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Did that Dog Sniff Violate the Fourth Amendment?

Catherine Hawke and Tiffany Middleton

Is sniffing at the front door of a private home by a trained narcotics detection dog a Fourth Amendment search requiring probable cause? Is a "drug dog" somehow like a manmade technology, such as a thermal imaging device? These were a couple of the questions recently presented to the U.S. Supreme Court during arguments in *Florida v. Jardines*.[1] The case provides an engaging kickstarter for classroom discussion about current issues related to the Fourth Amendment.

The story behind *Florida v. Jardines* starts on November 3, 2006, when Detective William Pedraja of the Miami-Dade Police Department received an unverified "crime stoppers" tip that marijuana was being grown at the home of Joelis Jardines. On December 5, Detective Pedraja, along with officers from the Miami-Dade Police Department's Narcotics Bureau and agents of the Department of Justice's Drug Enforcement Administration (DEA), set up surveillance of the Jardines residence. After an observation period, Detective Douglas Bartlet of the Miami-Dade Police arrived on the scene with his K-9 partner, a chocolate lab named Franky. As a trained narcotics dog, Franky had already participated in 656 narcotics-detection incidents, which had resulted in 399 positive alerts. Thanks to Franky's assistance over the years, the Miami-Dade Police had already seized more than one million grams of marijuana, 13,008 grams of cocaine, 2,638 grams of heroin, and 180 grams of methamphetamine.

Pedraja and Bartlet walked up the driveway and front walkway to the front door of the house with Franky on a leash ahead of them. As the trio approached Jardines's front door, Franky began sniffing. He sat down immediately after sniffing the base of the front door, as he was trained to do to identify the source of contraband odors. Detective Bartlet noted the alert, and returned with Franky to their police car to prepare information to obtain a search warrant. Meanwhile, Detective Pedraja knocked on the front door of the home, but got no response. He reported that he also smelled the scent of live marijuana. After obtaining a search warrant for the Jardines's home, officers confirmed that it was being used as a grow house. Officers seized marijuana plants and captured Jardines as he attempted to flee through a rear door of the house.

During the subsequent trial, Jardines moved to suppress the evidence seized from his home, asserting that Franky's sniff constituted an unreasonable search under the Fourth Amendment. The trial court granted the motion to suppress, determining that there was not probable cause to issue a search warrant in this case.

The state appealed the decision to the Florida Third District Court of Appeal. The appeals court reversed the trial court's decision to suppress the evidence, concluding that "a canine sniff is not a Fourth Amendment search" and that "the officer and the dog were lawfully present at the defendant's front door." Jardines appealed that decision to the Florida Supreme Court, which reversed the appellate decision, concluding that a dog sniff in this case was a "substantial government intrusion into the sanctity of the home and constitutes a 'search' within the meaning of the Fourth Amendment."

The state of Florida appealed the case to the U.S. Supreme Court, arguing that the Florida Supreme Court misapplied the available legal precedents in deciding that a warrant is required before a trained police dog may sniff for narcotics outside the front door of a

house. Indeed, the Supreme Court has already determined in one instance that a sniff by a drug dog does not constitute a "search" under the Fourth Amendment. The 1983 decision in *United States v. Place*[2] concerned the use of a drug dog in an airport. The Court reasoned that a dog sniff is meant to reveal only the presence or absence of substances, thus not requiring a warrant.

Jardines, however, argued that the dog sniff *does* constitute a "search" under the Fourth Amendment because the use of a trained drug dog, something other than the officer's natural nose, requires a warrant. In support of his argument, Jardines cited a case from 2001, *Kyllo v. United States,* in which the Court ruled that the use of thermal imaging equipment to survey a home did constitute a "search." The Court considered that such equipment was not in general use by the public and revealed "a critical fact about the interior of the premises that the government is extremely interested in knowing and that it could not have otherwise obtained without a warrant," typically physical intrusion into the home. Jardines also argued that prior decisions concerning the use of drug dogs in public places do not establish that dog sniffs at *the front door of a home* are also not Fourth Amendment searches.

The Court in prior cases has also ruled that the areas immediately surrounding a private residence fall within the "curtilage" of the home, and are, at times, protected from searches much like the interior of a home. In legal terms, curtilage determines the boundaries within which a homeowner can expect a reasonable amount of privacy, and protection from illegal searches. Traditionally, curtilage includes any house or outbuilding associated with a dwelling, or the area inside any fences or walls, but not any open fields beyond these areas. Exceptions to the curtilage protection sometimes apply to front walkways, which are typically intended for public use—e.g., mail, deliveries, salespeople, visitors—to interact with the owner of the private residence. The state of Florida argues that Jardines's driveway, walkway, and front door were not entitled to such expectations of privacy, as a salesperson, a delivery person, a Girl Scout selling cookies, or even a police officer, might lawfully walk along the same paths to the front door expecting to talk with a resident. Jardines argues that the approach of a police officer with a drug dog is different because the purpose of the visit is to determine what is *inside* the home, thereby violating expectations of privacy.

