Canine Sniffs and the Admissibility of Evidence Seized during Lawful Traffic Stops: *Illinois v. Caballes*

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**CONSTITUTIONAL LAW – FOURTH AMENDMENT – PROTECTION FROM UNREASONABLE SEARCHES AND SEIZURES** – The United States Supreme Court held that a canine sniff conducted without reasonable, articulable suspicion of criminal activity during a lawful traffic stop did not violate the Fourth Amendment.


On November 12, 1998, Roy Caballes was pulled over for going six miles over the speed limit, was arrested on a drug-related charge, and was taken to the police station all within a matter of minutes.¹ During the routine traffic stop, his vehicle became the subject of a canine sniff conducted by State Trooper Craig Graham and his drug-detection dog.² Officer Graham drove to the scene with the dog after hearing Illinois State Trooper Daniel Gillette contact the police dispatcher to report the stop.³ When Graham arrived at the scene, the traffic stop was still in progress.⁴ Officer Graham walked the dog around Caballes’ car, and within a minute the dog responded to the trunk.⁵ Officers Gillette and Graham then searched the trunk and found marijuana.⁶

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¹. People v. Caballes, 802 N.E.2d 202, 203 (Ill. 2003). Caballes was traveling at a speed of seventy-one miles per hour on a section of Interstate 80 that had a posted speed limit of sixty-five miles per hour. *Caballes*, 802 N.E.2d at 203.
². *Id.*
³. *Id.* Officer Graham responded as a member of the Illinois State Police Drug Interdiction Team. *Id.* Officer Gillette did not call for his assistance. *Id.*
⁴. *Id.* After Officer Gillette radioed the dispatcher, he walked over to Caballes’ car and told him he was speeding. *Id.* Gillette then asked for his license, registration, and proof of insurance. *Id.* Once he collected the requested materials, Gillette directed Caballes to move his vehicle out of traffic and to sit in the police car. *Id.* While Gillette wrote out a warning ticket, he communicated with the police dispatcher to verify Caballes’ license information and to check for warrants. *Caballes*, 802 N.E.2d at 203. Gillette was still in the police car writing the ticket when Officer Graham arrived. *Id.*
⁵. *Id.*
⁶. *Caballes*, 802 N.E.2d at 203.
Roy Caballes was arrested and charged with one count of cannabis trafficking. He filed a motion to suppress the evidence seized during the traffic stop and a motion to quash the resulting arrest, both of which were denied by the trial judge. Caballes was convicted of the narcotics offense, sentenced to twelve years in prison, and ordered to pay a substantial fine. The trial judge found that Officers Gillette and Graham did not unnecessarily extend the traffic stop and that the search of Caballes’ trunk was proper.

The Appellate Court of Illinois affirmed the decision. While the court did find that Caballes’ encounter with the police was inappropriately extended, the delay itself was de minimis and did not warrant the court overturning the lower court’s decision. The Illinois Supreme Court, however, reversed, holding that the scope of the traffic stop was improperly extended into a drug investigation. The United States Supreme Court granted certiorari to determine whether reasonable, articulable suspicion is necessary under the Fourth Amendment to justify the use of a drug-detection dog to sniff a vehicle during a lawful traffic stop. The Court ultimately held that canine sniffs performed during legiti-
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Traffic stops do not violate the Fourth Amendment. It further held that reasonable, articulable suspicion is not required because no "legitimate" privacy interests are implicated.

The Court began its analysis by stating that the initial seizure of Caballes was lawful because it was based on probable cause of a motor vehicle code violation. The Court further indicated that the canine sniff had been conducted while Caballes was being lawfully detained pursuant to the traffic stop. The Court concluded that the use of a drug-detection dog would not change the character of a reasonably executed and lawful traffic stop unless the canine sniff infringed upon a constitutionally protected privacy interest.

For a search to be subject to the Fourth Amendment, the Court noted that a "legitimate" privacy interest must be compromised. In Caballes, the Court failed to find that canine sniffs, which revealed the presence of drugs only, infringed upon a "legitimate" privacy interest. The majority noted that possession of a controlled substance was essentially possession of contraband, which no person has a right to possess. For this reason, the Court held that conducting a canine sniff for the purpose of finding illegal contraband during the course of a lawful detention did not violate the Fourth Amendment.

