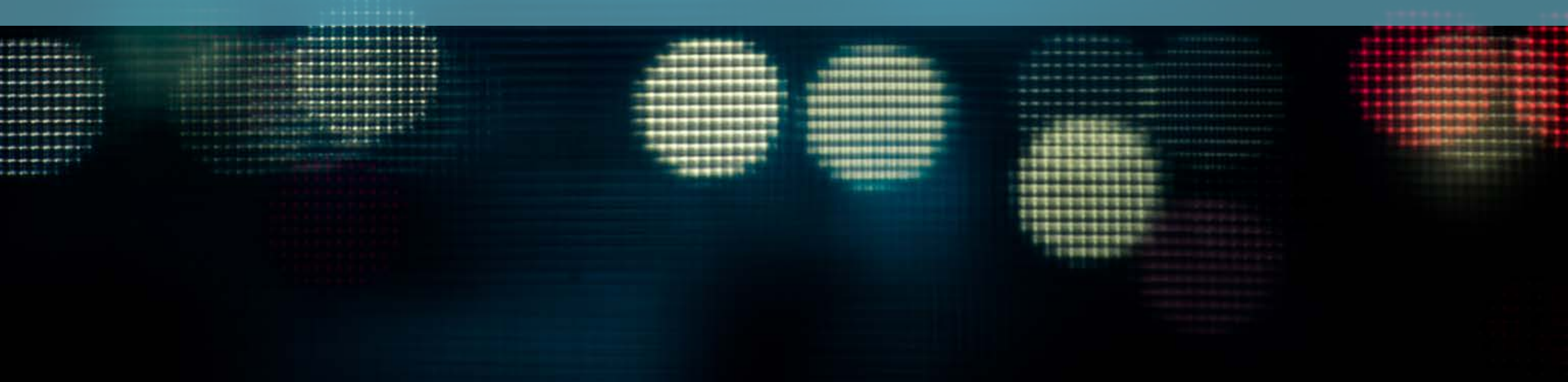
# The Fourth Amendment and Highway Interdiction

By Bonita L. Gunden



# TRAFFIC STOPS AND THE FOURTH AMENDMENT

1) Was the traffic stop valid at its inception?

2) How long can an investigative detention last?

3) If consent to search was granted, was that consent voluntary and an independent act of free will?

4) Was there “reasonable suspicion” to summon a drug dog?

5) Was the search and seizure supported by probable cause?

A vehicle may be lawfully stopped by a law enforcement officer only when there is probable cause to stop the vehicle, or, lacking probable cause, when the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot."

*United States v. Breeland*, 53 F. 3d 100, 102 (5th Cir. 1995).

A stop based upon reasonable suspicion is typically referred to as a Terry stop. A Terry stop permits law enforcement officers to stop persons and briefly detain them in order to investigate a reasonable suspicion that such persons are involved in criminal activity.

United States v. Wadley, 59 F.3d 510, 512 (5th Cir. 1995), cert. denied, 519 U.S. 895 (1996).

The criminal activity referenced in *Terry* has been held to include traffic violations, however minor.

*See, e.g., Pennsylvania v. Mimms,* 434 U.S. 106 (1977)(motorist stopped for expired license plate); *U.S. v. Kelly,* 981 F.2d 1464 (5th Cir. 1993)(motorist stopped for seatbelt violation).

If the alleged traffic violation forming the basis of the stop was not a violation of state law, there is no objective basis for justifying the stop. The constitutionality of the officer's stop of a defendant's vehicle must stand or fall based on whether the defendant violated Texas law.

