit court judge as it related to the Zapata case. The judge ultimately denied the admission of the cadaver dog evidence. A 3-part analysis was established to analyze the various dog scent evidence.

1. Admissible under the rules of evidence?
 - a. Relevant? -Sec. 904.01 -- The judge answered yes.
 - b. Witness qualified? - Sec. 907.02 -- judge answered yes.
 - c. Assist the trier of fact? - Sec.907.02 -- judge answered no.
2. Proper Foundation? Citing *Brooks* majority rule, decides:
 - a. Whether the dog is of a breed characterized by acute power of scent -- court answers yes.
 - b. Whether the dog has been trained to detect human remains -- court answers yes
 - c. Whether the dog has been found by experience to be reliable in detecting or alerting to human remains scent -- court answers no. ****See below for specifics related to this decision.***
 - d. Whether the dog was placed on the trail where the person being tracked was known to have been -- no decision.
 - e. Whether the detection of human remains odor occurred within a reasonable time, given the abilities of the canine -- court answers possibly, but did not have to reach that issue.
3. Cautionary Jury Instruction. The court believed the lack of sufficient probity made the evidence more prejudicial than probative based upon the court's

belief that people -- based on legend, rumor, or experience -- would give the canine evidence more credence than the statistics would support.

* The negative response to the question of the canines' detection reliability was based upon the dogs' actual searches in the field. The judge concluded that any/each time a cadaver dog searched and cleared an area *without* providing an indication and no person or other tool returned to the search location to verify that there **WASN'T** something there, the dog's conclusion that the area did not contain the odor of human remains had not been confirmed and was therefore was not reliable.

The industry standard for determining the reliability of detector dogs has historically been based upon logged training, certification, and the percentage of correct finds from blind training sessions. This standard was not used during this case. It is the strong opinion of CSS that the judicial system needs more education on cadaver dogs as a bona fide detector dog and an investigative tool.

The trial ended in a hung jury. Eugene Zapata pled guilty prior to a second trial, and Jeanette Zapata was vindicated as a mother who would never have willingly abandoned her children.

Eugene's confession revealed that many of the cadaver dogs' residual odor indications were correct and reliable.

This was one circuit court judge's opinion and is not a binding precedent, nor is this case law.

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