United States v. Solorio-Mendoza, Case No. CR-14-642-GW
Tentative Ruling on Motion to Suppress

I. Background

Defendant Jorge Luis Solorio-Mendoza ("Defendant") moves to suppress evidence seized from a vehicle under his control during a traffic stop by Los Angeles County Sheriff's Department ("LASD") Deputy John Leitelt ("Leitelt") on October 28, 2014. *See generally* Mot. to Suppress ("Mot."), Docket No. 59.

On October 28, 2014 at approximately 3:30 PM, Leitelt was travelling northbound on Interstate 5, north of Lake Hughes Road in Castaic, within the County of Los Angeles, and observed a black 2006 Mercedes Benz 550 sedan (the "Mercedes") travelling northbound ahead of him. Incident Report ("IR"), Ex. A to Mot., Docket No. 59-1, at 6.[1] Leitelt pulled up alongside the Mercedes, which then "suddenly and aggressively applied its brake," decelerating well below the speed of traffic and causing a change in the normal flow of traffic. *Id.* Leitelt observed that the vehicle traveling behind the Mercedes had to aggressively apply its brakes to avoid colliding with it. *Id.* Leitelt has been with the LASD for about fifteen years and with the LASD's Domestic Highway Enforcement Team for three years. *See* ¶ 2 of Declaration of John Leitelt, Docket No. 64-2.

Leitelt initiated a traffic stop on the Mercedes to provide a warning or citation for violating California Vehicle Code §§ 22019 and 22400(a) and to check on the welfare of the driver. *See* IR at 6. Defendant was the driver and sole occupant of the vehicle. *Id.* Upon contacting Defendant through the passenger-side window, Leitelt immediately noticed the strong odor of fabric softener. *Id.* Leitelt recognized the odor of fabric softener as one of several agents often used by drug couriers to mask the odor of narcotics. *Id.* Defendant appeared nervous when speaking with Leitelt, and Leitelt specifically noted that Defendant's hands were trembling, the pitch of Defendant's voice was raised, and Defendant made continuous arm movements and gestures that Leitelt interpreted as nervous. *Id.* Defendant initially provided the wrong name ("Marcos") when Leitelt asked him who the owner of the vehicle was. *Id.* Defendant reported that he gave Marcos a ride to the Los Angeles International Airport ("LAX") in what he thought was Marcos' vehicle. *Id.* Leitelt observed on the registration documents that

[1] Citations to the page numbers of the IR will be to the page number of the electronically-filed document.

the Mercedes was registered to Antonio Mendez Macias. *Id.* Leitelt told Defendant that the Mercedes was not registered to Marcos and asked Defendant if the Mercedes could have been registered to anyone else. *See id.* After pausing, Defendant responded "Antonio." *Id.* Leitelt checked Defendant's driver license status on his patrol vehicle's computer and confirmed Defendant had a valid license. *Id.* Defendant also stated that Marcos/Macias lived in the "Bay Area."

Leitelt asked Defendant to step out of the Mercedes so he could further question him regarding his relationship to the vehicle. *Id.* Leitelt asked Defendant to explain where he was traveling. *Id.* Defendant explained that Marcos arrived in the city of Delano,[2] accompanied by an unidentified male, and asked Defendant to drive Marcos to LAX. *Id.* Defendant did not know Marcos' ultimate destination. *Id.* Leitelt observed that Defendant appeared nervous while responding to his questions. *Id.* Leitelt asked Defendant if he would consent to Leitelt searching the Mercedes, but Defendant declined by stating that he couldn't give consent because it wasn't his vehicle. *Id.* Leitelt told Defendant he wanted a narcotics canine to conduct a "free air sniff search" of the Mercedes and told Defendant he would be "on his way" if the canine did not alert.[3] *Id.*

Leitelt contacted Detective Price ("Price") and his narcotics canine ("Charlie"), who were approximately two miles away from the scene. *Id.* Price arrived within ten minutes and deployed Charlie to the exterior of the Mercedes. *Id.* Charlie alerted on the trunk of the Mercedes and then alerted on the spare tire inside after Price opened the trunk. *Id.* Leitelt removed the spare tire from the trunk and recovered eleven packages containing a cumulative total of approximately twenty-four pounds of methamphetamine from inside the spare tire. *Id.* Leitelt then arrested Defendant. *Id.* at 7.