Justice Souter wrote a dissenting opinion in which he concluded that the use of the drug-detection dog during the traffic stop was not an ordinary incident to the traffic stop and was not justified on

15. Id. at 837-38. Justice Stevens delivered the majority opinion of the Court in which Justices O'Connor, Scalia, Kennedy, Thomas, and Breyer joined. Id. at 836. Chief Justice Rehnquist did not take part in the decision of the case. Id.
16. Id. at 838.
17. Id. at 837.
18. Id. The Court accepted the state court's conclusion in making this determination. Id. The state court found that the duration of the stop was "justified by the traffic offense and the ordinary inquiries incident to such a stop." Id. In addition, the Supreme Court stated initially that it proceeded on the assumption that Officer Graham knew only that Caballes had been pulled over for speeding, and it omitted any facts regarding Caballes that might have caused suspicion. Id.
19. Caballes, 125 S. Ct. at 837.
20. Id.
21. Id.
22. Id. at 838. Justice Stevens noted that drug-detection dogs are trained to disclose only the presence or absence of drugs. Id. Although the error rates of the dogs were called into question, Caballes did not offer evidence to support a finding that canine sniffs could reveal something other than contraband. Id. Also, Caballes never suggested that "an erroneous alert, in and of itself, reveal[ed] any legitimate private information." Id.
23. Id.
any ground.24 According to Justice Souter, a canine sniff should rise to the level of a search because the possibility of error is significant.25 Further, Justice Souter argued that the Fourth Amendment should be used to determine the reasonableness of the search and concluded that the canine sniff would be unreasonable based on the facts in this case.26

Justice Ginsburg also authored a dissenting opinion, which Justice Souter joined.27 According to Justice Ginsburg, the test articulated in Terry v. Ohio28 should have been applied to determine whether the scope of the traffic stop was improperly exceeded.29 While Justice Ginsburg agreed that the initial stop was lawful, she found that the use of the drug-detecting dog broadened the scope of the routine traffic stop into a drug investigation.30 According to Justice Ginsburg, Caballes' Fourth Amendment rights were violated because the State did not provide evidence that warranted the use of a drug-detection dog.31

In deciding the principal issue in Caballes, whether canine sniffs conducted during regular traffic stops were lawful, the Supreme Court first addressed whether a constitutionally protected interest was at stake.32 The idea that a person has a reasonable expectation of privacy against government searches is rooted in the Fourth Amendment.33 The Amendment specifies that the people shall be secure in their persons, houses, papers, and effects.34

24. Caballes, 125 S. Ct. at 842-43 (Souter, J., dissenting).
25. Id. at 839. According to Justice Souter, earlier cases involving canine sniffs were decided based on the belief that the dogs were very accurate. Id.
26. Id. at 840. Justice Souter believed that the search was unreasonable because the troopers did not have any indication of drug activity. Id. Following the same analysis, he also concluded that any evidence obtained from the illegal search should have been suppressed. Id.
27. Id. at 843-47 (Ginsburg, J., dissenting).
28. 392 U.S. 1 (1968). The Supreme Court held that the reasonableness of a stop could be determined by examining "whether the officer's action was justified at its inception," and "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 19-20.
29. Caballes, 125 S. Ct. at 844 (Ginsburg, J., dissenting).
30. Id. at 843.
31. Id. at 844.
32. Id. at 837 (majority opinion).
34. LAFAVE, supra note 33, at § 2.1. The Fourth Amendment to the United States Constitution provides:

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 affirma-
For this reason, a Fourth Amendment analysis requires the court to determine whether a particular government activity constituted a search based on the area and the interests of the individual.\textsuperscript{35}

The Supreme Court discussed this issue in United States v. Place.\textsuperscript{36} In Place, the bags of a suspected drug courier were seized and taken to another location so that a canine sniff could be performed.\textsuperscript{37} During the "sniff test," the dog alerted to one of the bags, indicating the presence of drugs.\textsuperscript{38} Federal agents obtained a search warrant based on the positive reaction, and a subsequent search revealed cocaine.\textsuperscript{39} The respondent in this case, Raymond Place, challenged the validity of the detention of his luggage and moved to suppress the evidence obtained from his bags after he was indicted on a drug-related charge.\textsuperscript{40}

In Place, the main issue before the Court was whether law enforcement agents could in fact detain and subject luggage to a canine sniff if they reasonably suspected that the bags contained drugs.\textsuperscript{41} The Court answered this question affirmatively by holding that a law enforcement officer could detain luggage based on reasonable suspicion in order to investigate the "circumstances that aroused his suspicion" pursuant to Terry principles.\textsuperscript{42} The majority stated that, had the canine sniff been characterized as a search here, the seizure of the bags would not have been proper because the federal agents did not have probable cause to search

