

APPENDIX

APPENDIX

Amended memorandum. 1

Order denying rehearing en banc.5

Excerpts of district court orders denying
 motion to suppress. 7

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 12 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LESHAWN LAWSON,

Defendant-Appellant.

No. 17-10063

D.C. No. 4:15-cr-00119-PJH-1

AMENDED
MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, Chief Judge, Presiding

Argued and Submitted April 10, 2018
San Francisco, California

Before: WARDLAW and CLIFTON, Circuit Judges, and KATZMANN,** Judge.

LeShawn Lawson was indicted for one count of possession with intent to distribute more than five kilograms of cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). The district court denied Lawson's motions to suppress evidence collected pursuant to three GPS tracking warrants and a UPS package search

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Gary S. Katzmman, Judge for the United States Court of International Trade, sitting by designation.

warrant, the traffic stop of his Bentley, and the subsequent consensual vehicle search. After a bench trial, Lawson was found guilty and sentenced to 214 months' imprisonment, to be followed by five years' supervised release. Lawson now appeals, challenging the district court's denial of his motions to suppress. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

This Court reviews the district court's denial of a motion to suppress de novo, and its factual determinations for clear error. United States v. Fowlkes, 804 F.3d 954, 960 (9th Cir. 2015).

1. Lawson argues that the traffic stop of his Bentley and the subsequent search were the fruits of four prior surveillance warrants. Lawson is incorrect. Based upon his observations of Lawson's speeding and missing license plates, the arresting officer, Matthew Williams, had valid grounds to perform the traffic stop. The district court did not clearly err in finding that Williams reasonably perceived Lawson's traffic infractions, and Lawson does not challenge the district court's finding that he voluntarily consented to the search which yielded the cocaine. See United States v. Arreguin, 735 F.3d 1168, 1174 (9th Cir. 2013) (stating that trial court's credibility determinations are due special deference). Reasonable suspicion that a traffic violation occurred is sufficient to justify an investigatory stop, "even if the stop serves some other purpose" and "the ultimate charge was not related to the traffic

stop.” United States v. Willis, 431 F.3d 709, 715 (9th Cir. 2005) (citing Whren v. United States, 517 U.S. 806, 808–10, 813 (1996)).

2. Lawson also argues that even if the traffic stop and consensual search were not the fruit of invalid warrants, they nevertheless violated the Fourth Amendment because they were unreasonably prolonged. This argument fails. Rodriguez v. United States provides that a traffic stop “seizure remains lawful only ‘so long as [unrelated] inquiries do not measurably extend the duration of the stop.’” 135 S. Ct. 1609, 1615 (2015) (alteration in Rodriguez) (quoting Arizona v. Johnson, 555 U.S. 323, 333 (2009)). “An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” Id.

Here, Williams’ traffic stop of Lawson’s Bentley was not unreasonably prolonged. The district court found that Lawson consented to a search of the vehicle within five minutes into the stop, and that the subsequent background check on Lawson “came back clean” approximately seven minutes into the stop. The remainder of the stop consisted of Williams awaiting cover and conducting the consensual search. Altogether the stop lasted about twenty minutes. This timeframe is undisputed.

Beyond Lawson's explicit consent, Williams' grounds for the search were buttressed by facts providing independent reasonable suspicion that Lawson was involved in criminal activity. See United States v. Turvin, 517 F.3d 1097, 1099–1100 (9th Cir. 2008); United States v. Mendez, 476 F.3d 1077, 1081 (9th Cir. 2007). As the district court found, Williams detailed three factors supporting reasonable suspicion of criminal activity to investigate further: (1) the absence of luggage despite Lawson's statement that he had spent three weeks in Los Angeles; (2) Lawson's stated employment as an entertainer and iron worker, which would not pay enough for Lawson to afford the Bentley he was driving; and (3) Williams' knowledge that Interstate 580 was a well-known drug trafficking route from Los Angeles to San Francisco. Further, Rodriguez does not foreclose any and all questions not wholly related to perceived traffic infractions. See 135 S. Ct. at 1611. Williams' questioning of Lawson and observations regarding the inconsistency in his answers were reasonable. See United States v. Rojas-Millan, 234 F.3d 464, 469–70 (9th Cir. 2000).