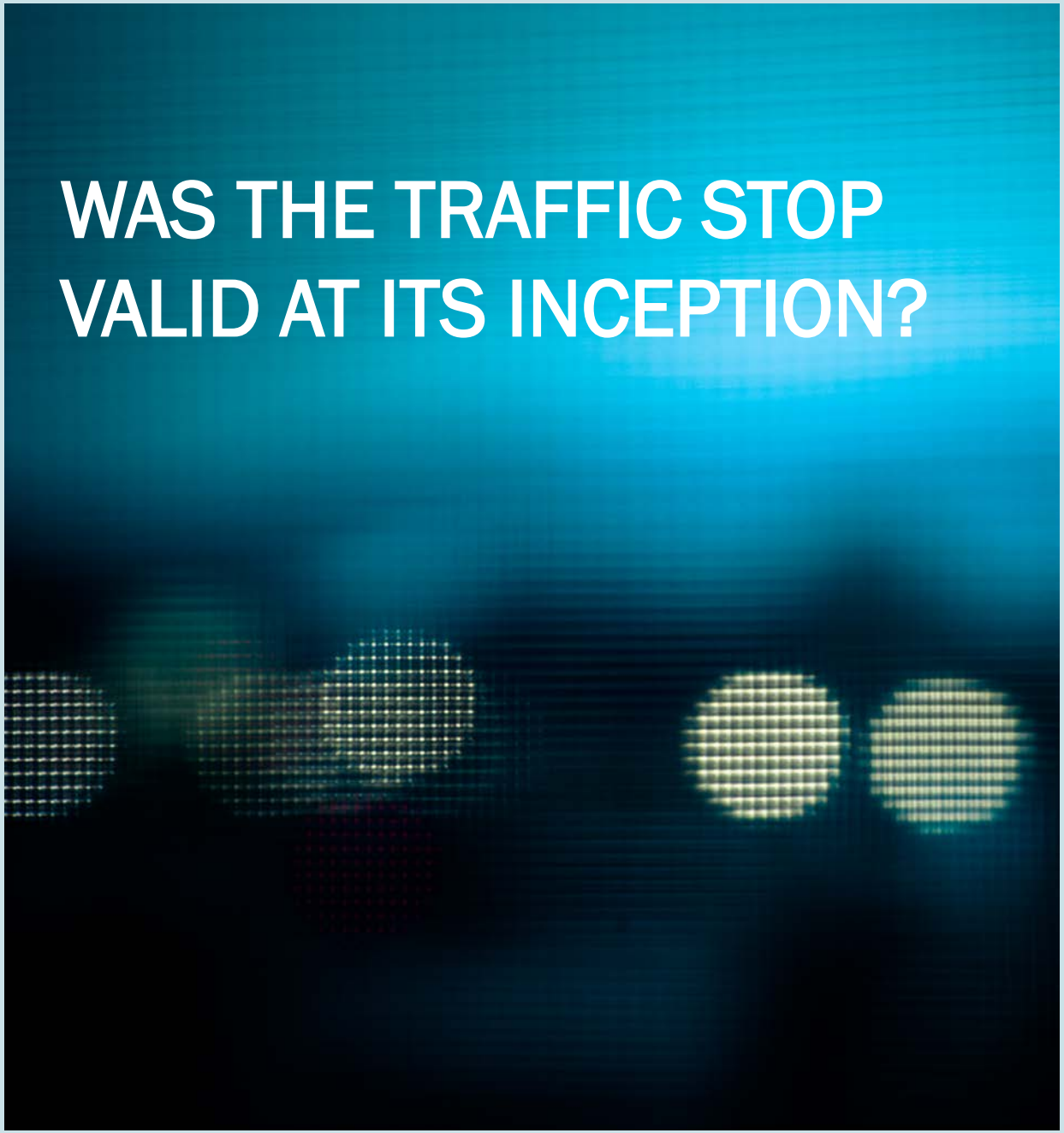
*United States v. Raney*, 633 F.3d 385, 389 (5th Cir. 2011); *United States v. Cole*, 444 F.3d 688, 689 (5th Cir. 2006).

"If officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive."

*United States v. Lopez-Valdez,* 178 F.3d 282, 288 (5th Cir. 1999).

The government bears the burden of proving that the stop was constitutional if the stop and search were conducted without a warrant.

*United States v. Raney,* 633 F.3d 385, 392 (5th Cir. 2011).