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Miami-Dade detective Douglas Bartlet and narcotics detector canine Franky give a demonstration in Miami, Dec. 6, 2011. Franky's super-sensitive nose was at the heart of a question put to the Supreme Court: Does a police K-9's sniff outside a house give officers the right to get a search warrant for illegal drugs, or is the sniff itself a search that violates the home's sanctity? (AP Photo/Alan Diaz)

Technology and the Supreme Court

In discussing the questions presented by Florida v. Jardines, *it might be useful to discuss past cases where the Supreme Court has explored the effects of certain technologies on Fourth Amendment rights. You may also download this activity as classroom-ready handouts at www.americanbar.org/publiced.*

Procedure

1. Split students into seven groups, and assign each group one of the case summaries.

2. Ask each group to read its case study and then answer the following questions:
   - How does the Fourth Amendment regulate police or government activity in this scenario?
   - What do you think the legal "standard" is as a result of this case?
   - Did this ruling surprise you? Why or why not?

3. Allow each group to present their findings to the class. Compile an outline of findings on a whiteboard or chart paper. Discuss all of the cases:
   - Did any of these decisions surprise you? If so, why?
   - What similarities or differences do you see between decisions? How might you account for any differences?
   - Do you think that the decisions listed here are consistent? Why or why not?

4. Distribute copies of the preceding summary of *Florida v. Jardines* to students. Lead a discussion about the case:
   - How is this case similar or different from the others that you just learned about?
   - How might decisions in the other cases help us understand this case?
   - Do you think the use of Franky constitutes a search? Why or why not?
   - What do you think will be the final decision? Why?

5. Monitor the news for a decision in this case during the current term. Review the decision with students and compare the actual decision to your classroom findings.

CASE SUMMARIES

Please note that particular cases were selected to highlight the role that technological inventions and innovations, or other sensory-enhancing tools, have had in Fourth Amendment interpretations by the Court. Early decisions may no longer be current law.

Carroll v. United States (1925)
The police knew that Carroll had been smuggling alcohol, which was illegal under Prohibition. When they saw him driving, police chased Carroll's car, pulled him over, searched the car, and found liquor, all without a search warrant. Carroll claimed that this warrantless search of his car violated his Fourth Amendment rights. In the end, the Supreme Court disagreed with him. The Court ruled that the search of a car was permissible because, although there are some privacy expectations in a car, the fact that a car can be moved lowers that expectation and creates a need to allow the police to search without a warrant. In other words, in the time it would take the police to procure a search warrant, the car could be driven off, and any evidence lost.

Olmstead v. United States (1928)
Olmstead was running a major bootlegging operation off the coast of Seattle during Prohibition. Olmstead would use phones to communicate information about incoming shipments and coordinate distribution. Police used wiretaps to listen in on Olmstead's conversations, and taped hours of conversation. When he was arrested in 1925 for violating the Volstead Act, Olmstead argued that the wiretapping of his home phone violated his Fourth Amendment rights because police did not have any warrants.

The Court disagreed with Olmstead. Former President and Chief Justice William Howard Taft issued the opinion: "The language of the Amendment can not be extended and expanded to include telephone wires reaching to the whole world from the defendant's house or office. The intervening wires are not part of his house or office any more than are the highways along which they are stretched." Taft added that Congress was free to protect telephone communications through legislation, which they later did, but the courts could not do so without distorting the meaning of the Fourth Amendment. In the lengthiest and most noted dissent, Justice Brandeis asserted a general "right to be let alone" from government intrusion and argued that the

purpose of the Fourth Amendment was to secure that right. Brandeis argued that "there is, in essence, no difference between the sealed letter and the private telephone message." The protections of the Fourth Amendment, he said, did not apply solely to the medium familiar to the framers of the Constitution.

Katz v. United States (1967)

Katz regularly used a public phone in Los Angeles to call other parts of the country to place illegal gambling bets. He frequently used the same phone booth, to which the police secured an electronic listening device without a search warrant. The recordings of Katz's phone calls were used against him during his trial for illegal gambling activities. Katz claimed that the police's use of the device violated his Fourth Amendment right. The state of California claimed that Katz had no reasonable right to expect that his phone calls from a public phone would be private. The Court held that the Fourth Amendment did in fact apply in a public phone booth. According to the Court, the Fourth Amendment applies to *people* not *places.*

United States v. Knotts (1983)

Minnesota law enforcement agents suspected that a person named Armstrong was purchasing chloroform for the manufacture of illegal drugs. Police arranged with the manufacturer of the chloroform to have a radio transmitter, described as a "beeper," placed inside a drum of chloroform the next time Armstrong placed an order. Subsequently, police followed Armstrong's vehicle, which ended up at a cabin owned by Knotts. Police ultimately found Knotts's cabin through the use of the beeper. Authorities acquired a search warrant, and found evidence of a methamphetamine laboratory inside the cabin, which was used to convict both Armstrong and Knotts. Knotts appealed the conviction, claiming the use of the beeper violated his Fourth Amendment rights.