\textsuperscript{35} LAFAVE, supra note 33, at § 2.1.
\textsuperscript{36} 462 U.S. 696 (1983). Before the Supreme Court addressed the issue, a few courts held that canine sniffs were searches, based on the fact the officer could not discover the smell using his own senses. LAFAVE, supra note 33, at § 2.2(g). Most courts, however, held that the use a drug-detection dog was essentially the same as the officer using his own sense of smell, making the plain smell doctrine applicable. \textit{Id.}
\textsuperscript{37} \textit{Place}, 462 U.S. at 699.
\textsuperscript{38} \textit{Id.}
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} \textit{Id.} More specifically, Place was formally accused of possession of a controlled substance with intent to distribute. \textit{Id.}
\textsuperscript{41} \textit{Id.} at 698.
\textsuperscript{42} \textit{Place}, 462 U.S. at 706.
them.\textsuperscript{43} The Court did not, however, find that the exposure of the bags to a drug-detection dog was a search subject to the Fourth Amendment.\textsuperscript{44}

Justice O'Connor, writing for the majority in \textit{Place}, noted that canine sniffs are different from recognized searches because they are generally "less intrusive" and are used only for a limited purpose, which is to determine whether drugs are present in a particular place.\textsuperscript{45} For these reasons, the Supreme Court classified a canine sniff as \textit{sui generis}\textsuperscript{46} instead of as a search.\textsuperscript{47} Ultimately, the Court found that the seizure of Place's bags was unreasonable and held that the evidence obtained from them was inadmissible.\textsuperscript{48} The determinative factor in this case, however, was the length of the detention and not the actual exposure of the bags to the drug-detection dog.\textsuperscript{49}

In 1984, less than a year after \textit{Place}, the Supreme Court decided \textit{United States v. Jacobsen},\textsuperscript{50} a case that discussed the issue of whether a cocaine "field test" was a search within the meaning of the Fourth Amendment.\textsuperscript{51} In \textit{Jacobsen}, two Federal Express employees opened a damaged package, in compliance with company policy, and discovered what they believed to be drugs.\textsuperscript{52} The employees contacted federal drug authorities, who subsequently performed chemical tests that confirmed that the package contained cocaine.\textsuperscript{53} Based on these results, the federal agents obtained a search warrant and later arrested the intended recipients of the package.\textsuperscript{54} The respondents, charged with possession of a controlled substance with intent to distribute, moved to suppress the

\textsuperscript{43} Id.
\textsuperscript{44} Id. at 707.
\textsuperscript{45} Id.
\textsuperscript{46} \textit{sui generis} can be defined as "of its own kind or class" or "unique." \textsc{Black's Law Dictionary} 1475 (8th ed. 2004).
\textsuperscript{47} \textit{Place}, 462 U.S. at 707.
\textsuperscript{48} Id. at 710. The federal agents detained the bags for approximately an hour and a half. Id. at 699.
\textsuperscript{49} Id. at 709.
\textsuperscript{50} 466 U.S. 109 (1984).
\textsuperscript{51} \textit{Jacobsen}, 466 U.S. at 111.
\textsuperscript{52} Id. The package was described as a box wrapped in brown paper that contained wrinkled newspapers and a tube. Id.
\textsuperscript{53} Id. The particular agency that the Federal Express employees contacted was the Drug Enforcement Administration (DEA). Id. In this case, different federal agents performed a total of two "field tests." Id. at 112. Both confirmed that the substance in the package was cocaine. Id.
\textsuperscript{54} Id. at 112.
evidence against them because they believed the warrant resulted from an illegal search and seizure.\textsuperscript{55}

In deciding the principal issue in \textit{Jacobsen}, whether or not the “field test” was a search, the Court first determined if the test “infringed an expectation of privacy that society [was] prepared to consider reasonable.”\textsuperscript{56} After making that determination, the Supreme Court found that the “field test” was not a search subject to the Fourth Amendment.\textsuperscript{57} Justice Stevens, writing on behalf of the majority, stated simply that the test did not “compromise any legitimate interest in privacy” because it showed only whether a particular substance was cocaine.\textsuperscript{58} Based on its opinion in this case, the Court ruled that the evidence against the respondents in \textit{Jacobsen} was admissible.\textsuperscript{59}

