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Sniffer-dog Searches in the United States

Eve M. Brank
University of Nebraska - Lincoln, ebrank2@unl.edu

Jennifer L. Groscup
Scripps College

Emma Marshall
University of Nebraska-Lincoln

Lori Hoetger
University of Nebraska-Lincoln, lhoetger@gmail.com

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We present here a complement to Judge Wayne Gorman's article on the law of sniffer-dog searches in Canada found on page 52. Similar to Judge Gorman's article, we examine U.S. Supreme Court cases about the use of police dogs in searches.

The U.S. Supreme Court first addressed the issue of dog sniffs in *U.S. v. Place*[1] pursuant to the Fourth Amendment protection from unreasonable government searches and seizures and requirements for obtaining a search warrant.[2] We start with a brief historical[3] reminder of Fourth Amendment case law to provide context for current sniffer-dog questions. Next, we provide an overview of U.S. Supreme Court cases that have addressed what role sniffer dogs should have in Fourth Amendment jurisprudence.

A BRIEF FOURTH AMENDMENT HISTORY

The Fourth Amendment was born out of the American Revolution with historians pointing to the colonists' protests against English writs of assistance as the spark that fired the revolution.[4] The writs of assistance allowed no specific suspicion or pointed location for a search. Rather, the British officials could search businesses and homes with very little delay.[5] Desiring not to return to life like they experienced under British rule, the framers of the Bill of Rights included the Fourth Amendment's protection against unreasonable searches and seizures. For more than a century, no caselaw directly focused on the Fourth Amendment.[6] Near the turn of the twentieth century, the Supreme Court in *Weeks v. United States*[7] excluded evidence obtained by law enforcement who did not have a warrant but still went into a home and seized papers that implicated the defendant in a federal crime. In a unanimous decision, the Court developed what is known as the Exclusionary Rule and excluded the evidence because the papers were illegally obtained. In *Silverthorne Lumber Co. v. United States*[8] the Exclusionary Rule was extended to evidence that was obtained because of illegally acquired information.[9] The primary goal of the Exclusionary Rule is to disincentivize government officials from ignoring the law to search and seize evidence that they could not lawfully obtain. In other words, the rule is meant to "prevent, not to repair."[10]

How are law enforcement agents to behave so they do not have their evidence excluded? For almost 200 years, defining a search or seizure rested on the common understanding of physical intrusions.[11] But, in 1967, the Court rejected the physical trespass requirement detailed in earlier cases and instead focused on a new understanding of Fourth Amendment rights in *Katz v. United States*.[12] Justice Harlan's widely relied upon concurring opinion outlined a two-prong test for determining when the Fourth Amendment protections are triggered. In the first prong, the question is whether the individual claiming an expectation of privacy had an actual, subjective expectation that the searched area or item was private. In the second prong, the question is whether that subjective expectation is one that society is willing to recognize as reasonable. The Supreme Court has applied the *Katz* logic in a variety of places finding that the Fourth Amendment does not apply to searches involving the police digging through garbage at the curb,[13] wired police informants,[14] bank-maintained account records,[15] a pen register on a telephone that records the phone numbers called,[16] or the area beyond the curtilage of a home.[17]

In addition to the reasonableness clause, the Fourth Amendment also includes the Warrant Clause. The plain language of the Warrant Clause provides that a search should not occur without a warrant. Nonetheless, the Court in *United States v. Rabinowitz*[18] held that warrants are unnecessary if a