During the booking process, Leitelt recovered two cell phones and a Home Depot receipt for eight gallons of acetone[4] from the passenger compartment of the Mercedes. *Id.* Leitelt also recovered $1,176.00 in U.S. currency from Defendant's person and wallet. *Id.*

The Government charged Defendant with violations of 21 U.S.C. §§ 841(a)(1) and

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[2] As indicated by the Government, Delano is about 263 miles from the Bay Area. *See* Exhibit B to Sur-Reply, Docket No. 78-2. It is about another 145 miles from Delano to LAX. *Id.*, Exhibit C.

[3] An "alert" is an indication by a trained drug detection canine "signaling, through a distinctive set of behaviors, that he smelled drugs" in a specific location. *Florida v. Harris*, 133 S.Ct. 1050, 1054 (2013).

[4] Acetone is a product used in the conversion of liquid methamphetamine into a solid form. *See* IR at 7.

(b)(1)(A)(viii), for the possession with intent to distribute of at least 10.9 kilograms of a substance containing a detectible amount of methamphetamine. *See* Compl., Docket No. 1, at 1. On April 28, 2015, Defendant filed a motion to suppress all evidence recovered during and as a result of the October 28 traffic stop. *See generally* Mot. Defendant argued that the evidence should be suppressed because the investigation resulted from an illegal detention, the search was unlawful because it was performed without a warrant, and that the canine alert was not a credible basis to establish probable cause to search. *See id.* Following the Government's Opposition and in his Reply, Defendant proffered new evidence and raised a new separate argument that Leitelt stopped Defendant on the basis of his race (Defendant is Hispanic), and thus that the traffic stop was illegal because it violated the Equal Protection Clause. *See* Reply to Government's Opposition to Motion to Suppress Evidence ("Reply"), Docket No. 71, at 6:15-10:8.

II. Analysis

A. Local Rule Compliance

The Government argues that the motion to suppress should be denied because Solorio did not comply with Local Criminal Rule 12-1.1, which states the following:

> A motion to suppress shall be supported by a declaration on behalf of the defendant, setting forth all facts then known upon which it is contended the motion should be granted. The declaration shall contain only such facts as would be admissible in evidence and shall show affirmatively that the declarant is competent to testify to the matters stated therein.

C.D. Cal. L. Crim. R. 12-1.1. In the present case, Defendant did not provide a declaration as required pursuant to Local Criminal Rule 12-1.1 until after the Government filed its Opposition. *See* Docket No. 75. Nevertheless, the Court shall consider the merits of Defendant's motion, given that the Government has had the opportunity to file a Sur-Reply. *See* Docket No. 78.

B. The Traffic Stop Had Legal Justification

1. Leitelt Had Reasonable Suspicion under the Fourth Amendment

Defendant alleges that the traffic stop was a pretextual stop based on his race. *See* Mot. at 9:16-8:23; Reply at 6:15-10:8. "'A pretextual stop occurs when the police use a legal justification to make the stop in order to search a person or place, or to interrogate a person, for an unrelated serious crime for which they do not have the reasonable suspicion necessary to support a stop.'" *United States v. Millan*, 36 F.3d 886, 888 (9th Cir. 1994) (quoting *United States v. Cannon*, 29 F.3d 472, 474 (9th Cir. 1994). A stop is not a pretextual stop when the

objective circumstances are such that any reasonable officer could have justifiably performed the stop if faced with the same circumstances. *See United States v. Perez*, 37 F.3d 510, 513 (9th Cir. 1994). The objective facts and circumstances at the time of the stop – and not the officer's subjective intent – are what determine if a traffic stop is pretextual. *See Cannon*, 29 F.3d at 475.

