DeWolfe appeals drug-sniffing dog case to Supreme Court

Issue addresses Fourth Amendment, dogs' reliability

By: Steve Lash Daily Record Legal Affairs Writer August 31, 2018

Maryland Public Defender Paul B. DeWolfe has urged the U.S. Supreme Court to review and overturn the state high court's decision requiring appellate courts to defer to trial judges' determinations – unless clearly wrong — that a drug-sniffing dog was reliable, saying the reliability issue is too constitutionally significant to leave unreviewed.

In papers filed with the justices, DeWolfe said police officers' reliance on a dog's detection of drugs is often the decisive factor they cite in saying they had "probable cause" to search a vehicle, as required by the Constitution's Fourth Amendment.

DeWolfe filed the request for Supreme Court review on behalf of Brian Grimm, who is appealing a drug conviction, saying the justices should review anew the trial judge's finding that a drug-detecting dog reliably smelled drugs in Grimm's car.

Grimm's trial counsel had argued in vain that the dog, Ace, was unreliable based on a propensity for false positives during training.

The Maryland Court of Appeals upheld the conviction in April, saying that, in the absence of clear error, deference was owed to the trial judge who found Ace to be reliable.

Maryland's Court of Appeals has ruled that appellate courts must defer to trial judges' determinations – unless clearly wrong — that a drug-sniffing police dog is reliable. (File Photo)

But "clear error review is incompatible with securing the Fourth Amendment guarantee against unreasonable searches," which requires greater appellate oversight, DeWolfe wrote in the papers cosigned by Assistant Maryland Public Defender Jeffrey M. Ross, the counsel of record before the Supreme Court.

"In a given case, an appellate court might become convinced that the record more fully supports the conclusion that a dog is unreliable because it was not well-trained, calling into question the (police) department's entire program," DeWolfe added. "But, under clear error review, the dog and the department, would get a pass."

DeWolfe also urged the justices to provide lower courts with guidance on how much training a dog-sniffing dog must have to be deemed reliable.

Maryland Attorney General Brian E. Frosh, through Assistant Attorney General Carrie J. Williams, has chosen not to submit a reply to DeWolfe's request for Supreme Court review unless the justices ask for a response.

The Supreme Court has not set a date for its consideration of DeWolfe's request. The case is docketed at the high court as *Brian Grimm v. State of Maryland*, No. 18-117.

In its decision, the Court of Appeals essentially upheld the sniffing talents of Ace, who alerted his police handler to the potential presence of drugs in Grimm's car after police had stopped him for failing to wear a seat belt on the Baltimore-Washington Parkway near Arundel Mills on April 9, 2014. Officers found heroin during the subsequent search.

Grimm pleaded guilty to possession of heroin with intent to distribute after Anne Arundel County Circuit Judge William C. Mulford said Ace's signal gave the officers probable cause to search. Grimm was sentenced to 15 years in prison but permitted to argue on appeal his constitutional Fourth Amendment right against unreasonable searches had been violated because Ace was an unreliable drug sniffer.

The Court of Appeals rejected Grimm's suggestions, through counsel, to review Mulford's determination anew and to set standards for judging a drug-sniffing dog's reliability.

"Grimm barks up the wrong tree in asserting that, because there are no generally accepted standards in Maryland regarding the training and certification of drug detection dogs, appellate courts must provide guidance to law enforcement agencies," Judge Shirley M. Watts wrote for the high court.

"The Fourth Amendment does not require such standards," she added. "Just as no constitutional provision requires set standards for the training and certification of drug detection dogs, no Maryland statute does, either."

Judge Sally D. Adkins, in a concurring opinion, said appellate courts should review a drug-sniffing dog's reliability based on the "totality of the circumstances." Adkins found that the totality of the circumstances, including testimony from officers who trained Ace and the dog's training record, showed the canine to be reliable.

The Court of Appeals rendered its decision in *Brian Grimm v. State of Maryland*, No. 37 September Term 2017.

Tagged with: DRUGS   FOURTH AMENDMENT   K-9   MARYLAND COURT OF APPEALS   PROBABLE CAUSE   SUPREME COURT

To purchase a reprint of this article, contact reprints@thedailyrecord.com.