Footnotes

1. 462 U.S. 696, 707 (1983).
2. U.S. CONST. amend. IV
3. *See generally* Eve M. Brank & Jennifer L. Groscup, *Psychology and the Fourth Amendment*, *in* 3 ADVANCES IN PSYCHOLOGY AND LAW 119 (Monica M. Miller & Brian Bornstein eds., 2018).
4. David A. Sklansky, 100 COLUM. L. REV. 1739 (2000).
5. Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547 (1999).
6. Edward L. Barrett, Jr., *Personal Rights, Property Rights, and the Fourth Amendment*, 1960 SUP. CT. REV. 46 (1960).
7. 232 U.S. 383 (1914).
8. 251 U.S. 385 (1920).
9. The Supreme Court later referred to this category of excludable evidence as "fruit of the poisonous tree" in Nardone v. United States, 308 U.S. 338, 341 (1939). The application of the exclusionary rule was further extended in Mapp v. Ohio, 367 U.S. 643 (1961) to apply in cases where violations where committed by state officials and to preclude illegally obtained evidence from being admitted in state court proceedings.
10. Elkins v. United States, 364 U.S. 206, 217 (1960).
11. *See e.g.*, Olmstead v. United States, 277 U.S. 438 (1928) (where defendant argued unsuccessfully that a wiretap constituted a search and seizure under the Fourth Amendment). In holding that the intrusion was insufficient to trigger the protection of the Fourth Amendment the Court focused on the lack of a physical trespass.
12. Katz v. United States, 389 U.S. 347, 361 (1967).
13. California v. Greenwood, 486 U.S. 35 (1988).
14. U.S. v. White, 91 S.Ct. 1122 (1971).
15. U.S. v. Miller, 96 S.Ct. 1619 (1976).
16. Smith v. Maryland, 442 U.S. 735 (1979)
17. Oliver v. U.S., 466 U.S. 170 (1984).
18. 339 U.S. 56 (1950).

search is reasonable and conducted during a lawful arrest. Importantly, the Court in *Rabinowitz* said there was no "fixed formula"[19] for determining reasonableness and defaulting to always requiring a warrant is not appropriate. Instead, the Court held that reasonableness would be determined in light of the case facts and circumstances. Accordingly, the Court later found that a search incident to an arrest is reasonable within the "grabbable area."[20] More importantly, *Terry v. Ohio*[21] held that a police officer could stop and frisk a suspect looking for weapons when the officer had a "reasonable suspicion" that the person is engaged in criminal activity. The police do not need a warrant and they do not need to have probable cause to arrest the suspect, but their intrusions on individuals should still be limited.

When police engage in technology-aided investigations it provides the Court with new case facts and circumstances to consider. For example, in 2001, the Court in *Kyllo v. United States*[22] held that obtaining illegal drug-growing data from thermal imaging was a Fourth Amendment search and the officers should have had a search warrant. The Court in *Kyllo* seemed concerned with the efficiency of data collection from the thermal imaging device and the fact that such a device would not be commonly available to those not in law enforcement. In a similar vein, law enforcement sniffer dogs are a special type of searching technology. A frequently used means of obtaining probable cause to search is a "sniff" for the presence of illegal items such as explosives, cadavers, and drugs.[23] In these instances, the trained dog's "alert" to the presence of drugs frequently becomes the "probable cause" that serves as the justification to conduct a warrantless search lawfully.[24] In fact, this practice is so widespread and common in American policing that officers have been known to refer to dog-sniff tests as "walking probable cause" or "probable cause on a leash."[25] The following sections will detail the U.S. Supreme Court caselaw in chronological order that has addressed such sniffer dogs.

THE FOURTH AMENDMENT AND SNIFFER DOGS

U.S. V. PLACE[26]

Dog Sniff of Luggage Is Not a "Search"

When preparing to board his plane in Miami for New York City, Raymond Place's behavior attracted the attention of law enforcement agents. Because he was preparing to board his flight, the Miami agents alerted drug enforcement agents in New York where Place was detained upon arrival. After Place did not consent to a search of his luggage, the agents told him they were going to take the luggage to a federal judge to obtain a search warrant. The officers then took the luggage to a different New York airport where they subjected the luggage to a sniff test by a trained narcotics detection dog. The dog positively alerted to the presence of narcotics in one of the bags. Approximately 90 minutes had elapsed from taking the bags from Place to the dog at the other airport. Because it was late on a Friday afternoon, the officers kept the luggage and secured a search warrant on Monday morning at which point they found cocaine in one of the bags. Place argued that the warrantless seizure of his bag was in violation of the Fourth Amendment. At issue was whether based on reasonable suspicion law enforcement could temporarily detain Place's luggage and subject it to a trained narcotics detection dog.

