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**PREVIEW; United States v. Sanchez: A Prolonged Traffic Stop
and the Scope of a Consensual Search**

Danielle Dacus*

The Ninth Circuit Court of Appeals was scheduled to hear oral arguments in this matter on Wednesday, September 2, 2020, but upon issuance of an order on August 21, 2020, the Court decided to rule on the record and briefs alone. Caitlin Boland Aarab submitted the briefs on behalf of the Appellant. Thomas Keoki Godfrey submitted the brief on behalf of the Appellee.

I. INTRODUCTION

The issues presented in this case are whether the Montana Highway Patrol Trooper unconstitutionally prolonged Manuel Paz Sanchez Jr.'s traffic stop and whether the Trooper had consent to search the spare tire located in the vehicle.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

Manuel Paz Sanchez Jr. was stopped for a traffic violation by a Montana Highway Patrol Trooper.² While the Trooper drafted the traffic warning, he checked Sanchez's license and rental vehicle documents, and Sanchez waited in the Trooper's patrol car.³ During this time, the Trooper asked Sanchez questions regarding his travel plans.⁴ After issuing Sanchez a traffic warning, the Trooper requested Sanchez's consent to search the rental car for contraband.⁵ Sanchez provided both oral and written consent.⁶ While searching the vehicle, the Trooper asked for specific consent to search the spare tire located inside the vehicle to which Sanchez replied, "It's not my tire."⁷ The Trooper proceeded to search the exterior of the tire and eventually deployed a drug-detection dog that alerted to the tire.⁸ The Trooper then asked and received Sanchez's consent to

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¹ Opening Brief of Appellant at *10, 18, *United States v. Sanchez*, (9th Cir. Jan. 28, 2020) (No. 19-30248).

² Answering Brief of the United States at *1, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248).

³ Opening Brief of Appellant, *supra* note 1, at *3, 5.

⁴ *Id.* at *4.

⁵ *Id.* at *5.

⁶ *Id.*

⁷ *Id.* at *6.

⁸ Answering Brief of the United States at *7–8, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248).

search the tire's interior.⁹ The Trooper located Methamphetamine inside the tire, and Sanchez was subsequently indicted.¹⁰

Sanchez brought a motion to suppress in the district court.¹¹ The court held (1) the Trooper had reasonable suspicion to conduct the traffic stop; (2) the Trooper did not unconstitutionally prolong the stop because, immediately after the stop's end, Sanchez provided consent for the search; and (3) the search of the spare tire fell within the scope of that consent.¹² Sanchez subsequently pleaded guilty, preserving his right to appeal the motion to suppress.¹³ Sanchez now appeals the denial of his motion.¹⁴

III. SUMMARY OF ARGUMENTS

A. Appellant Manuel Paz Sanchez

Appellant bases his appeal on two issues: (1) the stop was unconstitutionally prolonged because the Trooper lacked reasonable suspicion to continue the stop after completing its mission; and (2) the spare tire's removal and search exceeded the scope of his consent.¹⁵ On appeal, Appellant does not contest that the Trooper possessed reasonable suspicion to conduct the initial traffic stop.¹⁶

Appellant argues that the traffic stop was unconstitutionally prolonged by the Trooper's request to search the vehicle after concluding the traffic stop's mission.¹⁷ Applying the *Rodriguez v. United States*¹⁸ standard, Appellant asserts the Trooper required "reasonable suspicion ordinarily demanded to justify detaining an individual" to continue investigating after completing tasks related to the mission of the traffic stop.¹⁹ Appellant asserts the Trooper did not possess the reasonable suspicion required and instead used drug trafficker stereotypes to justify his continued investigation.²⁰

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *8–9.

¹² *United States v. Sanchez*, No. CR 18-03-BLG-SPW, 2019 WL 1598621, slip op. at *2–4 (D. Mont. Apr. 15, 2019).

¹³ Opening Brief of Appellant at *8–9, *United States v. Sanchez*, (9th Cir. Jan. 28, 2020) (No. 19-30248).

¹⁴ *Id.*

¹⁵ *Id.* at *10, 14.

¹⁶ Reply Brief of Appellant at *3, *United States v. Sanchez*, (9th Cir. Apr. 20, 2020) (No. 19-30248).