For the foregoing reasons, we affirm the district court's ruling.¹

AFFIRMED.

¹ In light of our analysis, we need not review the constitutionality of the prior four warrants. We also note that the panel considered the applicability of United States v. Gorman, 859 F.3d 706 (9th Cir. 2017). Gorman is inapposite. In this case, Lawson consented to the police search of his vehicle that yielded cocaine.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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LESHAWN LAWSON,

Defendant-Appellant.

No. 17-10063

D.C. No.

4:15-cr-00119-PJH-1

Northern District of California,
Oakland

ORDER

Before: WARDLAW and CLIFTON, Circuit Judges, and KATZMANN,* Judge.

The memorandum disposition filed on May 2, 2018, is hereby amended by inserting the following text at the end of footnote 1: <We also note that the panel considered the applicability of United States v. Gorman, 859 F.3d 706 (9th Cir. 2017). Gorman is inapposite. In this case, Lawson consented to the police search of his vehicle that yielded cocaine.>.

With the foregoing amendment, Judge Wardlaw votes to deny the petition for rehearing en banc, and Judge Clifton and Judge Katzmnn so recommend. The full court has been advised of the suggestion for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is therefore **DENIED**. No further

* The Honorable Gary S. Katzmnn, Judge for the United States Court of International Trade, sitting by designation.

petitions for rehearing or rehearing en banc will be entertained.

United States District Court
Northern District of California

I. Motion to Suppress Evidence From Warrantless Search and Seizure

Defendant seeks suppression of all the evidence seized from his person and from inside the Bentley, including evidence found in the trunk of the car, without a warrant on February 6, 2015. The court previously found that the government did not establish probable cause to conduct the search, and the government did not proffer additional evidence to make a probable cause showing. The government asserts that Officer Williams asked for and obtained defendant's consent to conduct the warrantless search of his person and his car. Defendant denies that he consented to Officer Williams's search of his person or his vehicle.

A. Conflicting Testimony Whether Defendant Consented to the Search

Both Officer Williams and defendant testified about the disputed issue whether defendant consented to the search of his person and car during the course of the traffic stop on February 6, 2015.

1. Officer Williams's Account

Officer Williams testified that after he pulled over defendant's car, he asked defendant to roll down the back windows, which were tinted, because Officer Williams could not see if anyone was sitting in the back of the car. Officer Williams also testified that he asked defendant for his driver's license, but did not ask defendant to turn over his keys at that time. Officer Williams engaged in brief conversation, asking defendant where he was coming from, to which defendant answered he was driving from Los Angeles and had been there for three weeks. Officer Williams stated in the arrest report that he asked defendant what he was doing in Los Angeles, and defendant answered that he works there as an entertainer at the clubs and that he works in the Bay Area as an iron worker. Doc. no. 51, Ex. A-1 (arrest report). Officer Williams testified that he made a remark that defendant didn't have much luggage, to which defendant responded by pointing to his Louis Vuitton duffle bag on the front passenger seat. The arrest report reflects that defendant explained that he had been driving back and forth so he doesn't take too much with him. Officer Williams testified that he commented on defendant's nice

1 car, a Bentley, and defendant explained that the car was not really expensive and that he
2 was paying it off monthly. The arrest report states that defendant told Officer Williams
3 that the Bentley was only a 2006 model and that he pays around \$470 per month for it.
4 On cross-examination, Officer Williams defended the accuracy of his account and
5 testified that he made mental notes of his conversation with defendant, including
6 defendant's statement that he was paying \$470 per month on the Bentley, before
7 preparing the arrest report later that day.

8 Officer Williams testified that during the course of his conversation with defendant,
9 Officer Williams asked defendant if he was on probation or parole and, as stated in the
10 arrest report, Officer Williams reported that defendant responded that he was not on
11 either and had not been in trouble in quite some time. Officer Williams also testified that
12 he asked defendant if he had anything illegal, which defendant denied, as indicated in the
13 arrest report.