1) speeding
2) following too closely
   (2 - 5 second rule)
3) weaving
4) driving in passing lane
5) not signaling 100 feet
   before changing lanes
6) no seat belt
7) obstructed view
8) obscured license plate
9) broken tail-light

According to Trooper Francis's report he was also traveling eastbound on I-40, when he first observed the 1997 Ford pickup with an Arizona license plate "traveling at an unusually slow speed of 63-65 miles per hour." The video recording of the stop shows that Trooper Francis was following the pickup for at least two minutes; his report indicates that he observed a "large air freshener hanging from the rear-view mirror." According to Francis, the sun had just risen and was shining brightly where "the driver had to lean around the air freshener in order to clearly see through his windshield."

Trooper Francis then initiated a traffic stop of the Ford pickup for an alleged violation of Texas Transportation Code §547.613(a)(1) – obstructed view. Once the Ford pickup had come to a stop, Trooper Francis approached the front passenger side of the vehicle, identified himself and told the driver he had been stopped for having an “obstructed view” caused by the air freshener hanging from the rear view mirror.

# OBSCURED REGISTRATION

Texas Administrative Code Title 43, Part 1, Chapter 8, Subchapter E §8.139(b)

Trooper Esqueda approached the vehicle from the passenger side and stated that the reason for the traffic stop was because he could not read the registration tag or see it in the back window of the vehicle. Esqueda went on to state, "you need to move it down the window or put it right at the back where it's supposed to be." Daniels suggested he change the location of the tag at that time, Esqueda said no, he should wait and Esqueda continued to question Daniels about his employment. . . . .Again, Daniels asked Esqueda if he wanted to follow Daniels to another location (considered safe by Esqueda) to change the location of the temporary tag.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of DANVILLE
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# Mistake  of law or mistake of fact?

In Hein v. North Carolina, 135 S.Ct. 530, 539 (2014), the Supreme Court held generally that evidence is not suppressed when it is discovered as a result of an officer's objectively reasonable mistake of fact.

# How Long Can An Investigative Detention Last?

Temporary detention of an individual by a law enforcement officer, resulting from a traffic violation, even if only for a brief period of time and for a limited purpose, constitutes a "seizure" of the person within the meaning of the Fourteenth Amendment. Common sense thus dictates that an automobile stop is subject to the constitutional imperative that it not be unreasonable under the circumstances.

*United States v. Raney,* 633 F.3d 385, 389 (5th Cir. 2011).

The investigative detention must last no longer than is necessary to effectuate the purpose of the stop and the scope of the detention must be carefully tailored to its underlying justification. Florida v. Royer, 460 U.S. 491, 500 (1993). Usually the end mission is a ticket or a warning citation. In completing their "mission," officers can: request a driver's license, proof of insurance, vehicle registration, rental car contract; run an NCIC or other computer data-based check on the driver's and/or passengers criminal history; check for any outstanding warrants; check for border crossings; and check on ownership of the vehicle.

United States v. Shabazz, 993 F.2d 431, 435 (5th Cir. 1993); Johnson v. City of Canton, Texas, 2017 WL 235039 (E.D. Tex. 1/18/2017)

An officer can question any occupant of the vehicle about where they live, what they do for a living, where they are going, where did they start their trip, length of trip, purpose of trip, where they will be staying; how long have they known one another, etc. Officers always hope to obtain inconsistent answers from various occupants of the car. Questioning can become impermissible if it gets too intrusive, takes too long, or is not reasonably related to the original purpose of the stop or prompted by information learned during the stop.

*United States v. Pinkston,* 932 F.Supp 843 (E.D. Tex. 1996)

The legality of the officer's actions during the stop depends upon the objective facts known to them at the time the motorist's freedom was restricted by the stop, and not upon the officer's subjective reasons for their actions.

*United States v. Estrada,* 526 F.2d 357, 358 (5th Cir. 1976).

An officer's subjective motivations are irrelevant in determining whether his or her conduct violated the Fourth Amendment. "So long as a traffic law infraction that would have objectively justified the stop had taken place, the fact that the police officer may have made the stop for a reason other than the occurrence of the traffic infraction is irrelevant for purposes of the Fourth Amendment.

*Goodwin v. Johnson,* 132 F.3d 162, 173 (5th Cir. 1997).

The detention of a motorist and his vehicle "must be temporary and last no longer than is reasonable necessary to effectuate the purpose of the stop, unless further reasonable suspicion, supported by articulable facts, emerges.

