

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE NEXT CASE ON THE COURT'S
CALENDAR IS JARDINES VERSUS
STATE.

>> MAY IT PLEASE THE COURT.

HOWARD BLUMBERG, ASSISTANT
PUBLIC DEFENDER ON BEHALF OF
THE PETITIONER.

MR. ^JARDINES.

THIS CASE PRESENTS TWO FOURTH
AMENDMENT ISSUES YET TO BE
DECIDED BY THE UNITED STATES
SUPREME COURT.

THE FIRST WHETHER THE USE OF A
DRUG DETECTION DOG AT THE
EXTERIOR OF A HOME TO DETERMINE
WHAT IS INSIDE THE HOME
CONSTITUTES A FOURTH AMENDMENT
SEARCH, AND SECOND, IF THAT
DOES NOT CONSTITUTE A FOURTH
AMENDMENT SEARCH, DOES THE
FOURTH AMENDMENT ALLOW POLICE
OFFICERS TO APPROACH THE FRONT
DOOR OF A HOME WITH A
DRUG-DETECTION DOG AT ANY HOUR
OF THE DAY OR NIGHT AND WITHOUT
EVEN A REASONABLE SUSPICION OF
CRIMINAL ACTIVITY.

>> IS THAT THE CASE HERE?

THAT ISN'T THE CASE HERE.

>> THE CONFLICT ISSUE IS THE
FIRST ISSUE.

>> RIGHT.

THE SECOND ISSUE DO WE HAVE TO REALLY EVEN REACH THAT ISSUE IN THIS PARTICULAR CASE?

>> WELL, IT WAS WAS DECIDED BY JUDGE COPE IN HIS OPINION CONCURING.

>> CORRECT.

>> THE CONFLICT ISSUE IS THE FIRST ISSUE.

I SUBMIT THAT THE ISSUE IS SQUARELY BEFORE THE COURT BASED ON THE FACTS AND THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL AND, ACTUALLY THE MAJORITY OPINION OF THE THIRD DISTRICT COURT OF APPEAL SAID THAT YOU DON'T NEED REASONABLE SUSPICION OR ANYTHING TO APPROACH THE FRONT DOOR OF A HOUSE.

SO I THINK THAT ISSUE IS SQUARELY BEFORE THE COURT.

>> GOING TO YOUR ARGUMENT YOU MENTIONED THAT IT HAS NOT BEEN DECIDED BY THE UNITED STATES SUPREME COURT BUT IT HAS BEEN DECIDED THAT A DOG SNIFF IS NOT A SEARCH.

ISN'T THAT SETTLED LAW?

>> IN THE CONTEXT OF LUGGAGE IN AN AIRPORT AND CAR ON A HIGHWAY.

IN A HOUSE UNDER THE FOURTH AMENDMENT AND BASED ON THE UNITED STATES SUPREME COURT JURISPRUDENCE A SEARCH AT A

HOUSE IS TOTALLY DIFFERENT
MATTER. THAT IS WHAT THIS ISSUE
IS.

>> THE WHOLE REASONING OF THE
THIRD DCA AND, I READ JUDGE
GROSS'S DISSENT IN RABB, SEEMS
TO EXTEND FROM A EXPECTATION OF
PRIVACY ON A FRONT PORCH IN
THIS PARTICULAR CASE.

THIS IS A QUESTION I HAVE FOR
YOU AND I WILL HAVE THE SAME
QUESTION FOR THE STATE.

WHAT IS A FRONT DOOR MEAN?
THE CASE LAW IN JUDGE GROSS
AND MAJORITY IN THE THIRD DCA,
THIRD DISTRICT COURT OF APPEAL
SEEMS TO SAY THAT A DOG
SNIFFING AT A FRONT DOOR OF A
HOUSE, THERE A PERSON HAS NO
REASONABLE EXPECTATION OF
PRIVACY BECAUSE A SALESMAN CAN
WALK UP TO THE FRONT DOOR,
RELIGIOUS PEOPLE CAN WALK UP,
ANYBODY CAN WALK UP TO THE
FRONT DOOR AND KNOCK SO THERE
IS NO EXPECTATION OF PRIVACY.

AND THE QUESTION I HAVE FOR YOU
AND I WILL HAVE THE SAME
QUESTION FOR THE STATE IS, WHAT
DOES THAT MEAN?

THERE ARE DIFFERENT TYPES OF
FRONT DOORS.

THERE ARE APARTMENTS THAT HAVE
A FRONT DOOR RIGHT THERE ON THE
SIDEWALK.

WHERE A DOG CAN WALK BY.

IN THAT INSTANCE YOU CAN WALK A DOG FROM DOOR-TO-DOOR, SEE IF THEY ALERT.

THEN YOU HAVE HOMES THAT ARE PRETTY WELL SET BACK, IN THE PROPERTY, WHERE YOU ACTUALLY HAVE TO WALK SOME DISTANCE TO GET TO THE DOOR.

THERE ARE DOORS THAT HAVE A FRONT PORCH THAT IS SCREENED-IN WITH DOORS TO GET IN.

SO, CAN YOU EXPLAIN THE DIFFERENCES THERE?

I MEAN DOES ANY DOOR, PERSON DOES NOT HAVE A REASONABLE EXPECTATION OF PRIVACY AT ANY FRONT DOOR?

>> WELL, AS EXPLAINED I THINK IN THE MAJORITY OPINION OF THE FOURTH DISTRICT COURT OF APPEAL IN RABB, IT IS SORT OF A CONTINUUM OF EXPECTATION OF PRIVATE VERY BUT THERE IS NO QUESTION THAT THE HIGHEST EXPECTATION OF PRIVACY IS AT THE FRONT DOOR OF A PRIVATE HOME AND THAT'S WHAT WE'RE DEALING WITH HERE.

>> WE'RE DEALING WITH ONE THAT IS SET BACK FROM THE STREET?

>> YES, JUSTICE.

>> OKAY.

IT IS NOT A SITUATION WHERE IT IS ON THE STREET?

>> CORRECT.

>> THAT IS ONE WE HAVE TO

DECIDE SPECIFICALLY.

IT DOESN'T HAVE A SCREENED
PORCH?

>> NO.

>> OKAY, BUT A PORCH AND THEN
THE FRONT DOOR?

>> CORRECT.

THAT IS THE ISSUE BEFORE THE
COURT HERE.

>> LET ME, I AGREE, BECAUSE I
WITH YOU, AT LEAST THAT, THE
ILLINOIS VERSUS CABALLES CASE
DOES NOT DECIDE THE ISSUE.
THEY COULDN'T HAVE GONE OUT OF
THEIR WAY MORE TO SAY WHAT THEY
WERE DECIDING IN THE CONTEXT
OF A LEGITIMATE TRAFFIC STOP.
HOWEVER, THE ISSUE OF THIS
EXPECTATION OF PRIVACY, IF, WE
HAD A CASE FROM 1981, CITED IN
THIRD DISTRICT OPINION, AND I
HAVEN'T READ THE FACTS.

STATE v. MORSEMAN ONE DOES NOT
HARBOR EXPECTATION OF PRIVACY
ON A FRONT PORCH WHERE SALESMEN
OR VISITORS MAY APPEAR AT ANY
TIME.

NOW IN THIS CASE, BUT FOR THE
DOG, IF THEY HAD GOTTEN A TIP
AND INSTEAD, INSTEAD OF A DOG
GOING FIRST, WITH THE TRAINER,
IF THE DETECTIVES CAME UP AFTER
THEY GOT A TIP.

THEY WATCHED AND THEY WERE
APPROACHING THE FRONT DOOR,
AND, HE KNOCKED ON THE FRONT

DOOR AND HE SMELLED THE MARIJUANA, WOULD THAT BE A, AND HE USED THAT INFORMATION TO GET HIS, SEARCH WARRANT, IN THEY GOT A SEARCH WARRANT IN THIS CASE AND WOULDN'T THAT BE A VALID SEARCH WARRANT?

