**[J-47-2001]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

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| COMMONWEALTH OF PENNSYLVANIA, | : | No. 37 WAP 2000 |
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| Appellee | : | Appeal from the Order of the Superior |
| | : | Court entered November 22, 1999 at No. |
| | : | 735WDA1999, reversing the Order of the |
| v. | : | Court of Common Pleas of Butler County |
| | : | entered April 14, 1999 at C.A. No. 119 of |
| | : | 1998. |
| EDWARD S. ROGERS, | : | |
| | : | 741 A.2d 813 (Pa. Super. 1999) |
| Appellant | : | |
| | : | SUBMITTED: March 6, 2001 |

## CONCURRING OPINION

**MR. JUSTICE CASTILLE** **DECIDED: May 27, 2004**

I join the Majority Opinion because it comports with both federal law and the existing state constitutional construct.[1] I write separately to address this Court's existing jurisprudence in the canine sniff area and to suggest what I believe is a better approach.

[1] With respect to Trooper Banovsky's initial reasonable suspicion, I note that the crowning fact is the presence of the open boxes of detergent and fabric sheets. These items are not usually found in an open state in automobiles (or at least not unless those automobiles are bound to or from the laundry), and Trooper Banovsky knew from his experience that drug couriers commonly employ such agents in an attempt to mask the tell-tale odor of illegal narcotics. See United States v. Salzano, 158 F.3d 1107, 1114 (10th Cir. 1998) ("we agree with the government's assertion that a strong odor may give rise to reasonable suspicion on the part of law enforcement officials that the odor is being used to mask the smell of drugs") (collecting cases).

The Majority has the unenviable task of attempting to resolve the canine sniff question in light of a category-based approach to canine sniffs which has been adopted in Commonwealth v. Johnston, 530 A.2d 74 (Pa. 1987) and in this Court's subsequent decision in Commonwealth v. Martin, 626 A.2d 556 (Pa. 1993). I believe this category-based construct is ill-suited to account for the subtleties that often arise and control questions in the search and seizure arena in general, and canine sniffs in particular, and it produces perplexing results. I suggest that we reconsider the construct.[2]

In United States v. Place, 462 U.S. 696, 103 S.Ct. 2637 (1983), the U.S. Supreme Court noted that "the canine sniff is *sui generis*," emphasizing that "[w]e are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure." Id. at 707, 103 S.Ct. at 2644-45. The Court explained the basis for this conclusion as follows:

> A "canine sniff" by a well-trained narcotics detection dog . . . does not require opening the luggage. It does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer's rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited. This limited disclosure also ensures that the owner of the property is not subjected to the embarrassment

[2] The Majority suggests that we wait for a case where a party challenges the Johnston/Martin construct before we reconsider it. I have no objection. I write to outline the problem because, faced with the precedent and the effect of *stare decisis*, the Commonwealth is unlikely to forward such a challenge before the Court, or some of its members, acknowledge the difficulty. Indeed, in the recent past, this pragmatic consideration has led this Court to correct problematic precedents even in the absence of a request from the parties. See Commonwealth v. Freeman, 827 A.2d 385 (Pa. 2003 (abrogating relaxed waiver rule on direct appeals); Commonwealth v. Grant, 813 A.2d 726 (Pa. 2002) (overruling Commonwealth v. Hubbard, 372 A.2d 867 (Pa. 1977)).

> and inconvenience entailed in less discriminate and more intrusive investigative methods.

Id., 103 S.Ct. at 2644. The Place Court ultimately concluded that the conduct of police in subjecting a suspected drug courier's luggage, which was detained in a public airport, to a canine sniff by a trained drug detection dog was not a search within the meaning of the fourth amendment. Id., 103 S.Ct. at 2645.[3]

The federal canine sniff cases have been uneven in the wake of Place, particularly where the dogs have entered vehicles. See also 1 W.R. LaFave, Search and Seizure, § 2.2(f) (3d Ed. 1996 & Supp. 2004) (outlining history and complexity of this issue). The uncertainty no doubt results from the fact that, notwithstanding that canine sniffs may be *sui generis* as a theoretical matter, they occur only in the context of certain and varying factual patterns. Thus, the fact that a canine sniff of luggage located in a public place might not be deemed a search in some situations does not mean that all situations involving canine sniffs would be or should be deemed so non-intrusive as not to trigger fourth amendment concerns. For example, it is unlikely in the extreme that the U.S. Supreme Court would approve of a random traffic stop conducted merely to permit a canine sniff of the vehicle. See LaFave, supra, § 2.2(f), at 456-57 ("It is extremely important to recognize that the Place holding does not validate the use of drug detection dogs in all circumstances. . . . [I]f an encounter between the dog and a person or object is achieved by bringing the dog into

