

Wednesday, August 6, 2008

### **Calling the dogs means a detention.**

Â Bill of Rights.Â (From the public domain.)Â Â Praised be Virginia's intermediate appellate court for generally finding that a detention takes place once a police officer tells a person that s/he is having a drug dog come to search the suspect's vehicle. Â In *Middlebrooks v. Virginia*, \_\_ Va. App. \_\_ (August 5, 2008), a police officer found Middlebrooks urinating in public, and searched him by consent and found nothing incriminating. Middlebrooks told the police that the nearby vehicle was his "people's car", but the police later learned through a motor vehicle records check that the car belonged to him. Armed with this so-called "lie" about the car's ownership, the frequent drug activity in the park area, and Middlebrooks's eventually hanging out in the car, a police officer returned and asked Middlebrooks for permission to search the car, which Middlebrooks refused. (It is curious that Middlebrooks consented to have his person searched and not his car. Was it because he knew that only his car would turn up contraband (a significant amount of marijuana) and not his person)? Kudos to the cop for at least being honest that Middlebrooks refused a search, at first. Kudos for Middlebrooks's knowing his right to refuse the search.)Â When Middlebrooks refused the car search, the cop told him heÂ would have the car sniffed by a drug dog.Â The cop then asked if he would find any drugs inside, and Middlebrooks admitted to the presence of marijuana in the car and its location. Â Fortunately, the Virginia Court of Appeals determined that telling Mr. Middlebrooks of the coming of the drug dog amounted to a TerryÂ stop, which requires reasonable articulable suspicion,Â sinceÂ a reasonable person would not have felt free to leave at that point. The appellate court found no reasonable articulable suspicion, and found under the Exclusionary Rule that Mr. Middlebrooks's eventual admission to the presence and location of the marijuana (and the seizure of the marijuana) required suppression. Â Life sometimes is fair, and sometimes more than fair. Unfortunately, so many court opinions run afoul of theÂ Bill of Rights that Middlebrooks is a cause for celebration, particularly considering that the Virginia Court of Appeals is far from a bastion of wooly-headed liberals. Â What will happen to Middlebrooks on appeal? Will a majority of the Virginia Supreme Court or United States Supreme Court find a way to say that no seizure took place in Middlebrooks? I expect that the prosecution will appeal this case and that the Virginia Supreme Court will grant an appeal of this case. However,Â is there any split among various courts to lead the United StatesÂ Supreme Court even to grant certiorari review?Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00