>> THAT WOULD BE A VALID SEARCH UNDER MORSEMAN, CORRECT. THIS COURT'S DECISION UNDER MORSEMAN.

>> WHAT IS DIFFERENT HERE?

>> THE DOG.

THE DOG IS DIFFERENT AS TO BOTH ISSUES.

>> ISN'T THE WHOLE POINT OF THE FOURTH DISTRICT OPINION, IS THAT PLACE, NOT, PLACE MAKES A DIFFERENCE.

IT IS DIFFERENT IF IT IS A TRAFFIC STOP OR AN AIRPORT SEARCH.

BUT NOW WE GET TO THE ISSUE OF PLACE BEING BE A FRONT PORCH.

IF YOU SAY THERE IS NO EXPECTATION OF PRIVACY ON A FRONT PORCH, I'M TRYING TO FOLLOW, AGAIN, I DON'T, I DON'T LIKE THE IMAGE OF THIS IDEA OF DRUG-SNIFFING DOGS ON CHAINS, JUST ROAMING THE STREETS FOR, YOU KNOW TO SEE WHETHER THEY CAN SMELL DRUGS INSIDE.

BUT, IF YOU, ACKNOWLEDGE THAT, MORSEMAN SAYS THERE IS NOT LEGITIMATE EXPECTATION OF

PRIVACY ON A FRONT PORCH, WHAT IS THE DIFFERENCE, BASED ON, WHETHER IT WAS THE HUMAN BEING UP THERE SNIFFING OR THE DOG?

>> BECAUSE IT DEPENDS ON WHAT HAPPENS ON THE FRONT PORCH.

DOES THAT CONSTITUTE A VIOLATION OF A REASONABLE EXPECTATION OF PRIVACY?

AND NOW THERE ARE TWO LEVELS OF THAT.

MORSEMAN I BELIEVE THE POLICE OFFICER ON THE FRONT PORCH LOOKED THROUGH OPEN WINDOW AND SAW SOMETHING IN THE HOUSE.

THERE IS NO EXPECTATION OF PRIVACY IN THE OFFICER COMING UP TO THE PORCH OR LOOKING INTO OPEN WINDOW.

HOWEVER --

>> IF A SALESMAN CAME UP TO THE FRONT PORCH TO SOLICIT FOR SOMETHING AND HAD A STRONG SMELL OF MARIJUANA, SALESMAN WOULD HAVE CALLED THE POLICE.

THE POLICE THEN WOULD --

>> SALESMAN DOESN'T DO ANYTHING TO DETECT INFORMATION INSIDE THE HOUSE, USING A SENSORY-ENHANCING TOOL.

THAT IS WHAT THIS CASE IS ALL ABOUT.

>> THEY ARE, YOU KNOW, THE WEIGHT OF AUTHORITY SEEMS TO BE AGAINST YOU THAT THE, THAT THE DOG, THIS IDEA THAT IT IS A

SENSORY-ENHANCING INSTRUMENT
AS TO THE KYLLO CASE HAS BEEN
REJECTED.

YOU KNOW, YOU'RE NOT
CHALLENGING THE RELIABILITY OF
THE DOG.

YOU KNOW, I DON'T, I AGREE WITH
THE DISSENT IN CABALLES.

THEIR REASONING ON THEIR PART
THAT LIKE KYLLO SEEMS
PRETTY CLEAR.

>> FIRST OF ALL, I AM
CHALLENGING PARTIALLY, IN TERMS
OF THE WHAT THE DOG DOES.
THE DOG'S CAPABILITIES, AND
THAT WAS CONCEDED IN CABALLES.
THE DEFENDANT CONCEDED FACT
THAT THE DOG IN THAT CASE DID
NOT REVEAL ANYTHING OTHER THAN
CONTRABAND.

I'M NOT CONCEDED THAT IN
THIS CASE.

I CITED TO THE NEBRASKA LAW
REVIEW THAT TALKS ABOUT THE
FACT THAT BASICALLY WHAT THESE
DOGS ALERT TO CHEMICALS IN --

>> YOU'RE AN EXCELLENT LAWYER.
THAT ISSUE ABOUT WHETHER THIS
DOG, FRANKY, WAS A, GOOD, YOU
KNOW, GOOD-SMELLING DETECTING
DOG OR A ERROR-PRONE DOG --

>> I'M NOT ATTACKING FRANKY.
LAST THING I WANT TO BE IS BE
UP THERE BUT I AM ATTACKING
DRUG-DETECTION DOGS IN GENERAL.

>> SAY ON THE FACTS WHAT

HAPPENED HERE.

THE AFFIDAVIT SAYS AFFIANT AND
DETECTIVE BARTELT WITH THE K-9,
FRANKY APPROACHED THE PREMISES
IN ATTEMPT TO OBTAIN A SEARCH
WARRANT.

WHILE AT THE FRONT DOOR I TAKE IT,
WHILE DETECTIVE, PEDRAJA.

THE K-9 OFFICER AND FRANKY.

>> THAT IS NOT WHAT HAPPENED.

THAT'S WHAT THE AFFIDAVIT SAYS.

TESTIMONY AT HEARING ON MOTION
TO SUPPRESS ESTABLISHED THAT IS
NOT WHAT HAPPENED.

>> WHO GOES TO THE FRONT DOOR
FIRST?

>> THE DOG.

WHILE DETECTIVE PEDRAJA
INTENTIONALLY STAYED BEHIND.
THAT IS

A CRITICAL FACTOR IN THIS CASE.

>> YOU'RE ARGUING THAT
PEDRAJA LATER TAINTED, THAT
THE DOG ALERTED FIRST.

>> THE TRIAL JUDGE GRANTED
MOTION TO SUPPRESS.

ALL THE FACTS AND THIRD DCA
DOESN'T SAY ANYTHING ABOUT
STANDARD REVIEW IN THEIR
OPINION.

ALL FACTS DETERMINED BY THE
TRIAL JUDGE HAVE TO BE VIEWED
IN LIGHT MOST FAVORABLE TO THE
DEFENSE.

>> REGARDLESS OF WHEN PEDRAJA
ACTUALLY SMELLED THE MARIJUANA,

THEY SAY THE DOG ALERTED, AND
PEDRAJA WALKED UP TO THE DOG
AND SMELLED IT.

YOU'RE SAYING, WELL THAT DIDN'T
HAPPEN.

THE DOG ALERTED.

THEREFORE HE BELIEVES IT.

WHY ISN'T THAT NOT A FACTUAL
QUESTION FOR THE TRIAL COURT?
WHEN PEDRAJA TESTIFIED?

>> THE SEQUENCE OF WHAT
HAPPENED IS A FACTUAL FINDING
FOR THE TRIAL COURT AND THAT
FINDING WAS MADE IN FAVOR OF
THE DEFENSE BELOW IN THIS CASE.

>> I UNDERSTAND THAT.

>> THE THIRD DCA OBVIOUSLY
CAN'T REVERSE THAT.

>> RIGHT.

>> SO WHAT, I'M STILL NOT
SATISFIED WITH YOUR ANSWER.

I THINK JUSTICE PARIENTE ASKED
YOU AT THE BEGINNING IS, IF THE
OFFICER, THE ONE WHO WAS IN THE
CAR AND SURVEYING THE PLACE, IF
THAT OFFICER WALKED UP TO THE
DOOR, WE DON'T HAVE THE DOG, WE
DON'T HAVE THE DOG TRAINERS
THERE, THIS OFFICER, AFTER HIS,
OBSERVING THE PREMISES, WALKS
UP TO THE DOOR, AND SMELLS THE
MARIJUANA, GOES BACK AND GETS
HIS SEARCH WARRANT, WE WOULD
NOT BE HERE, CORRECT?

>> THAT'S CORRECT.

THE THIRD DISTRICT COURT OF

APPEAL --

>> WHERE IS THE DIFFERENCE
SIMPLY BECAUSE WE HAVE THE DOG
ALSO?

WE STILL HAVE THE OFFICER
WALKING UP TO THE PREMISES,
SMELLING THE MARIJUANA.

