SEARCH & SEIZURE – DOG SNIFF

Florida v. Harris, --- U.S. --- (2013)
Decided February 19, 2013

FACTS: On June 24, 2006, Deputy Wheetley (Liberty County, FL, SO) was on patrol with his drug dog, Aldo. Deputy Wheetley made a traffic stop of Harris, as his truck bore an expired license plate. As the deputy approached, he saw that Harris was "visibly nervous:" he was "unable to sit still, shaking and [was] breathing rapidly." There was an open can of beer in the cup holder. Deputy Wheetley asked for consent to search, which was refused. He retrieved Aldo, who did a "free air sniff" around the vehicle. He alerted on the driver's side door handle.

Based on that alert, Deputy Wheetley concluded that he had probable cause to search the vehicle. He did not find, however, any of the drugs Aldo was trained to locate (methamphetamine, marijuana, cocaine, heroin and ecstasy), but did locate 200 pseudoephedrine pills, 8,000 matches, hydrochloric acid, antifreeze, and a coffee filter full of iodine crystals – all ingredients for making methamphetamine. He arrested Harris and gave him Miranda warnings, and Harris admitted he cooked methamphetamine at his home. He was charged with possessing pseudoephedrine for the purpose of manufacturing methamphetamine.

Pending trial, Harris "had another run-in with Wheetley and Aldo." He was stopped for a broken brake light. Aldo again alerted on the car but this time, nothing was located.

Harris moved for suppression, arguing that the alert was not enough for probable cause. At the suppression hearing, Deputy Wheetley testified both about his own training and that of Aldo.[1] Logs were introduced in evidence showing Aldo's ability to locate hidden drugs, and he performed "satisfactorily." However, his actual certification had expired the year before. Upon being questioned, Wheetley agreed 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." He argued that Aldo's two alerts on a vehicle that did not contain the actual substances he was trained to locate was likely as a result of Harris transferring methamphetamine odor from his hands to the door handle.

[1] Both had trained extensively, separately and Aldo had been certified by a private company that specialized in training law enforcement dogs. They were partnered in 2005 and received refresher training. They did four hours of training a week to maintain skills, as well.

The trial court denied the motion to suppress Harris took a conditional plea and appealed. Ultimately, the Florida Supreme Court reversed his plea, ruling that the deputy lacked probable cause to search the vehicle. In fact the Florida Supreme Court created "a strict evidentiary checklist to assess a drug-detection dog's reliability. Requiring the State to introduce comprehensive documentation of the dog's prior hits and misses in the field, and holding that absent field records will preclude a finding of probable cause no matter how much other proof the State offers." The State requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Must a drug dog's "field performance records" be used to prove a dog's reliability?

HOLDING: No

DISCUSSION: The Court noted, that 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 was present.[2] In evaluating whether that standard is met, the Court noted it had "consistently looked to the totality of the circumstances," rejecting "rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach." The court looked back to Illinois v. Gates, emphasizing that probable cause is "a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules."[3]

Looking to the decision of the Florida Supreme Court, it questioned how, for example, a "rookie dog" could ever be successful, as the prosecution would not be able to introduce "extensive documentation of the dog's prior 'hits' and 'misses' in the field." Absent "field performance records," they would never be able to use the dog, no matter how reliable. The court concluded that the "finding of a drug-detection dog's reliability cannot depend on the State's satisfaction of multiple, independent evidentiary requirements."

The Court also noted that "field data … may not capture a dog's false negatives," and in addition, "if the dog alerts to a car in which the officer finds no narcotics, the dog may not have made a mistake at all." Instead, the officer may have simply been unable to find the drugs, or the drugs may have been present in such small quantities that the officer missed them. In addition, the "dog may have smelled the residual odor of drugs previously in the vehicle or on the driver's person." Field records are not as reliable as

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[2] Texas v. Brown, 460 U.S. 730 (1983); Carroll v. U.S., 267 U.S. 132 (1925).
[3] 462 U.S. 213 (1983).

the “dog’s performance in standard training and certification settings,” in fact, as they are done in controlled testing environments. Even in the absence of a formal certification, a dog that has “recently and successfully completed a training program that evaluated … proficiency in locating drugs,” can be considered reliable.

Of course, the Court continued, the defendant has a right to challenge the dog’s reliability, but in such cases, a “probable-cause hearing focusing on a dog’s alert should proceed much like any other,” allowing each side to “make their best case.”

The Court agreed that a “sniff is up to snuff when it meets [the] test” as to “whether all the facts surrounding a dog’s alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime.” In this case, “Aldo’s did.”

The U.S. Supreme Court reversed the decision of the Florida Supreme Court and remanded the case.

Full Text of Opinion: **http://www.supremecourt.gov/opinions/12pdf/11-817_5if6.pdf.**