

**ROLL CALL TRAINING**  
**FROM NORTH CAROLINA'S 24/7 POLICE**  
**ATTORNEY LAW FIRM**

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**TOPIC:**

WHEN MAY A LAW ENFORCEMENT OFFICER USE  
A TRAINED CANINE TO SNIFF THE EXTERIOR OF A  
LAWFULLY STOPPED AUTOMOBILE?

**UPDATE**  
See *State v. Branch Update*,  
Nov 21, 2005.  
Vol.4 No..11

**THE CASE:**

*Illinois v. Caballes*, United States Supreme Court (January, 2005).

**DISCUSSION:**

The use of “drug interdiction” canines in the course of traffic stops has been a common practice nation-wide for many years. Unfortunately, the continuing viability of this technique, at least in North Carolina, was called into question by a 2004 decision of the North Carolina Court of Appeals, *State v. Branch*, in which the Court held that reasonable suspicion was required for such a canine sniff. The Court’s ruling in this case has been appealed to the North Carolina Supreme Court.

IN LIGHT OF THE UNITED STATES SUPREME COURT’S HOLDING IN CABALLES, IT IS VERY UNLIKELY THAT THE NORTH CAROLINA SUPREME COURT WILL REQUIRE REASONABLE SUSPICION TO SUPPORT THE CANINE SNIFF OF A LAWFULLY DETAINED AUTOMOBILE.

**WHAT FIRST-LINE SUPERVISORS SHOULD KNOW**

*A canine sniff of the exterior of a lawfully detained automobile is not a search. No suspicion is required to support such a canine sniff!*

A long line of cases, both Federal and State, recognize that the canine sniff of the exterior of a lawfully detained automobile is not a search. Generally, when the law enforcement activity in question (the canine sniff in this case) is not a search, no degree of suspicion is required to support that activity. However, in *Branch*, our Court of Appeals held that “a reasonable and articulable suspicion is required before a dog sniff, even though it is not a search, is valid.” The Court went on to hold that “the time needed to verify defendant’s credentials is not a time during which officers may investigate any possible criminal activity while the defendant is immobilized.” As noted above, this holding is currently on appeal in our Supreme Court.

Fortunately, in light of the Supreme Court’s ruling in *Caballes*, this holding by the Court of Appeals is unlikely to be left in place. The *Caballes* Court held that “the use of a well-trained narcotics-detection dog – one that does not expose noncontraband items that otherwise would remain hidden from public view – during a lawful traffic stop, generally does not implicate legitimate privacy interests.” The Court went on to hold that “any

intrusion on respondent's privacy expectations does not rise to the level of a constitutionally cognizable infringement." Since no legitimate privacy interest is implicated by the canine sniff, no suspicion is required to support that sniff. Finally, the Court held that "a dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." As this decision is directly contrary to the Court of Appeals' holding in Branch, it is unlikely that our Supreme Court will uphold that case on appeal.

## **TWO MORE POINTS TO CONSIDER**

It is important to note that in this case Defendant was stopped for a traffic violation, not at a checkpoint. Given the Supreme Court's holding in *Indianapolis v. Edmond*, the use of a canine to sniff every vehicle stopped at DWI or license checkpoint probably violates the Fourth Amendment.

It is also important to note that in *Caballes* the canine was walked around Defendant's car *while the officer who stopped him was in the process of writing him a warning ticket*. Even though the canine sniff of the exterior of an automobile is not a search and requires no justification, the continuing detention of a suspect and his automobile to facilitate that sniff may very well be a Fourth Amendment seizure, requiring at least reasonable suspicion. Put another way, even though no justification is required for the sniff, some justification (at least reasonable suspicion) is required if the suspect is detained longer than is necessary to process him for the traffic violation for which he was originally stopped.

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