In 2001, the Supreme Court decided in \textit{Kyllo v. United States}\textsuperscript{60} whether the use of a “thermal-imaging device” to detect heat within a home was a search subject to the Fourth Amendment.\textsuperscript{61} In \textit{Kyllo}, federal agents scanned the exterior of a house using a “thermal imager” because they believed that the petitioner, Danny Kyllo, was growing marijuana inside.\textsuperscript{62} The scan of the house revealed concentrated areas of heat, which was indicative of indoor marijuana growth.\textsuperscript{63} Based on the results of this scan, as well as informant tips and information obtained from utility bills, the fed-

\textsuperscript{55} Id.
\textsuperscript{56} \textit{Jacobsen}, 466 U.S. at 122. In \textit{California v. Ciraolo}, 476 U.S. 207 (1986), the Supreme Court used this two-part test to analyze what constituted a search under the Fourth Amendment. \textit{Ciraolo}, 476 U.S. at 211. The first part of the test asked whether the individual had an actual expectation of privacy based on his conduct. \textit{Id}. The second part of the test asked whether the individual’s expectation of privacy was one that society was prepared to recognize as reasonable, meaning it was legitimate. \textit{Id}. This test required courts to determine whether the government’s intrusion infringed upon protected “personal and societal values.” \textit{Id}. at 212. This test was first articulated in \textit{Katz v. United States}, 389 U.S. 347, 360 (1967) (Harlan, J., concurring), by Justice Harlan in a concurring opinion. \textit{Katz}, 389 U.S. at 360.

\textsuperscript{57} \textit{Jacobsen}, 466 U.S. at 124. Before deciding the issue of whether the “field test” constituted a search, the majority in \textit{Jacobsen} determined that the removal of the plastic bags from the tube by the federal agent did not violate the Fourth Amendment. \textit{Id}. at 120. The Court reasoned that the removal of the bags was not a search because the information presented to the agent, particularly by the Federal Express employees, left little doubt that the package contained drugs only. \textit{Id}. at 119. In addition, the agent obtained this information because of a private search, which was not subject to the Fourth Amendment. \textit{Id}.

\textsuperscript{58} \textit{Id}. at 123.
\textsuperscript{59} \textit{Id}. at 126.
\textsuperscript{60} 533 U.S. 27 (2001).
\textsuperscript{61} \textit{Kyllo}, 533 U.S. at 29.
\textsuperscript{62} \textit{Id}.
\textsuperscript{63} \textit{Id}. at 30.
eral agents obtained a search warrant. Kyllo was charged with "manufacturing marijuana" after a subsequent search revealed marijuana. After he was indicted, Kyllo made a motion to suppress the evidence obtained from the search.

The Supreme Court in Kyllo, after considering the test set forth in Katz, held that the use of the "thermal imaging device" constituted a search within the meaning of the Fourth Amendment. Justice Scalia, writing for the majority, pointed out that where the inside of a home is the subject of a search, there is a "minimal expectation of privacy that exists, and that is acknowledged to be reasonable." The majority found generally that the scanning device was intrusive because it could detect information relating to the interior of the home. Because the evidence obtained from Kyllo's home was, in part, the product of an unlawful search, the Court remanded the issue of admissibility to the lower court.

In Caballes, the Supreme Court based its opinion on two cases, namely United States v. Place and United States v. Jacobsen, that presented very different factual scenarios. Nevertheless, the analysis in these cases provided a framework that made the outcome of Caballes predictable.

In Caballes, the Court framed the issue as whether the Fourth Amendment required reasonable suspicion of drug possession before conducting a canine sniff on a lawfully detained vehicle. The Court stated that reasonable suspicion was only necessary if canine sniffs compromised constitutionally protected privacy interests. To start with, the majority discussed the holding in Jacobsen. Jacobsen stood for the proposition that the possession of "contraband" was not a legitimate interest. Possession of contraband is exactly how the Court characterized Caballes' interest because he was attempting to conceal marijuana. Similarly, the Court found that Caballes had no expectation of privacy.

64. Id.
65. Id.
67. Id. at 34-35.
68. Id. at 34.
69. Id. at 37.
70. Id. at 40-41.
71. Caballes, 125 S. Ct. at 837-38.
72. Id. at 837.
73. Id.
74. Id.
75. Jacobsen, 466 U.S. at 123.
76. Caballes, 125 S. Ct. at 837-38.
Jacobsen generally held that a test, which disclosed the presence of drugs only, was not a search within the meaning of the Fourth Amendment.\textsuperscript{77} Similarly, an investigative procedure, such as a canine sniff, which disclosed the same information, was likewise held not to be a search in \textit{Place}\.\textsuperscript{78} In \textit{Caballes}, the majority quickly disposed of the constitutional issue by applying the same reasoning to conclude that the canine sniff was not a search.\textsuperscript{79}

