

SUPREME COURT OF CONNECTICUT

State v. Kono

Kono · Decided January 3, 2017

SUMMARY

Justice Espinosa dissents from the majority’s conclusion that police use of a drug-sniffing dog in the shared hallway of a condominium constituted a search under article first, § 7, of the Connecticut Constitution. The dissent argues that a canine sniff is distinct from advanced surveillance technology under *Kyllo* and that the shared hallway was not curtilage under *Florida v. Jardines*.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Espinosa, J.
JURISDICTION	Connecticut
DECIDED	January 3, 2017
PROCEDURAL POSTURE	The dissent addresses the majority's conclusion that police use of a drug-sniffing dog in the shared hallway outside the defendant's condominium unit violated article first, § 7, of the Connecticut Constitution.
STANDARD OF REVIEW	Whether police conduct constitutes a search is analyzed under the reasonable-expectation-of-privacy framework, with the same analytic framework applied under article first, § 7, of the Connecticut Constitution and the Fourth Amendment. Curtilage is evaluated using the <i>Dunn</i> factors and related objective and subjective privacy considerations.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	State v. Dennis Kono

TOPICS

- fourth amendment
- search and seizure
- criminal procedure
- constitutional law

PRACTICE AREAS

- constitutional criminal procedure
- search and seizure
- Fourth Amendment law

QUESTIONS PRESENTED

1. Whether a police dog's sniff of odors emanating from a condominium unit into a shared hallway constitutes a search under the Fourth Amendment or article first, § 7, of the Connecticut Constitution.
2. Whether the shared hallway area immediately outside the defendant's condominium unit constitutes curtilage under *Florida v. Jardines*.
3. Whether a trained police dog should be treated like sophisticated sense-enhancing technology under *Kyllo v. United States*.

HOLDINGS

1. In the dissent's view, the police did not conduct a search of the defendant's condominium unit because a dog sniff reveals only the presence or absence of contraband and occurred in a shared common area rather than inside the unit or its protected curtilage.
2. The dissent would hold that *Kyllo's* rule concerning sophisticated sense-enhancing technology does not apply to a trained police dog.
3. The dissent would hold that the shared hallway immediately outside the defendant's condominium unit is not curtilage, so *Jardines* does not apply.

KEY QUOTATIONS

“A dog sniff does not yield detailed information and does not “expose noncontra- band items that otherwise would remain hidden from public view,” it discloses only the presence or absence of contraband.” (at 2)

“When one lives in a unit that shares walls, floors and ceilings with other units, and shares the same hallway as others in the building, it would be unreasonable to expect the same amount of privacy as that enjoyed in an indepen- dent dwelling place.” (at 12)

“Jardines stands only for the narrow proposition that when a police dog sniff occurs on a defendant’s property, within the curtilage of the home, the sniff constitutes a search.” (at 15)

“Under these facts, I conclude that the area in the shared hallway immediately outside the defendant’s condominium unit did not constitute curtilage.” (at 19)

FACTUAL BACKGROUND

Police received information that Dennis Kono was growing marijuana in his condominium unit. With permission from the condominium property's manager, officers brought a trained police dog into the building's shared hallway and conducted a canine examination near the defendant's unit. The officers never entered the condominium unit and confined their activities to common areas.

PROCEDURAL HISTORY

Police investigated information that the defendant was growing marijuana in his condominium unit and, with permission from the condominium property manager, brought a police dog into the building's common hallway. The dissent disagreed with the majority's determination that the canine examination constituted a search.

CASES CITED

- *Kyllo v. United States*, 533 U.S. 27, 40, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001)
- *Florida v. Jardines*, U.S. , 133 S. Ct. 1409, 1414-18, 185 L. Ed. 2d 495 (2013)
- *State v. Davis*, 283 Conn. 280, 310, 929 A.2d 278 (2007)
- *United States v. Place*, 462 U.S. 696, 707, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983)
- *Illinois v. Caballes*, 543 U.S. 405, 408, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)
- *Katz v. United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring)
- *State v. Torres*, 230 Conn. 372, 380, 645 A.2d 529 (1994)
- *United States v. Jones*, U.S. , 132 S. Ct. 945, 955, 181 L. Ed. 2d 911 (2012)
- *Florida v. Riley*, 488 U.S. 445, 448, 450, 109 S. Ct. 693, 102 L. Ed. 2d 835 (1989)
- *California v. Ciraolo*, 476 U.S. 207, 209, 215, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986)
- *Dow Chemical Co. v. United States*, 476 U.S. 227, 235, 106 S. Ct. 1819, 90 L. Ed. 2d 226 (1986)
- *Oliver v. United States*, 466 U.S. 170, 182 n.12, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984)
- *United States v. Thomas*, 757 F.2d 1359, 1367 (2d Cir. 1985)
- *United States v. Whitaker*, 820 F.3d 849, 852-53 (7th Cir. 2016)
- *People v. Burns*, 50 N.E.3d 610, 617-22 (Ill. 2016)
- *Grady v. North Carolina*, U.S. , 135 S. Ct. 1368, 191 L. Ed. 2d 459 (2015)
- *United States v. Karo*, 468 U.S. 705, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984)
- *United States v. Hopkins*, 824 F.3d 726, 732 (8th Cir. 2016)
- *State v. Luhm*, 880 N.W.2d 606, 616-17 (Minn. App. 2016)
- *State v. Brown*, 198 Conn. 348, 357, 503 A.2d 566 (1986)