¹⁷ *Id.* at *3–5 (quoting *Rodriguez v. United States*, 575 U.S. 348, 353 (2015)).

¹⁸ 575 U.S. 348 (2015).

¹⁹ Opening Brief of Appellant, *supra* note 1, at *13 (quoting *Rodriguez*, 575 U.S. at 355).

²⁰ *Id.* at *14–15 (citing *Rodriguez*, 575 U.S. at 355).

Next, Appellant asserts that the Trooper's removal and search of the spare tire exceeded the scope of his consent.²¹ Following *Florida v. Jimeno*,²² Appellant argues the scope of his consent to search is determined by what is objectively reasonable.²³ Appellant asserts that the Trooper's removal and search of the rental car's spare tire exceeded this standard.²⁴ Further, Appellant asserts he did not expand the scope of the search and in fact limited the scope when he responded to the Trooper's request to search the tire by stating, "It's not my tire."²⁵ Appellant finally argues his statement consenting to the removal of the tire from its rim was only provided after the Trooper's initial unconstitutional search of the tire and deployment of the drug-detection dog.²⁶

B. Appellee United States of America

Appellee argues (1) Sanchez's constitutional rights were not violated because the stop was not unconstitutionally prolonged; (2) alternatively, the Trooper had reasonable suspicion to prolong the traffic stop; (3) the search of the tire fell within the scope of Sanchez's consent; and (4) the drug-detection dog's alert gave the Trooper probable cause for the search of the tire.²⁷

Appellee asserts the stop was not unconstitutionally prolonged because the questions asked during the stop were relevant to the mission of the stop and only 14 minutes elapsed from the time of the initial stop to the time the Trooper requested consent to search.²⁸ The Ninth Circuit Court of Appeals has held a 14 minute traffic stop to be an acceptable length of time.²⁹ Further, Appellee argues even if reasonable suspicion was necessary for the stop's extension, reasonable suspicion "is not a particularly high threshold to reach."³⁰ Appellee asserts the impossibility of Sanchez's answers to the Trooper's questions combined with the Trooper's knowledge

²¹ *Id.* at *17.

²² 500 U.S. 248 (1991).

²³ Opening Brief of Appellant, *supra* note 1, at *17–18 (citing *Jimeno*, 500 U.S. at 250–51).

²⁴ *Id.*

²⁵ *Id.* at *18–20.

²⁶ Reply Brief of Appellant at *12, *United States v. Sanchez*, (9th Cir. Apr. 20, 2020) (No. 19-30248).

²⁷ Answering Brief of the United States at *9–11, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248).

²⁸ *Id.* at *13–14.

²⁹ *Id.* (citing *United States v. Turvin*, 517 F.3d 1097, 1101 (9th Cir. 2008)).

³⁰ *Id.* at *14, 16–17 (quoting *United States v. Valdes-Vega*, 738 F.3d 1074 (9th Cir. 2013) (en banc)).

of drug trafficker behavior provided reasonable suspicion to prolong the stop.³¹

Next, Appellee argues the Trooper did not exceed the scope of Sanchez’s consent because he provided voluntary oral consent and signed the Montana Highway Patrol search form.³² Analogizing this case to *United States v. Gutierrez-Mederos*,³³ where the court held the search of a locked panel and removal of a cardboard divider fell within the scope of consent, Appellee asserts contraband is typically not located in plain sight, and, therefore, it is reasonable for a Trooper to look inside compartments when searching.³⁴ Finally, Appellee asserts the Trooper received specific consent to search the tire’s interior and had additional probable cause to do so after the drug-detection dog alerted to the tire.³⁵

IV. ANALYSIS

A. *Extension of the Traffic Stop*

The Court must first address whether the Trooper unconstitutionally extended Sanchez’s traffic stop beyond its mission. Without independent reasonable suspicion of criminal activity, a traffic stop cannot be prolonged after the “mission” of the traffic stop has been completed.³⁶ Additional inquiries may be conducted during the course of the traffic stop, but cannot prolong the stop “beyond the time reasonably required to complete the mission.”³⁷ Generally, the mission of a traffic stop is to ensure all vehicles are being “safely and responsibly” operated on the roadway.³⁸ This often includes reviewing the validity of the driver’s license and vehicle registration.³⁹ After the officer finishes the tasks related to ensuring the vehicle is being safely and responsibly operated, the mission of the traffic stop is complete.⁴⁰

³¹ *Id.* at *17–20.