14 Officer Williams testified that he asked defendant if he could search, and
15 defendant said, "Go ahead," which Officer Williams understood as consent to search
16 defendant's person and his car. Officer Williams then went back to the patrol car, asked
17 for cover, and then ran a background check on defendant. Officer Williams testified that
18 when back-up arrived at the scene, he started to search defendant's car. Officer Williams
19 testified that Officer Grejada responded to his request for back-up, and that Grejada
20 arrived at the scene before defendant exited the car; with respect to the timing of
21 Grejada's arrival, defense counsel pointed out that Officer Williams wrote in his arrest
22 report that "[a]s I was walking with Lawson to the sidewalk, Officer Grejada arrived on -
23 scene."

24 Officer Williams testified that he asked defendant to get out of the car and that he
25 searched defendant's person. Officer Williams testified that he did not take the keys from
26 defendant when defendant got out of the car. Officer Williams testified that the keys were
27 still inside the car at that point, and that he took the car keys after searching the interior of
28

1 the car. According to Officer Williams, he saw the keys inside the car, but he did not
2 remember whether the keys were in the ignition.

3 Officer Williams testified that he asked defendant to sit on the curb, and defendant
4 complied. Grejada was standing behind defendant. Officer Williams testified that after
5 he searched the interior of the car, he was holding the car keys when he asked defendant
6 how to open the trunk. According to Officer Williams, defendant told him that the trunk
7 release was in the glove compartment, but Officer Williams found the trunk release button
8 on the key fob. Officer Williams did not recall asking defendant separately for consent to
9 search the trunk. Officer Williams testified that he saw bricks, wrapped in green saran
10 wrap, in plain view in the trunk.

11 2. Defendant's Testimony

12 Defendant waived his Fifth Amendment privilege for the limited purpose of
13 testifying on the issues raised by his motions to suppress. On the issue of consent,
14 defendant testified at the outset that he never gave Officer Williams consent to search his
15 car or his person. Defendant denied that Officer Williams ever asked for his consent to
16 search, and stated that he would be crazy to give consent. Defendant opined that Officer
17 Williams knew that defendant would not cooperate, and testified that during the
18 encounter, lasting about 10 minutes, not once did Officer Williams ask for consent to
19 conduct the search.

20 Defendant denied other statements attributed to him by Officer Williams in the
21 arrest report or during testimony. Defendant denied telling Officer Williams that he pays
22 \$470 per month on the Bentley, noting that the discovery produced in this case indicates
23 that his car was paid off. Defendant further denied having a conversation where he told
24 Officer Williams that he hasn't been in trouble for a long time. Defendant also testified
25 that he did not discuss his employment with Officer Williams at the scene, but later in the
26 interview room at the police station. Defendant denied telling Officer Williams that the
27 trunk release was in the glove box because the trunk release is on the driver-side door,
28 referring to photos of the Bentley left door handle. Def. Exs. C and H.

GPS tracking device on the Bentley on December 30, 2014, and again installed a GPS device on January 23, 2015. Mot. Suppress Bentley Warrant (doc. no. 42) at 12.

E. Traffic Stop

During the evening of February 5, 2015, DEA agents observed that the tracker data for the Bentley showed that defendant had traveled from the Bay Area to Los Angeles. Opp. Mot. Suppress Unlawful Traffic Stop, Ex. B (doc. no. 51) ("Winston Decl.") ¶ 3. On February 6, 2015, at about 7:15 a.m., DEA Agent Winston monitored the GPS tracker data which indicated that defendant was driving back to the Bay Area from Los Angeles. *Id.* ¶ 4. Agent Winston telephoned Livermore Police Detective Al Grejada, informed him of the DEA's investigation of defendant and the active GPS tracker on defendant's Bentley with a description of the Bentley, and requested that an officer from the Livermore Police Department perform a traffic stop on the Bentley if it drove through their jurisdiction. *Id.*