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[3] The Place Court's conclusion in this regard arguably was *dicta* because the Court ultimately held that the 90-minute detention of the luggage preceding the canine sniff was unreasonable under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968). Place, 462 U.S. at 709-10, 103 S.Ct. at 2645-46. As Professor LaFave has noted, however, the question of whether the conclusion was *dicta* soon became academic for the Court has treated the resolution of the canine sniff issue as a binding holding. See 1 W.R. LaFave, Search and Seizure, § 2.2(f), at 453-54 & nn. 255, 257 (3d Ed. 1996 & Supp. 2004) (citing United States v. Jacobsen, 466 U.S. 109, 124, 104 S.Ct. 1652, 1662 (1984)). See also City of Indianapolis v. Edmond, 531 U.S. 32, 40, 121 S.Ct. 447, 453 (2000).

an area entitled to Fourth Amendment protection, that entry is itself a search subject to constitutional restrictions."). Thus, in City of Indianapolis v. Edmond, 531 U.S. 32, 121 S.Ct. 447 (2000), where drug-detection dogs were employed by police to sniff the exterior of stopped vehicles at a drug interdiction traffic checkpoint, relief was granted to the defendant because the fact that the use of the dogs "[did] not transform the seizure into a search" did not change the fact that the antecedent suspicionless seizure, which was effected as part of a drug interdiction checkpoint program designed to uncover evidence of "ordinary criminal wrongdoing," ran afoul of the fourth amendment. Id. at 40, 42, 121 S.Ct. at 453, 454. So, too, in Place itself, relief was granted because the length of the detention of the luggage was deemed to be unreasonable, 462 U.S. at 709-10, 103 S.Ct. at 2645-46, even though the canine sniff which was accommodated by the detention was not grounds for relief.

Even though this Court has agreed that canine sniffs are less intrusive than conventional searches, the Court has forged its own direction jurisprudentially in the canine sniff arena, under authority of Article I, Section 8 of the Pennsylvania Constitution, and the Majority decides this case consistently with that analytical framework. This Court approached the canine sniff questions presented in Johnston and Martin as if in pursuit of some Platonic ideal, establishing what appear to be categorical rules drawing conceptual distinctions between canine sniffs of "places," see Johnston, 530 A.2d at 79 (requiring lawful police presence and only reasonable suspicion), and "people," see Martin, 626 A.2d at 560-61 (requiring lawful police presence and probable cause). This case involves the third of the generic nouns, *i.e.*, a thing (an "effect" for fourth amendment purposes; a "possession" for Article I, Section 8 purposes). Rote application of the Johnson/Martin categorical approach would make resolution of this appeal simple: an automobile is certainly not a person, it is more similar to a place; but it is not entitled to heightened scrutiny vis a vis other places or things (such as the home). Accordingly, all canine

searches of automobiles should only need to be supported by reasonable suspicion. Ultimately, the Majority approves of the canine sniffs here based upon this existing categorical analysis.

The Majority is correct in looking to Johnston and Martin for guidance: they are the closest precedent; their continuing vitality has not been specifically challenged by the Commonwealth; and their proper application is the central dispute between the parties. But, the complexities of this case cause me to query whether this category-based construct is appropriate in the first place. There may be canine sniffs of places or things -- such as things in public view in public places -- which should not have to be supported by any level of suspicion whatsoever. On the other hand, where, as in the case *sub judice*, the canine sniff is affected only after a seizure, the underlying seizure must comport with governing standards. Similarly, if the canine sniff requires entry into a constitutionally-protected area, traditional search and seizure doctrines beyond the law governing canine sniffs must be consulted and satisfied. In other words, in a case like this, the constitutional problem of the dog's **entry into the car** is not diminished by the fact that a canine sniff upon that entry is less intrusive than a human search of the interior would be. Indeed, the lack of intrusiveness of the canine sniffs in Place and Edmond did not cure the unreasonable detentions which allowed those unintrusive sniffs to occur. In my view, this case confirms the necessity for flexibility in this Court's approach to these cases and persuasively impeaches the categorical construct.

