

APPELLATE MOOT COURT COLLEGIATE CHALLENGE

IN RE: United States of America (Petitioner) vs. Brian Martin (Respondent)

STATEMENT OF THE CASE

On March 10, 2009, at approximately 2:00 p.m., the Manchester Multi-Agency Drug-Enforcement Task Force (“Task Force”), investigating known drug trafficking neighborhoods, executed a valid search warrant on a suspected heroin mill at 757 Wrong Turn Road in Manchester, Tennessee. Local Manchester dog-handlers, Officers Peter Lennon (“Lennon”) and Paul Best (“Best”) used their trained narcotics dogs, Rocky and Raccoon, to expedite the search, and then exited the residence to place the dogs in their patrol cars. Both dogs were certified in 2005 by the National Narcotic Detector Dog Association and have been recertified every two years since. Rocky has a fifty-seven percent field accuracy rate and Raccoon has a seventy-eight percent field accuracy rate.

Before placing the dogs in patrol cars, the officers allowed the dogs to wander the yards of 757 and 765 Wrong Turn Road in order to relieve themselves. As Officer Lennon turned towards 757, he felt Rocky tug at his leash, so he looked back and noticed him getting a scent. Officer Lennon gave him slack and said, “Hey Paul, Rocky smells something.” Rocky walked to the dryer vent at the front of 765, gave a sniff, and alerted. At that moment, Officer Lennon was still standing in the driveway. Rocky’s leash was approximately eight feet long, and the dryer vent was approximately three feet from the corner of the house. Raccoon sat right next to Rocky and also alerted. The Officers, based solely upon Raccoon’s and Rocky’s alert, contacted the Drug Enforcement Agency.

Officers Lennon and Best returned to 757 Wrong Turn Road and alerted DEA Agent George McCartney (“McCartney”) of the positive canine alert for narcotics at 765 Wrong Turn

Road. Agents McCartney and John Starkey proceeded to 765 Wrong Turn Road to conduct a knock and talk. Homeowner Brian Martin (“Martin”) responded to the knock on the door by peering through a peephole, opening his door and saying, “May I help you?” Agents confirmed that Martin was the homeowner, informed him of the positive canine alert, and placed him under arrest. Agent McCartney reached across the threshold to cuff and pat-down Martin while Agent Starkey conducted a wingspan search. Martin stood slightly behind his threshold until being led away. The wingspan search encompassed a bench with a lift-up seat in the vestibule where officers found seventy grams of crack cocaine, three ounces of marijuana, twenty hits of the blotter form of lysergic acid (“LSD”) and drug paraphernalia. A pat-down of Martin revealed one-quarter ounce of marijuana and LSD in his pants pocket.

Based on the warrantless dog-sniff alert and narcotics recovered during the arrest, agents secured and executed a search warrant on 765 Wrong Turn Road. During the execution of the search warrant, agents found an additional one ounce of marijuana, one-thousand hits of LSD, and fifty grams of crack cocaine in a cabinet between the washer and dryer in the laundry room.

On April 1, 2009, the grand jury for the Western District of Tennessee returned an indictment against Martin for violation of 21 U.S.C. 841(a), possession with intent to distribute a controlled substance, and 21 U.S.C. § 860(a) distribution or manufacturing of drugs in or near schools and colleges.

Defendant Martin filed a motion to suppress all evidence, arguing that the dog sniff and arrest were illegal under the Fourth Amendment to the United States Constitution. The United States District Court for the Western District of Tennessee granted Martin’s motion on May 31st, 2009. The United States filed an interlocutory appeal pursuant to 18 U.S.C. § 3731, challenging the district court’s order granting the Defendant’s motion to suppress all evidence. The United

States Court of Appeals for the Thirteenth Circuit affirmed the district court's order granting the Defendant's motion to suppress all evidence. The United States filed a Petition for Writ of Certiorari, which the United States Supreme Court granted.

ISSUE ONE

Whether a warrantless canine sniff of the exterior of a private residence, absent reasonable suspicion, is an unreasonable search in violation of the Fourth Amendment to the United States Constitution.

ISSUE TWO

Whether, absent any recognized exception to the warrant requirement, a warrantless arrest of an individual standing behind his threshold is an unreasonable seizure in violation of the Fourth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. AMEND. IV. Unreasonable Searches and Seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CASE LAW

Case law is limited to the following universe of cases:

United States v. Place, 462 U.S. 696 (1983)

United States v. Bronstein, 521 F.2d 459 (2d Cir. 1975)

Nebraska v. Ortiz, 600 N.W.2d 805 (Neb. 1999)

Terry v. Ohio, 392 U.S. 1 (1968)

United States v. Karo, 468 U.S. 705 (1984)

Kyllo v. United States, 533 U.S. 27 (2001)

United States v. Thomas, 757 F.2d 1359 (2nd Cir. 1985)

Illinois v. Caballes, 543 U.S. 405 (2005)

Payton v. New York, 445 U.S. 573 (1980)

United States v. Watson, 423 U.S. 411 (1976)

United States v. Johnson, 626 F.2d 753 (9th Cir. 1980)

United States v. Edmondson, 791 F.2d 1512 (11th Cir. 1986)

United States v. Santana, 427 U.S. 38 (1976)

United States v. Quaempts, 411 F.3d 1046 (9th Cir. 2005)

Silverman v. United States, 365 U.S. 505 (1961)

United States v. Oaxaca, 233 F.3d 1154 (9th Cir. 2000)