

## “THE FEDERAL CORNER”

### Extending the Traffic Stop to Get the Drug Dog

#### Buck Files

In the December edition of the *VOICE*, I wrote about the Supreme Court granting certiorari in *Rodriguez v. United States*, \_\_\_S.Ct.\_\_\_, (U.S. 2014); 2014 WL 1766135. I was correct then in predicting that this could be a huge case. It involved a traffic stop prolonged for less than ten minutes while everyone waited for the arrival of a back-up officer so that a drug dog could do his sniffing. The United States Court of Appeals for the Eighth Circuit found this to be a *de minimis* intrusion, not in violation of the Fourth Amendment.

I did not, however, realize that the Supreme Court would go as far as it did in deciding this case. On April 21<sup>st</sup>, the Supreme Court held that:

Police may not extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff, abrogating *U.S. v. Morgan*, 270 F.3d 625, *U.S. v. \$404,905.00 in U.S. Currency*, 182 F.3d 1014.

*Rodriguez v. U.S.*, \_\_\_ S.Ct. \_\_\_, 2015 WL 1780927 (2015) GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, and in which KENNEDY, J., joined as to all but Part III. ALITO, J., filed a dissenting opinion.

#### [The Facts in *Rodriguez*]

Officer Struble observed Rodriguez’s car as it veered off the shoulder of a highway for one or two seconds and then jerked back onto the highway. He initiated a traffic stop and obtained Rodriguez’s license, registration and proof of insurance. Rodriguez explained that had swerved to avoid a pothole. Struble went to his patrol car and completed a records check on Rodriguez. He returned to Rodriguez’s car, obtained the passenger’s identification and asked where they had been. After receiving an explanation, he returned to his patrol car, completed a records check on the passenger and called for a second officer for back-up.

After Officer Struble had returned Rodriguez’s license, registration and proof of insurance to him, he issued a written warning to Rodriguez. *With no additional information available to him* and after the written warning had been handed to Rodriguez, Officer Struble asked Rodriguez’s permission to have his drug dog -- Floyd -- walk around his car. Rodriguez refused consent and everyone waited for the second officer to

arrive. When he did, Floyd walked around Rodriguez's car and -- surprise -- alerted to the presence of drugs. A search of Rodriguez's car revealed a large bag of methamphetamine.

After Rodriguez was indicted for violations of 21 U.S.C. §§ 841 (a)(1) and 841 (b)(1), his lawyer filed a motion to suppress the evidence seized during the traffic stop. A hearing was held by United States Magistrate Judge F.A. Gossett who recommended to United States District Judge Joseph Bataillon of the United States District Court for the District of Nebraska that he deny Mr. O'Connor's motion to suppress the evidence. Judge Bataillon did so, adopting the findings and recommendations of Judge Gossett.

Rodriguez entered a conditional guilty plea and then appealed the denial of his motion to suppress the evidence. A panel of the United States Court of Appeals for the Eighth Circuit [Wollman (who authored the opinion of the Court), Collton, and Gruender, Circuit Judges] affirmed the District Court, holding that the delay caused by the dog sniff did not violate the defendant's Fourth Amendment right to be free from unreasonable seizures. *U.S. v. Rodriguez*, 741 F.3d 905, (8<sup>th</sup> Cir. 2014)

Justice Ginsburg's opinion contains, in part, the following:

[An Overview of the Opinion]

In *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005), this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. *Id.*, at 407, 125 S.Ct. 834. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision.

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[Why the Supreme Court Granted Certiorari]

We granted certiorari to resolve a division among lower courts on the question whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff.

573 U.S. —, 135 S.Ct. 43, 189 L.Ed.2d 896 (2014). Compare, e.g., *United States v. Morgan*, 270 F.3d 625, 632 (C.A.8 2001)

(postcompletion delay of “well under ten minutes” permissible), with, *e.g.*, *State v. Baker*, 2010 UT 18, 13, 229 P.3d 650, 658 (2010) (“[W]ithout additional reasonable suspicion, the officer must allow the seized person to depart once the purpose of the stop has concluded.”).