A traffic stop requires "reasonable suspicion" by police of a violation, specifically "a particularized and objective basis for suspecting the particular person stopped" of committing an offense. *Heien v. North Carolina*, 135 S.Ct. 530, 536 (2014) (citing *Navarette v. California*, 132 S.Ct. 1683, 1687-88 (2014)). Even if the officer misunderstands the law, "reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition." *Id.* at 536. Any subjective pretextual motivations need not be evaluated if there is legal basis for the stop. *See United States v. Wallace*, 213 F.3d 1216, 1219 (9th Cir. 2000) (holding that "[t]he fact that the alleged traffic violation is a pretext for the stop is irrelevant, so long as the objective circumstances justify the stop").

Leitelt states that he observed the vehicle driven by Defendant "suddenly and aggressively" apply its brakes for no obvious reason, thereby disrupting the flow of traffic and causing the next vehicle behind Defendant to brake in order to avoid colliding with Defendant. Leitelt initiated a traffic stop to provide a warning or citation for violating California Vehicle Code §§ 22109 and 22400(a) and to check on the welfare of the driver. Cal. Veh. Code § 22109 provides:

> No person shall stop or suddenly decrease the speed of a vehicle on a highway without first giving an appropriate signal in the manner provided in this Chapter to the driver of any vehicle immediately to the rear when there is opportunity to give the signal.

Cal. Veh. Code § 22109 (2014). The method of signaling is described in the subsequent section:

> (a) The signals required by this Chapter shall be given by signal lamp, unless a vehicle is not required to be and is not equipped with turn signals. Drivers of vehicles not required to be and not equipped with turn signals shall give a hand and arm signal when required by this chapter.
> (b) In the event the signal lamps become inoperable while driving, hand and arm signals shall be used in the manner required in this chapter.

Cal. Veh. Code § 22110 (2014). Leitelt makes no mention in his report as to whether or not the vehicle driven by Solorio provided adequate signaling when braking in compliance with

California Vehicle Code § 22400(a). Defendant in his declaration does not deny his sudden use of the brakes on the freeway and does not affirmatively state that he used any appropriate signal before doing so.

Cal. Veh. Code § 22400(a) is titled the "Minimum Speed Law" and provides:

> No person shall drive upon a highway at such a slow speed as to impede or block the normal and reasonable movement of traffic, unless the reduced speed is necessary for safe operation, because of a grade, or in compliance with Law.
> No person shall bring a vehicle to a complete stop upon a highway so as to impede or block the normal and reasonable movement of traffic unless the stop is necessary for safe operation or in compliance with law.

Cal. Veh. Code § 22400(a) (2014). Because Solorio's sudden and apparently unjustified braking caused a disruption in the normal flow of traffic, it was reasonable for Leitelt to believe a violation of California Vehicle Code § 22400(a) had occurred. Furthermore, it is reasonable to expect another officer in the same circumstances to find the same violation. Because Leitelt's interpretation and application of California Vehicle Code § 22400(a) was reasonable under the circumstances of Defendant's actions, the traffic stop was justified. Accordingly, because the objective circumstances justified the stop, any alleged pretextual motivation is irrelevant.

2. Any Discriminatory Motives, If Present, Are Irrelevant Here

Defendant argues that "race is inseparable from the basis for the stop in this case," and presents evidence that Defendant argues shows that Leitelt targeted Hispanics when making traffic stops. Reply at 6:17-18. In doing so, Defendant appears to be making an Equal Protection (rather than Fourth Amendment) challenge to the stop. Defendant attempts to argue that his argument is relevant to the Fourth Amendment analysis because the racial profiling was a "substitute for reasonable suspicion." *See* Response to Government's Sur-Reply to Motion to Suppress Evidence, Docket No. 79, at 4:18-19. The Court agrees that, for instance, if Defendant's race were the sole factor for the traffic stop, then Leitelt would not have had reasonable suspicion to make the stop. However, the Court concludes that, independent of any racial motivations, the objective circumstances herein justified the stop.