To understand the deficiencies in the categorical construct, a discussion of Johnston and Martin is required. In Johnston, a majority of this Court rejected the then-recent decision in Place as a matter of Pennsylvania constitutional law, preferring instead the fourth amendment views of the three justices who dissented in Place. Johnston involved a canine sniff of the corridor of a storage locker facility, conducted by police with the explicit permission of the owner of the facility. The sniff was not arbitrary or random, for police had

observed conduct leading them to believe that bales of marijuana were being stored in one or more of the lockers in the facility. A majority of this Court held that, although such a consensual canine sniff was probably not even a search under the fourth amendment in light of Place, it nevertheless was a search for purposes of Article I, Section 8 of the Pennsylvania Constitution. The Johnston majority declared that such a limited "search" required: (1) reasonable suspicion to believe that drugs may be present in the place to be tested; and (2) that police were lawfully present in the place where the canine sniff was conducted. The majority concluded that the canine sniff of the outside of the lockers in Johnston was lawful because its newly formulated two-part state constitutional test was satisfied. The majority dubbed its Article I, Section 8 approach a "Fourth Amendment middle ground" which preserved the utility of trained drug detection dogs but also ensured that such dogs were not employed "at random and without reason." 530 A.2d at 79. The majority emphasized that its holding was based in part upon the very considerations that had led the Place Court to conclude that a canine sniff was not a search at all:

> Our holding is based in part, on considerations not dissimilar to those stated in United States v. Place: a canine sniff-search is inherently less intrusive upon an individual's privacy than other searches such as wiretapping or rummaging through one's luggage; it is unlikely to intrude except marginally upon innocent persons; and an individual's interest in being free from police harassment, annoyance, inconvenience and humiliation is reasonably certain of protection if the police must have a reason before they may, in the circumstances of this case, utilize a narcotics detection dog.

530 A.2d at 79-80.

Where Johnston has come to be recognized as the Pennsylvania constitutional test of the lawfulness of canine searches of places, Martin has come to govern canine searches of the person. Martin was stopped by police while carrying a satchel which police had reasonable suspicion to believe contained drugs. Police directed Martin to place the satchel on the ground, whereupon a trained drug detection dog sniffed it and correctly

indicated the presence of narcotics. 626 A.2d at 558-59. The Martin majority remarkably held (by 4-3 vote), again apparently under the aegis of the Pennsylvania Constitution, that probable cause was required before police could permit the canine to sniff the satchel. The majority distinguished Johnston as involving a canine sniff of the exterior of a place, whereas the majority treated the canine sniff of the exterior of Martin's satchel as a sniff of a person. Notwithstanding the limited intrusion of canine sniffs as explicitly recognized in Johnston, the majority held that canine sniffs of persons require a higher level of suspicion because "an invasion of one's person is, in the usual case, [a] more severe intrusion on one's privacy than an invasion of one's property." Id. at 560. However, the majority never explained the basis for its assumption that a satchel should be deemed a part of a person, rather than a person's property, for purposes of this distinction -- despite the fact that both dissenting opinions, as well as the concurrence of Mr. Justice (now Chief Justice) Cappy, directly joined that issue.[4] The majority went on to declare in *dicta* -- and without analysis, explanation, or citation -- that even if police have probable cause to search a person/satchel, and have conducted a confirmatory canine sniff, the person/satchel cannot actually be searched unless and until police then secure a search warrant. Id. at 560-61.[5]

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[4] The concurrence stressed that "it is the nature of the governmental intrusion on which we must focus," and emphasized that Martin was carrying the satchel "up until the point where the police approached with guns drawn and ordered that the satchel be placed upon the ground." 626 A.2d at 562 (Cappy, J., Concurring). In such an instance, the concurrence saw no reasoned distinction between the satchel and "a purse, a breast pocket wallet, or a coat." Id.

