

Supreme Court to hear 2 cases involving K9s and drug arrests

By Jonathan Stempel, Reuters

Two dogs, a chocolate Labrador retriever named Franky and a German shepherd named Aldo, should have their day at the U.S. Supreme Court.

The court is scheduled on Wednesday to hear Florida's appeal of two decisions by that state's highest court that found the detection of drugs by trained police dogs had violated the constitutional ban on unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution.

These arguments involve distinctly different issues: whether a dog can sniff outside a home without a warrant, and how qualified a dog must be to do a legitimate sniff.

They give the Supreme Court a chance to extend, or limit, prior decisions giving police a long leash to use dogs, including for suitcases at airports and cars stopped at checkpoints.

"If the court vindicates the ability of police to use dogs without probable cause, and that a sniff outside a car justifies searching that car, it could enhance their ability to use dogs for law enforcement," said Richard Garnett, a University of Notre Dame law professor and clerk for former Chief Justice William Rehnquist.

Like others in law enforcement, Florida maintains that dog "alerts" are not searches because they uncover illegal activities that deserve no privacy protection.

The retired Justice David Souter mocked that idea in a dissent

from a 2005 pro-sniff decision, saying it supposes that a trained canine becomes an “infallible dog” that never errs.

At least 23 U.S. states joined each of Florida’s appeals, calling drug-detecting dogs “essential weapons” at the forefront of efforts to stop illegal drug production and sales.

The Supreme Court is often their ally in search cases, typically siding with the police.

Sanctity of the home

One of Wednesday’s cases, Florida v. Jardines, concerns a December 5, 2006, search outside Joelis Jardines’ home near Miami.

A “crime stopper” had tipped police that marijuana was growing inside. Relying on that tip, a detective, joined by Franky, approached. Trained to find the strongest odor, Franky went to the front door, sniffed the base, and sat down.

That was the alert his handlers were looking for. After obtaining a search warrant, police found marijuana plants inside the home. Jardines was arrested for possessing more than 25 pounds of marijuana, and stealing the electricity to grow it.

In voiding the search, Florida’s highest court called Franky’s sniff an “unreasonable government intrusion into the sanctity of the home.” There, it said, the expectation of privacy was much greater than in a car or an airport.

The court also likened Franky to the heat-sensing thermal imagers that the U.S. Supreme Court, in a 2001 decision that cut across ideological lines, said could not without a warrant be used outside a home to detect marijuana growing inside.

Where the government uses a device “not in general public use” to uncover details about a home, “the surveillance is a

'search' and is presumptively unreasonable without a warrant," Justice Antonin Scalia then wrote for a 5-4 majority.

"Jardines is a line-drawing case: the question is can police use the dog at the front door," said Orin Kerr, a law professor at George Washington University and former clerk to Justice Anthony Kennedy. "If a warrant were needed, police would never use the dog at a house, because then they could just go inside."

Telltale nerves

Wednesday's other case, Florida v. Harris, involves a search not of a house, but of Clayton Harris' pickup.

An officer pulled over Harris near Bristol, Florida, in the state's panhandle, on June 24, 2006, after seeing that the truck had an expired tag. An open beer can lay in the cup holder.

Nervous, shaking and breathing rapidly, Harris would not let the officer search his truck. Out came Aldo, who was led around the truck for a "free air sniff."

Near the driver's door handle, Aldo gave his alert, becoming excited and then sitting down. The officer then searched the truck's interior, and found 200 pseudoephedrine pills and 8,000 matches, which are ingredients for methamphetamine.

Harris pleaded no contest, but he got a reprieve. The Florida Supreme Court said the state did not show Aldo's reliability as a drug detector with evidence of his training, certification and performance, and his handler's experience.

By comparison, Franky had no such problems, according to court papers. At the time of Jardines' search, he had made 399 positive alerts. The result: seizures of roughly one ton of marijuana and 34 pounds of cocaine and heroin.

"The state's 'credentials alone' canine-reliability test is

based on an over generalized assertion – that all trained or certified drug-detection dogs are reliable in the field,” a group of 34 law professors said in a brief supporting Harris.

Regardless of how the court rules in both cases, police will go on using dogs for drug detection. The questions are when, and how.

Decisions in both cases are expected by the end of June.

The cases are Florida v. Jardines, U.S. Supreme Court, No. 11-564; and Florida v. Harris, U.S. Supreme Court, No. 11-817.