



## The Seventh Circuit agrees with the District Court's decision that delaying the traffic stop did not deny the Defendant's Fourth Amendment rights.



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In *United States v. Fadiga*, \_\_\_ F.3d \_\_\_, 2017 WL 2367981 (7th Cir June 1, 2017), a jury found Defendant Mohamed Fadiga guilty of possessing more than fifteen (15) unauthorized "access devices," i.e., gift cards that had been fraudulently re-encoded. 18 U.S.C. § 1029(a)(3). The District Court sentenced Fadiga to thirty (30) months of imprisonment based upon his conviction. On appeal, Fadiga argued that the police learned about his crime by violating his Fourth Amendment rights and that the jury pool used during his trial was the result of racial discrimination. The relevant facts are as follows.

On the night in question, a police officer stopped a car that had an expired license plate in Northern Indiana. After approaching the stopped vehicle, the police officer asked Mamadu Barry, the driver, for registration papers which Barry did not have. Barry also professed not to know who owned the car or to where he was driving. So, the police officer asked the same questions of Fadiga who was in the passenger's seat. Fadiga replied that "a friend" owned the car and then produced, not a registration document, but a rental agreement. The car's return was past due under that agreement, and the agreement did not authorize either Barry or Fadiga to drive the car. When Fadiga opened his wallet to extract his driver's license, the officer saw "oodles" of plastic cards in Fadiga's wallet. Now suspicious, the officer asked Barry and Fadiga for permission to search the car, and both consented to the search. The search revealed a bag full of gift cards, and the officer asked his dispatcher to send someone with a card reader to determine whether the cards were legitimate. About thirty minutes later, the card reader arrived, and use of the card reader established that the cards had been tampered with.

Fadiga's moved to suppress the evidence against him regarding the police officer's discovery of the gift cards. Specifically, Fadiga argued that the delay between the officer's call and the card reader's arrival violated his Fourth Amendment rights.

The case was initially assigned to United States District Judge Lozano who denied Fadiga's motion to suppress. In denying Fadiga's motion to suppress, Judge Lozano noted that the United States Supreme Court has held that police officers violate the Fourth Amendment by extending a traffic stop to allow time for a drug-detection dog to arrive unless reasonable suspicion justifies an investigation.

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Rodriguez v. United States, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1609 (2015). Judge Lozano found that Rodriguez’s “unless clause” had been satisfied in this case because the police reasonably suspected that the car’s occupants possessed doctored gift cards.

The case was subsequently transferred to United States District Judge Simon. Judge Simon agreed with Judge Lozano’s analysis and conclusion and denied Fadiga’s motion to reconsider the denial of his motion to suppress.

On appeal, the Seventh Circuit agreed with both District Judges. The Seventh Circuit noted that both Fadiga and Barry consented to a search and that the search revealed far more gift cards “than the most avid shopper carries.” In addition, the Seventh Circuit stated that other suspicious details existed. For example, the police officer was right to question Barry’s professed ignorance of the car’s ownership and his destination, and the officer was right to find suspicious Fadiga’s assertion that an unnamed friend owned the car. Notably, the rental contract that did not permit either Barry or Fadiga to operate the car. Accordingly, the Seventh Circuit concluded that these suspicious circumstances justified detention of Fadiga to learn more.

The Seventh Circuit explained that the Supreme Court’s holding in Rodriguez established that reasonable suspicion permits a delay for the arrival of investigative resources. *Id.*, \_\_\_ U.S. \_\_\_, 135 S. Ct. at 1615-16. The Seventh Circuit also found important the fact that Rodriguez involved a situation in which the car’s occupants could drive away lawfully had they not been detained by the police. Conversely, Fadiga and Barry did not appear to have any right to use the car. The return date on the rental contract had passed, and neither Fadiga nor Barry had been authorized to drive the car under the terms of the rental agreement. Therefore, whether or not they waited for a card reader, the police were entitled to detain Fadiga and Barry until their authority to use the car had been determined. Accordingly, the Seventh Circuit agreed with the District Court that the officer’s extending the traffic stop of Fadiga did not violate Fadiga’s Constitutional rights and upheld the District Court’s denial of Fadiga’s motion to suppress.

The Seventh Circuit also rejected Fadiga’s argument that he did not receive a fair trial because he is black, but none of his forty-eight (48) potential jurors were black. The Seventh Circuit began its analysis of Fadiga’s racial discrimination claim by noting that Fadiga had offered no evidence to support his argument before the District Court. On appeal, Fadiga observed that the population of the two counties (Lake and Porter) from which the jury pool came is approximately twenty percent (20%) black, and Fadiga asked the Seventh Circuit to infer that a discriminatory practice must have existed.

The Seventh Circuit stated that zero for forty-eight (48) from such a population is exceptional, but Fadiga did not attempt to estimate the probability that it could occur by chance, nor did he provided data about voter registration or the age distribution of the counties’ population (people under 18 are ineligible to serve on juries). The jury plan at the time of Fadiga’s trial drew from lists of registered voters. Since then, the Northern District of Indiana has amended its plan to include as potential jurors everyone with government-issued identification such as a driver’s license, plus all resident taxpayers, whether or not registered to vote.

The Seventh Circuit held that, for a challenge to the composition of a jury pool to succeed, Fadiga had to show how the venire was selected, and the record did not offer any reason to think that the rules of the Northern District’s former jury selection plan were either biased or by-passed. The

Seventh Circuit stated that the plan was race-blind and, before its amendment, should have produced venires that, in aggregate, tracked the population of registered voters—at least if all groups respond to jury summonses at the same rate, another question on which the record was silent. Although it may be possible to imagine things going wrong (such as a batch of jury summonses being sent to a single town or precinct that is predominantly white), there was no evidence that this, or anything else, went wrong.

The Seventh Circuit concluded by stating that no one is entitled to racial balance on any particular jury. Accordingly, the Seventh Circuit held that the District Court properly rejected Fadiga's complaint about his jury pool and upheld Fadiga's conviction and sentence.

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**Note:** *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*