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## ***LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH***

**By Don Hays**

Month of March – 2024 - ALTERNATIVE

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# **LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH**

## **Month of March - 2024 - ALTERNATIVE**

### **United States v. Adrian Johnson, No. 22-2932, 2024 WL 635281, February 15, 2024.**

**THE CASE:** After stopping Johnson's car for a registration violation. The police soon discovered that Johnson possessed no driver's license. Consequently, the police decided to impound the car. While processing the car for impoundment, a K-9 Officer allowed his dog to sniff the car. The dog alerted and illegal drugs was discovered. Did the Officer's act of allowing the K-9 to sniff the suspect car illegal extend the duration of Johnson's detention?

**FACTS:** An Officer (First Officer) was driving a marked police vehicle when he saw Johnson driving a white SUV in the opposite direction. He noticed that Johnson was looking beneath his arm—an odd move that the Officer interpreted as a sign that Johnson might be trying to hide his face. Believing that this behavior might indicate criminal activity, the Officer began to follow Johnson. As he drove, the Officer ran Johnson's license plate through the squad car computer and learned that it was expired. Consequently, the Officer activated his lights to initiate a traffic stop. Johnson pulled over, but the Officer thought he (Johnson) took an unusually long time to do so.

Upon request, Johnson produced paper identification and a bill of sale for the car, but he did not furnish its registration or a driver's license. The Officer returned to his vehicle and ran Johnson's identification. The system informed him that Johnson had a suspended driver's license. Because Johnson had no license and the car was not registered to him, the Officer decided to impound the car. He called for backup and began preparing two documents: an impound log and a warning for Johnson's expired plate. A Second Officer soon arrived as backup. Department policy required officers to inventory vehicles before impounding them. Shortly after the Second Officer's arrival, the First Officer instructed Johnson to get out of his car to allow the officers to conduct their inventory. Johnson refused to consent to a search of his car but allowed the First Officer to search his person for weapons. The Officer searched Johnson and found about \$1,600 in cash. The Officers then decided that the Second Officer would put Johnson in the back seat of her police vehicle while they inventoried the car Johnson had been driving. While the Second Officer walked Johnson to her squad car, the First Officer (who was a K-9 Officer) brought his dog out to sniff Johnson's car. The dog twice alerted to the presence of a controlled substance. The dog sniff wrapped up about 85 seconds after the Second Officer began escorting Johnson to her car.

The Second Officer then handcuffed Johnson and informed him that they were detaining him because the dog had alerted near his vehicle. They told him that he was not yet under arrest, but that they were going to search his car for contraband. The First Officer began searching the car and quickly found a pipe used for smoking methamphetamine. He then placed Johnson under arrest and informed him of his *Miranda* rights. The officers continued searching the car and found a box containing a handgun. Near where the dog had alerted, they also found a bag containing 44 grams of methamphetamine, a mixture containing fentanyl, a digital scale, and another handgun. The First Officer called for a tow truck and waited with the car while the Second Officer took Johnson to jail.

Subsequently, the People brought drug and weapons charges against Johnson. Johnson moved to suppress all evidence found in the car as fruits of an unconstitutional search. The District Court denied his motion, finding that the dog sniff did not violate the Fourth Amendment, and that it provided the officers with probable cause to search the car. Johnson then entered a conditional guilty plea, and the court sentenced him to 15 years in prison. This appeal followed.

**ISSUE:** Did the Officer's act of employing his K-9 to "sniff" Johnson's car violate Johnson's rights?

**THE LAW:** The Fourth Amendment protects against unreasonable searches and seizures. A "dog sniff" is not a search and so does not implicate the Fourth Amendment. However, an officer may not prolong an otherwise-lawful traffic stop in order to conduct a dog sniff. The permissible duration of a traffic stop is determined by the "mission" of the stop. If an officer prolongs a stop beyond its permissible length to conduct a dog sniff, even for a short time, the stop becomes unlawful unless the officer has reasonable suspicion of criminal activity.

