SUPREME COURT OF THE UNITED STATES

No. 03–923

ILLINOIS, PETITIONER *v.* ROY I. CABALLES

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

[January 24, 2005]

JUSTICE GINSBURG, with whom JUSTICE SOUTER joins, dissenting.

Illinois State Police Trooper Daniel Gillette stopped Roy Caballes for driving 71 miles per hour in a zone with a posted speed limit of 65 miles per hour. Trooper Craig Graham of the Drug Interdiction Team heard on the radio that Trooper Gillette was making a traffic stop. Although Gillette requested no aid, Graham decided to come to the scene to conduct a dog sniff. Gillette informed Caballes that he was speeding and asked for the usual documents—driver's license, car registration, and proof of insurance. Caballes promptly provided the requested documents but refused to consent to a search of his vehicle. After calling his dispatcher to check on the validity of Caballes' license and for outstanding warrants, Gillette returned to his vehicle to write Caballes a warning ticket. Interrupted by a radio call on an unrelated matter, Gillette was still writing the ticket when Trooper Graham arrived with his drug-detection dog. Graham walked the dog around the car, the dog alerted at Caballes' trunk, and, after opening the trunk, the troopers found marijuana. 207 Ill. 2d 504, 506–507, 802 N. E. 2d 202, 203 (2003).

The Supreme Court of Illinois held that the drug evidence should have been suppressed. *Id.,* at 506, 802 N. E. 2d, at 202. Adhering to its decision in *People* v. *Cox*, 202 Ill. 2d 462, 782 N. E. 2d 275 (2002), the court employed a

two-part test taken from *Terry* v. *Ohio,* 392 U. S. 1 (1968), to determine the overall reasonableness of the stop. 207 Ill. 2d, at 508, 802 N. E. 2d, at 204. The court asked first "whether the officer's action was justified at its inception," and second "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Ibid.* (quoting *People* v. *Brownlee*, 186 Ill. 2d 501, 518–519, 713 N. E. 2d 556, 565 (1999) (in turn quoting *Terry*, 392 U. S., at 19–20)). "[I]t is undisputed," the court observed, "that the traffic stop was properly initiated"; thus, the dispositive inquiry trained on the "second part of the *Terry* test," in which "[t]he State bears the burden of establishing that the conduct remained within the scope of the stop." 207 Ill. 2d, at 509, 802 N. E. 2d, at 204.

The court concluded that the State failed to offer sufficient justification for the canine sniff: "The police did not detect the odor of marijuana in the car or note any other evidence suggesting the presence of illegal drugs." *Ibid.* Lacking "specific and articulable facts" supporting the canine sniff, *ibid.* (quoting *Cox*, 202 Ill. 2d, at 470–471, 782 N. E. 2d, at 281), the court ruled, "the police impermissibly broadened the scope of the traffic stop in this case into a drug investigation." 207 Ill. 2d, at 509, 802 N. E. 2d, at 204.[1] I would affirm the Illinois Supreme Court's judgment and hold that the drug sniff violated the Fourth Amendment.

In *Terry* v. *Ohio*, the Court upheld the stop and subse-

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[1]The Illinois Supreme Court held insufficient to support a canine sniff Gillette's observations that (1) Caballes said he was moving to Chicago, but his only visible belongings were two sport coats in the backseat; (2) the car smelled of air freshener; (3) Caballes was dressed for business, but was unemployed; and (4) Caballes seemed nervous. Even viewed together, the court said, these observations gave rise to "nothing more than a vague hunch" of "possible wrongdoing." 207 Ill. 2d 504, 509–510, 802 N. E. 2d 202, 204–205 (2003). This Court proceeds on "the assumption that the officer conducting the dog sniff had no information about [Caballes]." *Ante*, at 2.

quent frisk of an individual based on an officer's observation of suspicious behavior and his reasonable belief that the suspect was armed. See 392 U. S., at 27–28. In a *Terry*-type investigatory stop, "the officer's action [must be] justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place." *Id.,* at 20. In applying *Terry*, the Court has several times indicated that the limitation on "scope" is not confined to the duration of the seizure; it also encompasses the manner in which the seizure is conducted. See, *e.g., Hiibel* v. *Sixth Judicial Dist. Court of Nev., Humboldt Cty.,* 542 U. S. ___, ___ (2004) (slip op., at 9) (an officer's request that an individual identify himself "has an immediate relation to the purpose, rationale, and practical demands of a *Terry* stop"); *United States* v. *Hensley,* 469 U. S. 221, 235 (1985) (examining, under *Terry*, both "the length and intrusiveness of the stop and detention"); *Florida* v. *Royer,* 460 U. S. 491, 500 (1983) (plurality opinion) ("[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop [and] . . . the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion . . . ."). "A routine traffic stop," the Court has observed, "is a relatively brief encounter and 'is more analogous to a so-called *Terry* stop . . . than to a formal arrest.'" *Knowles* v. *Iowa,* 525 U. S. 113, 117 (1998) (quoting *Berkemer* v. *McCarty*, 468 U. S. 420, 439 (1984)); see also *ante*, at 6 (SOUTER, J., dissenting) (The government may not "take advantage of a suspect's immobility to search for evidence unrelated to the reason for the detention.").[2] I would

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[2] The *Berkemer* Court cautioned that by analogizing a traffic stop to a *Terry* stop, it did "not suggest that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a *Terry* stop." 468 U. S., at 439, n. 29. This Court, however, looked to *Terry* earlier in deciding that an officer acted reasonably

apply *Terry*'s reasonable-relation test, as the Illinois Supreme Court did, to determine whether the canine sniff impermissibly expanded the scope of the initially valid seizure of Caballes.

