

LEGAL AND REGULATORY NOTES, JUNE 2015

Police May Not Extend a Traffic Stop to Bring in a Drug-Sniffing Dog

The U.S. Supreme Court ruled in April that police cannot prolong a routine traffic stop to bring in a drug-sniffing dog without probable cause of a drug-related crime. *Rodriguez v. United States*, 575 U.S. ____ (2015). The case transpired in Nebraska in 2012. After observing a car veer onto the shoulder of the highway for a few seconds and then jerk back onto the road, a police officer pulled the car over and questioned the driver and passenger. The Court later determined that the officer was justified in making the traffic stop since Nebraska state law prohibits driving on highway shoulders. The officer spoke with the driver and passenger about where they were coming from and where they were headed, checked the vehicle's insurance and registration, ran a record check on the driver, and determined that there were no outstanding warrants for his arrest. The brief investigation, in other words, yielded no evidence of criminal activity other than violating the traffic law that prohibits driving on the highway shoulder.

After issuing a written warning for the violation, the officer asked for permission to walk his police dog around the vehicle. The driver said no but the officer persisted and, after waiting for backup to arrive, walked his drug-sniffing dog around the vehicle. The dog was alerted to the presence of drugs, and when the officer searched the vehicle, he found a large bag of methamphetamine. The driver was subsequently indicted on drug charges but asked the Court to suppress the evidence taken from his car on the basis that it had been obtained in violation of his Fourth Amendment right to free from unreasonable search and seizure.

The Fourth Amendment to the U.S. Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The right is understood to require that police officers must have some evidence of criminal activity before stopping or searching a person.

A “dog sniff” conducted during a lawful stop for a traffic violation does not necessarily violate the Fourth Amendment. (See, e.g., *Illinois v. Caballes*, 543 U.S. 405 (2005).) However, if conducting the dog sniff extends the time necessary to investigate the traffic violation, that extension of time is unconstitutional unless there is probable cause (in this case, evidence of drug activity) to conduct the sniff. If the police stop lasts longer than the time needed to handle the matter for which the stop was made, it becomes an unconstitutional seizure. Even a minimal extension of time (in Mr. Rodriguez's situation it was eight minutes) is considered unlawful unless there is some additional evidence of criminal activity to be investigated. “A seizure for a traffic violation justifies a police investigation of that violation” – not more – and “authority for

the seizure ... ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.”

The take-away from the case is this: A traffic stop that is based only on the observance of a traffic violation becomes unconstitutional if it is “prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.”

The case is archived at http://www.supremecourt.gov/opinions/14pdf/13-9972_p8k0.pdf.

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