The Court rejects the Defendant's contention that he has presented statistical evidence which sufficiently demonstrates that Leitelt has a practice of impermissibly stopping Hispanics driving on Interstate 5. The Government has satisfactorily shown that Defendant's statistics and

concomitant conclusions are entirely inadequate.[5] *See* Sur-Reply at 6-7.

Furthermore, even if Defendant is claiming that Leitelt specifically targeted Hispanics for traffic stops,[6] the Government correctly points out that this type of claim is properly brought under the Equal Protection Clause rather than under the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 813 (1996) (stating that "the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment."). In *Whren*, the Supreme Court again acknowledged that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.* However, the Supreme Court issued no guidance as to the remedy for such an Equal Protection violation. In fact, the Supreme Court has held that "[s]uppression of evidence, however, has always been our last resort, not our first impulse," and has applied the exclusionary rule only "where its deterrence benefits outweigh its 'substantial social costs." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006).

Thus, even if Defendant would be able to prove racial targeting, it is unclear whether suppression would be a proper remedy for a racial targeting claim where the other objective circumstances support finding reasonable suspicion, and Defendant has provided the Court with no case law that holds otherwise. Defendant cites to *Rodriguez v. California Highway Patrol*, which was a case involving an Equal Protection claim alleging racial profiling in conducting stops, detentions, interrogations, and searches of motorists. 89 F.Supp.2d 1131, 1140-41. However, *Rodriguez* was a civil case alleging civil rights violations, not a criminal case. Defendant also cites *United States v. Armstrong*, which involved a motion for dismissal of an indictment based on selective prosecution where the defendant argued that he had been targeted due to his race. 517 U.S. 456 463-65 (1996). *Armstrong* involved selective prosecution by the prosecuting attorney(s) rather than selective targeting in making traffic stops. Defendant further

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[5] To quote Mark Twain, who incorrectly attributed the remark to Benjamin Disraeli, "There are three kinds of lies: lies, damned lies and statistics." Mark Twain, *Chapters from My Autobiography.*

[6] Given that Defendant is apparently equating an individual's status as being "Hispanic" based solely on the individual's having a typical Hispanic sounding surname, his accusation against Leitelt is somewhat problematic. How would Leitelt know what the driver's surname was at the time of the initiation of the traffic stop? It cannot be based on simple appearance, because many persons with Hispanic surnames do not have features associated with Hispanics (*see e.g. Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1039 (9th Cir. 1999) – "where was born in Mexico, but is of English ancestry and has ash blond hair, light skin, and light brown eyes"), other persons who can be considered Hispanic from Central America or the Caribbean have features which appear to be black or African/American (*see e.g. United States v. Reese*, 60 F.3d 660, 663 (9th Cir. 1995) , a person may have a Hispanic surname solely due to marriage or adoption, etc.

cites *United States v. Chavez*, a Fifth Circuit case where the court held that it did not have to reach the question of the application of the exclusionary rule as a remedy for Equal Protection violations because the defendant had failed to provide proof of a discriminatory purpose sufficient to trigger an Equal Protection claim. *United States v. Chavez*, 281 F.3d 479, 487 (5th Cir. 2002). Overall, Defendant has cited no authority that demonstrates that suppression is the proper remedy for an Equal Protection violation in these circumstances, or that an Equal Protection argument of this sort is properly brought to defend against a criminal indictment as opposed to being brought as a separate civil rights action.[7]

C. Leitelt Had Sufficient Articulable Factors Before Him For Reasonable Suspicion That Defendant Was Involved In Drug Trafficking