It is hardly dispositive that the dog sniff in this case may not have lengthened the duration of the stop. Cf. *ante*, at 2 ("A seizure . . . can become unlawful if it is prolonged beyond the time reasonably required to complete [the initial] mission."). *Terry*, it merits repetition, instructs that any investigation must be "reasonably related in *scope* to the circumstances which justified the interference in the first place." 392 U. S., at 20 (emphasis added). The unwarranted and nonconsensual expansion of the seizure here from a routine traffic stop to a drug investigation broadened the scope of the investigation in a manner that, in my judgment, runs afoul of the Fourth Amendment.[3]

The Court rejects the Illinois Supreme Court's judgment and, implicitly, the application of *Terry* to a traffic stop converted, by calling in a dog, to a drug search. The Court so rules, holding that a dog sniff does not render a seizure that is reasonable in time unreasonable in scope. *Ante*, at 2–3. Dog sniffs that detect only the possession of contraband may be employed without offense to the Fourth Amendment, the Court reasons, because they reveal no lawful activity and hence disturb no legitimate expectation of privacy. *Ante*, at 3–4.

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when he ordered a motorist stopped for driving with expired license tags to exit his car, *Pennsylvania* v. *Mimms,* 434 U. S. 106, 109–110 (1977) *(per curiam)*, and later reaffirmed the *Terry* analogy when evaluating a police officer's authority to search a vehicle during a routine traffic stop, *Knowles*, 525 U. S., at 117.

[3]The question whether a police officer inquiring about drugs without reasonable suspicion unconstitutionally broadens a traffic investigation is not before the Court. Cf. *Florida* v. *Bostick,* 501 U. S. 429, 434 (1991) (police questioning of a bus passenger, who might have just said "No," did not constitute a seizure).

In my view, the Court diminishes the Fourth Amendment's force by abandoning the second *Terry* inquiry (was the police action "reasonably related in scope to the circumstances [justifiying] the [initial] interference"). 392 U. S., at 20. A drug-detection dog is an intimidating animal. Cf. *United States* v. *Williams*, 356 F. 3d 1268, 1276 (CA10 2004) (McKay, J., dissenting) ("drug dogs are not lap dogs"). Injecting such an animal into a routine traffic stop changes the character of the encounter between the police and the motorist. The stop becomes broader, more adversarial, and (in at least some cases) longer. Caballes—who, as far as Troopers Gillette and Graham knew, was guilty solely of driving six miles per hour over the speed limit—was exposed to the embarrassment and intimidation of being investigated, on a public thoroughfare, for drugs. Even if the drug sniff is not characterized as a Fourth Amendment "search," cf. *Indianapolis* v. *Edmond,* 531 U. S. 32, 40 (2000); *United States* v. *Place,* 462 U. S. 696, 707 (1983), the sniff surely broadened the scope of the traffic-violation-related seizure.

The Court has never removed police action from Fourth Amendment control on the ground that the action is well calculated to apprehend the guilty. See, *e.g., United States* v. *Karo,* 468 U. S. 705, 717 (1984) (Fourth Amendment warrant requirement applies to police monitoring of a beeper in a house even if "the facts [justify] believing that a crime is being or will be committed and that monitoring the beeper wherever it goes is likely to produce evidence of criminal activity."); see also *Minnesota* v. *Carter,* 525 U. S. 83, 110 (1998) (GINSBURG, J., dissenting) ("Fourth Amendment protection, reserved for the innocent only, would have little force in regulating police behavior toward either the innocent or the guilty."). Under today's decision, every traffic stop could become an occasion to call in the dogs, to the distress and embarrassment of the law-abiding population.

The Illinois Supreme Court, it seems to me, correctly apprehended the danger in allowing the police to search for contraband despite the absence of cause to suspect its presence. Today's decision, in contrast, clears the way for suspicionless, dog-accompanied drug sweeps of parked cars along sidewalks and in parking lots. Compare, *e.g., United States* v. *Ludwig*, 10 F. 3d 1523, 1526–1527 (CA10 1993) (upholding a search based on a canine drug sniff of a parked car in a motel parking lot conducted without particular suspicion), with *United States* v. *Quinn*, 815 F. 2d 153, 159 (CA1 1987) (officers must have reasonable suspicion that a car contains narcotics at the moment a dog sniff is performed), and *Place*, 462 U. S., at 706–707 (Fourth Amendment not violated by a dog sniff of a piece of luggage that was seized, pre-sniff, based on suspicion of drugs). Nor would motorists have constitutional grounds for complaint should police with dogs, stationed at long traffic lights, circle cars waiting for the red signal to turn green.