>> BUT, AS I RESPONDED TO THE
JUSTICE LABARGA, THAT DIDN'T
HAPPEN UNTIL AFTER THE DOG WENT
UP. IF THE DOG --

>> HE IS OBSERVING THE
PREMISES.

YOUR PREMISE IS HE WOULD HAVE
NEVER APPROACHED THE DOOR
WITHOUT THE DOG HAVING ALERTED.

>> THAT IS THE FACTS, THAT IS
WHAT THE FACTS IN THIS CASE
SHOW.

THAT'S WHAT THE TRIAL COURT
BASICALLY.

>> HOW DO THE FACTS IN THIS
CASE SHOW THAT?

>> BECAUSE THE OFFICER, I'M
SORRY.

>> [INAUDIBLE]

>> IT WAS ANONYMOUS
CRIMESTOPPERS TIP, JUSTICE.

WHAT HE DID SHOWED UP THERE,
THIS IS IMPORTANT, HE SHOWED UP
THERE AT 7:00 IN THE MORNING
AND SAT OUTSIDE THE HOUSE AND
WATCHED THE HOUSE UNTIL THE DOG
SHOWED UP.

AND THAT'S WHY THIS IS
IMPORTANT.

BECAUSE, YES, IF HE HAD SHOWED UP AT THE HOUSE, BASED ON THE CRIMESTOPPERS TIP, GONE UP TO THE PORCH OF THE HOUSE, SMELLED MARIJUANA, THAT IS FINE UNDER THIS COURT'S DECISION IN MORSEMAN.

AGAIN, WE HAVEN'T TALKED A LOT ABOUT KYLLO, THE REASON WHY THIS IS SO DIFFERENT IS BECAUSE OF KYLLO.

>> EXCEPT THAT IS WHERE CABALLES, I AGREED WITH YOU, THAT, CABALLES DOESN'T DECIDE THIS ISSUE BASE IT WAS A TRAFFIC STOP.

BECAUSE YOU HAVE NOW CONCEDED THERE IS NO EXPECTATION OF PRIVACY IN THE FRONT PORCH, SO ONCE YOU'VE DONE THAT, THEN, CABALLES SAYS IT IS DIFFERENT FROM KYLLO, THE DOG SNIFF REVEALS LOCATION ONLY OF AN ILLEGAL SUBSTANCE.

NOW THAT WAS THEIR HOLDING. SO, THEY, DON'T FIND THAT KYLLO IS CONTROLLING.

IN FACT, JUSTICE STEVENS DIDN'T FIND IT BUT JUSTICE SOUTER AND JUSTICE GINSBURG DISAGREE AND EXPLAIN WHY KYLLO WOULD CONTROL.

SO I DON'T, WHERE DO YOU GET THAT THIS IS, THAT WE CAN HOLD THAT KYLLO WOULD MANDATE THAT

YOU CAN'T USE THE DOG TO ENHANCE THE SENSORY PERCEPTION ON THE FRONT PORCH BUT YOU CAN USE IT FOR A SEARCH OF A CAR, OR SEARCH OF A LUGGAGE, OR ANY OTHER, YOU KNOW, ANY OTHER PLACE?

>> FROM THIS QUOTATION FROM THE UNITED STATES SUPREME COURT'S DECISION IN KYLLO.

WE THINK THAT OBTAINING BY SENSE-ENHANCING TECHNOLOGY ANY INFORMATION REGARDING THE INTERIOR OF THE HOME, THAT COULD NOT OTHERWISE HAVE BEEN OBTAINED WITHOUT PHYSICAL INTRUSION INTO A CONSTITUTIONALLY PROTECTED AREA, CONSTITUTES A SEARCH. THAT'S WHERE I GET THIS FROM. IT COMES FROM KYLLO.

>> SO THIS WASN'T A SNIFF ON THE PORCH?

THIS WAS A SNIFF OF THE CRACK OF THE DOOR?

>> YES.

>> FOR WHAT'S INSIDE.

>> YES.

>> IF YOU HAVE A SNIFF OF A SWING OR A CHAIR OUT ON THE FRONT PORCH YOU MAY HAVE A DIFFERENT CIRCUMSTANCE.

>> TOTALLY DIFFERENT.

>> THAN IF YOU GO UP, THAT IS HOW YOU'RE SAYING THIS IS DIFFERENT.

>> TOTALLY DIFFERENT.

>> YOU'RE GOING BEHIND THE FRONT DOOR TO THE AIR COMING THROUGH WHATEVER OPENINGS THERE ARE?

>> THIS IS DETERMINATION OF WHAT IS INSIDE THE HOUSE. JUST AS KYLLO.

>> WITH THE CAR ON THE STREET AND LUGGAGE YOU'RE OUT IN PUBLIC PLACE BUT WHAT IS BEHIND THAT FRONT DOOR IS NOT OUT IN A PUBLIC PLACE.

>> THAT'S CORRECT.
THAT'S CORRECT.

>> BUT THE DOG, EVEN IN THE LANGUAGE THAT YOU QUOTED, DIDN'T, SMELL ANYTHING THAT COULD NOT HAVE BEEN SMELLED BECAUSE THE OFFICER SAID HE SMELLED, HE HAD THAT ODOR OF MARIJUANA WHEN HE DID IN FACT APPROACH THE DOOR.
SO THE DOG DID NOT REVEAL ANYTHING THAT COULD NOT HAVE BEEN GATHERED WITHOUT THE DOG'S SENSORY PERCEPTION?

>> BUT THESE DOGS ARE TRAINED, THEY CAN DETECT THINGS FROM INSIDE A HOME THAT A POLICE OFFICER CAN NOT.

THAT IS WHY THIS IS A SEARCH.

>> BUT THE POLICE OFFICER, I CAN'T GET AROUND THE FACT THAT THE POLICE OFFICER IN THIS CASE HOWEVER, SMELLED THE MARIJUANA

HIMSELF.

>> BUT THAT'S, I UNDERSTAND THAT. BUT THAT IS A SEPARATE ISSUE. THE ISSUE HERE IS WHETHER THE USE OF THE POLICE DOG WAS AN ILLEGAL SEARCH.

DID IT VIOLATE THE FOURTH AMENDMENT BY BRINGING THIS POLICE DOG UP TO THE FRONT DOOR OF THE HOUSE TO DETERMINE WHAT WAS INSIDE THE HOUSE, USING HIS SENSES THAT HAVE BEEN TRAINED TO DO THAT, WHEN, WHICH IS BASICALLY A SENSORY-ENHANCING DEVICE JUST LIKE IN KYLLO WHERE THE POLICE OFFICERS, KYLLO WEREN'T EVEN AT THE FRONT DOOR OF THE HOUSE.

THEY WERE IN A CAR PARKED ON THE STREET AND THEY HAD --

>> JUSTICE QUINCE IS GOING TO THE POINT, IF THIS WERE NOT A DOG, LET'S SAY THAT THE GUY WATCHING DIDN'T HAVE THE EXPERTISE WITH SMELL.

AND SO HE JUST CALLED SOMEBODY THAT IS WITH DRUG, WHOEVER DOES THE DRUG STUFF AND THEN THAT OFFICER GOES UP.

I THINK THAT IS WHAT SHE IS SAYING, A HUMAN.

AND THAT HUMAN GOES TO THE FRONT DOOR AND YOU CAN SMELL IT.

>> THERE ARE CASES THAT SAY THAT'S FINE BUT THAT IS NOT

YOUR FACTS HERE.

YOUR FACTS HERE --

>> WHY IS A DOG DIFFERENT THAN
A EXPERIENCED PERSON IS WHERE
THE QUESTION IS GOING?

IF YOU CAN DO THAT AS A PERSON,
UP TO THE FRONT DOOR, SOMEONE
WHO HAS EXPERIENCE, THEN WHY IS
A DOG DIFFERENT THAN A HUMAN
WITH EXPERIENCE?

THIS IS A DOG THAT'S TRAINED,
SAME THING WITH A IMWHO BEING,
TRAINED TO SMELL ODORS.

