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October 29, 2012

Supreme Court Ponders Drug-Detection Dog's 'Sniff Test'

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Available at: https://works.bepress.com/alan_garfield/73/

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A dog's nose is a marvel of nature. Spread out the scent receptors in a human's nose and you cover a square inch, about the size of a postage stamp. Spread out a dog's receptors and you cover 60 square inches, about the size of typing paper. That's one super-powered sniffer, capable of outperforming a human



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schnoz by a thousand to one.

Most dogs use these miraculous muzzles to search for moldy bread and inspect their comrades' private parts. But some are trained to deploy their gnarly nostrils in the fight against crime.

Such is the case with Franky, a chocolate lab, whose "sniff test" has helped authorities seize more than 2.5 tons of marijuana. (Dare I say the

Caped-Crusader would be envious of this pooch's proboscis?)

I bring up Franky because the Supreme Court will be considering the implications of this woofers' whiffer on Wednesday.

Specifically, the Court will consider whether a drug-detection dog's "sniff test" at the front door of a private home is a "search" under the Constitution's Fourth Amendment.

The Fourth Amendment generally requires police to obtain a warrant before they conduct a search. This requires them to demonstrate to a judge that they have "probable cause" for believing that evidence of a crime is in a particular place.

But this rule applies only when the police conduct a "search," which occurs when they invade an area where people have a reasonable expectation of privacy.

So, for example, the police do not need a warrant to see the interior of an apartment when it is readily visible

through an open window. But they would need a warrant to enter the apartment and look around.

The question in Franky's case is whether a sniff test conducted outside of a person's front door constitutes a "search." Does this conflict with a person's reasonable expectations of privacy?

In prior cases, the Supreme Court has described dog sniffs as unobtrusive. They don't involve rummaging through a person's belongings or exposing hidden items to public view.

And they detect only illegal substances, for which people have no legitimate expectation of privacy.

Because sniff tests entail only a modest invasion, the Court generally has allowed them without a warrant when people have otherwise been lawfully detained. Thus, the Court has said a dog may sniff the exterior of a car that has been detained for a routine traffic stop.

Police also generally are

allowed to initiate a "knock and talk" encounter at a person's front door without obtaining a warrant. That's because people do not have an expectation of privacy on their front porches where salespeople or visitors (or trick-or-treaters) may appear without warning.

So, if the police can come to your front door without a warrant, can they also bring a drug-detection dog with them and allow the dog to take a few whiffs? Or do you have a reasonable expectation that this weapon of mass inhalation will not be deployed without a warrant?

The Florida Supreme Court, which ruled on Franky's test, said that the sniff test was a search and needed a warrant. The court acknowledged that the U.S. Supreme Court had allowed warrantless dog sniffs in other contexts, but said that a sniff test at a person's home is qualitatively different because people's expectations of privacy are greatest at their homes.

Now it's the U.S. Supreme Court's turn.

The Court is similarly sensitive to people's privacy expectations at home, so it might follow the Florida court's lead. But it's also true that the Court has characterized dog sniff tests as only modestly invasive.

Personally, I'm inclined to agree with the Florida court. But to help clarify my thoughts, I decided to consult with the one occupant in my home with expertise on canines' super-powered sniffing sensors: our 13-year-old, half blind and wholly deaf cocker spaniel. First, I had to wait for him to finish his nap. But once he awoke, did his business, checked his bowl and scratched his ears, he spoke with a wisdom and clarity that captured the sentiment of dogs throughout the ages.

"Cats couldn't do that," he proclaimed. Then he settled in for another nap.

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