On February 6, 2015, at about 8:30 a.m., Livermore Police Officer Matthew Williams received a call from Detective Grejada, who informed Officer Williams of the DEA investigation of defendant and asked him to perform a traffic stop on defendant's Bentley if located while it passed through the Livermore area. Opp. Mot. Suppress Unlawful Traffic Stop, Ex. A (doc. no. 51) ("Williams Decl.") ¶ 2. At about 9:30 a.m., Officer Williams observed a white Bentley traveling without any license plates on the vehicle, in violation of California Vehicle Code § 5200, and traveling at approximately 75 MPH in a posted 55 MPH construction zone, in violation of Vehicle Code § 22349(a). Opp. Mot. Suppress Unlawful Stop (doc. no. 51), Ex. A-1 (Arrest Report). Officer Williams pulled over the Bentley, driven by defendant, for a traffic stop. With the Bentley stopped, Officer Williams exited his patrol car and contacted defendant as he sat in the driver's seat. *Id.* In a late-filed declaration, defendant states that Officer Williams approached defendant's car with his hand on his gun, spoke in a commanding and forceful tone, and ordered defendant to hand over the keys and roll down all the windows of the vehicle. Lawson Decl. (doc. no. 60) ¶ 9.

As reported by Officer Williams, he asked defendant several questions while holding a casual conversation. According to the arrest report, Officer Williams asked defendant if he would mind having his person and vehicle searched, and defendant responded, "Go ahead, I don't have anything in my car." Arrest Report (doc. no. 51) at LAWSON-0031. Defendant disputes that he ever gave anyone consent to enter or search any part of his vehicle. Lawson Decl. (doc. no. 60) ¶ 11.

Officer Williams requested another officer for back-up and asked defendant to step out of the vehicle. According to the arrest report, Officer Williams conducted a consent search of defendant's person when he stepped out of the car. Officer Williams located a large amount of U.S. currency in defendant's right front pants pocket and left rear pants pocket. After searching defendant's person, Officer Williams asked him to walk to the sidewalk and sit on the curb. As Officer Williams was walking with defendant to the sidewalk, Officer Grejada arrived on the scene. Officer Williams then commenced a search of the vehicle and searched the inside of a duffle bag on the front passenger seat that contained a large amount of cash in \$100 bills, as well as a camera and two cell phones. Arrest Report (doc. no. 51) at LAWSON-0031-0032.

Officer Williams reported that when he had finished searching the interior of the vehicle, he asked defendant how to open the trunk, while holding the keys to the vehicle. Officer Williams saw the trunk release on the key fob and pushed it to open the trunk, where he found another duffle bag containing bricks of suspected drugs, as well as license plates issued for the Bentley. Arrest Report (doc. no. 51) at LAWSON-0032; Williams Decl. ¶ 4. Defendant was arrested and transported to the Livermore Police station, where Officer Williams read defendant his *Miranda* rights. Williams Decl. ¶ 5.

II. Motions to Suppress Evidence Obtained Pursuant to Warrants

Defendant moves to suppress evidence seized pursuant to the three GPS tracking warrants (Captiva, Equinox and Bentley) and the UPS parcel warrant. Doc. nos. 39-42. The government filed a consolidated opposition to those four motions to suppress, which does not challenge defendant's standing to bring those motions. Doc. no. 52. Defendant

1 particularly where the content of their communications with law enforcement has already
2 been disclosed.

3 Having weighed defendant's interest in challenging probable cause, where none of
4 the informants will be called to testify at trial and the government has disclosed the
5 content of their communications with law enforcement, against the strong public interest
6 against disclosure, the court DENIES the motion for an order directing the government to
7 disclose the identity of the informants, to produce them for interviews, and to reveal their
8 locations. Doc. no. 45.

9 **IV. Motion to Suppress Evidence From Unlawful Stop and Prolonged Detention**

10 Defendant seeks an order suppressing all evidence obtained as a result of an
11 unlawful traffic stop, prolonged detention, de facto arrest, and warrantless search and
12 seizure of his person and vehicle on February 6, 2015. Doc. no. 43.

13 **A. Legal Standard**

14 The Fourth Amendment guarantees "[t]he right of the people to be secure in their
15 persons, houses, papers, and effects, against unreasonable searches and seizures."
16 U.S. Const. amend. IV. Because stopping an automobile and detaining its occupants,
17 "even if only for a brief period and for a limited purpose," constitutes a "seizure" under the
18 Fourth Amendment, an official must have individualized "reasonable suspicion" of
19 unlawful conduct to carry out such a stop. *Tarabochia v. Adkins*, 766 F.3d 1115, 1121
20 (9th Cir. 2014) (citing *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *Delaware v.*
21 *Prouse*, 440 U.S. 648, 663 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-
22 86 (1975)).