WHY IS THAT DIFFERENT?

I THINK THAT IS WHERE IT IS
GOING HERE.

IT IS A PERSON.

>> TO SOME EXTENT THE OFFICERS
ARE TRAINED TO RECOGNIZE.

>> THEY HAVE TO BE.

>> BUT THIS GOES BEYOND THAT.

>> AGAIN, HOW IS THAT DIFFERENT
THOUGH?

TRAINING, TO DETECT ODOR,
PERSON VERSUS DOG?

>> BECAUSE THE SENSES OF AN
OFFICER ARE NOT BEING ENHANCED
IN ANY WAY TO DETECT WHAT'S
INSIDE A HOUSE.

>> BUT THEY HAVE NOT, BUT
ALL --

>> [INAUDIBLE]

>> PARDON ME?

>> [INAUDIBLE].

>> BUT THE IMPORTANT PART OF
KYLLO IS IT DETECTED HEAT ON

THE OUTSIDE OF THE HOUSE, THAT
COULDN'T OTHERWISE BE DETECTED.
AND THAT REVEALED SOMETHING
THAT WAS INSIDE THE HOUSE.

>> AND THAT WOULD BE, IF THAT
WERE THE CASE, KYLLO WOULD
APPLY TO, YOU KNOW, IF IT WAS
SEARCHES OF MOTOR VEHICLES,
BUT, U.S. SUPREME COURT HAS
MADE THIS DISTINCTION ABOUT DOG
SNIFF, AND, THIS IS AGAIN, AS A
QUESTION IS WHETHER IT IS AN
UNREASONABLE SEARCH.
SO THEY DON'T, THE ONLY
UNREASONABLE PART OF THE SEARCH
IS, YOU SAY THE DOG GOING UP
THERE.

BECAUSE THE REST IS THE SEARCH
WARRANT.

YOU'RE NOT CONTESTING PROBABLE
CAUSE?

YOU DIDN'T CONTEST IT.

>> NOT IF YOU CAN CONSIDER DOG
SNIFF WAS PART OF THAT.

>> IT WAS ADDED.

THEY GET THE TIP.

THEY SURVEIL.

THE POLICE OFFICER SMELLS THE
MARIJUANA INSIDE.

OBSERVES THAT THE
AIR-CONDITIONING IS RUNNING
CONTINUOUSLY, WHICH HE, FROM
HIS EXPERIENCE HE UNDERSTANDS
MEANS THAT THERE IS SPECIAL
LIGHTS THAT ARE THERE THAT ARE
HEAT LIGHTS, AND, YOU KNOW

THAT, CAUSE THE
AIR-CONDITIONING TO GO.
SO, WE HAVE TO CONSIDER THE
TOTALITY OF THE CIRCUMSTANCES
AS TO --

>> RIGHT.

BUT THE DOG SNIFF COMES OUT AND
THE POLICE OFFICER SNIFF COMES
OUT BECAUSE IN THIS PARTICULAR
CASE IT IS FRUIT OF THE
POISONOUS TREE.

>> LET ME FOCUS ON THAT.

WHAT IS SUPPORTS INFERENCE, BUT
FOR THE DOG SNIFF THE OFFICER
WOULD NOT HAVE GONE TO THE
DOOR?

IS SUCH AN INFERENCE NECESSARY
TO SUPPORT YOUR POSITION?

>> LET ME ANSWER THAT.

FIRST OF ALL, NO IT'S NOT.

NO, IT'S NOT.

THAT DOCTRINE IS CALLED
INEVITABLE DISCOVERY.

IN OTHER WORDS NOT THE
DEFENSE'S BURDEN TO ESTABLISH
THAT HE WOULDN'T HAVE.

IT IS THE STATE'S BURDEN TO
ESTABLISH THAT HE INEVITABLY
WOULD HAVE GONE UP TO THAT
DOOR, EVEN IF THE DOG HAD NEVER
COME ON THE SCENE.

AND IN THIS PARTICULAR CASE HE
SAT AT THE SCENE 15 MINUTES OUTSIDE
THE HOUSE.

MADE NO EFFORT TO APPROACH THE
HOUSE.

WAITED FOR THE DOG TO GET THERE
ONCE THE DOG GETS THERE, HE
STARTS TO APPROACH THE HOUSE
WITH THE DOG AND STAYS BEHIND
AND LETS THE DOG SNIFF AT THE
FRONT DOOR WHICH WE CONTEND IS
THE FOURTH AMENDMENT SEARCH.

>> IS THAT THAT SIGNIFICANT?

DIDN'T HE ALSO STAY AT THE
HOUSE SURVEILLING THE HOUSE,
EVEN AFTER THAT POINT?

>> AT THAT POINT THE ILLEGAL
SEARCH HAD TAKEN PLACE.

>> BUT AFTER, WHAT I'M SAYING
IS, EVEN THOUGH, YOU'RE MAKING
A LOT OF THE FACT THAT HE
STAYED THERE FOR 15 MINUTES OR
20 MINUTES OR SO BEFORE HE EVER
APPROACHED THE DOOR.

BUT DIDN'T HE ALSO STAY THERE
SOME TIME ACTUALLY AFTER HE
APPROACHED THE DOOR AND THAT'S
WHEN THE WHOLE THING ABOUT THE
AIR-CONDITIONING WAS OBSERVED
AND TOOK PLACE?

>> YES.

PUT THE REASON WHY I'M MAKING
SUCH A BIG DEAL ABOUT SITTING
THERE FOR 15 MINUTES BECAUSE
THAT RELATES TO INEVITABLE
DISCOVERY ISSUE.

THE QUESTION AS TO WHETHER THE
OFFICER WAS GOING TO GO UP TO
THAT DOOR NO MATTER WHAT.
THEREFORE IT DOESN'T MATTER
WHAT THE DOG SEARCHED AT THE

DOOR.

THAT'S WHY I TALK ABOUT THAT.

THAT IS THE ONLY RELEVANCE
REALLY AS TO THAT 15 MINUTES
BEHIND.

>> YOU'RE SAYING THAT BUT FOR
THE DOG'S ALERT, THE OFFICER
WOULD NOT HAVE GOTTEN OUT OF
THE CAR AND WALKED UP TO THE
DOOR?

>> THE RECORD IN THIS CASE
ABSOLUTELY SUPPORTS THAT.
THAT'S WHAT HAPPENED.
AND BASICALLY THAT'S WHAT THE
TRIAL JUDGE FOUND.

AND AGAIN THAT IS A FACTUAL
FINDING.

>> WOULD YOU TAKE ONE MORE
SHOT AT HELPING ME, BECAUSE
YOU AGREE THAT IF A HUMAN
WALKED ON THIS PORCH.
HUMAN POLICE OFFICER, GOES UP
TO THE DOOR AND THAT'S OKAY, TO
THAT POINT.

AND, THAT IS OKAY.

THAT COULD BE USED TO ESTABLISH
PC FOR A SEARCH WARRANT?

>> YES, JUDGE.

>> HELP ME ONE MORE TIME HOW
THAT IS GOING TO BE DIFFERENT
FROM AN ANIMAL GOING UP DOING
THE SAME THING AND SNIFFING AND
THEN USING THAT AGAIN?

WHY IS THE DOG DIFFERENT?

IT IS NOT A PIECE OF EQUIPMENT.

IS THAT THE ONLY THING --

THAT'S MAKES THE DIFFERENCE IS
BECAUSE DOGS CAN SMELL BETTER
OR THEY SUPPOSEDLY CAN?

>> NO.

BECAUSE THEY HAVE BEEN TRAINED
TO DETECT THESE PARTICULAR
CHEMICALS.

>> JUST AS AN OFFICER IS
THOUGH.

BUT SO IS AN OFFICER.

THAT'S WHY I'M STUCK ON THIS.

>> I RESPECTFULLY DISAGREE.

>> OKAY.

>> OFFICERS ARE NOT TRAINED,
THEIR SENSE OF SMELL IS NOT
HEIGHTENED IN ANY WAY SO THAT
THEY CAN SMELL CHEMICALS THAT
ARE INSIDE A HOUSE.