³² *Id.* at *10, 23.

³³ 965 F.2d 800 (1992).

³⁴ Answering Brief of the United States, *supra* note 2, at *21–23 (citing *United States v. Gutierrez-Mederos*, 965 F.2d 800, 802–03) (9th Cir. 1992)).

³⁵ *Id.* at *23–24 (citing *Florida v. Harris*, 568 U.S. 237 (2013)).

³⁶ Opening Brief of Appellant at *12–13, *United States v. Sanchez*, (9th Cir. Jan. 28, 2020) (No. 19-30248) (quoting *United States v. Rodriguez*, 575 U.S. 348, 356–57 (2015)).

³⁷ *Rodriguez*, 575 U.S. at 354–55 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

³⁸ Opening Brief of Appellant, *supra* note 1, at *12–13.

³⁹ *Id.*

⁴⁰ *Id.*

To prolong a traffic stop after the completion of its mission, there must be independent reasonable suspicion of criminal activity.⁴¹ “Particularized suspicion” from “objective and reasonable inferences” of “specific, articulable facts” provides a Trooper with reasonable suspicion.⁴² Objective and innocent facts that are meaningless to the layperson can be the basis for suspicion and further investigation.⁴³ The Court must look at the totality of the circumstances when determining if reasonable suspicion exists.⁴⁴

While the Ninth Circuit will likely reach the same holding as the district court did when it held the Trooper’s extension of the stop to be constitutional, it will probably diverge from the district court’s reasoning. The district court incorrectly focused on the reasonableness of the time it took from the beginning of the stop until the Trooper’s request to search instead of the time between the completion of the stop’s mission and the Trooper’s request to search.⁴⁵ The district court relies on *United States v. Turvin*,⁴⁶ where the court determined 14 minutes to be a reasonable length for a traffic stop, to hold Sanchez’s 14 minute stop similarly constitutional.⁴⁷ However, the Ninth Circuit has stated that *Rodriguez* abrogated *Turvin*’s reasonableness standard for the extension of a traffic stop absent reasonable suspicion.⁴⁸ Therefore, the constitutionality of the stop is based on whether or not reasonable suspicion existed to extend the stop after the completion of its mission.⁴⁹

After reviewing this case, the Ninth Circuit will likely hold the Trooper possessed reasonable suspicion to prolong Sanchez’s traffic stop. Before the Trooper issued the traffic warning, he reviewed Sanchez’s driver’s license, rental car agreement, and

⁴¹ *Id.* (citing *Rodriguez*, 575 U.S. at 356–57); Answering Brief of the United States at *12, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248) (citing *United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015)).

⁴² *Evans*, 786 F.3d at 788 (9th Cir. 2015) (quoting *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc)).

⁴³ Answering Brief of the United States at *16–18, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248) (quoting *United States v. Arvizu*, 534 U.S. 266, 273–74 (2002); *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

⁴⁴ Answering Brief of the United States, *supra* note 2, at *16 (citing *Arvizu*, 534 U.S. at 273).

⁴⁵ *United States v. Sanchez*, No. CR 18-03-BLG-SPW, 2019 WL 1598621, slip op. at *3–4 (D. Mont. Apr. 15, 2019).

⁴⁶ 517 F.3d 1097 (9th Cir. 2008).

⁴⁷ *Sanchez*, 2019 WL 1598621 at *3–4.

⁴⁸ *United States v. Landeros*, 913 F.3d 862, 866–67 (9th Cir. 2019).

⁴⁹ Opening Brief of Appellant at *12–13, *United States v. Sanchez*, (9th Cir. Jan. 28, 2020) (No. 19-30248) (quoting *United States v. Rodriguez*, 575 U.S. 348, 356 (2015)).

conducted a criminal history and El Paso Intelligence Center check.⁵⁰ The Trooper, upon issuing the traffic warning, completed the mission of the traffic stop and therefore, required reasonable suspicion to continue the stop.⁵¹ Nevertheless, the Trooper likely possessed the required reasonable suspicion to prolong the stop. Sanchez's impractical travel plan to drive further east than his end destination and then fly to the end destination, as well as the Trooper's belief that the story was being made up on the spot, created perceived inconsistencies in his story supporting reasonable suspicion.⁵² Further, the innocent objective facts that Sanchez started his trip in Sacramento, a known drug-hub, and was driving a rental car, a known transportation method for drug distributors, can support reasonable suspicion when considered under the totality of the circumstances.⁵³ Therefore, the Court will likely hold the Trooper did not unconstitutionally prolong the stop because reasonable suspicion existed to extend the stop.