*United States v. Machuca-Barrera,* 261 F.3d 425, 434 (5th Cir. 2001).

Unless additional reasonable suspicion arises during the course of the stop, "once all relevant computer checks have come back clean, there is no more reasonable suspicion, and, as a general matter, continued questioning thereafter unconstitutionally prolongs the detention.

*United States v. Lopez-Moreno*, 420 F.3d 220, 231 (5th Cir. 2005).

# Was Consent to Search Voluntary and an Act of Independent Free Will?

Often, once a ticket or warning citation has been issued and all documentation has been returned, officers will ask, “Do you mind if I ask you a few more questions?” They proceed to ask if driver transporting anything illegal . . . .cocaine, methamphetamine, heroin, marijuana, fentanyl, other controlled substances; large amounts of cash; weapons, etc.  Is it okay if I look?  Can I search your car?

If these questions are asked when personal documents have not been returned and the driver grants consent to search the vehicle, **the argument follows that the driver's consent was not voluntary, because he was not free to leave. If you drive down the road without a DL; registration, or rental agreement, that can be a separate offense. It is coercive for a police officer to retain identification documents after a lawful stop is completed.**

*United States v. Brown*, 567 Fed. Appx. 272 (5th Cir. 2014), *citing United States v. Cavitt,* 550 F.3d 430, 439 (5th Cir. 2008).

Once a traffic stop has become unconstitutionally prolonged, the Court must find that any consent to search was both voluntary and the result of an independent act of free will because "consent cannot be the product of the illegal detention."

*United States v. Jenson,* 462 F.3d 399, 407 & n. 10 (5th Cir. 2006).

Would a reasonable person have believed that he or she was free to leave or free to refuse the requested consent to search. That is the test – an objective test that looks to the police officer's conduct at issue and the setting in which it occurs. The government has the burden to prove that the consent was voluntary, and that burden becomes more difficult when "consent" is preceded by a Fourth Amendment violation.

*United States v. Macias,* 658 F.3d 509, 522 (5th Cir. 2011).

Voluntariness of consent must be determined from the totality of the circumstances. The Fifth Circuit Court of Appeals has instructed that the following factors should be reviewed in determining whether the consent to search was voluntary. Although all of these factors are deemed relevant to the ultimate determination, none are dispositive or controlling of the voluntariness issue.

*United States v. Thompson,* 130 F.3d 117 (5th Cir. 1997), *cert. denied*, 118 S.Ct. 1335 (1998).

When a motorist gives consent to search his vehicle, he necessarily consents to an extension of the traffic stop while the search is conducted.

United States v. Machuca-Barrera, 261 F.3d 425, 435 (5th Cir. 2001).

1) the voluntariness of the defendant's custodial status;

2) the presence of coercive police procedures;

3) the extent and level of the defendant's cooperation with the police;

4) the defendant's awareness of the right to refuse consent;

5) the defendant's education and intelligence; and

6) the defendant's belief that no incriminating evidence will be found.

At the time Aguilera provided "consent to search," he was under de facto arrest. Dawson still had possession of Aguilera's driver's license; Aguilera had not been provided with an opportunity to exit the patrol car and had not been informed that he was free to leave. No one should be surprised that under these circumstances Aguilera cooperated with Dawson. Further, Aguilera was never advised of his right to refuse to permit the search either before or after the request was made. *See, e.g., United States v. Alvarado-Ramirez*, 975 F.Supp 906, 919 (W.D. Tex. 1997)(holding that because there was no evidence presented by the government of any intervening factors which would have "legalized" the search in light of the prior 4th A. violation, the seized evidence must be suppressed). Such a warning in addition to *Miranda* warnings, which should have been given by this point, would have insured that consent given by Aguilera was free, voluntary, and untainted by the arrest's possible illegality. *Alvarado-Ramirez, 975 F.Supp at 919*.

"Even though voluntarily given, consent does not remove the taint of an illegal detention if it is the product of that detention and not an independent act of free will."

United States v. Jenson, 462 F. Supp 399, 407 & n. 10 (5th Cir. 2006).

Courts are instructed to consider three factors to determine whether the defendant's "consent" was an independent act of free will.

