

# Can Drug-Sniffing Dog Prompt Home Search?

by NINA TOTENBERG



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Alan Diaz/AP

Miami-Dade narcotics detector canine Franky, who came out of retirement to give a demonstration, sniffs marijuana in Miami in 2011. Franky's supersensitive nose is at the heart of a question being put to the U.S. Supreme Court: Does a police K-9's sniff outside a house give officers the right to get a search warrant for illegal drugs?

When the dog alerted for drugs, the police got a warrant, found marijuana growing inside and arrested Jardines. The Florida Supreme Court ruled that the dog sniff was an illegal search and thus could not justify a warrant. Now the state has appealed to the U.S. Supreme Court, and the case poses tricky issues for both law enforcement and privacy advocates.

Dog sniffs do have a history at the court. In the past, the justices have ruled that dog sniffs do not constitute a search. But those decisions involved cars that had been stopped for other reasons and luggage in public places, not homes.

"The entire history of the Fourth Amendment really is based on the fact that the home is different," says Jardines' lawyer, Howard Blumberg. "It goes all the way back to the early 1600s and the saying that a man's home is his castle."

Indeed, in 2001 the Supreme Court, in a decision written by conservative Justice Antonin Scalia, ruled that police could not use heat-detection devices outside a home to detect marijuana grow lights inside. Not only does the device violate the home dweller's expectation of privacy, said Scalia, but the technology could detect many other innocent details of the homeowner's life, like "the hour at which the lady of the house takes her bath."

Florida contends, however, that using drug-detection dogs is not analogous to technology because there is no constitutional right to possess contraband, and the state maintains that dogs trained to detect illegal drugs do not alert to other substances.

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You can already hear all the likely jokes at the Supreme Court, about the justices going to the dogs. But the issue being argued Wednesday is deadly serious: whether police can take a trained drug-detection dog up to a house to smell for drugs inside, and if the dog alerts, use that to justify a search of the home.

In the case before the court, the four-legged cop was named Franky, and as a result of his nose, his human police partner charged Joelis Jardines with trafficking in more than 25 pounds of marijuana.

In the fall of 2006, police in Florida got an anonymous crime-stoppers tip that there was illegal drug activity at the Jardines home. A month later, police officers took Franky to the house and walked him up to the front porch.



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Alan Diaz/AP

Miami-Dade retired narcotics detector canine Franky looks on during a demonstration in Miami.

The police were doing nothing more than the postman or the trick-or-treater, says lawyer Gregory Garre, representing Florida. The police "did the same thing that millions of Americans will do on Halloween night, which is walk up to the front steps, knock on the door, and while they were there, they took in the air and the dog alerted to the smell of illegal narcotics."

Public defender Blumberg replies that the state's reasoning is pushing the envelope beyond the Constitution's ban on unwarranted searches. If a dog sniff at the front door is not deemed to be a search, he warns, the real-life consequences could be profound.

Police would be free "to walk up and down suburban neighborhoods, go up to each door, and see if the dog alerts to contraband." And they could do the same thing in apartment houses, checking out each apartment door "based on nothing, or on an anonymous tip, or because that's what they want to do that day."

That's just not a realistic scenario, according to the state. "They have far too many things to do than to waste their time with that sort of indiscriminate searching," says Garre.

The dog sniff case leads inevitably back to the question of how much technology the government can use to determine what is going on inside the home. If a dog sniff is permissible, why not develop some new and cheaper technology that does the same thing — a detection device that could easily be used, going home to home or apartment to apartment?

Florida asserts that there is a fundamental difference between a dog and a technological device. "We recognize that there are limits to one's God-given senses," says Garre, "whereas with technology there is always the possibility, as we've seen, of advances that would be tantamount to X-raying houses."

Last year the Supreme Court balked at technology like that, requiring a warrant if police place a GPS tracking device on the car of a criminal suspect.

The question here, at rock bottom, is whether walking a drug-detection dog up to a house is more acceptable, involving, as it does, man's best friend.