**MEMORANDUM**

To: Senior Lawyer

From: Alexander Cervantes

Date: March 12, 2014

Re: Penny’s Motion to Suppress Evidence of Marijuana After it was Found in her Storage Unit by a Police Dog.

**Question Presented**

Was the dog sniff of the storage unit a search that violated the Fourth Amendment and can the evidence be suppressed if there wasn’t sufficient probable cause in obtaining the search warrant?

**Short Answer**

 The dog sniff was a search under the Fourth Amendment but it violated the defendant’s reasonable expectation of privacy. The evidence of marijuana can be suppressed from the case because of this reason and because the search warrant was not valid, as probable cause was not sufficiently established.

**Facts**

**…**

**Analysis**

**The Fourth Amendment Protects Against Unlawful Searches And Seizures That Violate Reasonable Expectations of Privacy That Involve Physical Intrusions.**

The Fourth Amendment provides that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

**…**

1. ***Was There a Physical Intrusion by Officer Wallander and the Police Dog Violating the Defendant’s Reasonable Expectations of Privacy?***

A search cannot be viable under the Fourth Amendment if a physical intrusion has occurred upon the person who is being searched. *Florida v. Jardines*, 185 L. Ed. 2d 495, 500 (2013). *Jardines* defines a physical intrusion as when an officer enters constitutionally protected land without the permission of the landowner. 185L. Ed. 2d at 502. This violation goes against reasonable expectations of privacy.

Though an area can be deemed outside curtilage and apart from the home, reasonable expectations of privacy can still exist. *United States v. Gilman*, No. 06-00198, 2007 U.S. Dist. LEXIS 32524, at \*38 (D. Haw. May 2, 2007). As was stated in *Cannon*, the 9th Circuit ruled that renters have a reasonable expectation of privacy under the Fourth Amendment. This applies to the defendant as the Mob-U storage unit was a rental. 264 F.3d 875 at 879. The question that comes into place was whether the officer and the police dog violated the defendant’s rights in a physical intrusion that occurred in the search. Private citizens have implicit permissions to approach the front of the house using normal paths; if Wallander acted as a normal citizen than his presence on the property could not be seen as an intrusion. *Jardines*, 185 L. Ed. 2d 495 at 500. When the dog got out of Wallander’s control, he chased after it. This would be considered a normal act, for the owner to enter the premises to retrieve his dog. However, the dog searched the storage unit by sniffing it.

In the dissent for *Jardines*, the Justice argued that there is no reasonable expectation of privacy in odors emanating from the home or outbuildings. Id. at 508. However, the smell of marijuana coming from the storage unit could not have been identified without the use of the drug-sniffing dog. According to *Jardines,* this can be constituted as a physical intrusion. *Id* at 503. Looking at a previous case, *Jardines* argued that an intrusion can occur if some sort of device, which is not in public use, is used to detect things that cannot normally be detected. *Id* at 504. The dog is a specialized device because it was able to make discoveries that were not in plain view, its heightened sense of smell made the drugs known. Not only did the dog trespass and conduct a search with no permission from the defendant, but the dog use itself is a physical intrusion. The officer and the dog violated the defendant’s reasonable expectations of privacy.

**…**

**Conclusion**

The defendant’s Fourth Amendment rights were violated in this case. The defendant will not be charged with violating 21 U.S.C. Section 811 because she will be able to exclude the evidence of marijuana. Though the defendant’s Mob-U storage unit was outside the curtilage, it still had a reasonable expectation of privacy that the officer and the police dog violated when conducting their search. Not only did they conduct a search without the defendant’s permission, but the warrant itself had complications in the terminology that lacked substantial evidence for it to be issued.