

Written by John W. Whitehead
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WASHINGTON, DC — In a 9-0 decision in *Florida v. Harris*, the U.S. Supreme Court has declared that police may use drug-sniffing dogs to carry out warrantless searches during routine traffic stops. Citing studies raising serious doubts about the reliability and training of drug detection dogs, The Rutherford Institute had asked the U.S. Supreme Court to declare the practice of using drug detection dogs as the sole basis for warrantless searches unconstitutional under the Fourth Amendment's prohibition on unreasonable searches and seizures. Published scientific studies show that drug dog alerts are wrong as much as 56% of the time, and are heavily influenced by the biases of the dog's handler.

“This ruling undercuts the entire basis of the Fourth Amendment, which was designed to protect us from unreasonable searches and seizures,” said John W. Whitehead, president of The Rutherford Institute. “When dog sniffs, which have proven to be unreliable, are considered probable cause for police to search your property without a warrant—whether it's your home, your car or your person—then none of our rights are secure.”

In June 2006, a Florida county sheriff stopped a vehicle driven by Clayton Harris for an expired license tag. When Harris refused the sheriff's request for consent to search the vehicle, a drug-detection dog was deployed and conducted a “free air sniff” of the exterior of the vehicle. When the dog alerted to the door handle on the driver's side, the officer conducted a warrantless search of the interior of the vehicle and found materials used for the manufacture of methamphetamine. Harris was arrested and charged. However, before trial, Harris' attorneys moved to suppress the evidence found as a result of the search of his vehicle, asserting that the search violated the Fourth Amendment. At the suppression hearing, the state introduced evidence that the dog had gone through training and was certified for drug detection, but presented no specific evidence documenting the dog's overall performance nor records of the dog's false alerts. In fact, Harris presented evidence that the dog had alerted to the same vehicle two months after his arrest, but a search of the vehicle revealed no illegal drugs. The trial court denied the motion to suppress, but the Florida Supreme Court granted the motion on appeal, ruling that evidence that the dog has been trained and certified to detect narcotics, standing alone, is not sufficient to establish the dog's reliability for purposes of

U.S. Supreme Court Rules in Favor of Police Use of Drug-Sniffing Dogs to Carry Out Warrantless Searches

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determining probable cause. The court held that the state has the burden of showing the officer had a reasonable basis for believing the dog was reliable by presenting evidence on matters such as training field performance records.

In asking the U.S. Supreme Court to affirm the lower court's ruling, The Rutherford Institute documented empirical research showing dog alerts are not inherently reliable. One recent study at the University of California—Davis, showed that in a test where handlers were told drugs might be found at the test site, but no drugs were present, dogs gave false positive alerts an astonishing 85% of the time. The U.S. Supreme Court has yet to rule on a related case, *Florida v. Jardines*, which challenges the use of drug-sniffing dogs by police to carry out warrantless searches of private homes. The Rutherford Institute also filed an amicus brief in *Florida v. Jardines*.

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