#### [Seizures for Traffic Violations]

A seizure for a traffic violation justifies a police investigation of that violation. “[A] relatively brief encounter,” a routine traffic stop is “more analogous to a so-called ‘*Terry* stop’ ... than to a formal arrest.”

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Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s “mission”—to address the traffic violation that warranted the stop... and attend to related safety concerns.

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Because addressing the infraction is the purpose of the stop, it may “last no longer than is necessary to effectuate th[at] purpose.”

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Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.

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#### [The *Caballes* and *Johnson* Cases]

Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention. *Johnson*, 555 U.S., at 327–328, 129 S.Ct. 781 (questioning); *Caballes*, 543 U.S., at 406, 408, 125 S.Ct. 834 (dog sniff). In *Caballes*, however, we cautioned that a traffic stop “can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of issuing a warning ticket. 543 U.S., at 407, 125 S.Ct. 834. And we repeated that admonition in *Johnson* : The seizure remains lawful only “so long as [unrelated] inquiries do not measurably extend the duration of the stop.” 555 U.S., at 333, 129 S.Ct. 781.

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[What an Officer May Do After a Traffic Stop]

An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop.

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[He] may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

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[An Officer's Mission After a Traffic Stop]

Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." *Caballes*, 543 U.S., at 408, 125 S.Ct. 834. Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.

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These checks serve the same objective as enforcement of the traffic code: ensuring that cars on the road are operated safely and responsibly.

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[A Dog Sniff is Not an Ordinary Incident of a Traffic Stop]

A dog sniff, by contrast, is a measure aimed at "detect[ing] evidence of ordinary criminal wrongdoing"

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Candidly, the Government acknowledged at oral argument that a dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop... Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

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[The Eighth Circuit's *De Minimis* Rule]

In advancing its *de minimis* rule, the Eighth Circuit relied heavily on our decision in *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).

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In *Mimms*, we reasoned that the government's "legitimate and weighty" interest in officer safety outweighs the "*de minimis*" additional intrusion of requiring a driver, already lawfully stopped, to exit the car.

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The Eighth Circuit...believed that the imposition here similarly could be offset by the Government's "strong interest in interdicting the flow of illegal drugs along the nation's highways."

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Unlike a general interest in criminal enforcement, however, the government's officer safety interest stems from the mission of the stop itself. Traffic stops are "especially fraught with danger to police officers."

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On-scene investigation into other crimes, however, detours from that mission.

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So too do safety precautions taken in order to facilitate such detours.

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Thus, even assuming that the imposition here was no more intrusive than the exit order in  *Mimms*, the dog sniff could not be justified on the same basis. Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.

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The reasonableness of a seizure, however, depends on what the police in fact do.

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[The Critical Question in Dog Sniff Cases]

The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket...but whether conducting the sniff “prolongs”—*i.e.*, adds time to—“the stop,”.

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[The Eighth Circuit did not Review the District Court’s Finding on Individualized Suspicion]

The Magistrate Judge found that detention for the dog sniff in this case was not independently supported by individualized suspicion, see App. 100, and the District Court adopted the Magistrate Judge's findings, see *id.*, at 112–113. The Court of Appeals, however, did not review that determination.

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[Why this Case Goes back to the Eighth Circuit]

The question whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of the traffic infraction investigation, therefore, remains open for Eighth Circuit consideration on remand.

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[The Supreme Court’s Conclusion]

For the reasons stated, the judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

My Thoughts

- What an interesting split of the Justices -- but any five are enough for an opinion;
- Considering the number of drug cases that begin with a traffic stop, *Rodriguez* will become a familiar case for judges and lawyers; and,
- Now the battle will continue to be fought on whether the arresting officer had reasonable suspicion of criminal activity so that he might prolong the traffic stop.