A frequently used means of obtaining probable cause to search is a "sniff". . . .

The Supreme Court held that the officers' lengthy seizure and detention of the luggage exceeded the permissible bounds set forth in *Terry*[27] In dicta, the Court noted that the dog's sniff did not constitute a search within the meaning of the Fourth Amendment. The Court stated that there must always be a balance between "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests."[28] Despite the substantial government interest in detecting narcotics, the Court held that the police violated Place's Fourth Amendment rights when they seized his luggage for 90 minutes and because of such a lengthy seizure, the evidence obtained from the subsequent search was inadmissible. Although arguably not a question before them,[29] the Court noted that the dog sniff was not a search. They described the dog sniff of that luggage as unique given that the dog was only trained to detect narcotics and was able to sniff the bag while it was closed and all its contents could remain private. The Court heralded the dog-sniff procedure as limited in both manner and the information obtained and not a search for the purposes of the Fourth Amendment.

CITY OF INDIANAPOLIS V. EDMOND[30]

Dog Sniff Is Less Intrusive Than a Search

Almost two decades after *Place*, the Supreme Court again had a case before them that involved narcotic-sniffing canines when a city's roadblock checkpoints were in question. The city of Indianapolis was operating vehicle checkpoints to find illegal drugs in passing cars. Cars were stopped without any reasonable suspicion or probable cause, but simply because they were at the checkpoint. Once a car was stopped, one officer would walk a narcotics-sniffing dog around the car to determine if the dog would alert to the scent of drugs. Two stopped motorists brought a lawsuit on behalf of the class of stopped motorists because they felt their Fourth Amendment Rights

19. *Id.* at 63.
20. Chimel v. California, 395 U.S. 752 (1969).
21. 392 U.S. 1 (1968).
22. 533 U.S. 27 (2001).
23. John J. Ensminger & L. Papet, *Walking Search Warrants: Canine Forensics and Police Culture after Florida v. Harris*, 10 J. ANIMAL & NAT. RESOURCE L. 1 (2014).
24. Jane Y. Bambauer, *How the War on Drugs Distorts Privacy Law*, 64 STAN. L. REV. 131 (2012).
25. Ensminger & Papet, *supra* note 23.
26. 462 U.S. 696 (1983).
27. *Terry, supra* note 21.
28. *Id.* at 703.
29. *See id.* at 710 (Brennan J., concurring); *see also id.* at 720 (Blackmun, J., concurring)
30. 531 U.S. 32 (2000).

[T]he Court did not believe the dog sniff changed the lawful character of a traffic stop.

were violated. Although the Supreme Court noted that similar checkpoints are permissible when they are set up to increase highway safety (e.g., verifying drivers' licenses, drunk driving tests) or are related to specific border security issues, the Supreme Court held in *Edmond* that checkpoints to simply detect general illegal activity are not. However, the Court again endorsed the dicta in *Place* that a canine sniff was not a Fourth Amendment search saying, "Just as in *Place*, an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics. Like the dog sniff in *Place*, a sniff by a dog that simply walks around a car is much less intrusive than a typical search."[31] However, the question remained: "What privacy interests are implicated by a drug-sniffing dog?"

ILLINOIS V. CABALLES[32]
Random Dog Sniffing OK for Traffic Stop Citation

Roy Caballes was speeding down an Illinois interstate when a state trooper pulled him over. A second trooper who was part of the Police Drug Interdiction Team overheard the stop information on the police dispatch and immediately proceeded to the stop location with his narcotics-sniffing dog. While the first trooper was in his squad car to finish issuing a warning ticket for Caballes, the second trooper walked the dog around the exterior of Caballes' car. The dog alerted to the trunk of the car, which led to a search of the trunk where the officers found marijuana that led to a narcotics conviction for Caballes.

Caballes argued the drug evidence should be excluded because even though the whole incident only took 10 minutes, the officers did not have specific and articulable facts related to drugs that would have justified a drug-sniffing dog. Relying on the uniqueness of dog sniffs as detailed by *Place*, the Supreme Court held that the dog sniff in this instance did not violate Caballes' Fourth Amendment rights. They noted that using a well-trained narcotics-detection dog does not infringe upon legitimate privacy rights because the Court did not believe the dog sniff changed the lawful character of a traffic stop.