1) the temporal proximity of the illegal conduct and the consent;
2) the presence of intervening circumstances; and
3) the purpose and flagrancy of the initial misconduct.

*Jenson,* 462 F.3d at 404-406.

In other words, we are to look at the causal connection between the consent and the unconstitutional detention.

*United States v. Chavez-Villareal,* 3 F.3d 124, 127 (5th Cir. 1993).

# Reasonable Suspicion Must Be Based on Specific. Articulable Facts

If an officer can establish "reasonable suspicion," motorists can be detained for the purpose of conducting a "free-air" sniff of the vehicle with a canine. The reasonable suspicion standard allows an officer to act when he observes "unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that persons with whom he is dealing may be armed and presently dangerous." Terry v. Ohio, 392 U.S. 1 at 30 (1989). However, in order to protect individuals against arbitrary government conduct, the standard prohibits officers from acting upon "inchoate and unparticularized suspicion[s] or hunche[s].

United States v. Sokolow, 490 U.S. 1, 7 (1989).

"Would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate." Id. at 27. Courts must look to the 'totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. United States v. Grant, 349 F.3d 192, 197 (5th Cir. 2003).

## Two step analysis:

(1) determine the facts upon which the officer relied, *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

(2) do those historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion?

This is a mixed question of law and fact, and the "issue is whether the facts satisfy the relevant constitutional standard."

# Examples of Specific, Articulable Facts:

- ✓ Known drug-trafficking corridor
- ✓ Messy car, cups, bottles, empty fast-food bags
- ✓ Blankets
- ✓ Religious items
- ✓ Inconsistent answers
- ✓ Rental contract does not fit stated intentions
- ✓ 3rd party renter
- ✓ One-way rental
- ✓ Prior criminal history
- ✓ Pulsating carotid artery or stomach
- ✓ Heavy breathing
- ✓ Lack of eye contact
- ✓ Extremely nervous, sweating
- ✓ Way Aguilera was chewing his gum

Factors such as nervousness, inconsistent stories, criminal history, use of another's vehicle, an out-of-state driver's license and license plates and presence on a known drug-trafficking corridor may not suffice to create reasonable suspicion of criminal activity.

United States v. Cavitt, 550 F.3d 430, 434, 437-38, 438 n. 5 (5th Cir. 2008); United States v. Santiago, 310 F.3d 336, 338, 342 (5th Cir. 2002); United States v. Jones, 234 F.3d 234, 237-38, 241-42 (5th Cir. 2000).

Travel plans whose implausibility is merely trivial or illusory do not suffice to justify an extended detention.

United States v. Jenson, 462 F.3d 399, 404-05 (5th Cir. 2006).

Trooper Dollar confirmed no outstanding tickets or warrants, issued citation and had Griffin sign. What justified prolonged detention for 26 minutes for a canine to arrive?

1) Dollar alleges that when Griffin handed him his license, his hands and arms were shaking uncontrollably. (Report at §5).

2) While in contact with Griffin from the passenger side of the vehicle, Dollar noticed open food and drink containers, a blanket, and a pillow – in his mind, indicating "hard travel" with the driver eating and resting in the vehicle. (Report at § 7).

3) Griffin showed nervousness at the beginning of the traffic stop. (Report at § 7).

4) By stopping in Los Angeles, the time line would indicate Griffin missed Thanksgiving in the Bay area. (Report at § 11). Further, Dollar believed the stated nature of the trip – visiting family in Memphis – was deceptive due to the timing of the trip. (Report at § 16).

5) Griffin's demeanor became reserved, quiet, and he broke eye contact after mentioning Los Angeles. (Report at § 11).

6) Griffin would involuntarily shake his head no when he was answering questions he was unsure of, or didn't want to talk about. (Report at § 12).

7) Griffin began sweating from his upper brow and lip, displayed a wrinkled brow and a look of stress. (Report at § 12).

8) Dollar noticed that Griffin's heart rate was elevated and pulsing hard, visible in his neck. Griffin began breathing deeper and in erratic breathing patterns. (Report at § 12).

9) Dollar's belief that Griffin was financially stressed. (Report at § 16).