Defendant contends that Leitelt lacked the reasonable suspicion necessary to turn the traffic stop for a traffic violation into an investigatory stop for drug trafficking. *See* Mot. at 6:19-12:2. "The Fourth Amendment prohibits 'unreasonable searches and seizures' by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *Terry v. Ohio*, 392 U.S. 1, 9, 88 (1968)). A police officer may expand the scope of an investigation beyond the initial purpose of the stop if he can articulate "suspicious factors that are particularized and objective." *United States v. Crapser*, 472 F.3d 1141, 1153 (9th Cir. 2007) (quoting *United States v. Murillo*, 255 F.3d 1169, 1174 (9th Cir. 2001). "[O]fficial intrusion upon the constitutionally protected interests of the private citizen" may be justified during a brief stop by police when there exists reasonable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (citing *Camara v. Municipal Court*, 387 U.S. 523, 534-535 (1967)). "Reasonable suspicion is formed by 'specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity.'" *United States v. Dorais*, 241 F.3d 1124, 1130 (9th Cir. 2001) (quoting *United States v. Michael R.*, 90 F.3d 340, 346 (9th Cir. 1996). Analysis of objective observations and knowledge of "modes or patterns of operation of certain kinds of lawbreakers" can be the basis for information from which "a trained officer draws inferences and makes

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[7] It has been held such a challenge should be brought as a motion for dismissal (akin to a charge of selective prosecution) rather than a motion to suppress because dismissal was the proper remedy for a racial targeting/Equal Protection violation in a criminal case. *See United States v. Cuevas-Ceja*, 58 F. Supp. 2d 1175, 1183 (D. Or. 1999)). A Sixth Circuit case held that a § 1983 action would be the appropriate means of bringing such a claim (*United States v. Nichols*, 512 F.3d 789, 794 (6th Cir. 2008)).

deductions – inferences and deductions that might well elude an untrained person" that leads to reasonable suspicion. *United States v. Cortez*, 449 U.S. 411, 418 (1981). The "totality of the circumstances – the whole picture – must be taken into account" when evaluating the existence of reasonable suspicion, rather than the factors individually. *Id.* at 417.

Leitelt's training and experience are relevant in his determination of reasonable suspicion of drug trafficking. *See Arvizu*, 534 U.S. at 273 (affirming officers may "draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available" to establish reasonable suspicion of criminal activity). Leitelt had 15 years of law enforcement experience with the Los Angeles County Sheriff's Department and approximately three years of interdiction experience assigned to the Domestic Highway Enforcement Team at the time of Defendant's arrest. Leitelt Decl. ¶ 2, Docket No. 64-2. Leitelt had knowledge based on his training and experience that Interstate 5 was "a route used by drug traffickers to transport narcotics." *Id.* ¶ 3. Accordingly, Leitelt had the experience to find reasonable suspicion of drug trafficking.

Leitelt detected the scent of fabric softener emitting from the interior of the Mercedes upon initially contacting Defendant. Leitelt stated in his report that it was his experience and training that fabric softener is among a group of agents commonly used to mask the odor of narcotics. Accordingly, Leitelt's detection of fabric softener is a relevant factor in his determination of reasonable suspicion. *Cf. United States v. $102,836.00 in U.S. Currency*, 9 F.Supp.3d 1152, 1158 (D. Nev. 2014) (finding the detection of a strong odor of air freshener in a vehicle by an officer who had training and experience regarding its application as an odor masking agent was a relevant factor for establishing reasonable suspicion).

Defendant was not the registered owner of the Mercedes and initially incorrectly identified the true registered owner. Leitelt identified that he has training and experience that it is a common practice of drug traffickers to transport narcotics in vehicles that do not belong to them. Defendant not being the registered owner of the Mercedes and his misidentification of the true owner are relevant in the evaluation of reasonable suspicion. *See Perez*, 37 F.3d at 514 (identifying that a driver who is not the registered owner is a suspicious factor), *overruled on other grounds by United States v. Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007); *see also United States v. Gonzalez-Lerma*, 14 F.3d 1479, 1484 (10th Cir. 1994) (noting that an often recurring factor supporting a finding of reasonable suspicion is a driver's inability to provide proof that he

is entitled to operate the vehicle). Moreover, Defendant's story about Marcos/Macias driving his car from the Bay Area to Delano and then having Defendant transport him to LAX and thereafter keep the automobile doesn't make any sense, nor did Defendant have an adequate explanation for that circuitous maneuver.

