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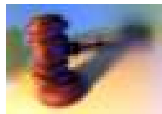
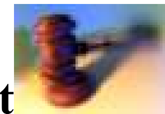


United States Supreme Court



Using a Drug-Sniffing Dog on a Homeowner's Porch to Investigate the Contents of the Home is a "Search" Within the Meaning of the Fourth Amendment

Florida v. Jardines, No. 11-564 (26 March 2013).

In 2006, Detective Pedraja of the Miami-Dade Police Department received an unverified tip that marijuana was being grown in the home of Joelis Jardines. One month later, the Department and the Drug Enforcement Administration sent a joint surveillance team to Jardines' home. Detective Pedraja approached Jardines' home accompanied by Detective Bartelt, a trained canine handler who had arrived at the scene with his drug-sniffing dog. As the dog approached Jardines' front porch, he apparently sensed one of the odors he had been trained to detect, and began energetically exploring the area for the strongest point source of that odor. After sniffing the base of the front door, the dog sat, which is the trained behavior upon discovering the odor's strongest point. Detective Bartelt then pulled the dog away from the door and returned to his vehicle. He left the scene after informing Detective Pedraja that there had been a positive alert for narcotics.

On the basis of what he had learned at the home, Detective Pedraja applied for and received a warrant to search the residence. When the warrant was executed later that day, Jardines attempted to flee and was arrested; the search revealed marijuana plants, and he was charged with trafficking in cannabis.

At trial, Jardines moved to suppress the marijuana plants on the ground that the canine investigation was an unreasonable search. The trial court granted the motion, and the Florida Court of Appeal reversed. The Florida Supreme Court then quashed the decision of the Court of Appeal and approved the trial court's decision to suppress, holding that the use of the trained narcotics dog to investigate Jardines' home was a Fourth Amendment search unsupported by probable cause, rendering invalid the warrant based upon information gathered in that search. The United States Supreme Court granted certiorari, limited to the question of whether the officers' behavior was a search within the meaning of the Fourth Amendment.

When the Government obtains information by physically intruding on persons, houses, papers, or effects, a "search" within the meaning of the Fourth Amendment has "undoubtedly occurred."

When it comes to the Fourth Amendment, the home is first among equals. At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window. We therefore regard the area "immediately surrounding and associated with the home"—what our cases call the curtilage—as "part of the home itself for Fourth Amendment purposes."

Since the officers' investigation took place in a constitutionally protected area, we turn to the question of whether it was accomplished through an impermissible physical intrusion. While law enforcement officers need not "shield their eyes" when passing by a home "on public thoroughfares," an officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas.

The officers could have lawfully approached his home to knock on the front door in hopes of speaking with him. Of course, that is not what they did. It is undisputed that the detectives had all four of their feet and all four of their companion's firmly planted on the constitutionally protected extension of Jardines' home, the only question is whether he had given his permission (even implicitly) for them to do so. He had not.

"A license may be implied from the habits of the country." The Court has accordingly recognized that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do."

But introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence is something else. There is no customary invitation to do *that*. To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police. The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose. Here, the background social norms that invite a visitor to the front door do not invite him there to conduct a search.

The Court, therefore, held that the government's use of trained police dogs to investigate the home and its immediate surroundings is a "search" within the meaning of the Fourth Amendment. The judgment of the Supreme Court of Florida was therefore affirmed.

Dog Sniff Provided Probable Cause to Search Vehicle

***Florida v. Harris*, 568 U.S. __ (Feb. 19, 2013).**

William Wheetley is a K-9 officer with the Liberty County, Florida Sheriff's Office. On June 24, 2006, he was on routine patrol with Aldo, a German shepherd trained to detect certain narcotics. Wheetley pulled over Clayton Harris' truck because it had an expired license plate. On approaching the driver's side door, Wheetley saw that Harris was visibly nervous, unable to sit still, shaking and breathing rapidly. He also noticed an open can of beer in the truck's cup holder. Wheetley asked Harris for consent to search the truck, but Harris refused. At that point, Wheetley retrieved Aldo and walked him around Harris' truck. Aldo alerted at the driver's side door handle.

Wheetley concluded, based principally upon Aldo's alert, that he had probable cause to search the truck. The search revealed 200 loose pseudophedrine pills, 8,000 matches, a bottle of hydrochloric acid, two containers of anti-freeze, and a coffee filter of iodine crystals – all ingredients for making methamphetamine. Wheetley arrested Harris who later admitted that he routinely cooked methamphetamine and could not go more than a few days without using it. He was charged with possessing pseudophedrine for use in manufacturing methamphetamine.