[5] The Martin majority's suggestion of a search warrant requirement was *dicta* because the majority ultimately decided the case upon the ground that probable cause was lacking. Id. at 561. In any event, the search warrant *dicta* is contrary to settled law governing searches incident to arrest. No warrant is required to search a person incident to a lawful arrest. See Commonwealth v. White, 669 A.2d 896, 902 (Pa. 1995) (outlining contours of search incident to arrest under Pennsylvania Constitution). The scope of a search incident to a lawful arrest encompasses the person as well as the immediate area in which the person
(continued…)

The final point worth noting about Johnston and Martin is that neither opinion cited anything in the text of the Pennsylvania Constitution, Pennsylvania constitutional history, policy concerns unique to Pennsylvania, or the persuasive experience of other jurisdictions which supported the categorical holdings that emerged. Of course, much water has passed under the Pennsylvania constitutional bridge since Johnston was decided; indeed, that case was decided some four years before Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991), the seminal decision by Mr. Justice (now Chief Justice) Cappy, which first set forth an analytical framework to approach claims that Article I, Section 8 of the Pennsylvania Constitution should be deemed to afford greater protections than its fourth

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was detained. Id. If a satchel is considered a person for purposes of the level of suspicion required, then it must be considered a person for purposes of a search incident to arrest.

Of course, the Martin majority's holding that probable cause is required for a canine sniff of a person/satchel effectively eliminates the utility of canine sniffs, since police would have no reason to conduct a canine sniff if they already have probable cause to arrest. This is particularly so if a search warrant were deemed required for a post-canine sniff search incident to arrest, where one is not required if no canine sniff occurs. See Martin, 626 A.2d at 565 (Montemuro, J., dissenting). Such a result is incongruous, to say the least.

The Martin majority defended its holding(s) with remarkable and unfortunate hyperbole, considering that a minimally intrusive canine sniff of a satchel, supported by reasonable suspicion, was at issue:

> We are mindful that government has a compelling interest in eliminating the flow of illegal drugs into our society, and we do not seek to frustrate the effort to rid society of this scourge. But all things are not permissible even in the pursuit of a compelling state interest. The Constitution does not cease to exist merely because the government's interest is compelling. A police state does not arise whenever crime gets out of hand.

Id. at 561. Martin is a severely flawed precedent which warrants reexamination.

amendment counterpart.[6] It is more difficult to explain the absence of any substantive state constitutional analysis in Martin, however, since that case was decided well after Edmunds.[7]

The Majority's logical application of the existing Johnston/Martin categorical approach results in the following construct concerning the degree of suspicion required to justify a canine sniff under the Pennsylvania Constitution:

(1.) reasonable suspicion is required to justify the uniquely lesser intrusion of a canine sniff of the outside of a place, even if the owner of the common area where the sniff is conducted gives consent (Johnston holding);

(2.) probable cause is required to justify a canine sniff of a person (Martin *dicta*), even though a full-blown Terry search requires mere reasonable suspicion;

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[6] In Edmunds, this Court stated that it is "essential" that a court undertaking an independent analysis of Article I, Section 8 consider "at least" four specific areas: the text of the Pennsylvania constitutional provision; the history of the provision, including Pennsylvania case law; related case law from other states; and policy considerations unique to Pennsylvania. Id. at 895.

[7] I have expressed elsewhere my reservations about broad state constitutional holdings which are unaccompanied by anything remotely resembling a substantive Edmunds analysis. See Commonwealth v. Perry, 798 A.2d 697, 714 n.6 (Pa. 2002) (Castille, J., joined by Newman, J., concurring); Commonwealth v. Shaw, 770 A.2d 295, 305 (Pa. 2001) (Castille, J., joined by Saylor, J., dissenting). In a recent scholarly article, my learned colleague Mr. Justice Saylor described in some detail the various approaches to state constitutional interpretation in our federal system, emphasizing the complexity of the inquiry when candidly and responsibly undertaken by courts. See Thomas G. Saylor, Prophylaxis in Modern State Constitutionalism: New Judicial Federalism and the Acknowledged, Prophylactic Rule, 59 N.Y.U. Ann. Surv. Am. L. 283, 285-94 & accompanying notes (2003). Justice Saylor's trenchant exploration reaffirms the necessity for an approach such as Edmunds and I am correspondingly wary of decisions which represent a view (or perhaps it was just a time), which did not perceive the complexity. That exploration also counsels that we tread carefully before following unexplained, categorical pronouncements that animate certain of this Court's precedents in this area.