Defendant allegedly appeared nervous when contacted by Leitelt, as demonstrated by his trembling hands and voice pitch raising. Nervousness alone is not sufficient to establish reasonable suspicion, but can be an additional factor where other suspicious factors are present. *United States v. Chavez-Valenzuela*, 268 F.3d 719, 726 (9th Cir. 2001), *overruled on other grounds by Muehler v. Mena*, 544 U.S. 93 (2005)).

Although each of the aforementioned factors, taken alone, may not indicate any illegal conduct, they may be sufficient to establish reasonable suspicion when considered within the totality of the circumstances from the perspective of a reasonable officer with Leitelt's experience. *See United States v. Skolow*, 490 U.S. 1, 9 (1989) (explaining that although a factor may be innocent in nature, it may amount to reasonable suspicion when taken collectively with other factors); *see also United States v. $102,836.00,* 9 F.Supp.3d at 1158-1159 (D. Nev. 2014) (finding of reasonable suspicion during a traffic stop where factors included scent of air freshener, expired car rental agreement, and nervous behavior). Consequently, Leitelt's experience and the totality of the circumstances support finding that Leitelt had reasonable suspicion that Defendant was engaged in drug trafficking.

D. Solorio's Extended Detention Was Not An Illegal Protracted Detention

Defendant asserts that Leitelt's investigation turned into an illegal protracted detention. *See* Mot. at 10:8. An officer may only prolong a traffic stop that exceeds the time necessary to investigate the purpose of the stop if there is reasonable suspicion to justify the additional detention. *See United States v. Mendez*, 476 F.3d 1077, 1080-1081 (9th Cir. 2007). There is no strict time limit for investigative stops; the test is reasonableness. *See United States v. Mayo*, 394 F.3d 1271, 1276 (2005).

Defendant calculated the time of the investigation to be 53 minutes, measured from the time of the first recorded query of Defendant's license plate at 3:00 PM until the time Leitelt requested a booking number at 3:53 PM according to CLETS records. *See* Mot. to Suppress at 16. These times, however, do not provide a definitive measure of the length of the investigation. It is not clear at what point during the investigation Leitelt performed the first query of

Defendant's license plate as it is not mentioned in Leitelt's declaration or the Incident Report, it is only mentioned that Leitelt performed a query of Defendant's driver license number. Leitelt may potentially have performed the query of Defendant's license plate just prior to initiating the traffic stop or earlier if he had already seen the Mercedes on the highway or if he had been provided the license plate number by another source, like another officer or an informant. Additionally, Defendant may have long been placed under arrest and Leitelt may have been filling out paperwork or on his way to a booking facility when he requested the booking number. Although the total duration of the investigation is not clear, all that needs to be determined is if the investigation was prolonged beyond the original purpose without reasonable suspicion to do so. *See United States v. Evans*, 786 F.3d 779, 788 (9th Cir. 2015) (indicating that an officer may only prolong a traffic stop "if the prolongation is supported by independent reasonable suspicion").

As previously discussed, Leitelt began building reasonable suspicion to justify extending the time and scope of the detention beginning with his first contact with Defendant. Leitelt detected the odor of fabric softener, observed Defendant's nervousness, and found discrepancies regarding the registered owner of the Mercedes and Defendant's initial story. Consequently, Leitelt had reasonable suspicion to prolong the traffic stop beyond the original purpose before he requested the canine. *See Mayo*, 394 F.3d at 1276 (holding an investigation may be prolonged as "new grounds for suspicion of criminal activity" are presented).

Leitelt states in his report that the narcotics canine arrived within ten minutes. This is not an unlawful detention because Leitelt already had reasonable and articulable suspicion of criminal activity. *See United States v. Martell*, 654 F.2d 1356, 1360 (9th Cir. 1981) (holding that the detention of a traveler's luggage for 20 minutes while waiting for a dog sniff was not an unlawful detention because officers had a reasonable and articulable suspicion), *see also United States v. Briasco*, 640 F.3d 857, 859-860 (8th Cir. 2011) (holding it was reasonable for an officer to detain the occupants of a vehicle for 42 minutes while waiting for a narcotics canine to arrive because the officer had a reasonable and articulable suspicion of criminal activity).