23 "Reasonable suspicion" means "a particularized and objective basis for suspecting
24 the particular person stopped of criminal activity." *United States v. Twillett*, 222 F.3d
25 1092, 1095 (9th Cir. 2000). It is defined as a suspicion based on "specific and articulable
26 facts which, taken together with rational inferences from those facts," justify a police
27 intrusion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "The reasonable suspicion standard is
28 not a particularly high threshold to reach. 'Although . . . a mere hunch is insufficient to

1 justify a stop, the likelihood of criminal activity need not rise to the level required for
2 probable cause, and it falls considerably short of satisfying a preponderance of the
3 evidence standard." *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013)
4 (en banc) (quoting *Arvizu*, 534 U.S. at 274).

5 In addition, when reviewing the record for the existence of reasonable suspicion,
6 "we 'must look at the totality of the circumstances.'" *Valdes-Vega*, 738 F.3d at 1078
7 (quoting *Arvizu*, 534 U.S. at 274). "This process allows officers to draw on their own
8 experience and specialized training to make inferences from and deductions about the
9 cumulative information available to them that might well elude an untrained person."
10 *Arvizu*, 534 U.S. at 273 (citations and internal quotation marks omitted).

11 B. Traffic Stop

12 Defendant moves to suppress all evidence obtained directly or indirectly as the
13 result of the unlawful traffic stop on February 6, 2015, for lack of reasonable suspicion.
14 Officer Williams articulated two bases for conducting the stop of the Bentley: (1) that
15 there was "no plate" affixed to the rear of the vehicle, in violation of California Vehicle
16 Code § 5200; and (2) that he paced the Bentley traveling at approximately 75 mph in a
17 55 mph zone, a violation of California Vehicle Code § 22349(a). Doc. no. 43.

18 1. Missing License Plates

19 Officer Williams reported that the Bentley did not have a license plate affixed to the
20 front or back of the vehicle in violation of Vehicle Code § 5200. Section 5200 provides as
21 follows:

22 (a) When two license plates are issued by the department for
23 use upon a vehicle, they shall be attached to the vehicle for
24 which they were issued, one in the front and the other in the
rear.

25 (b) When only one license plate is issued for use upon a
vehicle, it shall be attached to the rear thereof

26 Defendant contests this assertion, referring to photos taken during the search to
27 demonstrate that the Bentley displayed a dealer plate reading "California Wheels San
28 Jose" at the time of the stop, and had report-of-sale paperwork affixed to the lower-right

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corner of the front windscreen, permitting the lawful operation of the vehicle without license plates or registration pursuant to California Vehicle Code § 4456(c). Mot. Traffic Stop (doc. no. 43), Ex. A. Section 4456(c) provides that a vehicle displaying a copy of the report of sale may be operated without license plates or registration card until either (1) the license plates and registration card are received by the purchaser, or (2) a 90-day period, commencing with the date of sale of the vehicle, has expired, whichever occurs first.

The government responds that although defendant attempts to characterize the "California Wheels San Jose" placard as a "dealer plate," Mot. Traffic Stop (doc. no. 43) at 8, the picture of the placard distinctly shows that it was not an authorized dealer license plate allowing a motor vehicle to operate on the roadway. *Id.*, Ex. A. Defendant contends, however, that his vehicle displayed the "plates" of an automobile dealer no different than those displayed on thousands of cars in California when freshly purchased at any given time. Reply (doc. no. 58) at 3:16-18. Defendant cites no authority to support his contention that the plate displayed on his car complied with the Vehicle Code.

Furthermore, the government contends that due to the heavily tinted windows, Officer Williams was unable to see if the Bentley had a temporary registration sticker or report of sale documentation attached to the front windshield and had reasonable suspicion to pull the Bentley over to investigate further. Defendant responds that because the photos taken of the Bentley in its resting position after the stop clearly demonstrate that the requisite report-of-sale paperwork was plainly visible, the extent that the "no plate" formed the basis of a reasonable suspicion to detain the vehicle and its occupants, that reasonable suspicion quickly dissipated. Reply (doc. no. 58) at 3. Under the reasonable suspicion standard, however, an officer is not required to negate every possible explanation of innocence before taking action. *See United States v. Tiong*, 224 F.3d 1136, 1140 (9th Cir. 2000) ("Despite a possible innocent explanation for every police observation, a stop may be founded on reasonable suspicion."); *United States v. Tuyakbayev*, No. 15-CR-00086-MEJ, 2015 WL 4692847, at *5 (N.D. Cal. Aug. 6, 2015).