**ARGUMENTS:** On appeal, Johnson's primary argument was that the dog sniff violated his Fourth Amendment rights. Conversely, the People argued that the dog sniff did not prolong the stop, that "the sniff" was independently supported by reasonable suspicion even if it did prolong the stop, and that the evidence found in the car would inevitably have been discovered during the inventory search anyway.

### **SUB-ISSUE #1: Was the dog “sniff” itself illegal?**

**FINDINGS:** Initially, the Court of Appeals noted that Johnson did not challenge the length or validity of the dog sniff itself in the district court. The Court declared that this was correct because the United States Supreme Court has held that a dog sniff is not a search and so does not implicate the Fourth Amendment. Therefore, the issue considered by the Court was whether the officers failed to diligently pursue their traffic mission (as required by *Rodriguez v. United States*, 575 U.S. 348, (2015) by allowing the dog to sniff Johnson’s car. The Circuit Court concluded that it did not. The Court of Appeals agreed with that finding.

### **SUB-ISSUE #2: When the arresting Officer stopped pursuing his traffic-related tasks to conduct the dog sniff, did he improperly detour from the mission of the traffic stop, violating *Rodriguez*?**

**FINDINGS:** To answer this question, the Court noted that the “critical question” under *Rodriguez* was not whether the officer conducted any investigatory task during the stop. (i.e., conducted a dog sniff.) It was “whether conducting the sniff prolongs—i.e., adds time to—the stop.” According to the Court, such a case therefore becomes problematic under *Rodriguez* only when an officer, having no legal basis to keep a suspect in place, drags his or her feet during a traffic stop to give a trained dog time to arrive.

The Court held that this was not such a case. According to the Court, the Officer did not have to wait for a colleague to show up with a dog, because he was himself a “K-9 Deputy” and already had a drug-sniffing dog with him. Further, by the time the arresting Officer brought the dog to Johnson’s car, Johnson was already in trouble. The officers knew that he was driving with a suspended license, and so they had probable cause to arrest him. Even if, as the record indicated, the arresting Officer did not plan to arrest Johnson for that offense, he would not have allowed Johnson to drive away without a valid license. The Court of Appeals therefore concluded that the district court correctly found that by the time the arresting Officer brought the dog out of his vehicle, Johnson “was already in police custody and going nowhere.” The stop was prolonged not by the dog sniff, but by the arresting Officer’s discovery that he would have to impound Johnson’s car and not allow him to drive away in it.

### **SUB-ISSUE #3: Was the release of Johnson illegally delayed by the dog sniff?**

**FINDINGS:** In response to this question, the Court noted that perhaps Johnson was arguing that the officers could have driven him home (or to the jail) faster had the arresting Officer not paused the impound process to conduct the dog sniff. However, the Court also noted that the dashcam footage from the arresting Officer’s vehicle revealed that at the beginning of the dog sniff, the second Officer was already walking Johnson to her vehicle. According to the Court, securing a suspect in a police vehicle can be “reasonably incidental” to a traffic stop. The Court noted that this was particularly so in this case; the officers were required to inventory and impound the car, and the alternative to placing Johnson in a police vehicle would have been to leave him standing on a highway on a cold January night. [Parenthetically, the Court noted that had the Second Officer secured Johnson in her vehicle *only* to facilitate the dog sniff, *Rodriguez* might well have been violated.] However, the Court declared that “to the extent that (it) simply did not know whether every moment of the detention was spent in traffic-related tasks, the fault for those omissions was with” Johnson for failing to raise the issue at the trial level.

