



Written by [Bob Adelman](#) on April 22, 2015

Supreme Court: Police Cannot Prolong a Traffic Stop

A little after midnight on March 27, 2012, Dennys Rodriguez was driving his Mercury Mountaineer on Nebraska's State Highway 275 when he swerved onto the shoulder to avoid hitting a pothole. He was on the shoulder for perhaps one or two seconds before returning to the roadway, but that was enough to catch the attention of Nebraska police officer Morgan Struble.



He pulled Rodriguez over and conducted the usual and customary check of his driver's license, insurance, and registration. After it was all checked out, Officer Struble wrote Rodriguez a warning based on a Nebraska law prohibiting driving on the shoulder of a state highway.

Struble then stepped out of bounds, [according to the latest ruling from the Supreme Court](#), when he asked Rodriguez for permission to have his drug sniffing dog, Floyd, inspect the outside of his vehicle. Rodriguez refused permission whereupon Struble instructed Rodriguez to turn off his vehicle's engine and exit the vehicle and wait by Struble's police cruiser for backup to arrive.

Eight minutes elapsed.

When backup arrived, Floyd took two trips around Rodriguez' vehicle, and on the second pass, gave an "alert" that drugs were present. This was sufficient probable cause to permit an inspection of the vehicle whereupon a bag of meth was found. This sent Rodriguez to jail for five years.

When he complained that his Fourth Amendment rights against illegal searches and seizures without probable cause were violated, a lower court disagreed, saying that the eight minutes' delay was a "de minimus" intrusion into Rodriguez' rights. An appeals court agreed and the case went to the Supreme Court, where oral arguments were heard in January. The court ruled on April 21 that the lower courts were wrong, that Rodriguez' rights had been violated.

The court ruled 6-3, with the majority opinion written by one of the liberals on the bench, Ruth Bader Ginsburg. She dispensed quickly with the arguments presented that the intrusion was slight, the delay was only eight minutes, and that police should have that additional discretion in order to protect the public from drug traffickers:

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.

Ginsburg was joined by other court liberals Stephen Breyer, Sonia Sotomayor, and Elena Kagan, while three "conservatives" on the court supported the intrusion.



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During oral arguments in January, Justice Sotomayor became testy when a government lawyer proposed that the police should be allowed that extra discretion during a routine traffic stop:

I have a real fundamental question ... here because we've now created a Fourth Amendment entitlement to search for drugs using dogs whenever anybody is stopped.... Is that really what the Fourth Amendment should permit?

We can't keep bending the Fourth Amendment to the resources [read: desires] of law enforcement, particularly when this stop ... is not incidental to the purpose of the stop.

It's purely to help the police get more criminals ... but then the Fourth Amendment becomes a useless piece of paper.

On its surface the ruling appears to be a victory for the Fourth Amendment, and a surprise ruling at that, coming from the pen of liberal Justice Ginsburg and supported by other court liberals. But such searches *during* a lawful traffic stop, and not afterwards, are still allowed, wrote Ginsburg, based on the court's ruling in 2005 in *Illinois v. Caballes*. In that case the court ruled that the Fourth Amendment is not violated when the use of a drug-sniffing dog does not "unreasonably prolong" the length of that stop.

This is a distinction without a difference, according to John Whitehead of the Rutherford Institute:

While this ruling is certainly a step in the right direction, so long as the courts continue to bend the Constitution to favor the police, there is little to celebrate. After all, the police are still empowered to stop cars based on anonymous tips, carry out warrantless searches of cars using drug-sniffing dogs, and subject Americans to virtual strip searches, no matter the offense.

Even liberals are beginning to get the message: The creation of a police state will also apply to them. While the court should have ruled 9-0, it is, in Whitehead's words, "a step in the right direction."

A graduate of an Ivy League school and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.



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