Nervousness is insufficient, by itself, to support reasonable suspicion.

*United States v. Macias,* 658 F.3d 509, 518 (5th Cir. 2011); *United States v. Santiago,* 310 F.3d 336, 338-39 (5th Cir. 2002).

An arrest record alone, does not amount to reasonable suspicion.

United *States v. Jones,* 234 F.3d 234, 242 (5th Cir. 2000).

# BRING ON THE DOGS!

Although the Fifth Circuit has held that a canine search is not itself a "search" within the meaning of the Fourth Amendment, it is a Fourth Amendment violation if the canine search prolongs the stop after a computer check comes back clean and the officers lack other grounds for reasonable suspicion.

United States v. Place, 462 U.S. 696, 697 (1983); United States v. Dortch, 199 F.3d at 198-201 (5th Cir. 2000).

A three minute delay, or a delay of "moments," or a "trivial delay" between the completion of a computer check and a later search or dog sniff can be unreasonable.

United States v. Ellis, 330 F. 3d 677, 681 (5th Cir. 2003); United States v. Jones, 234 F.3d 234, 241 (5th Cir. 2000).

Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission. A dog sniff is a measure aimed at "detecting evidence of ordinary criminal wrongdoing."

*Indianapolis v. Edmond,* 531 U.S. 32, 40-41 (2000).

A traffic stop prolonged beyond completion of all tasks incident to the stop is unlawful. The seizure of a driver and/or passengers remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop."

*Arizona v. Johnson,* 555 U.S. 323, 330 (2009).

The Court in Rodriguez concluded that a canine search of a vehicle during a routine traffic stop is unlawful when it prolongs the stop beyond the time necessary for an officer to conduct certain inquiries and issue a ticket, unless reasonable suspicion of criminal activity distinct from the traffic offense is developed that is "ordinarily demanded to justify detaining an individual." *United States v. Rodriguez,* 135 S.Ct. 1609, 1614-15 (2015). "The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff prolongs the stop. *Rodriguez* at 1616.

If the government survives the reasonable suspicion analysis, it must then establish that the canine alert was sufficient to establish probable cause for a warrantless search to ensue. In other words, the government must show that the canine alert was both reliable and credible. Probable cause to search exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates,* 462 U.S. 213, 238 (1983).

An alert by a **certified drug detection dog** establishes probable cause to search the item alluded to by the dog. Florida v. Harris, 133 S.Ct. 1050 (2013). An alert by a drug-detecting dog provides probable cause to search a vehicle, United States v. Sanchez-Pena, 336 F.3d 431, 444 (5th Cir. 2003).

The dog sniff must be sufficiently reliable to establish probable cause, and reliability is present where the dog is " well trained." *Illinois v. Caballes*, 543 U.S. 405 (2005).

When a defendant challenges "the reliability of the dog overall or of a particular alert," then "[t]he question – similar to every inquiry into probable cause – is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." *Florida v. Harris,* 133 S.Ct. 1050, 1058 (2013).

Evidence 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. The same is true, even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs.

*United States v. Harris,* 568 U.S. 237, 246-47 (2013).

So long as officers are able to articulate specific, reasonable examples of the dog's behavior that signaled the presence of illegal narcotics, this Court will not engage itself in the evaluation of whether that dog should have used alternative means to indicate the presence of drugs."

*United States v. Shen,* 2017 WL 2378289 (N.D. Tex. 6/01/2017) *quoting United States v. Clayton,* 374 Fed. Appx. 497, 502 (5th Cir. 2010)(unpublished opinion).

A defendant however, must have an opportunity to challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witnesses. The defendant, for example, may contest the adequacy of a certification or a training program, perhaps asserting that its standards are too lax or its methods faulty. So too, the defendant may examine how the dog or handler performed in the assessments made in those settings.

*Harris,* 568 U.S. at 247.

The best practice for assessing a dog's reliability should be based on "the results of certification and proficiency assessments," because in those "procedures you should know whether you have a false positive," unlike in "most operational situations".

See K. Fulton, J. Greb, & H. Holness, Florida Int'l Univ., The Scientific Working Group on Dog and Orthogonal Detector Guidelines 1, 61-62, 66 (2010).