(3.) probable cause is required to justify a canine sniff of the outside of an object carried by a person (*e.g.*, a satchel), even if the dog does not go into the object itself (Martin holding);

(4.) reasonable suspicion is required to justify a canine sniff of the exterior of an automobile (today's holding, rendered in a case where the sniff occurred only after a lawful highway stop by police and during a lawful investigative detention); and

(5.) it is unclear whether reasonable suspicion or probable cause is required to justify a canine sniff of the interior of a vehicle, where the dog physically enters the car (today's second holding, rendered in the same circumstances as (4) above; for purposes of the decision, the Majority assumes, without deciding, that probable cause is required.).

This overall construct is impossible to square with the governing values of the fourth amendment and Article I, Section 8 and settled search and seizure jurisprudence in related areas. For example, what search and seizure value dictates that a trained drug detection dog cannot so much as take a whiff of the outside of a suspect's satchel unless probable cause is present? No matter how sincere and tenacious its aspirations, a satchel is doomed never to become a person: A canine sniff of the outside of such an object is far less intrusive than a Terry frisk of a person, which only requires reasonable suspicion. A canine sniff is also less intrusive than the actual physical entry of a dog into a personal possession, whether it is luggage, a car, or a satchel. Moreover, a sniff of the outside of a mere possession, such as a satchel, is nowhere near as intrusive as the full-blown search of a person incident to arrest: To require probable cause in both instances is irrational.[8]

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[8] In his dissent in Martin, Mr. Justice Montemuro articulated why it was difficult to see a constitutionally significant distinction between the canine sniff of the locker in Johnston and the sniff of Martin's satchel:

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Moreover, given the Johnston Court's recognition that a canine sniff is inherently less intrusive than other searches, what rational value is served by requiring reasonable suspicion before a consent sniff of the common area of a storage facility may be conducted? This Court's jurisprudence should attempt more carefully to account for the privacy values actually at stake in these instances, rather than dictating a series of procrustean categories into which we force ill-fitting search and seizure fact patterns like so many square pegs into round holes.

The Majority's reasoning is a facially logical application of Johnston and Martin, and in this case, causes no harm since probable cause supported the most intrusive act of the dog entering the vehicle. But it seems to me that the category-based approach adopted in Johnston and Martin, which finds no source in Pennsylvania constitutional law or history, is itself illogical. To properly decide these cases, it is not necessary to articulate a conceptual, Platonic ideal concerning canine sniffs of automobiles versus sniffs of persons, places, or things. A canine sniff of the exterior of a parked car in a public parking lot

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> Here, the police, while conducting a brief investigatory stop, directed a drug detection dog to sniff a satchel that was placed on the ground. The present search, like the one in Johnston, implicated privacy interests protected by our constitution in an inherently less intrusive manner than a traditional search. The sniff search only provided police with the limited information of whether contraband was present, and therefore was unlikely to intrude, except marginally, upon an innocent person's rights. The additional inconvenience of a brief sniff search conducted during a valid investigatory stop was minimal. Further, the subject of the investigation was reasonably protected from police harassment, annoyance and humiliation since both the investigatory stop and the canine sniff were supported by reasonable suspicion. Thus, the limited intrusion in the present case was not qualitatively different from the sniff search permitted in Johnston.

626 A.2d at 564 (Montemuro, J., dissenting). In my view, this logic is unimpeachable.

triggers different constitutional concerns than a sniff of the exterior of a car which has been lawfully stopped and detained by police precisely to permit the sniff.

