



Becoats v. Georgia

Georgia Court Upholds Canine Sniff During Traffic Stop

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©2010 Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute - In 2005, the United States Supreme Court decided the *United States v. Caballes*ⁱ, which involved the constitutionality of the use of a police canine during a routine traffic stop. In this case, an officer stopped Caballes for speeding. During the course of the traffic stop, another officer, and his drug-detection canine stopped at the scene. The canine officer conducted a “free air sniff” of the exterior of Caballes vehicle and the dog alerted at the trunk. The officers opened the trunk and found narcotics.

The issue before the court was whether the *Fourth Amendment* requires reasonable suspicion of to justify the use of drug-detection dog during a valid traffic stop. The Supreme Court held that no suspicion is necessary to use a drug-detection dog during the course of a traffic stop as long as the use of the canine did not exceed the normal length of time for a traffic stop.

On December 18, 2009, the Court of Appeals of Georgia decided *Becoats v. Georgia*ⁱⁱ, which was a case similar to *Caballes*. The facts of *Becoats* are as follows:

[An officer] observed Becoats’ vehicle straddling the center turn lane and saw Becoats looking over his shoulder and watching him as he drove past. The officer then saw Becoats accelerate rapidly, turn abruptly into a shopping center parking lot and stop. As the officer moved closer, Becoats exited his vehicle and went into a liquor store, returning with what appeared to be a 12 pack of beer. Several minutes later, the officer left the parking lot, heading south. But when he saw Becoats’ vehicle leave the lot heading north, he followed him. After observing Becoats’ vehicle weaving within the lane and crossing over the yellow center lane marker, the officer activated his blue lights and stopped the vehicle.

When he approached Becoats, the officer observed that Becoats was very nervous. The officer inquired whether Becoats was under the influence of any medication, alcohol

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or drugs and whether he had any illegal weapons, large sums of money or drugs in the vehicle. Becoats answered “no” to all questions. While Becoats was retrieving his driver’s license, the officer asked for permission to search the car. Becoats said the officer could, but that he was in a hurry. The officer considered Becoats’ response to be a refusal.

While the officer was checking Becoats’ license on the mobile computer inside his patrol car, a city police sergeant arrived with his drug dog. The sergeant testified that he heard about the traffic stop on the police radio and proceeded in that direction as a backup officer. At the officer’s request, the sergeant had his drug dog scan the exterior of Becoats’ vehicle for any narcotics odor. The dog gave an odor response, barking and lunging at the vehicle. Based on the dog’s response, the sergeant searched the car, where he found marijuana and crack cocaine in the center console and in a closed box in the passenger seat. After the search was completed and Becoats was arrested, Becoats informed the officer that he had a bag of cocaine in his pants.

In total, there were 55 grams of cocaine and three bags of marijuana. Becoats moved to suppress the drugs. He argued that the drug dog was used after the conclusion of the traffic stop, and thus, violated his *Fourth Amendment* rights. His motion was denied and he was convicted during a bench trial. Becoats appealed to the Court of Appeals of Georgia.

The issue before the court was **whether the canine sniff was conducted after the traffic stop had ended thereby violating Becoats’ *Fourth Amendment* rights.** Becoats does not challenge the validity of the original traffic stop. Instead, he argues that the traffic stop was completed, but the officer nonetheless detained him for the purpose of conduct a drug sniff.

The court then covered three rules associated with searches during traffic stops. The three rules were stated as follows:

- An officer who lacks reasonable suspicion of other criminal activity exceeds the scope of a permissible investigation of a traffic offense only if he continues to detain and interrogate the subject, or seeks consent to search, after the conclusion of the traffic stop or after the tasks related to the investigation of the traffic violation have been accomplished.ⁱⁱⁱ
- It does not unreasonably expand the scope or duration of a valid traffic stop for an officer to prolong the stop to immediately investigate and determine if the driver is entitled to continue to operate the vehicle by checking the status of the driver’s license, insurance, and vehicle registration.^{iv}
- Because a drug dog’s sniffing of the exterior of a car does not constitute a search under the Fourth Amendment, a police officer does not need reasonable and articulable suspicion before using a canine trained in drug detection to sniff a vehicle’s exterior.^v

In light of the above rules, as long as the canine sniff took place during the normal time frame for the traffic stop, the sniff would not violate the *Fourth Amendment*, and the drugs would be admissible.

When the Court of Appeals examined the facts of this case, they observed that the officer activated his lights and stopped Becoats. He then spoke with Becoats at Becoats' car for approximately four minutes. During this time, he asked Becoats if he was under the influence and if he had weapons or contraband in his car. He also asked Becoats to produce his driver's license. It was also during this first four minutes of the stop that the officer requested consent to search the car and Becoats refused.

The officer then went back to his police vehicle to check Becoats' driver's license on his mobile computer. About one additional minute elapsed, and a canine sergeant arrived as backup. The officer asked him to have his dog sniff the exterior of the car. Then, while the officer was checking on the status of Becoats' driver's license, the sergeant had his dog sniff the exterior of the vehicle. The dog positively alerted on the car.

The Court of Appeals then held that, since the canine sniff took place during the driver's license check, between five and ten minutes into the traffic stop, the sergeant did not violate the *Fourth Amendment* when he conducted free air sniff of the exterior of Becoats' vehicle with his canine because the sniff did not unreasonably prolong the traffic stop. Therefore, the denial of the motion to suppress was affirmed.

The Bottom Line

- If an officer can have a canine conduct a free air sniff of the exterior of an automobile during the normal time frame of a traffic stop, the *Fourth Amendment* is not violated.^{vi}
- If an officer, without reasonable suspicion beyond the traffic offense, detains a traffic violator beyond the normal time frame for traffic stop, the officer exceeds the scope of the traffic stop, and the canine sniff will likely be held to violate the *Fourth Amendment*.^{vii}
- If, during a traffic stop, an officer develops reasonable suspicion of drug possession, then the officer can detain the vehicle and occupants for a *reasonable* period of time to wait on a canine to conduct a free air sniff.

ⁱ 543 U.S. 405 (2005)

ⁱⁱ A09A1798, 2009 Ga. App. LEXIS 1442

ⁱⁱⁱ Id. at 4 (citing *St. Fleur v. Georgia*, 296 Ga. App. 849, 851 (676 S.E.2d 243)(2009))

^{iv} Id. at 5 (quoting *Wilson v. Georgia*, 293 Ga. App. 136, 138 (666 S.E.2d 573)(2008))

^v Id. at 5-6 (citing *Thomas v. Georgia*, 289 Ga. App. 161, 162-163 (657 S.E.2d 247)(2008))

^{vi} *United States v. Caballes*, 543 U.S. 405 (2005); *Becoats v. Georgia*, A09A1798, 2009 Ga. App. LEXIS 1442 (Decided December 18, 2009)

^{vii} *Migliore v. Georgia*, 240 Ga. App. 783 (525 S.E.2d 166 (1999)); *Georgia v. Blair*, 239 Ga. App. 340 (521 S.E.2d 380 (1999)); *Simmons v. Georgia*, 223 Ga. App. 781 (479 S.E.2d 123)(1996)