## Suggested Discovery Requests:

1. Training and certification records for the canine Damon with corresponding explanations or descriptions of the significance of the particular training and certification of Damon;

2. Training and certification records, as it relates to canine handling, for Trooper Ingles;

3. Field Performance records of both Damon and his handler documenting both successes (contraband found) and failures (contraband not found) relating to Damon's "alerts" as to the presence of controlled substances;

4. Policies and Procedures of the Texas Department of Public Safety regarding the handling, training, certification, and use of drug-detection canines.

## GREYHOUND BUS STATION

"Commercial bus interdiction" – United States v. Drayton, 536 U.S. 194, 197 (2002); United States v. Wilmington, 240 F.Supp 2d 311 (M.D.Pa. 2002), aff'd, 131 Fed.Appx. 336 (3d Cir. 2005) (bus interdiction effort more akin to "voluntary search and seizure," than to an unconstitutional checkpoint).

A warrant is required before every search or seizure which violates the reasonable expectation of privacy espoused in the Fourth Amendment, "subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347 (1967). One of the most common and specifically recognized exceptions to the warrant requirement is the automobile exception. This exception includes vehicles, cars, boats, buses, motorhomes, tractor trailers, and planes and is based on the inherent mobility of vehicles and the lower expectation of privacy in such highly regulated modes of transportation.

Commercial bus passenger lacks standing to challenge the voluntariness of the driver's consent to permit the police to search the bus's undercarriage and/or passenger cabin. United States v. Wise, 877 F.3d 209, 217 (5th Cir. 2017). However, if bus driver specifically permitted police to search a passenger's luggage in the passenger cabin, should have standing to challenge bus driver's consent to search. Wise, 877 F.3d at 218. That is because passenger has subjective expectation of privacy in his luggage and that expectation of privacy is one which society would recognize as objectively reasonable. United States v. Bond, 529 U.S. 334, 336-37 (2000); United States v. Riazco, 91 F.3d 752, 754 (5th Cir. 1996).

Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage – provided they do not induce cooperation by coercive means."

*United States v. Drayton*, 536 U.S. 194, 201 (2002).

If an individual voluntarily disclaims ownership or recognition of a piece of luggage, that individual forfeits any expectation of privacy and lacks standing to challenge any unlawful search and seizure of that luggage.

*United States v. Roman,* 849 F.2d 920, 922 (5th Cir. 1988).

# USA v. Bustamante-Ochoa

Drug interdiction operation at Greyhound Bus station maintenance barn at 400 S. Monroe. Passengers dropped off at bus terminal. APD Cpl. McCarrell and his canine "Bongo," with permission of Greyhound employees conducted "free-air" sniff of bus undercarriage where baggage is checked. Bongo zeroed in on black duffle bag sitting on top of maroon suitcase, alternated between sniffing duffle and suitcase. Duffle had a luggage tag, Bustamonte-Ochoa.

Separated the 2 bags and placed with 2 other bags in a line. Bongo exhibited more intense sniffing at duffle bag; positive alert to odor of narcotics from duffle bag. McCarrell conducted probable cause search of duffle bag – says he immediately smelled marijuana upon opening bag. Pair of jeans on top of contents, each leg had a sealed plastic bag with U.S. currency.

Trio of police officers to bus station; as passengers reboarded bus, driver alerted officers when he identified Bustamante from her ticket. Bustamante detained for questioning, pointed out her grey suitcase and subsequently gave consent to search. Suitcase contained more bags of money. Total of approx. $443,000. Bustamante initially arrested on state charges of bulk currency violations, eventually indicted for 1) Interstate Transport in Aid of Racketeering (5 year maximum); and 2) Illegal Re-entry. Pled to Illegal Re-entry and sentenced to time served (6 months).

1) Original dog sniff conducted on undercarriage of bus – the luggage compartment –dog alerted to duffle bag, probable cause search.

2) Suitcase searched with Bustamante's consent.

3) Even if searches were somehow found to be illegal, would not effect prosecution on illegal re-entry charge. If the end result of an illegal search is the discovery of an individual in the country illegally, that person can still be prosecuted for illegal entry.