The Court noted that the \textit{Caballes} decision was consistent with its holding in \textit{Kyllo v. United States}, where it stated that the use of a "thermal imager" to detect the indoor growth of illegal drugs was an unlawful search.\textsuperscript{80} According to the Court, \textit{Kyllo} was distinguishable because the investigative procedure used by law enforcement agents was capable of detecting lawful activity in addition to illegal drugs.\textsuperscript{81} Therefore, the Court stated that Kyllo's legitimate expectation that lawful activity would remain private was very different from Caballes' expectation that illegal drugs would remain concealed in the trunk of his car.\textsuperscript{82} As Justice Souter pointed out in his dissenting opinion, this distinction is somewhat troublesome.\textsuperscript{83}

The Court's distinction between \textit{Kyllo} and \textit{Caballes} makes the reliability of trained drug-detection dogs problematic. If Justice Souter was correct in arguing that canine sniffs lack the certainty and the limited disclosure inherent in other tests, it is possible that canine sniffs are capable of detecting lawful activity.\textsuperscript{84} As the Court indicated in \textit{Caballes}, the expectation that lawful activity will remain private is legitimate and therefore protected by the Fourth Amendment.\textsuperscript{85}

In \textit{Caballes}, the Court did not elaborate on what legitimate privacy expectations a motorist would have, but it did state that any intrusion on Caballes' privacy expectations did not rise to the level of a constitutional violation.\textsuperscript{86} The Court essentially dismissed all Fourth Amendment implications in this case. Without stating as much, it seemed the Court determined that the individual's pri-

\textsuperscript{77} Id. at 838.
\textsuperscript{78} Place, 462 U.S. at 707.
\textsuperscript{79} Caballes, 125 S. Ct. at 838.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id. at 840 (Souter, J., dissenting).
\textsuperscript{84} See Caballes, 125 S. Ct. at 842 (Souter, J., dissenting).
\textsuperscript{85} Id. at 838 (majority opinion).
\textsuperscript{86} Id.
vacy interest was not significant enough to overcome the governmental interests in conducting a canine sniff. If this were the case, the Court should have used a balancing test in its analysis. The analysis was undoubtedly warranted given the weight of the Fourth Amendment protections.

The reasonableness of a canine sniff is generally determined by balancing the government's interest in using the dog against an individual's interest in freedom from unreasonable intrusions. In her dissent, Justice Ginsberg argued that a general interest in crime control did not justify the intrusion of a canine sniff. The majority, on the other hand, found that the use of the trained narcotics dog was justified given the fact that the dog simply walked around the exterior of Caballes' vehicle. Caballes illustrates that contradictory results will inevitably arise because courts characterize and weigh protected interests differently. However, the application of a balancing test would ensure, at the very least, that courts would give some weight to an individual's interests.

In Caballes, the Court held that subjecting a lawfully detained vehicle to a canine sniff by a trained drug-detection dog, without reasonable suspicion of criminal activity, did not violate the Fourth Amendment. Caballes did not, however, stand for the proposition that law enforcement officers have unlimited freedom to use similar investigative procedures in any given circumstance. Certain constitutional guaranties concerning searches and seizures are still relevant to the use of drug detection dogs in that an unreasonable or abusive use of a drug detection dog is improper. The effect of the Caballes holding will be most likely be limited by these constitutional considerations.

Finally, states may offer greater protection to an individual than the Federal Constitution provides. Several state courts have, in fact, declined to follow the holding in Place by finding that canine sniffs constituted searches under their respective constitutions. For this reason, the holding in Caballes will not be determinative in a number of state courts where attorneys chal-

89. Id. at 836 (majority opinion).
90. Id. at 838.
91. Shields, supra note 87, at § 1.
92. Shields, supra note 87, at § 2.
lenge the constitutionality of the canine sniffs based on rights set forth in the state constitutions.

In *Caballes*, the Court had to determine whether the police could subject a lawfully detained vehicle to a drug sniff, absent reasonable suspicion. The *Caballes* opinion illustrated that the Court's characterization of the individual's privacy interest is determinative in deciding whether a canine sniff constitutes a search, and will also have a bearing on whether evidence seized as a result of a positive canine alert will be admissible. It is difficult to predict what impact the *Caballes* holding will have on future cases because the Court decided such a narrow issue. It is, however, clear that the Court will not allow people who possess drugs to hide behind the Fourth Amendment.

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