

The U.S. Supreme Court: Architects of the American Police State

Written by John W. Whitehead
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“The unspoken power dynamics in a police/civilian encounter will generally favor the police, unless the civilian is a local sports hero, the mayor, or a giant who is impervious to bullets.” – Journalist Justin Peters

From time to time throughout history, individuals have been subjected to charges (and eventual punishment) by accusers whose testimony was treated as infallible and inerrant. Once again, we find ourselves repeating history, only this time, it’s the police whose testimony is too often considered beyond reproach and whose accusations have the power to render one’s life over.

In the police state being erected around us, the police can probe, poke, pinch, taser, search, seize, strip and generally manhandle anyone they see fit in almost any circumstance, all with the general blessing of the courts. Making matters worse, however, police dogs – cute, furry, tail-wagging mascots with a badge – have now been elevated to the ranks of inerrant, infallible, sanctimonious accusers with the power of the state behind them. This is largely due to the U.S. Supreme Court’s recent ruling in *Florida V. Harris*, in which the court declared roadside stops to be Constitution-free zones where police may search our vehicles based upon a hunch and the presence of a frisky canine.

This is what one would call a slow death by a thousand cuts, only it’s the Fourth Amendment being inexorably bled to death. This latest wound, in which a unanimous Supreme Court determined that police officers may use drug-sniffing dogs to conduct warrantless searches of

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cars during routine traffic stops, comes on the heels of recent decisions by the court that give police the green light to taser defenseless motorists, strip-search nonviolent suspects arrested for minor incidents, and break down people's front doors without evidence that they have done anything wrong.

These are the hallmarks of the emerging American police state, where police officers, no longer mere servants of the people entrusted with keeping the peace, are part of an elite ruling class dependent on keeping the masses corralled, under control, and treated like suspects and enemies rather than citizens. Whether it's police officers breaking through people's front doors and shooting them dead in their homes or strip-searching innocent motorists on the side of the road, in a police state such as ours, these instances of abuse are not condemned by the government. Rather, they are continually validated by a judicial system that kowtows to every police demand, no matter how unjust, no matter how in opposition to the Constitution.

The justices of the United States Supreme Court through their deference to police power, preference for security over freedom, and evisceration of our most basic rights for the sake of order and expediency have become the architects of the American police state.

In *Florida V. Harris*, for example, the court was presented with the case of Clayton Harris, who, in 2006, was pulled over by Officer William Wheatley for having an expired license tag. During the stop, Wheatley decided that Harris was acting suspicious and requested to search his vehicle. Harris refused, so Wheatley brought out his drug-sniffing dog, Aldo, to walk around Harris' car. Aldo allegedly alerted on the door handle of Harris' car, leading Wheatley to search the vehicle.

Although the search of Harris' car did not turn up any of the drugs that Aldo was actually trained to detect – such as marijuana – Wheatley found pseudophedrine, a common ingredient in cold medicine, and other materials allegedly used in the manufacture of methamphetamine. Harris was arrested and released on bail, during which time he was again stopped by Officer Wheatley and again subjected to a warrantless search of his vehicle based upon Aldo's alert, but this time Wheatley found nothing.

Harris challenged the search, arguing that the police had not provided sufficient evidence that Aldo was a reliable drug-sniffing dog, thus his supposed alert on Harris' door did not give the officer probable cause to search the vehicle. The Florida Supreme Court agreed, ruling that police should be able to prove that the dog actually has a track record of finding drugs while in

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the field before it is used as an excuse for a warrantless search.

Unfortunately, the U.S. Supreme Court did not see it that way. In reversing the Florida Supreme Court's ruling, the U.S. Supreme Court sided with police by claiming that all that the police need to do to prove probable cause for a search is simply assert that a drug-detection dog has received proper training. As such, the court has now given the police free reign to use dogs as "search warrants on leashes," justifying any and all police searches of vehicles stopped on the roadside. The ruling turns man's best friend into an extension of the police state.

The Supreme Court's decision is particularly alarming when one considers that drug-sniffing dogs, even expertly trained dogs with reliable handlers, are rarely accurate. One study demonstrated that dogs were incorrect in drug identification up to 60 percent of the time. A 2011 study published in *Animal Cognition* involved a series of tests, some designed to fool the dog and some designed to fool the handler. The dogs in these tests falsely alerted 123 out of a total of 144 times. When a test was designed to fool the handler rather than the dog, the dog was twice as likely to falsely alert.

As the *Animal Cognition* study shows, dogs are heavily influenced by the behavior and biases of their handlers. If an officer thinks he is likely to find something, whether due to personal bias or because he finds the suspect suspicious, he often cues his dog – consciously or unconsciously – to alert on the area to be searched.

Despite being presented with numerous reports documenting flaws in the use of drug-detection dogs, the U.S. Supreme Court opted to ignore plentiful evidence that drug-dog alerts are specious at best. Moreover, the justices also chose to interpret Aldo's failure to detect any of the drugs he was trained to find during the two sniff-searches around Harris' car as proof of Aldo's superior sniffing skills rather than glaring proof that drug-sniffing dogs *do* make mistakes. Incredibly, the court suggested that the dog alert was due to Aldo having smelled an odor that was transferred to the car door after the defendant used methamphetamine – a supposition that is nearly impossible to prove.

Law enforcement officials have come up with a slew of clever excuses to "explain" the not-uncommon phenomenon of dogs that alert but fail to uncover drugs. For example, in 2008, U.S. border-patrol agent Christopher Jbara claimed that a dog alerted to a car containing no drugs because the car's window "had been washed by a window-washer on the street ... and the water used to clean it could have been contaminated with bong water." The real reason may

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be that the odors that dogs are trained to detect are simply chemical compositions found in a number of common products. For example, to a dog, perfume may smell like cocaine, glue may smell like heroin, and mosquito repellent may smell like the drug ecstasy.

Unfortunately, the Supreme Court's decision is merely the latest in a long line of abuses justified by an institution concerned more with establishing order and protecting government agents than with upholding the rights enshrined in the Constitution. For example, in 2011, the U.S. Supreme Court ruled 8-1 in *Kentucky V. King* that police may smash down doors of homes or apartments *without* a warrant when in search of illegal drugs that they suspect might be destroyed. Despite the fact that police busted in on the *wrong* suspect in the *wrong* apartment, the court sanctioned the warrantless raid, saying that police had acted lawfully and that was all that mattered.

In April 2012, a divided Supreme Court ruled in *Florence V. Burlington* that any person who is arrested and processed at a jail house, regardless of the severity of his or her offense (i.e., they can be guilty of nothing more than a minor traffic offense), can be subjected to a strip search by police or jail officials, which involves exposing the genitals and the buttocks.

This "license to probe" is being extended to roadside stops, as police officers throughout the country have begun performing roadside strip searches without any evidence of wrongdoing and without a warrant. For example, Angel Dobbs and her niece, who were pulled over by a Texas state trooper on July 13, 2012, allegedly for flicking cigarette butts out of the car window, were subjected to roadside cavity searches of their anuses and vaginas. The officer claimed to be searching for marijuana; no marijuana was found.

With case after case stacking up in which the courts empower the police to run roughshod over citizens' rights, the Constitution be damned, the outlook is decidedly grim. In fact, the U.S. Supreme Court still has to rule on another drug-sniffing-dog-related case, *Florida V. Jardines*, which challenges warrantless searches of individuals' homes based on questionable dog alerts. For those hoping that our rights will be restored or at least protected, you could have a long wait.

Indeed, the next decision from the Supreme Court might just take the Fourth Amendment down

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for the count.

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