While out on bail, Harris had another run-in with Wheetley and Aldo. Wheetley pulled Harris over for a broken brake light. Aldo again sniffed the truck's exterior and again alerted at the driver's side door handle. Wheetley once more searched the truck but on this occasion discovered nothing.

Harris moved to suppress the evidence found in his truck on the ground that Aldo's alert had not given Wheetley probable cause for the search. At a suppression hearing, Wheetley testified about his and Aldo's extensive training in drug detection. Harris' attorney did not contest the quality of that training, but focused instead on Aldo's certification and performance in the field, particularly in the two stops of Harris' truck. Wheetley conceded that the certification (which he noted Florida law did not require) had expired the year before he pulled Harris over. Wheetley also acknowledged that he did not keep complete records of Aldo's performance in traffic stops or other field work; instead, he maintained records only of alerts resulting in arrests. But Wheetley defended Aldo's two alerts to Harris' seemingly narcotics-free truck: According to Wheetley, Harris probably transferred the odor of methamphetamine to the door handle, and Aldo responded to that residual odor.

The trial court concluded that Wheetley had probable cause to search Harris' truck and so denied the motion to suppress. Harris appealed to the Florida Supreme Court who reversed, holding that Wheetley lacked probable cause to search Harris vehicle. It held that the fact that a dog has been trained and certified is simply not enough to establish probable cause. To demonstrate a dog's reliability, the State needs to produce a wide variety of evidence including: the dog's training and certification records, an explanation of the meaning of the particular training and certification, field performance records showing how many times the dog has falsely alerted, and evidence concerning the experience and training of the officer handling the dog. The State appealed to the United States Supreme Court.

A police officer has probable cause to conduct a search when the facts available to him would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present. The test for probable cause is not reducible to precise definition or quantification. In evaluating whether the State has met this practical and common-sensical standard, the Court has consistently looked to the totality of the circumstances. It has rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more

flexible, all things considered approach. The Florida Supreme Court flouted this established approach to determining probable cause. To assess the reliability of a drug detection dog, the court created a strict evidentiary checklist, whose every item the State must tick off. Most prominently, an alert cannot establish probable cause under the Florida court's decision unless the State introduces comprehensive documentation of the dog's prior "hits" and "misses" in the field. (The Court wondered how one would apply its test to a rookie dog.) This, the Supreme Court found, is the antithesis of a totality of the circumstances test.

The Court found that evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust its alert. If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search. The same is true, even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs. A defendant, however, must have an opportunity to challenge such evidence, whether by cross-examining the testifying officer or by introducing his own fact or expert witness. In short, a probable cause hearing focusing on a dog's alert should proceed much like any other. The court should allow the parties to make their best case, consistent with the usual rules of criminal procedure. And the court should then evaluate the proffered evidence to decide what all the circumstances demonstrate. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause. If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert) then the court should weigh the competing evidence. In all events, the court should not prescribe, as the Florida Supreme Court did, an inflexible set of evidentiary requirements.

In this case, the record amply supported the trial court's determination that Aldo's alert gave Wheetley probable cause to search Harris' truck. This evidence was not rebutted. Thus, the United States Supreme Court reversed the judgment of the Florida Supreme Court.

Officers Executing A Search Warrant May Not Detain Occupants Found Beyond The Immediate Vicinity Of The Premises Covered By The Search Warrant

***Bailey v. United States,* 568 U.S. __ (Feb. 19, 2013).**

At 8:45 pm on July 28, 2005, police obtained a warrant to search 103 Lake Drive for a .380 caliber handgun. The residence was a basement apartment. A confidential informant had told police he observed the gun when he was at the apartment to purchase drugs from a "heavy set black male with short hair" known as 'Polo." As the search unit began preparations for executing the warrant, two officers were conducting surveillance in an unmarked car outside the apartment. They observed two men, later identified as Chunon Bailey and Bryant Middleton, leave the gated area above the apartment and enter a car parked in the driveway. Both matched the general description of "Polo." There was no indication that the men were aware of the officer's presence or had any knowledge of the impending search. The detectives watched the car leave the driveway. They waited for it to go a few hundred yards down the street and followed. Approximately a mile down the road, the detectives stopped the vehicle. They ordered Bailey and Middleton out of the car and frisked both men. The officers found no weapons but discovered a ring of keys in Bailey's pocket. Bailey identified himself and indicated that he lived in the apartment at 103 Lake Drive. His driver's license though, showed his address as Bayshore, New York, the town where the confidential informant told the police the suspect "Polo" used to live. Middleton confirmed that they were coming from the apartment. The

officers put both men in handcuffs. When asked why, one of the detectives said they were being detained incident to the execution of a search warrant at 103 Lake Drive. Bailey then responded, “I don’t live there. Anything you find there ain’t mine, and I’m not cooperating with your investigation.” The detectives then took Bailey and Middleton back to the apartment. By the time they arrived at the apartment, the search team had found a gun and drugs in plain view. Bailey and Middleton were placed under arrest and Bailey’s keys were seized incident to arrest. Police discovered that one of the keys unlocked the apartment’s door.