### **SUB-ISSUE #4: If the dog sniff was legal, was the search of Johnson’s otherwise legal?**

**FINDINGS:** The Court of Appeals then noted that its conclusion that the dog sniff did not unreasonably prolong the stop made the remainder of the Fourth Amendment analysis in this case very straightforward. According to the Court, to be reasonable, a search generally must be supported by probable cause and a warrant, but officers may dispense with the warrant requirement for vehicle searches under the so-called “automobile exception.” Thus, to legally search Johnson’s car, the arresting Officer needed only probable cause to believe that it contained contraband. Because Johnson did not challenge the drug-sniffing dog’s reliability, the Court held that it would accept the district court’s finding that the dog’s alerts gave the officers probable cause to search the car. The search of Johnson’s car therefore did not violate the Fourth Amendment.

**NOTE:** Since the Court found probable cause to search Johnson’s car, it did not need to rule on the issue of whether the contraband would have inevitably been discovered during the inventory search. It would seem that had this issue been analyzed, Johnson would have lost on this issue as well.

**CONCLUSION:** As a result of the above findings, the Court of Appeals affirmed Johnson’s convictions.

## **QUIZ QUESTIONS FOR THE MONTH OF MARCH – 2024 - ALTERNATIVE**

**United States v. Adrian Johnson, No. 22-2932, 2024 WL 635281, February 15, 2024.**

1. The Fourth Amendment provides that a dog sniff constitutes a “search” and, therefore, the Police must have probable cause to believe that the suspect is committing or has committed a criminal offense to justify such a dog sniff.
  - a. True.
  - b. False.
2. Can an otherwise legal dog sniff violate the constitutional rights of a suspect?
  - a. Yes.
  - b. No.
3. Johnson was secured in the back seat of the Second Officer’s patrol car while the Officers prepared to inventory search and tow his car. The Court held that this act of securing Johnson while the Officer’s conducted a search of his car rendered Johnson’s detention illegal.
  - a. True.
  - b. False.
4. After declaring that the dog sniff in this case was not illegal, did the Court of Appeals find that the subsequent discovery of contraband in Johnson’s car was also legal?
  - a. Yes.
  - b. No.

## **QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF MARCH – 2024 - ALTERNATIVE**

### **United States v. Adrian Johnson, No. 22-2932, 2024 WL 635281, February 15, 2024.**

1. The Fourth Amendment provides that a dog sniff constitutes a “search” and, therefore, the Police must have probable cause to believe that the suspect is committing or has committed a criminal offense to justify such a dog sniff.  
  
**b. False.** As the Court in this case held: “(t)he United States Supreme Court has held that a dog sniff is not a search and so does not implicate the Fourth Amendment.”
2. Can an otherwise legal dog sniff violate the constitutional rights of a suspect?  
  
**a. Yes.** An otherwise legal dog sniff can be rendered illegal when that sniff impermissibly extends the duration of the defendant’s detention. As the Court declared in this case, “The critical question when determining whether a dog sniff impermissibly prolonged a traffic stop, in violation of the Fourth Amendment, is not whether the officer conducted any investigatory task during the stop; it is whether conducting the sniff prolongs, that is, adds time to, the stop.”
3. Johnson was secured in the back seat of the Second Officer’s patrol car while the Officers prepared to inventory search and tow his car. The Court held that this act of securing Johnson while the Officer’s conducted a search of his car rendered Johnson’s detention illegal.  
  
**b. False.** The Court held, “Securing a suspect in a police vehicle can be reasonably incidental to a traffic stop, for purposes of the Fourth Amendment’s protection against unreasonable searches and seizures.” Because of the cold January weather in this case, the Court held that placing Johnson in the back of the Second Officer’s car was reasonable.
4. After declaring that the dog sniff in this case was not illegal, did the Court of Appeals find that the subsequent discovery of contraband in Johnson’s car was also legal?  
  
**a. Yes.** Because Johnson did not challenge the drug-sniffing dog’s reliability, the Court held that it would accept the district court’s finding that the dog’s alerts gave the officers probable cause to search the car. Therefore, the search of Johnson’s car did not violate the Fourth Amendment.