I believe that this Court ultimately should return to a traditional totality of the circumstances approach in these cases, unencumbered by the artificial construct of Johnston and Martin. Under our traditional approach, the canine sniff of the outside of appellant's vehicle only had to be supported by reasonable suspicion because police did not just happen upon appellant's car in a parking lot and subject it to the procedure; rather, appellant was lawfully stopped on the highway for speeding. Stops of the person always require, at a minimum, reasonable suspicion. After reasonable suspicion of a drug offense arose, Trooper Banovsky then continued to detain appellant precisely to secure the presence of the canine and its handler, so as to conduct the sniff of the vehicle exterior. Thus, it is not the Platonic conception of the nature of a canine sniff that dictates the outcome, but the circumstances (here, of undisputed seizure) which surrounded it. Indeed, the closer question might be that which was ultimately determinative in the defendant's favor in Place: *i.e.*, whether the length of time (over 70 minutes) during which appellant was detained on a highway, in snowy January weather, was so unreasonable as to run afoul of Terry, irrespective of the canine sniff question.[9] But, that question is not before us. Although appellant adverts to the length of time he was detained, he does not argue here, nor did he argue below, that the length of the detention preceding the canine sniff was unlawful under Place.[10]

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[9] Although this detention was shorter than the 90 minute detention of the luggage in Place, appellant was more isolated and had no option but to remain.

[10] The record, including appellant's omnibus pre-trial motion to suppress, his memorandum of law and reply memorandum, and his argument before the suppression court, reveals that he did not challenge the canine sniff on grounds that the length or conditions of the detention were unreasonable for a Terry stop.

Turning to the second canine sniff -- Rosie's jumping into the car and sniffing the interior -- there is no illegality again, not because of the nature of the canine sniff, but because, by the time this occurred, Rosie had already positively alerted to the presence of narcotics while outside the driver's side door. This fact, which confirmed Trooper Banovsky's existing reasonable suspicion of a drug offense, gave rise to probable cause. See United States v. Sukiz-Grado, 22 F.3d 1006, 1009 (10th Cir. 1994) (probable cause existed for entry of trained canine where dog alerted to presence of drugs when conducting canine sniff of exterior of vehicle). Under Pennsylvania's version of the automobile exception to the search warrant requirement, given the mobility of the vehicle and the spontaneous arising of probable cause, police would have been justified in conducting an immediate search of the interior of the car. See Perry, supra (Castille, J., concurring) (discussing Pennsylvania law concerning automobile exception to warrant requirement). Since the police themselves could have searched the car at this point, Rosie's entry into the car, and her confirmatory alert following a minimally intrusive sniff, was not unlawful.

In my view, the calculus would alter significantly if police had released Rosie into the car solely upon reasonable suspicion, notwithstanding that canine sniffs are less intrusive than full-blown searches. See Almeida-Sanchez v. United States, 413 U.S. 266, 269-70, 93 S.Ct. 2535, 2537-38 (1973) ("the Carroll doctrine [Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1925), which established the first exception to the warrant requirement for automobile searches] does not declare a field day for the police in searching automobiles. Automobile or no automobile, there must be probable cause for the search.").[11] But that is not what happened here.

[11] Although this Court may recognize enhanced protections against unlawful searches and seizures under the Pennsylvania Constitution, we cannot dilute a suspect's fourth amendment rights.

I note that the Superior Court avoided the question of whether probable cause was required and whether it existed for the canine sniff of the interior of the vehicle by emphasizing that Rosie leapt through the window without prompting from her handler. Commonwealth v. Rogers, 741 A.2d 813, 820 (Pa. Super. 1999) (citing United States v. Stone, 866 F.2d 359 (10th Cir. 1989)). I would be loathe to approve the second canine sniff on such ephemeral grounds, and the Majority is wise not to do so. Although the desire to enter the vehicle may have struck Rosie spontaneously and instinctively, a leashed and properly restrained police canine cannot effect such an entry without, at a minimum, some acquiescence from its handler. Approving the entry of the dog upon grounds of spontaneity would be akin to approving a dog "spontaneously" tearing open a package or luggage during a canine sniff. The extent of the intrusion is different in kind from the *sui generis* exterior sniff which was deemed so minimal by the Place Court and by this Court in Johnston; alleged "canine spontaneity" can hardly justify the heightened intrusion.[12]

Messrs. Justice Eakin and Baer join this concurring opinion.

[12] Notably, in finding that the canine sniff in Edmond did not transform the traffic checkpoint seizure into a search, the Supreme Court emphasized that there was no entry into the car:

> Just as in Place, an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics. [Place, 462 U.S. at 707, 103 S.Ct. at 2644.] Like the dog sniff in Place, a sniff by a dog that simply walks around a car is "much less intrusive than a typical search." Ibid.

531 U.S. at 40, 121 S.Ct. at 453.