



A T T O R N E Y S

SMITH, RODGERS &
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

Topic: A Significant Court Victory for Law Enforcement

Case: State v. Branch (bad law enforcement court case vacated by U.S. Supreme Court)

Discussion:

As many of you will remember, in February 2004 the North Carolina Court of Appeals decided the case of State v. Branch, involving the use of a police canine to sniff a lawfully detained motor vehicle. The Branch court ruled—incorrectly—that reasonable suspicion was required to justify such a sniff. This case decision was bad for police even beyond the canine sniff issue (explanation below).

In a previous Roll Call (Vol. IV No. 2 Feb 14) we examined State v. Branch in light of the United States Supreme Court case of Illinois v. Caballes (decided Jan. 2005). We urged that Caballes was directly contrary to the Branch opinion, and thus undercut Branch's usefulness to the defense bar as a precedent (Caballes' holding, of course, was that a canine sniff of the exterior of a lawfully detained motor vehicle is not a search that must be justified by reasonable suspicion). Nevertheless, Branch remained technically “on the books” and was therefore troublesome to North Carolina law enforcement officers.

Good News:

On October 11, 2005, The United States Supreme Court reviewed North Carolina v. Branch. The Supreme Court **vacated** the Court of Appeals' judgment and remanded the case back to North Carolina for further consideration in light of the Caballes decision. That action effectively reversed Branch.

Thus, the “bad” ruling in Branch is no longer law in our State (again, SR&S has maintained that Branch was incorrect from the outset). **But please note that last month's decision by our U.S. Supreme Court is important even beyond the issue of canine sniffs of cars.** Here's why: In Branch the Court of Appeals suggested it was unfair and unlawful for police officers making a vehicle stop (say, for an expired tag) to inquire into possible illegal conduct *beyond the license tag or other issue that justified the initial traffic stop*. Thus, the ruling appeared to disallow seizure of drugs inside a vehicle when seen in plain view, a radio check to see if the driver had outstanding warrants, a request for a consent to search, and so forth. That Branch has been vacated is a significant victory for law enforcement in North Carolina!

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NOVEMBER 21, 2005

VOLUME IV NUMBER 11

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