OFFICERS ARE TRAINED --

>> TO RECOGNIZE ISN'T THIS ODOR
I'M GETTING HERE IS MARIJUANA.

>> THE WHOLE CASE THEN IS GOING
TO RISE AND FALL ON THE
TRAINING OF THIS THING, WHETHER
IT IS A PIECE OF EQUIPMENT,
ANIMAL OR PERSON, TO ENHANCE
THEIR SMELL FOR CRIMINAL
ACTIVITY.

>>> EXACTLY.

>> WHATEVER IT IS.

>> SO THEY CAN GET INFORMATION
FROM INSIDE A HOUSE WHERE A
POLICE OFFICER NORMALLY
WOULDN'T.

>> ISN'T YOUR ARGUMENT ANIMAL
VERSUS HUMAN?

>> IN ITS SIMPLEST FORM, YES.

>> YOU COULD TRAIN A PERSON,
RIGHT?

>> IF A HUMAN COULD BE
TRAINED --

>> -- TRAINING AND, ON ONE
HAND, THEN JUST A DOG CAN
SMELL SOMETHING A HUMAN CAN NOT
SMELL --

[INAUDIBLE]

>> IT IS NOT THE TRAINING.
IT IS THE ENHANCEMENT OF THE
SENSES TO DETERMINE INSIDE A
HOUSE.

>> I DON'T UNDERSTAND HOW THIS
SENSES ARE THE ENHANCED.

I CAN UNDERSTAND TRAINING, TO
DETECT PARTICULAR THINGS TO
DISTINGUISH ONE SUBSTANCE FROM
ANOTHER.

BUT HOW DO YOU GIVE THEM A
BETTER SENSE OF SMELL ANYMORE
THAN WE COULD GET A BETTER
SENSE OF SMELL?

>> NO, YOU DON'T GIVE THEM --

>> YOU'RE TALKING ABOUT --

>> DOGS HAVE SENSE OF SMELL
THEY HAVE.

IT IS HIGHLY ENHANCED.

WHAT THE POLICE OFFICERS DO
IS --

>> YOU'RE TALKING ABOUT
ENHANCING THAT SENSE AND I
DON'T UNDERSTAND THAT.

THAT DOESN'T, THAT IS
TERMINOLOGY YOU USED?

>> YES.

>> I DON'T UNDERSTAND THAT.

>> IT IS USING THAT ENHANCED
SENSE. AGAIN THE DOGS HAVE ENHANCED
SENSE.

>> THEY ALREADY HAVE.

IT IS NOT ENHANCING IT.

IT IS TRAINING THEM IN THE USE
OF THAT SENSE OF SMELL THAT
THEY HAVE WHICH IS SUPERIOR TO
A HUMAN SENSE OF SMELL?

>> RIGHT.

BUT THEY DON'T HAVE NATURALLY,
GOD-GIVEN TALENT TO USE THAT
SENSE, HEIGHTENED SENSE TO
DETECT CHEMICALS, IN
CONTRABAND.

THAT IS WHAT THE POLICE
OFFICERS TRAIN THEM TO DO.

AND THAT IS THE DIFFERENCE.

WE'VE HAD BLOODHOUNDS FOREVER
BUT WE HAVEN'T HAD
DRUG-SNIFFING DOGS FOREVER.

>> WITH THAT YOU HAVE GONE WELL
OVER YOUR ALLOTTED TIME.

THANK YOU, MR. BLUMBERG.

>> GOOD MORNING, MY NAME IS
ROLANDO SOLER, ASSISTANT
ATTORNEY GENERAL ON BEHALF OF
THE STATE OF FLORIDA.

I WOULD LIKE TO FIRST DISCUSS
THE FACT AS LITTLE BIT.

>> BEFORE WE, AND I WANT YOU TO
DISCUSS THE FACTS.

THIS IS MY CONCERN WITH THE
THIRD DISTRICT'S CASE.

THE THIRD DISTRICT SAYS, AS A
MATTER OF LAW, THAT A DOG SNIFF
IS NEVER A SEARCH.

THAT THERE'S NOTHING TO, IT
DOESN'T MATTER WHERE IT IS.
YOU KNOW, AND, TO ME THAT LEADS
TO THIS NOTION THAT WE CAN
HAVE, IN THIS SOCIETY, DOGS,
YOU KNOW, WITH POLICE ON
LEASHES GOING THROUGH, WHETHER
A HOUSING DEVELOPMENT,
APARTMENT BUILDINGS, AND JUST,
SNIFFING AWAY.

AND THEN, AT THAT POINT,
GETTING A SEARCH WARRANT.
AND, IS THAT, IS THAT THE
STATE'S POSITION, THAT THIS
CASE IS NO, DOESN'T REALLY
MATTER WHAT THE FACTS ARE,
BECAUSE, WOULDN'T MATTER IF THE
POLICE OFFICER INDEPENDENTLY
SMELLED IT OR NOT.

DOESN'T MATTER WHAT KIND OF
FRONT PORCH IT IS.

THAT THE DOGS SINCE IT IS NOT A
SEARCH, THE FOURTH AMENDMENT
DOESN'T EVEN COME INTO BEING?

>> YES, YOUR HONOR, THAT'S
CORRECT.

BECAUSE AS LONG AS THE DOG
SNIFF IS NOT A SEARCH, THAT
DOES NOT CONSTITUTE A SEARCH
WITHIN THE MEANING OF THE
FOURTH AMENDMENT, THEN THE
FOURTH AMENDMENT IS NOT
IMPLICATED AND THERE IS NO

CONSTITUTIONAL BASIS FOR --

>> YOU THINK THAT, SO THAT
WOULD MEAN, AGAIN, IT DOESN'T
MATTER IF THERE WAS A TIP HERE?

>> CORRECT.

>> DOESN'T MATTER WHETHER THE
POLICE OFFICER WAITED,
SURVEILED --

>> CORRECT.

>> HE COULD GO UP TO ANY OF OUR
HOUSES ANY PLACE AND IN THIS
COMMUNITY, ANY COMMUNITY WITH A
DOG AND, SNIFF INTO YOUR
HOUSES?

>> AS LONG AS THE OFFICER, THE
DOG AND HANDLER ARE LAWFULLY
PRESENT AT THE LOCATION THAT
THE OBJECT IS SNIFFED.

THEY HAVE TO BE LAW FULLY
PRESENT THERE AS LONG AS
THEY'RE LAWFULLY PRESENT THERE.

>> WHY DID THE U.S. SUPREME
COURT, IF THAT IS WHAT THEY
WERE GOING TO SAY, IN CABALLES,
I MAY NOT BE, MAY NOT SAY
IT CORRECTLY.

THE SEARCH WE GRANT IS NARROW.
REASONABLE SUSPICION TO JUSTIFY
USING A DRUG-DETECTION DOG TO
SNIFF A VEHICLE DURING A
LEGITIMATE STOP.

THEY THEN PROCEED TO DISCUSS
THAT THEIR HOLDING IS THAT WE
HOLD DURING A TRAFFIC STOP,
DOES NOT GENERALLY IMPLICATE
LEGITIMATE PRIVACY INTERESTS.

IF, THEY DIDN'T HAVE TO GO THAT FAR.

THEY COULD HAVE SAID, DOESN'T MATTER WHERE IT IS, AIRPORT, HOME, THAT, DRUG, DRUG SNIFFING DOGS ARE PERFECTLY ACCEPTABLE? THEY DIDN'T SAY THAT.

THEY LIMITED THEIR HOLDING.

>> THAT'S CORRECT.

AND, PETITIONER IN RABB RELY EXCLUSIVELY ON KYLLO FOR THE PROPOSITION THAT FOURTH AMENDMENT WRAPS IMPENETRABLE PROTECTION AROUND THE HOUSE AND DRAWS A FIRM LINE OF PROTECTION AROUND THE HOUSE, ALL THE DETAILS AROUND THE HOUSE, LEGITIMATE OR NOT ARE PROTECTED BY FOURTH AMENDMENT.