Both Justices Souter and Ginsberg wrote separate dissenting opinions. Justice Souter's dissent rested on the idea that because research had demonstrated that even well-trained narcotics-sniffing dogs have between a 12.5% to 60% false positive rate, they are clearly not infallible. If the dogs are not infallible, then Justice Souter reasoned, the sniff cannot be used without probable cause since the officers did not have reasonable suspicion to conduct the additional search in the first place. Justice Ginsberg's dissent focused on the need for reasonable suspicion to conduct this secondary search. She was less concerned with the length of the search rather the lack of reasonable suspicion before bringing in the drug-sniffing dog.

FLORIDA V. HARRIS[33]
A Certified Dog Is Reliable Enough

Florida police officer William Wheetley was on a routine patrol with his narcotics-sniffing dog, Aldo, when he pulled over Clayton Harris for an expired license plate. Harris appeared nervous to Officer Wheetley and had an open beer can inside his truck. Officer Wheetley asked if he could search Harris's truck, but Harris refused. At this point, Officer Wheetley brought Aldo out of the patrol car and walked him around Harris's truck. Aldo alerted to Harris's driver's-side door handle. Using the alert as probable case, Officer Wheetley searched Harris's truck, and although he did not find any narcotics (i.e., drugs that Aldo was trained to detect), he did find a variety of items that were indicative of manufacturing methamphetamine (i.e., meth). Officer Wheetley arrested him and Harris confessed to making and using meth. Out on bail from this first offense, Harris was again pulled over by the same Officer Wheetley and Aldo—this time for a broken brake light. Aldo again alerted to the same door handle, but this time Officer Wheetley did not find anything during his search of Harris's truck.

The Supreme Court in reviewing the *Harris* case examined the question of what factors should be considered in determining a narcotics-sniffing dog's reliability. The Court noted that the reliability of the dog can be demonstrated by factors such as the training and certification the dog has received while minimizing the importance of field performance in reliability analysis. Justice Kagan delivering the unanimous decision stated that "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his 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."[34] The Court did note that even if a dog was generally reliable, there could be surrounding circumstances that could undermine probable cause from a particular alert. Some examples the Court provided were the officer cuing the dog (consciously or unconsciously) or if the dog was working in unfamiliar conditions. The Court reasoned that none of those exceptions applied for Aldo and there was no reason to believe that Aldo was not reliable. As the court stated, Aldo's "sniff is up to snuff."[35]

FLORIDA V. JARDINES[36]
The Court Shortens the Leash at Homes

The Supreme Court heard *Florida v. Jardines* with the *Harris* case on October 31, 2012. The decisions for both cases came down about five weeks apart in February and March of 2013. Where *Harris* is about a dog sniffing a vehicle, *Jardines* is about a dog sniffing the porch of a home. Based on a tip that mari-

31. *Id.* at 42.
32. 543 U.S. 405 (2005).
33. 568 U.S. 237 (2013).
34. *Id.* at 247.
35. *Id.* at 248.
36. 569 U.S. 1 (2013).

juana was being grown in the home of Joelis Jardines, two detectives and a trained narcotic-sniffing dog approached Jardines's home. The dog alerted at the base of the front door, which prompted the detective to obtain a search warrant. The ensuing search of Jardines's home revealed marijuana plants. At issue for the Supreme Court was whether the dog sniffing the front porch was a search under the Fourth Amendment. Although the previous outlined cases seem to suggest that the Supreme Court is giving a long leash to narcotic-sniffing dogs, the Court in *Jardines* shortens the leash. That line is the private home. In their holding that the dog sniff on Jardine's front porch was an unlawful warrantless search, the majority rely on the fact that the officers were within the curtilage of the home and the property rights inherent in one's home. Justice Kagan in her concurring opinion went a step further and analogized the police dog to high-powered binoculars being used to look inside a home through its windows. She concluded such would not only be a trespass on a person's property, but also an invasion of person's privacy. With this, Justice Kagan reinforced the idea that trained sniffer dogs are powerful instruments not available for general public use.[37]

