Rodriguez v. United States

(2015) __ U.S. __ [135 S.Ct. 1609]

Issue

Does a traffic stop become unlawful if the officer extended it for the purpose of having a K9 conduct a sniff of the car's exterior?

Facts

Just after midnight, a K9 officer in Nebraska stopped a car for a minor traffic violation. The driver was Dennys Rodriguez. After obtaining Rodriguez's license, registration, and proof of insurance, the officer returned to his car and ran a records check. It was negative. He then returned to Rodriguez's car and asked him and his passenger where they were coming from and where they were going. The passenger said they had been looking at a car that was for sale. By now, the officer suspected that the men were drug traffickers but, for purposes of this opinion, it was assumed he lacked reasonable suspicion to detain them.

In any event, he called for backup, wrote a warning ticket, obtained Rodriguez's signature, and promptly returned his license and other documents. At that point, the stop had lasted about 30 minutes and, as the officer acknowledged, he had no further reason to detain Rodriguez. As he testified, by then "I got all the reasons for the stop out of the way … took care of all the business."

While waiting for backup, the officer asked Rodriguez if he would consent to a search of his car and Rodriguez said no. The officer responded by telling Rodriguez to turn off the ignition, exit the car, and stand in front of his patrol vehicle. Rodriguez complied and they waited there for about seven minutes until backup arrived. The officer then walked his dog around the car and the dog alerted to the presence of drugs. A search of the car netted a "large bag" of methamphetamine. As the result, Rodriguez was indicted on federal drug charges and thereafter filed a motion to suppress the methamphetamine. The motion was denied and he appealed to the U.S. Supreme Court.

Discussion

The main issue on appeal was whether the traffic stop had become an illegal detention by the time the officer walked his dog around the car. If so, the methamphetamine should have been suppressed as the fruit of an illegal seizure.

It is settled that a traffic stop or detention violates the Fourth Amendment if the officers did not carry out their duties in a reasonable manner.[1] As the Court in *Rodriguez* explained, in the context of traffic stops those duties are ordinarily limited to (1) maintaining officer safety; (2) inspecting the driver's license, vehicle registration, and proof of insurance; (3) running a warrant check, and (4) determining whether to cite the driver. The officer who stopped Rodriguez did all of these things and therefore the stop had been lawful, at least until Rodriguez signed the warning.

As noted, after Rodriguez signed the warning, the officer continued to detain him for seven minutes while waiting for backup. Did this render the stop illegal? The answer, said the Court, was yes. As it explained, "A seizure justified only by a police-observed traffic

[1] See *Illinois v. Caballes* (2005) 543 U.S. 405; *Arizona v. Johnson* (2009) 555 U.S. 323; *People v. Gorrostieta* (1993) 19 Cal.App.4th 71, 83.

violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation." Or, as the Court said elsewhere, traffic stops must be terminated "when tasks tied to the traffic infraction are—or reasonably should have been—completed."

The Court did not say whether the stop became illegal shortly after the officer had done so, or whether it happened seven minutes later, or (most likely) that it had occurred at some undefinable point in-between. Instead, what mattered, at least in this case, was that it was illegal when the drugs were found, which meant they should have been suppressed.[2]

Comment

It is doubtful that the Court's ruling will affect, or even call into question, the following well-established principles pertaining to traffic stops and detentions:

NO TIME LIMIT: There is no absolute time limit,[3] and officers are not required to "move at top speed."[4] Instead, they must carry out their duties diligently in light of the actions of the detainee or other circumstances over which they had no control.[5] As the Court observed in *United States v. De Hernandez*, "[C]ommon sense and ordinary human experience must govern over rigid [time] criteria."[6]

NO "LEAST INTRUSIVE MEANS" TEST: In the past, some courts would rule that a detention was unlawful if the officers failed to employ the least intrusive means of pursuing their objectives. The "least intrusive means" test has been abrogated.[7] Instead, a traffic stop or detention may be invalidated only if the officers acted unreasonably in failing to recognize and implement the less intrusive means.[8]

NO UNREALISTIC SECOND-GUESSING: The courts evaluate the officers' conduct by applying common sense and avoiding unrealistic second-guessing. This is because most detentions are swiftly developing, and because a "creative" judge "can almost

---

[2] **NOTE**: Although the Court reversed the lower court's denial of Rodriguez's motion to suppress, it remanded the case back to Nebraska to determine whether the extension of the stop was lawful on grounds that the officer had reason to believe that Rodriguez possessed drugs.

[3] See *People v. Gorak* (1987) 196 Cal.App.3d. 1032, 1037 ["The U.S. Supreme Court has refused to adopt any outside time limitation on a lawful detention."]; *People v. Gallardo* (2005) 130 Cal.App.4th 234, 238 ["There is no hard and fast limit as to the amount of time that is reasonable"]; *U.S. v. Torres-Sanchez* (9th Cir. 1996) 83 F.3d 1123, 1129 ["'Brevity' can only be defined in the context of each particular case."].