Today's decision also undermines this Court's situation-sensitive balancing of Fourth Amendment interests in other contexts. For example, in *Bond* v. *United States,* 529 U. S. 334, 338–339 (2000), the Court held that a bus passenger had an expectation of privacy in a bag placed in an overhead bin and that a police officer's physical manipulation of the bag constituted an illegal search. If canine drug sniffs are entirely exempt from Fourth Amendment inspection, a sniff could substitute for an officer's request to a bus passenger for permission to search his bag, with this significant difference: The passenger would not have the option to say "No."

The dog sniff in this case, it bears emphasis, was for drug detection only. A dog sniff for explosives, involving security interests not presented here, would be an entirely different matter. Detector dogs are ordinarily trained not as all-purpose sniffers, but for discrete purposes. For

example, they may be trained for narcotics detection or for explosives detection or for agricultural products detection. See, *e.g.,* U. S. Customs & Border Protection, Canine Enforcement Training Center, Training Program Course Descriptions, http://www.cbp.gov/xp/cgov/border_security/canines/training_program.xml (all Internet materials as visited Dec. 16, 2004, and available in the Clerk of Court's case file) (describing Customs training courses in narcotics detection); Transportation Security Administration, Canine and Explosives Program, http://www.tsa.gov/public/display? theme=32 (describing Transportation Security Administration's explosives detection canine program); U. S. Dept. of Agriculture, Animal and Plant Health Inspection Service, USDA's Detector Dogs: Protecting American Agriculture (Oct. 2001), available at http://www.aphis.usda.gov/oa/pubs/detdogs.pdf (describing USDA Beagle Brigade detector dogs trained to detect prohibited fruits, plants, and meat); see also Jennings, Origins and History of Security and Detector Dogs, in Canine Sports Medicine and Surgery 16, 18–19 (M. Bloomberg, J. Dee, & R. Taylor eds. 1998) (describing narcotics detector dogs used by Border Patrol and Customs, and bomb detector dogs used by the Federal Aviation Administration and the Secret Service, but noting the possibility in some circumstances of cross training dogs for multiple tasks); S. Chapman, Police Dogs in North America 64, 70–79 (1990) (describing narcotics- and explosives-detection dogs and noting the possibility of cross training). There is no indication in this case that the dog accompanying Trooper Graham was trained for anything other than drug detection. See 207 Ill. 2d, at 507, 802 N. E. 2d, at 203 ("Trooper Graham arrived with his drug-detection dog . . . ."); Brief for Petitioner 3 ("Trooper Graham arrived with a drug-detection dog . . . .").

This Court has distinguished between the general interest in crime control and more immediate threats to public

safety. In *Michigan Dept. of State Police* v. *Sitz,* 496 U. S. 444 (1990), this Court upheld the use of a sobriety traffic checkpoint. Balancing the State's interest in preventing drunk driving, the extent to which that could be accomplished through the checkpoint program, and the degree of intrusion the stops involved, the Court determined that the State's checkpoint program was consistent with the Fourth Amendment. *Id.,* at 455. Ten years after *Sitz*, in *Indianapolis* v. *Edmond,* 531 U. S. 32, this Court held that a drug interdiction checkpoint violated the Fourth Amendment. Despite the illegal narcotics traffic that the Nation is struggling to stem, the Court explained, a "general interest in crime control" did not justify the stops. *Id.,* at 43–44. The Court distinguished the sobriety checkpoints in *Sitz* on the ground that those checkpoints were designed to eliminate an "immediate, vehicle-bound threat to life and limb." 531 U. S., at 43.

The use of bomb-detection dogs to check vehicles for explosives without doubt has a closer kinship to the sobriety checkpoints in *Sitz* than to the drug checkpoints in *Edmond.* As the Court observed in *Edmond:* "[T]he Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack . . . ." 531 U. S., at 44. Even if the Court were to change course and characterize a dog sniff as an independent Fourth Amendment search, see *ante*, p. ___ (SOUTER, J., dissenting), the immediate, present danger of explosives would likely justify a bomb sniff under the special needs doctrine. See, *e.g., ante*, at 8, n. 7 (SOUTER, J., dissenting); *Griffin* v. *Wisconsin,* 483 U. S. 868, 873 (1987) (permitting exceptions to the warrant and probable-cause requirements for a search when "special needs, beyond the normal need for law enforcement," make those requirements impracticable (quoting *New Jersey* v. *T. L. O.,* 469 U. S. 325, 351 (1985) (Blackmun, J., concurring in judgment))).

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For the reasons stated, I would hold that the police violated Caballes' Fourth Amendment rights when, without cause to suspect wrongdoing, they conducted a dog sniff of his vehicle. I would therefore affirm the judgment of the Illinois Supreme Court.