

Illinois v. Caballes
(January 24, 2005) ___ U.S. ___

ISSUE

When officers are conducting a traffic stop, under what circumstances can they use a drug-detecting dog to determine if there are drugs in the driver's car?

FACTS

An Illinois state trooper stopped Caballes for speeding. Another trooper who was assigned to the Drug Interdiction Team "immediately" responded to the location with his drug detecting dog.¹ While the first trooper was writing out a warning, the second trooper walked his dog around the outside of the car. When the dog alerted to the trunk, the officers opened it and found marijuana. The entire traffic stop, including the search of the trunk, took less than 10 minutes.

DISCUSSION

The Illinois Supreme Court reversed Caballes' conviction, ruling it is a violation of the Fourth Amendment for officers to walk a drug detecting dog around a car stopped for a traffic violation unless there were "specific and articulable facts to suggest drug activity." The United States Supreme Court disagreed.

As a general rule, officers who have made a lawful traffic stop may do only those things that are reasonably necessary to carry out their duties incident to the traffic violation. Furthermore, they must carry out their duties diligently.² And if the stop becomes unduly prolonged or unreasonably intrusive, it becomes an illegal *de facto* arrest. As the Court in *Caballes* observed, "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."

It logically follows that officers who have made a traffic stop can lawfully investigate another matter—even though they lack probable cause or reasonable suspicion—if their investigation neither prolongs the stop nor constitutes an unreasonable intrusion. This is essentially what the Supreme Court ruled in *Caballes*.

As for the length of the stop, the Court noted it took less than 10 minutes, and that one of the officers walked the dog around the car while the other wrote a warning. Thus, said the Court, "the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop."³

¹ NOTE: It appears this was a pretext traffic stop. Although the Court said it was analyzing the case as if it were a "legitimate traffic stop," it pointed out that it had "omitted any reference to facts about respondent that might have triggered a modicum of suspicion."

² See *People v. Miranda* (1993) 17 Cal.App.4th 917, 928 ["(E)very action taken by an officer in the course of making a traffic stop [must] be objectively reasonable and justified by the specific facts and circumstances confronting the officer."]; *United States v. Hensley* (1985) 469 U.S. 221, 235 [the officers "were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop."]; *Gallegos v. Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991 ["(We must) consider all the circumstances surrounding the encounter between the individual and the police, by evaluating not only how intrusive the stop was, but also whether the methods used by police were reasonable given the specific circumstances."].

³ ALSO SEE *U.S. v. \$404, 905* (8th Cir. 1999) 182 F.3d 643, 649 ["Thus, the canine sniff was thirty seconds or two minutes over our line, and it was done without reasonable suspicion to believe there were drugs in this particular vehicle. Does this mean Alexander was unconstitutionally detained? We think not. ¶ [A] two-minute canine sniff was a *de minimis* intrusion on Alexander's personal liberty"].

As for its intrusiveness, the Court ruled that having a drug detecting dog walk around the outside of a vehicle “does not rise to the level of a constitutionally cognizable infringement” because the dog is trained to do nothing except alert to illegal drugs. In the words of the Court, “A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.”⁴

Accordingly, the decision of the Illinois Supreme Court was vacated.

DA’s COMMENT

Although the Court in *Caballes* did not address the issue, it should be noted that an alert by a trained drug detecting dog almost always constitutes probable cause to search the place or thing to which the dog alerted. As the Ninth Circuit pointed out, “[W]e have routinely held that a canine identification or alert of illegal narcotics provides probable cause for the issuance of a search warrant, so long as the dog’s reliability is established.”⁵

In her dissenting opinion, Justice Ginsburg expressed concern that the Court’s decision “clears the way for suspicionless, dog-accompanied drug sweeps of parked cars along sidewalks and in parking lots,” and that we might expect to see “police with dogs, stationed at long traffic lights, [circling] cars waiting for the red signal to turn green.”

We can only point out that since 1983 officers in California have been permitted to do all of these things.⁶ But, judging from the absence of any reports of such activities, they seem to have realized that it is a waste of time and resources—that drug detecting dogs are better used when, as in *Caballes*, officers have reason to believe a certain person is engaged in drug activity but they lack probable cause to arrest or search.

Perhaps Justice Ginsburg should give officers a little more credit for exercising professional judgment in determining when and how to carry out their duties.

⁴ ALSO SEE *Indianapolis v. Edmond* (2000) 531 U.S. 32, 40 [“The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints does not transform the seizure into a search.”]; *United States v. Place* (1983) 462 U.S. 696, 707; *U.S. v. \$404, 905* (8th Cir. 1999) 182 F.3d 643. ALSO SEE *Florida v. Royer* (1983) 460 U.S. 491, 505-6 [“The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage. . . . If it had been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out.”]; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 281, fn.1.

⁵ *Grant v. Long Beach* (9th Cir. 2002) 315 F.3d 1081, 1085-6. ALSO SEE ; *People v. Superior Court (Moore)* (1980) 104 Cal.App.3d 1001, 1010 [“Our courts have, in effect, pragmatically accepted the ‘expertise’ of a dog whose sense of smell led to the detention of marijuana”]; *Estes v. Rowland* (1993) 14 Cal.App.4th 508, 529; *People v. Salih* (1985) 173 Cal.App.3d 1009, 1015; *People v. Russell* (1987) 195 Cal.App.3d 186, 189-190.

⁶ See *United States v. Place* (1983) 462 U.S. 696, 709; *People v. Mayberry* (1982) 31 Cal.3d 335; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 281, fn.1 [“It is well settled by *United States v. Place* . . . and our own high court’s decision in *People v. Mayberry* . . . a dog ‘sniff’ is not a search requiring any level of objective justification under the Fourth Amendment.