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## Do drug-sniffing dogs need probable cause?

*Supreme Court justices seem poised to say no*

**Mark Helm**

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WASHINGTON - The Supreme Court on Wednesday appeared ready to give police officers the right to use drug-sniffing dogs during routine traffic stops in order to find out if drivers have illegal narcotics aboard.

The Constitution forbids "unreasonable searches" by the police, and the high court in the past has said officers may not search a car for drugs unless they have reason to suspect the motorist is breaking the law. But the court's early rulings neglected a key question: Is a sniff the same as a search?

Justice Sandra Day O'Connor, a key swing vote on the court, insisted that a "sniff is not a search." She said that as long as the canine remains outside the vehicle, the officer is not searching the car.

"If a sniff doesn't constitute a search, the officer hasn't violated a person's rights," she said during an oral argument before the justices Wednesday.

But Ralph E. Meczyk, a lawyer representing a motorist whose car was sniffed by a drug-sniffing dog after he was stopped for speeding on Interstate 80 near Chicago, said that the police's use of a dog to detect drugs inside the car amount to an unconstitutional search of his vehicle.

"For a minor offense, anyone could be subjected to a humiliating search of their car without any evidence they've done something other than speed," he said. "This could happen to anyone."

Justice Antonin Scalia replied that police often use their senses, such as sight and smell, to look for illegal activity.

"Is anything I observe a search?" he asked. "If I'm a police officer and I'm looking for someone with a nervous twitch on their face, is that a search?"

Meczyk argued that police officers using their own senses to search for illegal activity didn't amount to a search but that the use of special tools, such as thermal-imaging machines or dogs, to uncover activities inside a person's home or car did amount to a search.

"Those tools allow the police to see or smell what's going on inside a person's house or car, violating their privacy," he said.

But Justice Anthony Kennedy said that odors emanating from a car or home were "out in the open," where privacy could not be expected.

Several justices, however, expressed concern that allowing police to use dogs

without probable cause could give law enforcement officers overly broad powers.

Justice Ruth Bader Ginsburg asked Illinois Attorney General Lisa Madigan whether such a ruling would allow police to "walk up and down streets with a drug-sniffing dog sniffing the foundations and doors of every house?"

Madigan answered that it would be allowed but noted that the dogs are trained only to find illegal contraband, such as drugs and explosives. She added that the public would not feel intimidated by the dogs.

Ginsburg snapped back that "these dogs can be frightening and humiliating."

The case in question began on a Nov. 12, 1998, when Roy Caballes was pulled over by an Illinois State Police trooper for driving 71 mph in a 65 mph zone on Interstate 80. As the trooper checked Caballes' license and registration, another trooper arrived on the scene with a drug dog.

The first trooper informed Caballes that he was only issuing a warning for speeding. But before he could finish writing the warning summons, the drug dog alerted to the presence of narcotics in Caballes' trunk. The trooper then searched the trunk and found marijuana.

Caballes, who had two prior arrests for marijuana distribution, was found guilty of marijuana trafficking.

He was sentenced to 12 years in prison and fined \$256,136, the street-market value of the seized drugs.

His conviction was upheld on appeal, but the Illinois Supreme Court reversed by a 4-3 vote.

The majority justices ruled that although the trooper was justified in making the initial traffic stop for speeding, it was unreasonable for the trooper to authorize the drug dog to sniff because there was no basis to suspect Caballes had drugs in his car.

The Supreme Court is expected to rule on the case by the end of June.

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