1 Defendant asserts that the temporary registration for the Bentley was affixed to the
2 windshield in the lower right corner, and that it was visible to Officer Williams. Lawson
3 Decl. (doc. no. 60) ¶ 6. The government points out that the license plates for the Bentley
4 had been issued and were found in the trunk of the car, so that the exception under
5 4456(c) permitting operation of the car with only report of sale paperwork would not have
6 applied. Opp. (doc. no. 51) at 8. Even if the temporary registration papers were valid
7 and displayed on the windshield, the absence of any license plates affixed to the Bentley
8 justified an investigatory stop under the reasonable suspicion standard. *See United*
9 *States v. Lopez*, No. C 08-00342 SI, 2008 WL 4820753, at *2 (N.D. Cal. Nov. 3, 2008)
10 (officer's observation that defendant's car did not have a front license plate supported
11 reasonable suspicion to justify the traffic stop), *aff'd*, 397 Fed. Appx. 338 (9th Cir. 2010).

12 2. Exceeding the Speed Limit

13 Officer Williams paced the Bentley for approximately 200 yards and concluded that
14 defendant was traveling at a speed of approximately 75 mph in a 55 mph construction
15 zone, in violation of California Vehicle Code § 22349(a). Arrest Report (doc. no. 51),
16 Exhibit A-1 at 2. Defendant notes that Officer Williams does not have any radar evidence
17 of his actual speed, relying instead only upon his visual estimate. Mot. Traffic Stop (doc.
18 no. 43) at 9. Furthermore, even though Officer Williams noted in his police report that he
19 paced defendant as exceeding the speed limit, when he radioed in the stop to dispatch,
20 he described it as a "no plate," and not speeding. *Id.* Defendant asserts that it would
21 have been impossible for Officer Williams to "pace" him at approximately 75 mph given
22 the traffic conditions because Officer Lawson would not have been able to accelerate to a
23 speed of 75 mph given the traffic conditions in the span of two exits. *Id.* Defendant
24 admits he has no affirmative evidence of how fast he was going, but states that he was
25 merely traveling with the flow of traffic, which was traveling bumper to bumper at the
26 speed limit, and he argues that traffic was too thick on westbound I-580 at 9:30 a.m. on a
27 Friday morning to exceed 55 mph. *Id.*; Lawson Decl. (doc. no. 60) ¶ 4.

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1 The record reflects that Officer Williams' suspicion that defendant was speeding
2 was not premised on a mere hunch, but rather, Officer Williams supported his visual
3 estimate by pacing the vehicle, which indicated that defendant was traveling in excess of
4 75 MPH in a 55 MPH construction zone. Further, he found the difference between the
5 estimated speed and the legal speed limit to be an estimated 20 MPH. These
6 observations support the reasonableness of Officer Williams' belief that defendant was
7 speeding. See *Tuyakbayev*, 2015 WL 4692847, at *5 (officer's visual estimate that the
8 defendant was driving at 20 mph above the speed limit, combined with hearing a loud
9 engine accelerating toward him, supported reasonable suspicion to conduct an
10 investigatory stop).

11 3. Pretextual Stop

12 Defendant further challenges the traffic stop for Vehicle Code violations as
13 pretextual, informed and assisted by DEA agents monitoring defendant's movements.
14 He argues that Officer Williams was called upon by the DEA to improperly stop a vehicle
15 which they were currently tracking and maintaining "mobile surveillance" of, in a fishing
16 expedition for evidence of narcotics trafficking that their multi-year and multi-agency
17 investigation had failed to provide. Mot. Traffic Stop (doc. no. 43) at 9. The government
18 does not dispute that Officer Williams was asked to perform a traffic stop on the Bentley.
19 Williams Decl. (doc. no. 51) ¶ 2. Even if the traffic stop served "some other purpose,"
20 reasonable suspicion to believe that a traffic violation occurred is sufficient to justify an
21 investigatory stop. *United States v. Willis*, 431 F.3d 709, 715 (9th Cir. 2005) (citing
22 *Whren v. United States*, 517 U.S. 806, 810, 813 (1996)). See *United States v. Choudhry*,
23 461 F.3d 1097, 1101-02 (9th Cir. 2006). In *Whren v. United States*, the Supreme Court
24 "specifically declined to hold that the Fourth Amendment test for traffic stops should be
25 'whether a police officer, acting reasonably, would have made the stop for the reason
26 given.'" *Willis*, 431 F.3d at 715 (quoting *Whren v. United States*, 517 U.S. 806, 810, 813
27 (1996)).
28