[4] *U.S. v. Hernandez* (11th Cir. 2005) 418 F.3d 1206, 1212, fn.7, Also see *U.S. v. Harrison* (2nd Cir. 2010) 606 F.3d 42, 45 [no requirement to terminate "at the earliest possible moment"].

[5] See *United States v. Place* (1983) 462 U.S. 696, 709, fn.10 [officers must be permitted "to graduate their responses to the demands of any particular situation"]; *United States v. Sharpe* (1985) 470 U.S. 675, 686 ["we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly"].

[6] (1985) 473 U.S. 531, 543

[7] See *City of Ontario v. Quon* (2010) 560 U.S. 746, 763 ["This Court has repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment."]; *Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 350 [the "least-restrictive-alternative limitation" is "generally thought inappropriate in working out Fourth Amendment protection"].

[8] See *United States v. Sharpe* (1985) 470 U.S. 675, 686 ["[t]he question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it"].

> always imagine some alternative means by which the objectives of the police might have been accomplished."[9]

We also want to point out two problems with this opinion. First, the Court said it decided to rule on this issue because there existed "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." This is not correct. There had been no serious "division" among the lower courts on this issue since 2009. That was when the Court ruled in *Arizona v. Johnson*[10] that an officer's investigation into matters unrelated to the traffic violation would not convert the encounter into an illegal seizure "so long as those inquiries do not *measurably extend* the duration of the stop." Thus, the Court in *Johnson* had ruled that an extended traffic stop does not become illegal unless it was *measurably* extended. While the Court did not explain what it meant by "measurably" extend, the word generally means "to some extent,"[11] which would indicate that officers have a moderate degree of leeway before they must terminate the stop; e.g., the stop does not become unlawful if it was prolonged for one minute.

The Court in *Rodriguez* could have—and, we think, should have—simply applied *Johnson* and ruled the stop was unlawful because it was prolonged for about seven minutes which was an "immoderate" amount of time. But instead it ruled that a traffic stop becomes unlawful if it is prolonged beyond the time "reasonably required" to complete the mission. This raises some questions. Does it mean the "measurably extended" test has been superseded by the "time reasonably required" test? If so, how can the courts determine the amount of time required to conduct traffic stops which are notoriously subject to so many variables? The answer is that, unless the delay was obviously excessive (as in *Rodriguez*), the courts will be forced to engage in the type of second-guessing that the Supreme Court has urged judges to avoid. It is even arguable—but absurd—that law enforcement agencies must maintain directories that calculate the current average time for their traffic stops. Another question is whether the Court really meant to say there is no difference between *Johnson's* "measurably extend" test and *Rodriguez's* "time reasonably required" tests. But then, why didn't it say so?

The second problem is the Court suggested that officer-safety precautions (such as waiting for backup) must not be "negligibly burdensome." Here are the Court's words: "[A]n officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." What does this mean? According to Webster's, "negligibly" means "so tiny or unimportant or otherwise of so little consequence as to require or deserve little or no attention." Does this mean that officer safety precautions—no matter how necessary—will render a detention unlawful unless they were "tiny or unimportant?" That would be absurd.

For these reasons, we think that—regardless of the outcome of the case—the Court's discussion of the these issues was unsatisfactory.

---

[9] *United States v. Sharpe* (1985) 470 U.S. 675, 686-67; *In re Joseph F.* (2000) 85 Cal.App.4th 975, 989 ["The reasonableness of a particular use of force is judged from the perspective of a reasonable officer on the scene, not by the 20/20 vision of hindsight."]; *U.S. v. Winters* (6th Cir. 2015) __ F.3d __ [2015 WL 1431269] ["it is not the role of this court to dictate the precise methods of investigation to be pursued by police officers"].

[10] (2009) 555 U.S. 323.

[11] "Measurably" *Merriam Webster's Unabridged Dictionary*. Web. 22 July 2015. http://unabridged.merriam-webster.com/

The second problem is the Court suggested that officer-safety precautions (such as waiting for backup) must not be "negligibly burdensome." Said the Court, "an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." What does this mean? According to Webster's, "negligibly" means "so tiny or unimportant or otherwise of so little consequence as to require or deserve little or no attention."[12] Does this mean that officer safety precautions—no matter how reasonably necessary—will render a detention unlawful unless they were "tiny or unimportant?" That would be absurd.

For these reasons, we think that—regardless of the outcome of the case—the Court's discussion of the these issues was unsatisfactory.

Date updated: July 23, 2015

[12] "Negligibly." *Merriam Webster's Unabridged Dictionary*. Web. 22 July 2015. http://unabridged.merriam-webster.com/