The Court unanimously ruled that use of the beeper did not violate Knotts's rights because monitoring the beeper signals did not invade any of his expectations of privacy. The beeper surveillance amounted to following an automobile on public streets and highways, which do not afford any expectations of privacy. The fact that the officers relied not only on visual surveillance, but also the use of the beeper, did not alter the situation. According to the Court, nothing in the Fourth Amendment prohibited the police from augmenting their sensory faculties with enhancements afforded by science or technology in this case. There was no evidence that the beeper was used to reveal information about the location of the chloroform container inside the cabin.

Kyllo v. United States (2001)

Government officials used thermal imaging equipment to scan Kyllo's home. They suspected that Kyllo was growing marijuana, and the heat emanating from the home, they observed, was consistent with the high-intensity lamps frequently used for indoor growing. This information was used to obtain a search warrant, and a subsequent search of Kyllo's home led to live marijuana plants. Kyllo argued that the use of the thermal imaging equipment violated the Fourth Amendment and required a warrant. The Court agreed, considering that such equipment was not in general use by the public at large and permitted for surveillance that would have otherwise been impossible without physical intrusion into the property, also requiring a warrant.

City of Ontario v. Quon (2010)

Quon, an officer with the Ontario Police Department in Ontario, California, was assigned a pager that could send text messages. While all Ontario officers with a pager were required to sign a statement that they understood that they had no expectation of privacy in using the city-issued equipment, they were also advised that "light personal use" was permitted. After Quon exceeded the monthly limit for text messages with his pager, his lieutenant asked the service provider for the message transcripts to determine if Quon needed more messages for department business. The lieutenant learned that Quon had been texting his wife, mistress, and friends, and that some of the messages were sexually explicit. Quon, his wife, and his mistress filed suit claiming that the lieutenant's actions violated their Fourth Amendment rights to privacy.

A unanimous Court ruled in favor of the City of Ontario. According to the Court, the search of Quon's text messages was reasonable, given its work-related purpose, and did not violate the Fourth Amendment.

United States v. Jones (2012)

Agents in Washington, D.C., suspected Jones of trafficking cocaine. They covertly installed and monitored a global positioning system (GPS) device on Jones's vehicle. The device provided information about the vehicle's location only, not the driver or occupants. Agents collected more than 2,000 pages of GPS data over 28 days and used the device to track Jones's Jeep in the vicinity of a suspected stash house in Maryland. Jones's presence at the stash house was also verified by visual, video, and photo surveillance. Ultimately, agents seized cash, cocaine, firearms, and other drug paraphernalia from Jones's Jeep and the stash house.

Jones argued that the installation and monitoring of the GPS device on his vehicle violated his Fourth Amendment rights. The Court unanimously agreed with him, and declared that the use of the GPS device did constitute a "search" under the Fourth Amendment.

WHAT EXACTLY IS A "SEARCH?"

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

—Fourth Amendment, U.S. Constitution

A "search" is not only government officials coming into your home, going through your files, or searching your computer. Generally, a search occurs any time government officials interfere with an individual's "reasonable expectation of privacy." What is this? The answer really depends. Typically, a court looks at what an everyday person would expect, the age and situation of the person being searched, the type of search, and a variety of other circumstances.

What happens if an official executes a search that is unconstitutional? For the purposes of studying the Constitution and the rights of individuals, the most important consequence of such searches is the "Exclusionary Rule." This rule dictates that any evidence obtained during an illegal search cannot be used against the person whose rights were violated by the search. The theory behind this rule is that such a consequence will encourage government officials to make sure they meet constitutional requirements when conducting a search. The excluded evidence is sometimes referred to as the "fruit of the poisonous tree."

LOOKING AT THE LAW *from page 279*

These issues alone could contribute to engaging and complex classroom discussions, not to mention the possible implications a decision in this case has for police departments, homeowners, and drug dogs across the country. In addition, the questions raised about the similarities between Franky the dog and thermal imaging equipment also provide a window into the Supreme Court's decisions concerning new technologies and the Fourth Amendment. The following teaching activity will provide students with an opportunity to learn about historic Supreme Court decisions around some important Fourth Amendment issues, and equip them with information to discuss the possibilities in *Florida v. Jardines.* Following the class discussion, stay tuned for the Court's decision in the case sometime during the term. As for Franky the drug dog, he retired in June after seven years with the Miami-Dade Police Department, and now lives with his former partner, Detective Bartlet.

Editor's Note: The U.S. Supreme Court is also mulling a second dog-sniff case this term in Florida v. Harris.[3] *The Harris case concerns the search of a suspect's vehicle. Drug-related paraphernalia was detected by a trained dog when an officer from a K-9 unit stopped a pick-up truck for having expired registration tags.*

Notes

1. *Florida v. Jardines*, No. 11-564.
2. *United States v. Place*, 462 U.S. 696 (1983)
3. *Florida v. Harris*, No. 11-817.

Catherine Hawke *and* **Tiffany Middleton** *work in the American Bar Association's Division for Public Education. Catherine is editor of* PREVIEW of Cases of the Supreme Court of the United States. *Tiffany is the editor of* Insights on Law & Society, *the ABA's magazine for high school teachers.*