Defendant also raises the possibility that this was a racially motivated stop of an African-American male driving an expensive car, Mot. Traffic Stop (doc. no. 43) at 10, but the record reflects that Officer Williams stopped defendant at the request of the DEA as part of an investigation, not due to racial animus. Because Officer Williams had reasonable suspicion to believe that defendant violated provisions of the Vehicle Code, the traffic stop was reasonable.

C. Prolonged Detention

Defendant contends that even if the traffic stop was initially justified, Officer Williams's line of questioning unreasonably prolonged the stop and became an unreasonable seizure, citing *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

Even a seizure that is lawful "can violate the Fourth Amendment if its manner of execution unreasonably infringes on interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). In *Rodriguez*, the Supreme Court held:

Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission" - to address the traffic violation that warranted the stop and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." Authority for the seizure thus ends when tasks tied to the traffic infraction are - or reasonably should have been - completed.

Rodriguez, 135 S. Ct. at 1614 (internal citations omitted). The Court in *Rodriguez* explained that "[t]he seizure remains lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.'" *Id.* at 1615 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)). "An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop[, but] may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* at 1615. See also *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (holding that "mere police questioning does not constitute a seizure" unless it prolongs the detention of the individual; thus, no reasonable suspicion is required to justify questioning that does not prolong the stop).

1 **1. Traffic Stop Was Not Unreasonably Prolonged**

2 Defendant contends that Officer Williams unreasonably prolonged the traffic stop
3 after pulling over defendant and articulating his stated reasons for doing so, by
4 interrogating defendant inappropriately for an undue amount of time about his travels, his
5 employment, and his vehicle. Mot. Traffic Stop (doc. no. 43) at 13. Defendant points out
6 that Officer Williams did not even begin the process of writing a ticket for speeding or
7 missing license plates.

8 Officer Williams states his belief that it took less than five minutes between the
9 initiation of the traffic stop and obtaining defendant's consent to search the vehicle.
10 Williams Decl. (doc. no. 51) ¶ 3. Defendant argues that Officer Williams reasonably
11 should have completed the process of dealing with the alleged Vehicle Code violations
12 within five minutes, and that the "casual conversation" and inquiries prolonged the traffic
13 stop beyond the time reasonably required to issue a ticket. Reply (doc. no. 58) at 4.
14 Defendant cites the CAD dispatch recording which indicates that the probation/parole
15 check on Lawson came back clean at approximately seven minutes into the stop. Mot.
16 Traffic Stop (doc. no. 43) at 12-13. Defendant also states that approximately 20 minutes
17 after the stop was made, Officer Williams radioed to dispatch that he had entered the
18 trunk of the vehicle and located a license plate. *Id.* at 13. The parties did not submit the
19 CAD records to the court, but the government does not dispute defendant's
20 representation about this time frame. Defendant states that he estimates that the
21 duration of the traffic stop and search of his car was about 20 minutes. Lawson Decl.
22 (doc. no. 60) ¶ 12.

23 Ninth Circuit authority recognizes that "officers are not required to move at top
24 speed when executing a lawful traffic stop," and are not prohibited from taking a brief
25 pause to ask a few questions unrelated to the purpose of the traffic stop, as long as the
26 traffic stop is not unreasonably prolonged under the totality of the circumstances. See
27 *United States v. Turvin*, 517 F.3d 1097, 1101-02 (9th Cir. 2008) (holding that an officer
28 who stopped writing out traffic citations to turn on a tape recorder and ask the defendant