B. *Scope of Consent*

The Court must decide two key issues regarding the search of the tire: (1) whether the original consent included the exterior of the tire; and, (2) if it did include the exterior of the tire, whether that consent was limited by Sanchez's later statement.

When an individual consents to a search, reasonableness determines the permissible scope of search.⁵⁴ A Trooper may search locations that are objectively reasonable when searching for the stated item.⁵⁵ Contraband is not generally strewn throughout the car.⁵⁶ Therefore, when consent to search for contraband is provided, containers such as paper bags⁵⁷ or locked compartments⁵⁸ are

⁵⁰ *Id.* at *3–5.

⁵¹ *Id.* at *14 (citing *Rodriguez*, 575 U.S. at 355).

⁵² Answering Brief of the United States at *17–18, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248).

⁵³ *Id.* at *16, 19–20.

⁵⁴ Opening Brief of Appellant, *supra* note 1, at *17–18 (citing *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)).

⁵⁵ *Jimeno*, 500 U.S. at 249 (1991).

⁵⁶ Reply Brief of Appellant at *21–22, *United States v. Sanchez*, (9th Cir. Apr. 20, 2020) (No. 19-30248).

⁵⁷ Opening Brief of Appellant, *supra* note 1, at *18 (citing *Jimeno*, 500 U.S. at 251 (holding the search of a paper bag located in the vehicle based on a consent to search for narcotics to be reasonable)).

⁵⁸ Answering Brief of the United States, *supra* note 2, at *22–23 (citing *United States v. Gutierrez-Mederos*, 965 F.2d 800, 802 (9th Cir. 1992) (holding the officer's search of a locked compartment and removal of cardboard divider when searching a vehicle based on consent to search for contraband to be reasonable)).

considered reasonable locations to search.⁵⁹ Troopers do not need to ask for subsequent consent to search items that are considered objectively reasonable for the search they are conducting, because they fall within the original scope of consent.⁶⁰

After an individual has provided consent for a search, they may subsequently limit the scope of their consent.⁶¹ Although the Ninth Circuit has no precedent on what constitutes a valid withdrawal of consent, it has previously referenced the Eighth Circuit Court of Appeals' definition when discussing the issue.⁶² The Eighth Circuit has held that, similar to providing consent, a withdrawal of consent is determined by what an objectively reasonable person would understand from the statement or actions.⁶³ Further, withdrawing consent cannot be ambiguous and must be done using an unequivocal statement or action.⁶⁴

Here, it is highly likely the Court will consider the exterior of the spare tire to be an objectively reasonable location to search for contraband. Sanchez consented to the Trooper's search for contraband.⁶⁵ Therefore, the scope of consent encompassed locations within the vehicle that would be objectively reasonable to search when looking for contraband.⁶⁶ Based on court precedent allowing the search of the interior of various containers during a consensual search for contraband, the exterior of any item within a vehicle, including a tire, likely falls within the scope of consent.⁶⁷

Additionally, the Court will likely hold Sanchez's subsequent response to the Trooper's request for specific consent to

⁵⁹ *Id.* at *21–22 (citing *Jimeno*, 500 U.S. at 251)).

⁶⁰ *United States v. Cannon*, 29 F.3d 472, 477 (9th Cir. 1994); Opening Brief of Appellant, *supra* note 1, at *18 (citing *Jimeno*, 500 U.S. at 252).

⁶¹ Opening Brief of Appellant, *supra* note 1, at *20 (citing *Jimeno*, 500 U.S. at 251–52).

⁶² *United States v. Russell*, 664 F.3d 1279, 1282, 1284 (9th Cir. 2012) (citing *United States v. Sanders*, 424 F.3d 768, 776 (8th Cir. 2005)).

⁶³ *Sanders*, 424 F.3d at 774 (8th Cir. 2005) (holding the action of repeatedly covering pockets during a consensual search to withdraw consent to search pockets because reasonable person would understand this as a withdrawal).

