



Dogs and The Fourth Amendment

How long can it take to write out a ticket?

USE OF DOGS DURING TRAFFIC STOPS

John R. Budnik, Esq.

Suppose a police officer from a small town in California observes a vehicle pass him in the opposite direction with no front license plate. The officer also notices that as the driver goes past him he has the all too familiar “deer in the headlights” look coupled with a double take at the officer and a glimmer of sweat. The officer also notices that this particular vehicle and its driver scream “parolee” at him, although the officer is not sure why. The officer immediately performs an otherwise legal U-turn and starts to follow the vehicle for about one city block. During that time, the officer notices that the driver repeatedly looks in his rear view mirror to see the officer. The driver’s eyes go back and forth between the mirror, the dashboard, and the road ahead. Based on such observation, the officer senses there is something wrong. He can feel it.

Armed with overwhelming probable cause to stop the driver for having no front license plate, the officer activates his overhead lights and pulls the driver over. The officer then runs the plate and within seconds it comes back current and valid. The officer makes contact with the driver and explains to him the reason for the stop. He asks the driver for his license, registration, and proof of insurance. The driver tells the officer he is going to reach into his glove box to retrieve the requested documents. The officer tells the driver to go ahead and open the glove box slowly. The only content in the glove box is a small document holder. The driver retrieves the document holder and hands it to the officer. To his great surprise the officer finds in the document holder a driver’s license, a registration card, and an insurance card. The officer runs the driver’s license and it comes back valid. It also clearly matches the driver. Both the registration and insurance cards are also in order.

The officer tries very hard to look for something that will allow him to get inside the car to search, but there is nothing obvious. Then the following colloquy takes place:

Officer: “Do you have anything in this vehicle that is illegal?”
Driver: “No sir, I don’t.”
Officer: “Then you won’t mind if I look inside, do you?”

At that point, the officer knows that the driver is going to let him look inside the car. This line has never failed the officer before. It was a masterful setup by the officer. The officer then asks the driver to step out of the car. But then something stunning happens. The driver says, “Not unless you have a search warrant.”

Use of drug sniffing dog does not automatically bar use of the evidence seized

Detention cannot be prolonged just to wait for the dog to show up

The officer feels crushed! He has to think fast. His authority and his pride have been challenged. He immediately tells the driver to stay in the car and not to move. The officer walks back to his patrol car. He pulls out his citation book and slowly starts to write the ticket for the “no front license plate.” Then the officer has an idea. He gets on his radio and calls for a canine unit. The canine officer tells the officer he will be right there after he finishes eating lunch and brushing his dog. The officer agrees to wait. He then finishes writing the citation for the plate violation and has the driver sign it. He gives the driver his copy but tells him he is not yet free to leave. The officer then goes back into his unit and waits. Forty-five minutes later, the canine unit arrives. The dog makes a quick pass around the driver’s car and immediately alerts to the trunk. The officer has the driver open the trunk. Inside, the officer finds a kilo of cocaine right in the middle of the otherwise empty trunk. More importantly, the officer feels like he has redeemed himself. In fact, after the officer finds the cocaine, the driver tells the officer he was on active parole for drug smuggling and sales. The officer asks the driver, “Why didn’t you tell me you were on parole?” The answer was, “Because you never asked me.”

A few months later, after the criminal case is dismissed, the driver files a civil rights lawsuit against the officer, the canine officer, the police department, and the city. He decides not to sue the dog for tactical reasons. What do you think the outcome was? Read on.

The United States Supreme Court in the case of **Illinois v. Caballes 125 S.Ct. 834 (2005)** has held that the use of a drug sniffing dog during the course of a vehicle stop does not violate the Fourth Amendment. However, in that case, a driver was pulled over for speeding and a second officer responded to the scene while the stop was still in progress with his drug sniffing dog. The dog did his job and found drugs for which the driver was arrested.

The case does not address common practical issues that will arise. For instance, what about delay? What if the traffic stop takes only 5 minutes to write a citation, but you want to delay the stop for a longer period of time to enable the drug sniffing dog to arrive because you think there might be drugs in the trunk of the car? You are violating the Fourth Amendment absent being able to articulate facts to justify a longer detention. In the above example, it is clear that there is a delay while waiting for the dog and that there is no reasonable suspicion to hold the driver once the citation has been issued. End result: the loss of a civil rights case in this hypothetical case.

The key is that the driver be lawfully detained in the first place. Then, the observation of the dog falls within the plain view rubric since the odor is exposed to public view. If the police have not prolonged the stop, the police may conduct a dog sniff of the exterior of the vehicle to locate contraband substances. HOWEVER, if the detention has become prolonged, beyond that necessary to complete the purpose for the traffic stop and write a citation, then the dog sniff violated the Fourth Amendment. In the above example, it is clear that a delay exists waiting for the dog and that there is no reasonable suspicion to hold the driver once the citation is issued. End result: the loss of a civil rights case in the hypothetical case.

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