Bailey was charged with three federal offenses: possession of cocaine with intent to distribute; possession of a firearm by a felon; and possession of a firearm in furtherance of a drug-trafficking offense. At trial, the District Court denied Bailey’s motion to suppress the apartment key and the statements he made to the detectives when stopped, holding that Bailey’s detention was justified under *Michigan v. Summers*, 452 U.S. 692 (the *Summers* rule allows officers executing a search warrant of private premises to detain the occupants of the premises while the search is being conducted, even when there is no particular suspicion that the individual is involved in criminal activity or poses a specific danger to the officers), and, in the alternative, that the detention was supported by reasonable suspicion under *Terry v. Ohio*, 392 U.S. 1. Bailey was convicted. The Second Circuit affirmed denial of the suppression motion. It interpreted *Summers* to “authorize law enforcement to detain the occupant of premises subject to a valid search warrant when the person is seen leaving those premises and the detention is effected as soon as reasonably possible.” Finding that *Summers* authorized Bailey’s detention, the court did not address the alternative holding that the stop was permitted under *Terry*. Bailey appealed to the United States Supreme Court.

Previously, in *Summers*, the United States Supreme Court defined an important category of cases in which detention is allowed without probable cause to arrest for a crime. It permitted officers executing a search warrant to detain the occupants of the premises while a proper search was being conducted. It does not require law enforcement to have particular suspicion that an individual is involved in criminal activity or poses a specific danger to the officers. In *Summers* though and later cases, the occupants detained were found within or immediately outside a residence at the moment the police officers executed the search warrant. Here, however, Bailey left the apartment before the search began; and the police officers waited to detain him until he was almost a mile away. Thus, the Court found that the issue to be decided was whether the reasoning in *Summers* can justify a detention beyond the immediate vicinity of the premises being searched.

In *Summers*, the Court recognized three important law enforcement interests that, taken together, justify detaining an occupant who is on private premises during the execution of a search warrant: officer safety; facilitating the completion of the search; and preventing flight.

The first, officer safety, requires officers to secure the premises, which may include detaining current occupants. By taking unquestioned command of the situation, the officers can search without fear that occupants who are on the premises and able to observe the course of the search will become disruptive, dangerous or otherwise frustrate the search. In the instant case though, Bailey had left the premises, apparently without knowledge of the search. He posed little risk to the officers at the scene. If Bailey had rushed back to the apartment, he could have been detained under *Summers*. In addition, the Court found the risk that a departing occupant might notice the police surveillance and alert others still inside the residence to be an insufficient safety rational to justify expanding the existing authority to detain beyond the immediate vicinity of the premises to be searched. If extended in this way the rationale would justify detaining anyone in the neighborhood who could alert occupants that the police are outside.

The second law enforcement interest relied on in *Summers* was that the orderly completion of the search may be facilitated if the occupants of the premises are present. If occupants are permitted to wander around the premises, there is the potential for interference with the execution of the search warrant. They can hide or destroy evidence, seek to distract the officers, or simply get in the way. Those risks are not present though by an occupant who departs beforehand. So, in this case, Bailey drove away from the apartment and thus, was not a threat to the proper execution of the search.

The third law enforcement interest addressed in *Summers* was the interest in preventing flight in the event that incriminating evidence was found. The need to prevent flight, however, if unbounded, might be used to argue for detention of any regular occupant regardless of his or her location at the time of the search, for example, detaining a suspect 10 miles away who is ready to board a plane. Even if the detention of a former occupant away from the premises could facilitate a later arrest if incriminating evidence is discovered, the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.

In sum, the Court found that none of the three law enforcement interest identified in *Summers* applies with the same or similar fore to the detention of recent occupants beyond the immediate vicinity of the premises to be searched. And each is also insufficient, on its own, to justify an expansion of the rule in *Summers* to permit the detention of a former occupant, wherever he may be found away from the scene of the search.

Therefore, the United States Supreme Court held that the rule in *Summers* is limited to the immediate vicinity of the premises to be searched and does not apply here, where Bailey was detained clearly beyond that point. Whether Bailey was properly stopped under *Terry* was an issue that the Supreme Court did not address, but sent back to the lower court for further proceedings consistent with its opinion.