RODRIGUEZ V. U.S.[38]

Dogs Can't Sniff on Routine Traffic Safety Stops

Switching back to dogs sniffing cars, Justice Ginsburg delivered the majority opinion for *Rodriguez*. A Nebraska police officer, Morgan Struble, pulled Dennys Rodriguez over after witnessing Rodriguez swerve onto the shoulder of the highway. Struble is a K-9 officer and had his narcotics-sniffing dog with him in his car. Rodriguez explained that he swerved to miss a pothole. After issuing a formal warning to Rodriguez, Officer Struble then asked if he could walk his dog around the vehicle. Rodriguez refused consent, so Officer Struble instructed Rodriguez to get out of his vehicle while they waited for a second officer. After the second officer arrived, Officer Struble took the dog around Rodriguez's vehicle twice with the dog alerting halfway through the second trip. Approximately eight minutes had passed since the issuing of the warning and the dog alerting. The majority focused on the fact that the extension of the traffic stop for the dog sniff occurred after the conclusion of the traffic stop, or in other words after the warning was issued, rather than the length of the extension. In relaying the majority opinion, Justice Ginsburg noted that the police are not permitted to extend the duration of a traffic stop without reasonable suspicion, even if it is only a minimum amount of time. The use of a drug-sniffing dog, the Court reasoned, is for detecting criminal activity and is not part of a routine traffic stop meant to ensure vehicle safety on the roads.

SUBSEQUENT LOWER-COURT DECISIONS

In the years since *Jardines* and *Rodriguez,* lower courts have been confronted with a crop of new issues in analyzing sniffer-dog searches. The Minnesota Supreme Court recently determined that, unlike a sniff of a home's front porch in *Jardines,* use of a drug-sniffing dog in a hallway immediately adjacent to an apartment was not an unconstitutional search.[39] The Minnesota Supreme Court distinguished the apartment complex from the situation in *Jardines,* clarifying that, "The area immediately adjacent to [the defendant's] apartment door is not analogous to the front porch in *Jardines* because it is located in an internal, common hallway that other tenants and the police jointly use and access."[40]

[T]he Court in *Jardines* shortens the leash. That line is the private home.

The Colorado Supreme Court also departed from U.S. Supreme Court reasoning when evaluating a drug-sniffing dog search of a vehicle in *People v. McKnight*.[41] Previous drug-sniffing-dog-search opinions had relied on the reasoning in *Place* that the use of a drug-sniffing dog does not implicate a reasonable expectation of privacy because these dogs only sniff out illegal activity, but Colorado legalized marijuana under their state constitution in January 2014. The Colorado Supreme Court had previously held a positive alert of a drug-sniffing dog could be used to support a finding of probable cause to search a vehicle.[42] But, according to the Colorado Supreme Court most recently, because individuals can lawfully possess marijuana in the state of Colorado, drug-sniffing dogs are similar technology to the use of a thermal-imaging device the U.S. Supreme Court analyzed in *Kyllo*.[43] The Colorado Supreme Court went on to hold that, because a sniff from a dog trained to detect marijuana can reveal lawful activity, that sniff is a search under the state constitution and must be justified by probable cause.[44]

Sniffer dogs can detect contraband other than drugs, and an appellate court in Massachusetts was confronted with one such type of search in *Commonwealth of Massachusetts v. Devoe*.[45] In that case, police officers were investigating a report of a female suspect with a firearm at a local park. The officers responded with their sniffer dog who had been trained to detect firearms. The dog positively alerted to the presence of a firearm in a bag and the defendant was charged with unlawful possession of a firearm for not having a permit. The defendant argued the dog sniff of her bag was unconstitutional. Similar to the Colorado Supreme Court's reasoning in *McKnight,* the Massachusetts appellate court distinguished the firearm sniff because such a sniff reveals potentially noncriminal activity (e.g., carrying a concealed weapon with a valid permit). But the appellate court did not reach the question of whether the sniff was an unreasonable search under the Fourth Amendment and instead deemed the search unconstitutional on other grounds.

