

K9 Sniffs at the Door: Understanding the Limits of the Fourth Amendment in Apartment Buildings

By **Daigle Law Group**

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We head to the Fourth Circuit to examine the recent and consequential ruling in **United States v. Johnson**. This case serves as a critical exploration of Fourth Amendment boundaries, specifically regarding the distinction between protected curtilage and common property in multi-unit dwellings during warrantless K9 sniffs.

The Facts of the Case

In March 2019, Washington County law enforcement officers collaborated with the DEA to investigate Eric Tyrell Johnson for suspected involvement in a fentanyl and heroin trafficking operation spanning Maryland and West Virginia. Following an extensive surveillance and wiretap operation, investigators identified Apartment 201, located within a large Maryland apartment complex, as Johnson's base of operations.

Agent Jasen Logsdon moved to act on this suspicion to secure a search warrant. In August 2019, the building's management granted him permission to conduct a warrantless investigation within the building's common areas, specifically allowing access to the hallway directly outside Johnson's apartment door.

During this phase of the investigation, Agent Logsdon utilized a trained drug-detection dog to perform a "free air sniff" in the common hallway. The dog alerted to the presence of illegal drugs at the bottom of Johnson's door, providing the probable cause necessary to obtain a formal search warrant for the residence.

Upon executing the warrant, officers discovered significant quantities of heroin and fentanyl, alongside firearms, ammunition, large sums of cash, and multiple cell phones. Johnson was subsequently charged with unlawful possession of a firearm and ammunition, conspiracy, and possession with intent to distribute fentanyl and heroin.

The Motion to Suppress

Johnson moved to suppress the evidence, claiming the warrantless dog sniff in the hallway constituted a Fourth Amendment violation. He asserted that the hallway area immediately outside his door should

be classified as protected curtilage, granting it the same privacy protections afforded to the interior of a home. Under this theory, the dog sniff would be considered a physical trespass and an unlawful search.

The district court denied the motion, concluding that a dog sniff only reveals the presence of contraband—in which there is no legitimate privacy interest. Furthermore, the court held that because the hallway was a shared space accessible to residents and staff, it did not constitute protected curtilage. Johnson appealed the decision to the Fourth Circuit Court of Appeals.

The Fourth Circuit Ruling

The Fourth Circuit upheld the district court's decision, ruling that the dog sniff at the apartment door did not constitute a search under the Fourth Amendment.

Johnson argued that the sniff violated a reasonable expectation of privacy by revealing information about the inside of his home, citing the Supreme Court case **Kyllo v. United States**. In *Kyllo*, the Court held that using advanced technology (like thermal imaging) to explore details of a home that would otherwise be unknowable without physical intrusion constitutes an unreasonable search.

However, the Fourth Circuit distinguished dog sniffs from the technology used in *Kyllo*. Citing **Illinois v. Caballes**, the court noted that there is no legitimate interest in possessing contraband. Since a trained K9 only alerts to the presence of narcotics, it does not compromise a legitimate privacy expectation.

The Question of Curtilage

Johnson further argued that even if *Kyllo* did not apply, the area was protected under **Florida v. Jardines**, which held that a dog sniff on the front porch of a private home is a search of the curtilage requiring a warrant.

To resolve this, the court applied the four-factor balancing test from **United States v. Dunn** to determine if the hallway was curtilage:

1. **Proximity:** How close the area is to the home.
2. **Enclosure:** Whether the area is within an enclosure surrounding the home.
3. **Nature of use:** How the area is typically used.
4. **Steps taken to shield:** Whether the resident tried to protect the area from public view.

While the “proximity” factor weighed in Johnson’s favor, the court found the hallway was not enclosed, was not under Johnson’s exclusive control, and was used by many others. Unlike the private porch in *Jardines*, this hallway was a common area. Consequently, the court held the sniff did not require a warrant and the evidence was admissible.

Key Takeaways

United States v. Johnson clarifies that hallways, driveways, or porches accessible to the public or other residents are generally deemed common property rather than protected curtilage. In these spaces, there is no reasonable expectation of privacy, allowing for warrantless K9 sniffs.

However, constitutional limits remain strict. Officers must exercise caution: dog sniffs conducted inside a home or within its actual curtilage still require a warrant or valid consent. Understanding these geographic boundaries is essential to maintaining the integrity of any investigation involving canine units.

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