CABALLES SPECIFICALLY WENT OUT OF ITS WAY TO DISTINGUISH THE DOG SNIFF VERSUS THE THERMAL IMAGING DEVICE USED IN KYLLO.

>> IF IT IS AS SIMPLE AS WHAT YOU'RE SAYING, WHY DID THE U.S. SUPREME COURT GO OUT OF ITS WAY TO VERY NARROWLY LIMIT ITS HOLDING TO THE COURSE OF A LEGITIMATE TRAFFIC STOP?

>> THAT WAS THE ISSUE BEFORE THE COURT.

THE DOG SNIFF OF A HOME WAS NOT BEFORE THE COURT.

AND I RESPECTFULLY ISN'T THEY WENT OUT OF ITS WAY TO DISTINGUISH THAT THERMAL

IMAGING DEVICE IN KYLLO FROM
THE DOG SNIFF.

WHY WOULD THEY DO THAT?

>> THEY HAD TO DO THAT BECAUSE
IT IS ONLY WAY YOU CAN JUSTIFY
HAVING DRUG-SNIFFING DOGS
OUTSIDE OF A CAR, IF IT WAS
ANOTHER TYPE OF DEVICE, YOU
COULDN'T, THEY HAD A
DISTINGUISH KYLLO.

>> I KNOW, YOUR HONOR.

I THINK IT WRONGLY SUGGESTS BY
DISTINGUISHING THE DOG SNIFF
FROM THE THERMAL IMAGING DEVICE
IN KYLLO I THINK THEY'RE
STRONGLY SUGGESTING THAT IF IT
HAD BEEN A DOG SNIFF INSTEAD
AFTER DEVICE USED IN KYLLO IT
WOULD HAVE BEEN PERMISSIBLE.
THEY COULD HAVE JUST SIMPLY
DISTINGUISHED KYLLO ON THE
BASIS THAT HOME WAS INVOLVED,
OR THEY COULD HAVE LIMITED ITS
REASONING.

CABALLES COULD HAVE LIMITED
REASONING TO CASES NOT
INVOLVING A HOME.

INSTEAD THEY SPECIFICALLY, THE
COURT WENT OUT OF ITS WAY TO
DISTINGUISH THE DOG SNIFF FROM
THE DEVICE.

I THINK THAT IS A STRONG
INDICATION THAT THE DOG SNIFF
WOULD HAVE BEEN PERMISSIBLE IF
IT HAD BEEN USED IN KYLLO FOR
EXAMPLE.

>> WHAT IS YOUR VIEW OF JUDGE
COPE'S STANDARD?

>> YOUR HONOR, MY POSITION IS
THAT THERE IS NO CONSTITUTIONAL
BASIS FOR REQUIRING REASONABLE
SUSPICION FOR A DOG SNIFF OF A
FRONT PORCH.

THERE IS NO LEGITIMATE
EXPECTATION OF PRIVACY IN A
FRONT PORCH FREELY ACCESSIBLE
TO THE PUBLIC.

>> ARE YOU DRAWING A
DISTINCTION FROM PORCH, FRONT
DOOR?

>> I'M SORRY?

>> ARE YOU DRAWING A
DISTINCTION, FRONT PORCH, FRONT
DOOR?

>> I'M DRAWING A DISTINCTION
BETWEEN FRONT PORCH AND THE
HOME.

>> WHERE THE FRONT DOOR BEGINS?

>> YES.

TO THE EXTENT, TO THE EXTENT
THAT --

>> I DIDN'T MEAN TO INTERRUPT.
I AM JUST TRYING TO MAKE SURE I
UNDERSTOOD.

>> SURE.

THERE ARE TWO ISSUES HERE.

ONE WHETHER THE DOG SNIFF AT
THE FRONT DOOR WAS ABLE TO
DETECT INFORMATION WITHIN THE
HOUSE.

>> THAT IS ONLY REASON YOU'RE
DOING THIS.

>> RIGHT. EXACTLY.

WELL, BUT, EXACTLY, IT IS ALL,
IT DEDECTS ONLY ILLEGITIMATE
ACTIVITY.

>> I DON'T KNOW.

THEY MAY BE ABLE TO SMELL THE
POT OF SPAGHETTI THAT THE GUY IS
COOKING.

>> DOG CANNOT COMMUNICATE THAT
TO ITS HANDLER.

>> THE QUESTION IS THE
COMMUNICATION THEN?

>> I THINK THE DOG SNIFF IS SUI
GENERIS.

THE SUPREME COURT IS SPECIFIC
ABOUT THAT.

THE BINARY NATURE OF A DOG'S
NOSE IT CAN ONLY REVEAL
PRESENCE OR BE A ABSENCE OF
CONTRABAND OR ONLY ILLEGITIMATE
ACTIVITY.

IT REVEALS NO INFORMATION ABOUT
LEGITIMATE ACTIVITY INSIDE THE
HOUSE.

>> ANALYSIS DRIVEN BY THE
QUESTION WE DISCUSSED EARLIER
WHETHER THE SNIFF IS A SEARCH?
BECAUSE IF IT IS A, NOT A
SEARCH --

>> FOURTH AMENDMENT DOESN'T
APPLY.

>> THEN THE REASONABLENESS
STANDARD OR SOME OTHER STANDARD
DOESN'T REALLY COME INTO PLAY.

>> THAT IS EXACTLY CORRECT.

>> IT IS ONLY, IT IS ONLY IF WE

CONCLUDE THAT IS A SEARCH OR SEIZURE.

BUT IN THIS CASE A SEARCH, THAT WE WOULD CONSIDER WHAT STANDARD OF REASONABLENESS UNDER THE FOURTH AMENDMENT WOULD BE APPLICABLE.

ABSENT CONCLUSION THAT IT IS A SEARCH, YOU JUST DON'T GO THERE.

YOU DON'T HAVE TO.

AND YOU CAN'T.

>> ACTUALLY IF IT IS A SEARCH WOULD REQUIRE PROBABLE CAUSE, NOT REASONABLE SUSPICION.

>> THE FIRST QUESTION WOULD BE IF THERE IS A LEGITIMATE EXPECTATION OF PRIVACY WHERE THAT DOG IS.

>> CORRECT.

>> IF YOU SAY THE DOG OR A PERSON.

I THINK WITH WHAT MR. BLUMBERG'S CONCESSION THAT THE FRONT PORCH ENJOYED NO EXPECTATION OF PRIVACY, TO ME THAT, YOU KNOW, AND OUR CASE LAW MAY SUPPORT THAT.

AND I THINK THE CONCERN I HAVE IS, AND WHAT JUDGE COPE HAD, IN THIS WAS WOULD THAT MEAN THEREFORE, THAT POLICE, SINCE THEY COULD BE ON YOUR FRONT PORCH, COULD JUST STAY THERE ON YOUR FRONT PORCH 24 HOURS DAY WAITING TO SEE WHETHER YOU OPEN

THE BLINDS, WHETHER YOU, YOU
THEY, COME IN AND OUT OF THE
HOUSE.

WHETHER YOU GROW OUT TO THE
GARBAGE?

I MEAN ARE THERE PARAMETERS IN
TERMS OF JUST SAYING, IT'S,
THAT THE FRONT PORCH -- WOULD
YOU AGREE WITH THAT THERE
IS GOING TO BE SOME SITUATION
WHERE IT IS GOING TO INTRUDE
UPON A REASONABLE EXPECTATION
OF PRIVACY?

SO SIMPLY SAYING, WE JUST TAKE
THE DOG VERSUS POLICE OFFICER,
WE WOULDN'T EXPECT THE POLICE
OFFICER TO BE ABLE TO JUST HANG
OUT ON SOMEONE'S FRONT PORCH,
WAITING FOR SOMETHING IMPROPER
TO HAPPEN?

WOULD YOU AGREE WITH THAT?

>> WELL, TWO RESPONSES YOUR
HONOR.

