



LGIT'S ROLL CALL REPORTER
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In making observations of possible criminality, officers may draw on their experience and specialized training to make inferences and deductions that might escape the untrained eye.

QUESTION: **Can police officers draw on their own experience and training to make inferences about perceived criminal conduct that might otherwise appear innocent to the untrained observer?**

ANSWER: **Yes. An officer's experience and training makes him or her uniquely capable of recognizing and confronting criminality.**

CASE: ***U.S. v. Johnson*, U.S. Court of Appeals for the Fourth Circuit**
Decided April 1, 2010

In this case, the U.S. Court of Appeals for the Fourth Circuit emphasized the critical role that police officers play in putting the Fourth Amendment into practice. The facts established that on the evening of September 14, 2006, Baltimore City Police Detective Eric Green was monitoring the 1800 block of Pennsylvania Avenue in Baltimore by video camera from a police station about five minutes' drive away. The block is known by police to be a very active open-air drug market. Around 7 p.m., Detective Green saw a subject later identified as Larry Johnson standing on the sidewalk. Johnson quickly engaged in hand-to-hand contact with three different men. After each contact, each of the three men immediately hurried off. Although Detective Green could not see an actual object being exchanged, he believed that, based on his training and experience and the hundreds of arrests he had made in the area, something small had been passed by Johnson in the hand-to-hand exchanges. He concluded the men were engaged in drug dealing. As a result, Detective Green dispatched his partner, Officer Joseph Bannerman, and another officer to the scene.

Detective Green continued to monitor Johnson and saw him walk to a nearby Chinese carry-out followed by two men. Detective Green suspected that Johnson was about to sell them drugs, since local dealers sometimes conduct their business in business establishments in order to avoid police cameras. Detective Green alerted the other officers. When they arrived, they saw Johnson and one of the men enter the restaurant. The second man kept walking after he spotted the police. Officer Bannerman followed Johnson into the carry-out, identified himself as a police officer and asked to see Johnson's hands. Instead, Johnson threw what Officer Bannerman believed to be a

heroin gelcap over the counter. A struggle ensued, and Johnson was arrested and handcuffed. Officer Bannerman recovered the gelcap and put Johnson into his patrol car. Johnson was found to carrying \$102 in cash.

While this was taking place, Detective Green reviewed the surveillance video. When he did so, he noticed that just before one of the suspected drug deals, Johnson had gone to a car parked along the street, opened the passenger door, shut it, paced back and forth, reached into the car and emerged appearing to hold something in his hand. Detective Green concluded that Johnson had used the car to store drugs. He radioed Officer Bannerman and told him to secure the car. When Officer Bannerman looked in the car, he saw a plastic bag containing baggies of gelcaps like the one Johnson had thrown behind the counter. He also saw a set of keys on the car seat. Officer Bannerman informed Detective Green who directed him to drive the car back to the police station. There, the car was fully searched. Fifty-six heroin gelcaps, thirty-nine cocaine vials, a mirror and a scale, both of which appeared to have drug residue on them, a razor blade, and a loaded .38 caliber handgun, were recovered during the search.

Johnson was charged by a federal grand jury with distribution and possession of cocaine and heroin with intent to distribute and other offenses. Prior to trial, Johnson's motion to suppress was denied. Johnson was convicted of all charges and sentenced to thirty years' imprisonment. Johnson appealed.

Johnson's convictions were upheld on appeal. The court ruled that Officer Bannerman had ample objective reasons to believe that Johnson was selling drugs as, based upon all of the officers' experience, Johnson's conduct was entirely consistent with drug dealing. As the court observed, "it is hard to imagine what else Johnson could have been doing." Johnson's contention that his hand-to hand contacts with the men were "social" was quickly rejected. The court said that there was nothing in the record to suggest that the series of contacts were "social"; instead, there was much to show that they were instances of drug dealing. In this regard, the court gave deference to Detective Green's testimony, as he was entitled to draw on his own experience and specialized training to make inferences from and deductions about the cumulative information available that might well have eluded an untrained person. With ample probable cause to arrest, the recovery of the money from Johnson was upheld as a valid search incident to arrest. The search of the vehicle was also upheld as the officers had probable cause to believe a search of the vehicle would uncover more contraband. In addition, the baggie seen by Officer Bannerman was in plain view. For all of these reasons, no Fourth Amendment violation was committed and Johnson's appeal failed.

NOTE: The main purpose of the *Roll Call Reporter* is to acknowledge the key role played by police officers in applying the Fourth Amendment. This important role was acknowledged by the court in this case and its words merit repeating here: "The task the police perform requires them to translate the law's abstractions into actual practice in the unpredictable circumstances of the streets. This is at once a vital and a difficult mission. It is vital because errors in either direction—toward excessive intrusion or toward

impotent enforcement—can be costly. It is difficult because the contexts are varying and, quite often, the time for deciding is short.” These are words worth remembering.

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