37. *See* case cited *supra* note 22 and accompanying text.
38. 135 S. Ct. 1609 (2015).
39. Minnesota v. Edstrom, 916 N.W.2d 512 (Minn 2018), *cert. denied*, 139 S.Ct. 1262 (2019).
40. *Id.* at 520.
41. 2019 WL 2167746 (May 20, 2019).
42. People v. Zuniga, 372 P.3d 1052 (2016); People v. Cox, 401 P.3d 509 (2017).
43. *See* case cited *supra* note 40 and accompanying text.
44. *See* case cited *supra note* 40, 42 at 55.
45. 95 Mass.App.Ct. 1107 (April 12, 2019) (slip op., unpublished disposition).

QUICK LIST OF 10 IMPORTANT 4TH AMENDMENT CASES

Weeks v. United States, 232 U.S. 383 (1914) – created exclusionary rule in federal cases

Mapp v. Ohio, U.S. 643,(1961) – created exclusionary rule in state cases

Katz v United States, (1967) – 4th Amendment applies whenever and wherever there is a reasonable expectation of privacy

Terry v. Ohio, 392 U.S. 1 (1968) – created "stop and frisk" for reasonable suspicion

Chimel v. California, 395 U.S. 752 (1969) – allows searches incident to an arrest

Pennsylvania v. Mimms, 434 U.S. 106 (1977) – 4th Amendment allows person be ordered out of car

New Jersey v. T.L.O., 469 U.S. 325 (1985) – allows student searches in public schools

Illinois v. Wardlow, 528 U.S. 119 (2000) – running from police provides basis for stop

Kyllo v. United States, 533 U.S. 27 (2001) – thermal imaging evidence not sufficient for probable cause warrant

Arizona v. Gant, 556 U.S. 332 (2009) – police can search vehicle after arrest only if have reasonable belief to find evidence or other probable cause

RESEARCH CONTINUES

Although the Court has held that dog sniffs are not searches requiring probable cause, empirical research on the issue has found that participants rated the intrusiveness of a dog sniff similarly to a frisk, which the Court has held to be a search.[46] Additionally, *Chicago Tribune* reporters Dan Hinkel and Joe Mahr found that law enforcement dogs across a three-year period were less than 50% accurate in accurately detecting drugs or drug paraphernalia.[47] The accuracy of the dog sniff seems to impact how invasive their sniff is perceived. In two separate studies, Professor Jane Bambauer told law students or lay people the accuracy of the dog was either 100%, 99%, or 90%.[48] The participants' perception of the dog's invasiveness increased as the accuracy decreased. In other words, the less accurate the dog was, the more invasive the sniff was perceived to be. Professor Bambauer also found that participants were more likely to think a dog sniff was a search when the sniff target was a house compared to a car.[49]

Despite these findings, empirical questions remain about public perceptions of police dogs and their sniffs. For example, based on the Supreme Court attention to the issue, we have examined a variety of locations beyond the simple car versus home comparison. Our research indicates that more privacy is expected for a home than for other types of living situations, such as an apartment or hotel room, and that, contrary to Bambauer's findings and court assumptions, people might expect an equivalent, high amount of privacy in their cars and their homes.[50] Similar to Bambauer, we found that a dog's accuracy can affect perceptions of the dog's reliability.[51] We also investigated how quality of training and certification can impact perceptions of the dog's reliability (two of the issues raised in *Harris*). We found that reliability perceptions were not influenced by the quality of ongoing training the dog receives, despite the fact that training was emphasized by the Court and that higher-quality, continued training might actually improve a dog's reliability. However, current certification did increase perceptions of the dog's reliability.