ONE IS THAT THOSE CONCERNS ARE
EQUALLY PRESENT WITH A HUMAN
POLICE OFFICER CONDUCTING A
KNOCK AND TALK.

SO THERE IS NO REASON FOR THE
DOG --

>> THAT'S WHAT I'M SAYING.

THE FOURTH AMENDMENT IS STILL
IMPLICATED.

IT DOESN'T NECESSARILY, IF YOU
SAY THAT THE DOG SNIFF IS NOT A
SEARCH IN A CLASSIC SENSE, JUST
LIKE, LOOKING INTO THE WINDOW,

AND YOU ANALYZE IT TO THAT
BECAUSE THE U.S. SUPREME COURT
HAS KIND OF DONE THAT AND THERE
ISN'T AN ATTACK ON FULL ABILITY
OF THE DOG AND I ASSUME THAT
WAS NOT RAISED HERE.

>> NO.

>> WE DON'T HAVE THAT ISSUE,
THEN IT STILL GOES TO THE
TOTALITY OF CIRCUMSTANCES AS TO
WHETHER IT WAS A REASONABLE
INTRUSION ON SOMEONE'S PRIVACY.

>> YOUR HONOR, AS LONG AS IT'S
NOT A SEARCH WITHIN THE MEANING
OF THE FOURTH AMENDMENT, THEN I
DON'T THINK THE FOURTH
AMENDMENT APPLIES.

>> ARE YOU SAYING A POLICE
OFFICER COULD COME TO MY FRONT
PORCH AND, OR FRONT, YOU KNOW,
STEP, AND, 3:00 IN THE MORNING
AND, STAY THERE FOR SEVERAL
HOURS?

THAT I HAVE NO -- THAT I HAVE
NO REASONABLE EXPECTATION OF
PRIVACY?

YOU KNOW, --

>> HAVE TO PUT UP A FENCE.

SAY DO NOT ENTER.

>> ARE YOU SAYING THAT?

>> I DON'T THINK IT IS A FOURTH
AMENDMENT ISSUE.

I'M NOT SURE, EXACTLY, WHAT
EXACTLY --

>> WELL, IF IN
CIRCUMSTANCES SUCH AS THAT, THE

PERSON RESIDING IN THE HOUSE
TOLD THE OFFICER, GET OFF MY
PORCH, THERE COULD BE ISSUE OF
TRESPASS AT SOME POINT.

>> CORRECT.

>> BUT THAT'S NOT, THAT IS
TOTALLY DIFFERENT ISSUE AND
CERTAINLY NOT INVOLVED IN THE
FACTS OR NOTHING LIKE THAT IS
INVOLVED IN THE FACTS BEFORE
US.

>> WELL, IF YOU CONSIDER IT, I
MEAN IT IS OUT OF THE FOURTH
AMENDMENT CONSIDERATION,
OFFICER WALKS UP, KNOCKS ON THE
DOOR.

SOON AS THE DOOR IS OPEN, DOG
GOES INSIDE.

SNIFFS, AND COMES BACK OUT AND
ALERTS. IT IS NOT A SEARCH.

WHAT HAPPENS THEN?

>> WELL, ONCE THE DOG ENTERS
THE HOME, THEN, THAT'S A
DIFFERENT STORY BECAUSE THEN
THE DOG IS NOT LAWFULLY PRESENT
INSIDE THAT HOME.

>> WHETHER LAWFULLY OR
UNLAWFULLY.

>> I DON'T KNOW IF THERE IS
CONSENT TO ENTER THE HOUSE.

>> IT IS NOT A SEARCH.

WHY IS LAWFUL, NOT A SEARCH AT
ALL, WHY DOES LAWFUL PRESENCE
EVEN GET INVOLVED?

IT IS NOT A SEARCH?

>> BECAUSE AGAIN, A, FOR

EXAMPLE, IF THE DOG ENTERED THE HOME OR THE HUMAN POLICE OFFICER ENTERED THE HOME --

>> THERE IS NOT A SEARCH.

>> YOU STILL NEED, ONE WOULD STILL NEED A SEARCH WARRANT.

>> IF IT IS NOT A SEARCH, THE RESULTS OF SOMETHING THAT IS NOT A SEARCH IS NOT A SEARCH.

YOU SAID, THIS IS THE DISCUSSION GOING ON, IT DOES NOT EVEN IMPLICATE THE FOURTH AMENDMENT.

>> WELL SIMPLY INVESTIGATORY TECHNIQUE THAT MAY OR MAY NOT PROVIDE PROBABLE CAUSE FOR SUBSEQUENT SEARCH.

>> SO IT IS NOT.

A DOG CAN GO INTO THE HOUSE AND SNIFF AROUND AND WHATEVER THEY LEARN FROM THAT, IT IS NOT A SEARCH.

>> I THINK THAT THE DOG'S PRESENCE -- WELL, GOOD POINT, YOUR HONOR.

>> TRYING TO THINK ABOUT --

>> DOG WOULD BE ACCOMPANIED BY THE HANDLER.

>> NO, I'M SAYING, THE DOG GOES IN. IT IS NOT A SEARCH.

IF THAT IS THE ABSOLUTE TECHNICAL RULE.

WHY ARE WE EVEN HERE?

YOU UNDERSTAND WHAT I'M SAYING.

>> RIGHT.

>> THIS IS WHERE HE GO.

THERE MUST BE SOME AREAS, SOME LIMITS TO THIS OR WE LET DOGS RUN LOOSE DO WHATEVER THEY WANT.

>> WHY WOULD THE DOG'S PRESENCE IN THE HOUSE BE ANY DIFFERENT THAN THE OFFICER'S PRESENCE IN THE HOUSE?

>> EXACTLY.

>> THE OFFICER CAN GO TO THE FRONT DOOR.

THE DOG CAN GO TO THE FRONT DOOR.

THE OFFICER GOES IN THE HOUSE SEES SOMETHING HE SHOULDN'T SEE, THAT IS UNLAWFUL ENTRY AND ILLEGAL SEARCH.

IF THE DOG GOES IN THE HOUSE WHERE HE IS NOT SUPPOSED TO BE AND DETECTS SOMETHING, THAT IS UNLAWFUL ENTRY.

>> YES.

>> AND, A SEARCH THAT IS UNLAWFUL.

>> IT IS NOT A ITCH SO.

IT IS NOT A SEARCH.

SAID ALL MORNING.

IT IS NOT A SEARCH.

THAT IS SOMEBODY WALKING INTO THE ROOM.

SO THE QUESTION IS, CAN YOU USE WHAT THEY SEE?

IS IT A SEARCH OR IS IT NOT.

IF IT IS NOT A SEARCH IT IS NOT A SEARCH.

IT MAY BE UNLAWFUL ENTRY, BUT

IF IT IS NOT A SEARCH, IT IS
NOT A SEARCH.

WE HAVE TO HAVE, RULES NEED TO
APPLY WHATEVER IT IS WE'RE
GOING TO DO.

>> THAT'S TRUE, ALTHOUGH I
THINK ONE MIGHT CONSIDER THE
DOG, TREAT THE DOG SAME WAY AS
HUMAN POLICE OFFICER.

AS FAR AS PRESENCE IS
CONCERNED.

>> WHAT TROUBLES ME WE HAVE ALL
THESE CASE, I'M, I WAS
SURPRISED AT THIS CASE LAW OUT
HERE AT THAT YOU AT THATS ABOUT
THE PORCH.

NO ONE HAS ANY EXPECTATION OF
PRIVACY.

WHEN YOU GO AND GET A SEARCH
WARRANT AND YOU WANT TO DO THE
PRIVILEGE, WHICH, YOU KNOW,
USUALLY INCLUDES THE PORCH AND,
THE YARD AND ALL THAT KIND OF
STUFF YOU HAVE GOT TO INCLUDE
THAT IN IT.

SO IT IS VERY SURPRISING TO ME
THAT THE PORCH, WHICH IS
GENERALLY A PART OF THE
CURTELAGE OF THE HOUSE, IS FREE
GAME OF THE POLICE.

