



LAW ENFORCEMENT RISK MANAGEMENT BULLETIN

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Supreme Court makes decision for, against police search powers

The United States Supreme Court recently handed down two decisions that will directly affect the way law enforcement officers conduct searches; one decision limits police authorities, while the other reiterates the validity of a common police tool.

In a February, 2013 decision, the Supreme Court has limited the power of police to detain people who are not at home while their residence is being searched. In *Bailey v. United States* (11-770), Chunon Bailey left his Wyandach, NY apartment one evening to drive a friend home. Bailey was pulled over shortly thereafter, about three-quarters of a mile from his home, and was handcuffed and driven back to his residence while police, via search warrant, searched his apartment for a gun. A firearm and drugs were located, and Bailey was eventually found guilty of cocaine possession and other crimes, and sentenced to 30 years in prison.

Appealing his case all the way to the Supreme Court, Bailey asserts he was illegally detained, while defending council cited he was held lawfully under *Michigan v. Summers* (1981), in which it was ruled police could detain people without suspicion in order to keep them from fleeing or harming officers.

Justice Anthony Kennedy wrote in his opinion for the court's 6-3 vote in favor of Bailey that the authority of police to detain a person found at their home during a search authorized by a warrant is limited to the immediate vicinity of the premises. Kennedy noted that concern for officer safety diminishes the farther away from the home the detention occurs. The justice added that none of the concerns present to justify the circumstances in *Michigan v. Summers* were evident in Bailey's detention. "The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched," Kennedy wrote. "To do otherwise gives the police too much discretion," he said.

In an unrelated Supreme Court case closely watched by law enforcement officials, justices unanimously sided with a Florida law enforcement agency and Aldo, its K-9 officer.

The court concluded that a sheriff's deputy had probable cause to conduct a search during a routine traffic stop when Aldo presented "alert signs". The deputy did not find the drugs Aldo was trained to locate, but did find paraphernalia used to make methamphetamine.

In order to meet the requirements to become a K-9, Aldo had completed a 120-hour training course given by the Apopka, Florida Police Department and received a one-year certification from a private law enforcement K-9 accreditation program. The German shepherd and his handler, Officer William Wheatley, attended regular training sessions. Despite this extensive training, in a prior decision, the Florida Supreme Court made a ruling that would have ordered officials to produce a canine's field performance records, including false alerts and unproductive searches, to demonstrate a dog's reliability when a search was challenged.

In an 11-page brief, Justice Elena Kagan wrote, "Training records established Aldo's reliability in detecting drugs," rejecting the Florida Supreme Court's decision and countering that its "strict evidentiary checklist" was too unyielding in judging dog reliability, especially as "errors may abound" in a K-9's field performance. "The better measure of a dog's reliability thus comes away from the field, in controlled test environments," she wrote. "For that reason, evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert."

The case included a legal brief from 24 states in support of the Florida law enforcement officials. The states agreed and stressed to the court, "drug-detecting canines are one of the essential weapons in the states' arsenal to combat this illegal traffic."

For questions about these or other law enforcement issues, contact AMRRP's Mike Branham or Eric Duthie at (602) 996-8810.