# USA v. BOWEN

Passengers dropped off at Greyhound terminal, bus went to maintenance barn where APD Cpl. Lavery working interdiction. Lavery, along with his canine "Koss," entered bus with consent of driver. Koss was several rows in front of Lavery on the bus when Lavery "noticed the dog 'investigating something in a seat.' Koss allegedly scratching on a backpack which led Lavery to conclude that Koss was alerting on the bag. Lavery retrieved the backpack and opened it – pair of shoes, each shoe contained vaccuum-sealed bag with 2 green wrapped bundles.

At that time, Lavery activated his body camera. Lavery asked Greyhound employees for a knife and used it to open one of the bundles.

Lavery: It might be marijuana, but I usually don't see marijuana wrapped up like this. That's heroin, that's a good amount of heroin. Does that smell like vinegar to you?

**Lavery has the driver smell the substance!**

Driver: Yeah.

Lavery: Smells like vinegar. That's heroin and that's a lot of heroin.

Driver: Yeah, it sure is.

Lavery: That means I am going to have to hold you off for a little bit.

Driver: Okay, no problem.

Lavery: We are going to have to go back and arrest this dude.

Driver: You know his name?

Lavery: Not yet! We are going to do some figuring out. There are no identifiers on the backpack. We might need to let them sit back down.

Driver: Yeah

Lavery: Yeah on the bus.

Driver: Ohh, that is sure a lot

Lavery: Need you guys to help me.

Driver: Okay, just take your time and do your thing man!

Lavery: I am going to try and hurry for you.

Driver: Don’t worry about it, today is my Friday. Yeah, get him or her or him, whoever it is.

Driver: No problem.

Lavery calls for assistance and develops a plan.  20 minutes after opening the backpack, Lavery is again conversing with the bus driver.

Lavery: Do you think we should tell the bus terminal that they are doing maintenance in case people start asking questions about the bus?

Driver: I called them. . .I called them and told them something is wrong with the bus

Lavery: Tell them the mechanics are working on it, that way if people ask and get spooked, they won't run off.

Driver: Yeah

Lavery: Let's just tell them it's getting worked on.

Driver: Okay, I'll tell them we have a flat or something and it's going to be a minute.

At least a half hour later, a plan was in place. The bus would return to the terminal and an announcement would be made that the bus would be taken out of service for mechanical reasons. Passengers would need to retrieve their belongings from the bus and wait for a replacement bus. Task Force Officer Fabela would remain on the bus from the barn to the terminal so that he could identify which passenger claimed the backpack. Off. Fabela would follow the passenger off the bus and that passenger would be taken into custody by Fabela and others.

Does the U.S. Constitution support suspicionless searches of every passenger and/or his personal belongings who takes a ride on a Greyhound bus? Bowen had a reasonable expectation of privacy in his backpack and that expectation of privacy is one recognized by society at large. In *Bond v. United States,529* U.S. 334 (2000), the Supreme Court held that even though the passenger placed his carry-on baggage in an overhead compartment on the Greyhound bus, he had a reasonable expectation of privacy in the opaque bag and even though the bag could have been handled by passengers and others, the police manipulation of the bag in an exploratory manner exceeded the scope of what society deems as reasonable.

To conduct a warrantless search of the vehicle, the automobile has to be readily mobile, and there has to be probable cause to believe there is contraband in the vehicle. United States v. Watts, 329 F.3d 1282 (11th Cir. 2003). To satisfy the mobility requirement, the government must only show that the vehicle is operational. Watts, 329 F.3d at 1286. Here, although the bus was stopped, the driver and passengers were free to leave whenever they wanted.

A vehicle search does not violate the Fourth Amendment where agents conduct a warrantless search if the vehicle is operational and, under the totality of the circumstances, there is a fair probability that contraband will be found in the vehicle. "When the canine alerted to the odor of drugs inside the bus, which defendant does not dispute was "readily mobile," the officer had probable cause to search the bus and every piece of luggage. Justification to conduct a warrantless search does not vanish once the automobile has been immobilized or when the suspect can no longer tamper with the evidence.

United States v. Pina, 648 Fed. Appx. 899 (11th Cir. 2014).