>> AS LONG AS FREELY ACCESSIBLE
TO THE PUBLIC, SCREENED IN OR
THE FENCE.

>> SO IS THE YARD.

>> WOULD A SCREEN BE A
DIFFERENCE IN THE PORCH??

>> IT MIGHT MAKE A DIFFERENCE
AS FAR AS EXPECTATION OF
PRIVACY.

>> WHAT ABOUT CHAIN-LINK ENDS
FENCE IN THE FRONT YARD WITH A
GATE?

>> A CHAIN-LINK FENCE --

>> WITH A GATE?

WITH A GATE IT WOULD?

WITH A GATE?

THAT WOULD DO IT TOO?

HE SAID A CHAIN-LINK FENCE WITH
A GATE?

>> YES, I BELIEVE SO.

>> THAT WOULD THEN STOP IT,
EVEN THOUGH SALESMEN CAN COME
THROUGH THE GATE AND COME UP TO
THE DOOR.

>> COULD AT MY HOUSE.

>> WHAT IF, POLICE OFFICER WITH
A DOG, AT RANDOM JUST CHOOSE AS
HOUSE, RANDOMLY.

TAKES THE DOG UP THERE, AND THE
DOG SMELLS SOMETHING THAT THE
OFFICER CAN NOT.

IS THAT A SEARCH?

>> NO.

AS LONG AS THE DOG IS LAWFULLY
PRESENT.

ARE WE SPEAKING ABOUT THE FRONT
PORCH OF A HOUSE FREELY
ACCESSIBLE TO THE PUBLIC?

THEN THERE IS NO, THE DOG, BOTH
THE DOG AND HANDLER ARE
LAWFULLY PRESENT ON THAT PORCH
AND THE DOG SNIFF IS NOT 50

SEARCH -- NOT A SEARCH UNLESS
IMPLICATED.

ONLY THING REVEALED PRESENCE OR
ABSENCE OF CON FROM BAND.

THERE IS NO LEGITIMATE PRIVACY
INTEREST IN POSSESSING
CONTRABAND.

I THINK THAT IS VERY CLEAR OF
THE CASES SUPREME COURT BOTH IN
CABALLES.

IF I MAY, I WOULD LIKE TO,
ADDRESS THE FACTS BRIEFLY.

THE DETECTIVE PEDRAJA WENT TO
THE PROPERTY AFTER RECEIVING A
ANONYMOUS TIP.

HE CONDUCTED SURVEILLANCE AFTER
15 MINUTES AND DECIDED TO CALL
IN THE K-9 UNIT AND HANDLER.

ALL THREE, THE DETECTIVE, THE
K-9 AND HANDLER BEGAN TO
APPROACH THE FRONT DOOR.

BUT BECAUSE FRANKY IS VERY
ENERGETIC AND THE DETECTIVE
DIDN'T WANT TO GET CAUGHT UP IN
THE LEASH, THE HANDLER AND THE
DOG PASSED UP THE DETECTIVE ON
THE DRIVEWAY AND THEY, THE DOG
REACHED THE FRONT DOOR BEFORE
THE DETECTIVE.

BUT THERE'S --

>> BUT YOU'RE NOW, I REREAD THE
JUDGE'S ORDER ON SUPPRESSION
AND THEY FIRST RELY, AS THEY
PROPERLY SHOULD HAVE ON RABB TO
SAY THE DOG SNIFF WAS ILLEGAL.
THEN THE ARGUMENT MUST HAVE

BEEN MADE THAT THE POLICE OFFICER SMELLED IT ALSO, AND, FOOTNOTE ONE OF THE JUDGE'S ORDER SAYS THERE WAS EVIDENCE AFTER THE DRUG DOG ALERTED, THE OFFICER ALSO DETECTED A SMELL OR THIS INFORMATION WAS ONLY CONFIRMING WHAT THE DETECTION DOG HAD ALREADY REVEALED.

SO THIS ISSUE OF FINDING A FACT ABOUT WHO ARRIVED FIRST AND, IS, WE CAN'T MAKE THAT DETERMINATION.

I DON'T KNOW IF THE THIRD DISTRICT DID BUT THE, THAT, THE JUDGE MADE THE DETERMINATION THAT THE POLICE DOGS WERE THERE FIRST.

>> OH, ABSOLUTELY.

I'M NOT CONTESTING THAT, YOUR HONOR.

I'M JUST, WITH REGARD TO INEVITABLE DISCOVERY DOCTRINE, WHAT I'M SAYING THE STATE ESTABLISHED A REASONABLE PROBABILITY.

AND BY THE WAY, IT IS NOT, YOU KNOW, IT IS INEVITABLE DISCOVERY BUT DOESN'T HAVE TO BE 100% CERTAINLY INEVITABLE. THE DISCOVERY HAS TO BE INEVITABLE.

ONLY REASONABLE PROBABILITY THAT THE DETECTIVE WOULD HAVE STILL APPROACHED HOUSE EVEN AFTER THE DOG SNIFF.

>> WAS THAT ARGUED TO THE TRIAL JUDGE?

>> IT WAS ARGUED TO THE TRIAL JUDGE.

>> IT WAS NOT ADDRESSED. THERE WERE NO FINDINGS AS TO THAT.

>> JUST SO I'M CLEAR ON THAT. THE DOG, FRANKY AND HANDLER GET THERE, CORRECT?

WHERE WAS OFFICER PEDRAJA WAS PASSED UP IN THE DRIVEWAY.

IT IS NOT CLEAR.

>> HE WAS IN THE CAR?

>> NO.

DETECTIVE PEDRAJA SPECIFICALLY SAYS IN THE FACTS HE WAS PASSEDP IN THE DRIVEWAY, APPROACHING WALKING TOWARD THE DOOR, WAS PASSED UP BY THE HANDLER BECAUSE FRANKY IS ENERGETIC.

NO INTENTION HE INTENTIONALLY STOPPED AS COUNSEL SUGGESTS OR HE CONTINUED TO WALK, WE DON'T KNOW.

WE KNOW HE WAS ALREADY WALKING TOWARDS THE FRONT DOOR AS THE TIME HE WAS PRACTICED UP BY THE DOG.

>> AT THE TIME, SO I'M CLEAR, WHEN FRANKY AND HANDLER WALKED UP TO THE DOOR, PEDRAJA WAS NOT SITTING IN THE CAR AND WAITING TO SEE WHAT HAPPENED?

>> NO. HE HAD ALREADY STARTED TO

APPROACH THE DOOR.

>> HAD PEDRAJA APPROACHED THE DOOR ANY TIME BEFORE THE DOG AND HANDLER GOT THERE.

>> NO, YOUR HONOR.

>> FIRST IS SOUNDED PRETTY REASONABLE.

THEY GET A TIP.

HE WAITS FOR THE DOG TO SEE IF THERE IS GOING TO BE CONFIRMATION.

NOW YOU'RE SAYING, SO, HE WAS JUST WAITING BUT THEN THEY WERE ALL THREE GOING UP TOGETHER WITH THE DOG?

DID HE SAY THAT?

HE WAS WAITING BUT NO MATTER WHAT THE DOG?

>> I DON'T KNOW THAT HE SAID THAT HE SAID THAT'S WHAT HAPPENED.

I DON'T KNOW THAT HE TESTIFIED AS TO HIS INTENTIONS, BUT DID TESTIFY THAT'S WHAT HAPPENED. ONCE THE K-9 AND HANDLER THERE, THEN ALL THREE APPROACHED AT THE SAME TIME.

ALSO I WOULD LIKE TO POINT OUT NEITHER POLICE OR CABALLES TURNED ON ANYTHING BE SNIFFED. BOTH CASES TURNED ON BINARY NATURE OF THE DOG'S NOSE AND ABILITY TO DETECT PRESENCE OR ABSENCE OF CONTRABAND.

MADE NO DIFFERENCE IN LUGGAGE OR BEING SEARCHED OR TRUNK OF A

CAR. THAT'S ALL I HAVE.

>> THANK YOU.

THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.