1 about drugs and for consent to search his vehicle did not unreasonably prolong the traffic
2 stop). In *Turvin*, the total duration of the traffic stop up to the point when the defendant
3 consented to the search was about 14 minutes. *Turvin*, 517 F.3d at 1101. The court in
4 *Turvin* concluded that this was no longer than an ordinary traffic stop and that evidentiary
5 findings were not necessary "to demonstrate the sensible observation that fourteen
6 minutes is not unreasonably long for a traffic stop." *Id.* Similarly, in *United States v.*
7 *Mendez*, 476 F.3d 1077 (9th Cir. 2007), the court held that the officers' questioning did
8 not unreasonably prolong the duration of a lawful stop, where the entire encounter
9 between the police and the motorist up to the time of the arrest and search took
10 approximately eight minutes, and the questioning occurred while the police detective was
11 running an identification check. *Mendez*, 476 F.3d at 1079-81.

12 Here, the record demonstrates that Officer Williams's questioning was of some
13 duration up to 20 minutes after the initial stop, at which point defendant was sitting on the
14 curb and Officer Williams had searched the trunk of defendant's car and reported finding
15 a license plate inside. Mot. Traffic Stop (doc. no. 43) at 13. Although there is a factual
16 dispute as to the duration of the stop prior to the search of the car, even if taking
17 defendant's estimate as accurate, a 20-minute traffic stop, like the 14-minute traffic stop
18 in *Turvin*, is not unreasonably prolonged under the circumstances. In particular, Officer
19 Williams ran a probation/parole check during the time that Officer Williams questioned
20 defendant and asked for consent to search, as in *Mendez*, and had to wait about 7
21 minutes for the results.

22 2. Reasonable Suspicion

23 Even if it could be said that the questioning by Officer Williams unreasonably
24 prolonged the traffic stop, the questioning was justified by reasonable suspicion that
25 defendant was involved in other criminal activity. See *Turvin*, 517 F.3d at 1099-1100;
26 *Mendez*, 476 F.3d at 1081.

27 Here, as in *Turvin*, it was reasonable for Officer Williams to ask questions based
28 on information learned during the course of the stop. *Turvin*, 517 F.3d at 1102. Officer

Williams' questions and request to search were reasonable based on facts learned and observations made after he stopped defendant. As stated in his report, Officer Williams detailed three factors supporting reasonable suspicion of criminal activity to further investigate: (1) absence of luggage, given that defendant stated that he spent the last three weeks in Los Angeles; (2) defendant's stated employment as an entertainer and iron worker, jobs which did not usually pay enough to afford the expense of a Bentley; and (3) Officer Williams's knowledge that Interstate 580 was a well-known drug trafficking route from Los Angeles to San Francisco. Arrest Report (doc. no. 51) at LAWSON-0031. Courts have consistently held that inconsistent, vague or evasive stories about travel plans are suspicious factors, such as taking a long distance trip by automobile for only a short stay. *United States v. Rojas-Millan*, 234 F.3d 464, 470 (9th Cir. 2000). See also *United States v. Garcia*, 205 F.3d 1182, 1185 (9th Cir. 2000). Viewed under the totality of the circumstances, Officer Williams's observations supported an articulable and reasonable suspicion to continue questioning defendant.

D. De Facto Arrest

Defendant contends that he was detained during the traffic stop in such a manner as to constitute a de facto arrest unsupported by probable cause:

Immediately upon approaching the car, Officer Williams removed any question that Mr. Lawson was free to leave by demanding that he hand over his keys and roll down all the windows. Thereafter, Officer Williams engaged in an accusatory line of questioning wholly unrelated to the purported purpose of the stop. After crudely insinuating that the Bentley was too nice of a vehicle for a man like Lawson to drive, Williams ordered Lawson out of the vehicle, removed his belongs from his person, and made him sit on the curb and watch as he rifled through Lawson's belongings. Detective Al Grejada stood over Lawson as this occurred. Mr. Lawson was outnumbered, intimidated by an undue show of authority, and uninformed of his rights.

Mot. Traffic Stop (doc. no. 43) at 14-15.

To determine whether a detention exceeds the bounds of an investigatory stop and amounts to a de facto arrest, courts look to the totality of the circumstances. *United States v. Ricardo D.*, 912 F.2d 337, 342 (9th Cir. 1990). "Whether an arrest has