Defendant attempts to analogize to *Rodriguez v. United States*, which dealt solely with the question of "whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff." *Rodriguez v. United States*, 135 S.Ct. 1609, 1614 (2015). While it is true that an officer may not extend a traffic stop for reasons

beyond the justification for the stop, the holding from *Rodriguez* is not applicable in the present case because Leitelt had a reasonable and articulable suspicion of drug trafficking when he extended the traffic stop beyond the original purpose.

E. The Alert of a Trained Narcotics Canine is Sufficient To Establish Probable Cause For a Search

Defendant questions the reliability of a dog sniff for probable cause and contends that the Court "should not accept the conclusion that there was probable cause for the search without receiving evidence on this issue." *See* Mot. at 20:17-18. Defendant also requests a *Daubert* hearing as to the reliability of narcotics detecting canines. *Id.* at 20:9-18. The alert of a trained narcotics canine is sufficient to establish probable cause to search a vehicle for narcotics. *See United States v. Garcia*, 205 F.3d 1182, 1187 (9th Cir. 2000) ("Because the dog alerted to both the trunk area and the glove box, probable cause existed to believe that both those areas contained narcotics").

The Supreme Court held in *Florida v. Harris* that the basis for establishing the reliability of a narcotics canine for being the basis of probable cause as follows:

> [E]vidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert. If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search.

133 S.Ct. 1050, 1057 (2013). The Government has provided evidence, including the following statement from Price, to establish the reliability of the narcotics detection canine in this case:

> As a Canine Handler, I completed the Los Angeles County Sheriff Department's Basic Narcotics Detection Canine Handler course which consisted of 300 hours of training with my Canine partner Charlie. Charlie and I trained in the "Minimal Odor Method". Charlie was trained on the odor of five illegal substances (Cocaine, Methamphetamine, Heroin, Marijuana, and Opium). At the end of the course, there was a testing process and certification. Charlie and I completed the course and were certified through the National Police Canine Association (NPCA) on August 17th, 2011. Charlie and I have since been certified through the NPCA as a narcotic odor detection team 3 additional times (2012, 2013, and 2014).
> Since completion of the LASD Narcotics Detection Canine Handler course, Charlie and I have been deployed throughout the County of Los Angeles and on occasion to other counties. We have conducted over 775 searches and logged an additional 1800 hours of training. Charlie's alerts have been used as probable

cause on 6 search warrants.

Ex. C, Price Decl. at 2, Docket No. 64-1. Charlie's extensive training and experience is sufficient for the Court to initially accept the reliability of his alert for establishing probable cause to search the Mercedes. Defendant may "challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witness" during a suppression hearing. *Florida v. Harris*, 133 S.Ct. 1050, 1057 (2013). Defendant may also request discovery of Charlie's training records in an attempt to challenge his reliability at the suppression hearing. *See United States v. Thomas*, 726 F.3d 1086, 1096 (9th Cir. 2013). However, Defendant has made no such challenge to Charlie's reliability; rather, Defendant has only challenged the reliability of a canine sniff generally for establishing probable cause. Furthermore, the cases Defendant cites in support of his position are inapposite, as they are civil forfeiture cases regarding the question of whether dog sniffs are probative evidence of contact between seized currency and illegal drug activity. *See* Mot. at 18:13-19:25. Based upon the evidence before the Court, Charlie is a well-trained narcotics detection canine and therefore his alert was reliable to establish probable cause to search the Mercedes. *See United States v. Lingenfelter*, 997 F.2d 632, 639 (9th Cir. 1993) (holding that the sniff of a narcotics detection canine is sufficient for establishing probable cause when there is evidence of the canine's reliability).

III. Conclusion

Based on the foregoing, Defendant cannot justify suppressing the evidence acquired by the Government during the October 28, 2014 traffic stop. The Court would DENY Defendant's Motion to Suppress.