⁶⁴ *Id.* at 774–75; *United States v. Gray*, 369 F.3d 1024, 1026 (8th Cir. 2004) (citing *United States v. Ross*, 263 F.3d 844, 846 (8th Cir. 2001) (holding statement about a search taking too long is not an unequivocal withdrawal of consent)).

⁶⁵ Opening Brief of Appellant, *supra* note 1, at *5.

⁶⁶ Answering Brief of the United States at *22–23, *United States v. Sanchez*, (9th Cir. Apr. 13, 2020) (No. 19-30248) (citing *United States v. Gutierrez-Mederos*, 965 F.2d 800, 803–04 (9th Cir. 1992)); Opening Brief of Appellant, *supra* note 1, at *5, 17–18 (citing *Jimeno*, 500 U.S. at 251).

⁶⁷ Answering Brief of the United States, *supra* note 2, at *22 (citing *United States v. Cannon*, 29 F.2d 472, 477 (9th Cir. 1994)).

search the tire did not limit the original consent.⁶⁸ Sanchez consented to the search of the vehicle and, therefore, could limit or withdraw his consent.⁶⁹ However, following the Eighth Circuit's standard, Sanchez's statement, "It's not my tire," is unlikely to be understood by an objectively reasonable person as withdrawing consent because it is a statement regarding the tire's ownership and does not directly address the scope of the search.⁷⁰ Further, as it does not expressly limit the scope of the consensual search, it is unlikely to be seen as an unequivocal statement withdrawing consent to search the spare tire.⁷¹ Therefore, the Court will likely hold that the Trooper's inspection of the exterior of the tire was constitutional.

Since the inspection of the exterior of the tire was likely within the scope of consent, the Trooper's use of a drug-detection dog on the exterior of the tire is also likely constitutional. Sanchez's unwithdrawn consent to search for contraband likely justified the Trooper's use of a drug-detection dog on the exterior of the spare tire.⁷² The positive alert from the Trooper's drug-detection dog provided probable cause to search the interior of the tire.⁷³ Moreover, Sanchez supplied specific consent to search the interior of the tire by stating "[y]eah," when asked by the Trooper if he could take the tire to a nearby shop to remove it from the rim.⁷⁴ Therefore, the Court will likely hold the search of the tire's interior to be constitutional.

V. CONCLUSION

This case presents opportunities for the Ninth Circuit, first, to solidify the *Rodriguez* rule that prolonging a traffic stop beyond the stop's mission requires reasonable suspicion, and, second, to set precedent on what constitutes a withdrawal of consent. The Court will likely hold that the Trooper had reasonable suspicion to prolong the stop, making the stop's extension constitutional. Additionally, due to the broad scope of Sanchez's consent to search for contraband, the Court will likely hold the search of the exterior of the tire fell

⁶⁸ Opening Brief of Appellant, *supra* note 1, at *18–19.

⁶⁹ *Id.*; Answering Brief of the United States, *supra* note 2, at *22.

⁷⁰ Opening Brief of Appellant, *supra* note 1, at *6.

⁷¹ *United States v. Gray*, 369 F.3d 1024, 1026 (8th Cir. 2004) (citing *United States v. Ross*, 263 F.3d 844, 846 (8th Cir. 2001)).

⁷² Answering Brief of the United States, *supra* note 2, at *7–8.

⁷³ *Id.* at *24 (citing *United States v. Harris*, 568 U.S. 237(2015)) (note: correct citation for cited case is *Florida v. Harris*, 568 U.S. 237 (2013)); *Florida v. Harris*, 568 U.S. 237 (2013) (holding an alert from a reliable drug detection dog provides probable cause).

⁷⁴ Answering Brief of the United States, *supra* note 2, at *23.

within the scope of the initial consent. Moreover, Sanchez's subsequent statement that the tire did not belong to him was not an unequivocal withdrawal of consent. Therefore, the Court will likely hold the scope of consent was not subsequently limited. Finally, since the search of the tire's exterior was likely constitutional, the use of the drug-detection dog on the exterior is also likely constitutional. The resulting probable cause from the drug-detection dog's alert along with Sanchez's additional consent makes it highly likely the Court will hold the Trooper's search of the tire's interior to be constitutional. Therefore, the Ninth Circuit will probably uphold the district court's denial of Appellant's motion to suppress.