Additionally, we investigated the issues raised in *Rodriguez* by varying whether a traffic stop was extended to conduct a dog sniff or question the driver about drugs, whether the extension to the traffic stop occurred before or after the ticket was issued, and the length of time the traffic stop was extended (2, 7, or 17 minutes). Consistent with the Court's reasoning that a dog sniff exceeds the ordinary type of investigation necessary for a traffic stop, participants perceived dog sniffs as more invasive than asking drug-related questions. Also consistent with the Court's reasoning that the timing of the extended investigation relative to issuing a ticket is the most important factor, participants perceived the extension of the stop as more problematic when it was conducted after the ticket was issued as opposed to before. Contrary to the Court's argument that the length of the extension of the stop is not important, participants thought that the stop was more problematic when the delay was long (17 minutes) or moderate (7 minutes) rather than minimal (2 minutes).

CONCLUSION

Generally, law-enforcement-trained-dog sniffs are not searches requiring probable cause to conduct, unless conducted within the curtilage of a home or someplace where the dog and its handler are not entitled to be. As such, the police

46. Christopher Slobogin & Joseph E. Schumacher, *Reasonable Expectations of Privacy and Autonomy in Fourth Amendment Cases: An Empirical Look at "Understandings Recognized and Permitted by Society,"* 42 DUKE L.J. 727 (1993).
47. Dan Hinkel & Joe Mahr, *Tribune Analysis: Drug-Sniffing Dogs in Traffic Stops Often Wrong,* CHI. TRIB. (Jan. 6, 2011), http://articles.chicagotribune.come/2011-01-06/news/ct-met-canine-officers-20110105_1_drug-sniffing-dogs-alex-rothacker-drug-dog).
48. Bambauer, *supra* note 24 (law students); Jane Y. Bambauer, *Defending the Dog*, 91 OR. L. R. 1203 (2013) (laypeople).
49. *Bambauer, supra* note 24, at 47.
50. Jennifer Groscup, Eve Brank, Emma Marshall & Lori Hoetger, Give Me a Home Where the Drug Sniffing Dog Doesn't Roam: Privacy Expectations for Canine Searches (manuscript in progress).
51. Emma Marshall, Jennifer Groscup, Alex Rivera & Eve Brank, Good Dog! How the Background of Law Enforcement Dogs Affects Perceptions of Canine Searches (manuscript in progress).

are usually not required to obtain a warrant or establish probable cause before the dog sniff. But as the legal landscape evolves, and new technology and privacy implications arise, courts will continue to face novel fact patterns regarding dog sniffs. Courts will have to address the issue of at what point a sniffer dog crosses the line to an invasive technology similar to the device used in *Kyllo*. The training and reliability of the dogs, the ability to detect potentially lawful items, and the privacy of the area sniffed, are all concerns courts must consider when evaluating these searches.

Eve M. Brank, J.D., Ph.D., is currently the Director of the Center on Children, Families, and the Law, Professor of Psychology, and Courtesy Professor of Law at the University of Nebraska-Lincoln. Her research primarily focuses on the way the law intervenes (and sometimes interferes) in family and personal decision making. Related to the current article, the authors have recently completed a series of studies funded by the National Science Foundation examining people's willingness to consent to police searches.

Jennifer Groscup, J.D., Ph.D., is an Associate Professor in the Psychology and Legal Studies departments at Scripps College. Her research interests have included legal decision making, particularly in judges' and jurors' perceptions of expert evidence. Her current research investigates issues related to the Fourth Amendment including consent searches, privacy expectations, and the use of law enforcement dogs. She is the President-Elect of the American Psychology-Law Society, Division 41 of the American Psychological Association.

Emma Marshall is a third-year graduate student in the dual J.D./Ph.D. Law-Psychology and Social-Cognitive Program at the University of Nebraska-Lincoln. She received her B.A. in Psychology from Pomona College in 2014. Her primary research interests are in the intersection of the Fourth Amendment, privacy, and consent to search decision making. She is especially interested in judicial reasoning and perceptions of police searches in situations involving K-9 officers and drug-sniffing dogs.

Lori Hoetger is an Assistant Public Defender in Douglas County, Nebraska. She graduated from the University of Nebraska Law-Psychology program, completing her J.D. in 2014 with highest distinction and Ph.D. in Psychology in 2018. Before her current position, she served as a judicial law clerk on the United States Court of Appeals for the Eighth Circuit.

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