No. ____________

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE GABRIEL DURAN GARCIA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari *to the United States Court of Appeals for the Fourth Circuit*

Appendix to
Petition for a *Writ of Certiorari*

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APPENDIX CONTENTS

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4631

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE GABRIEL DURAN GARCIA,

Defendant – Appellant.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Donald C. Coggins, Jr., District Judge. (7:21-cr-00523-DCC-1)

Argued: December 10, 2025 Decided: March 5, 2026

Before DIAZ, Chief Judge, GREGORY, Circuit Judge, and Gina M. GROH, United States District Judge for the Northern District of West Virginia, sitting by designation.

Affirmed by unpublished opinion. Judge Gregory wrote the opinion, in which Chief Judge Diaz and Judge Groh joined.

ARGUED: Howard Walton Anderson, III, TRULUCK THOMASON LLC, Greenville, South Carolina, for Appellant. Benjamin Neale Garner, OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee. **ON BRIEF:** Adair F. Boroughs, United States Attorney, Leesa Washington, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

GREGORY, Circuit Judge:

On an evening in November, two police officers stopped a bus for traffic law violations, asked the bus driver for consent to search the bus's luggage hold, and brought a drug-detection dog to sniff the open hold. After determining that the dog alerted, one of the officers searched a suitcase and recovered ten kilograms of cocaine. The police later recovered another ten kilograms of cocaine from an identical suitcase. Jose Duran Garcia was ultimately connected to the suitcases and charged with cocaine possession, among other offenses. After the district court denied Duran's motion to suppress the evidence recovered from the search, Duran pleaded guilty to the offenses charged. He now appeals the district court's denial of his motion to suppress.

For the reasons below, we affirm the district court's judgment.

I.

A.

Two police officers with the Duncan Police Department—Officers Wright and Bembenek—stopped a Wanda Coach bus traveling from Atlanta to New York for speeding and failure to maintain a single lane of traffic. During the stop, Officer Bembenek asked the bus driver whether they could open up and search the bus's exterior luggage hold. The bus driver consented.[1] Officer Wright then had a drug dog, Kaos, sniff the bus's luggage hold while Officer Wright wrote the bus driver a traffic ticket. Officer Wright testified that

[1] On appeal, neither party challenges the district court's factual finding that the bus driver consented to the officers' search of the bus luggage hold.

law enforcement did not have any particular reason to "believe that the bus was involved in illegal activities" before Kaos's sniff. J.A. 288.

Kaos was trained to alert handlers to the presence of drugs by sitting down after he sniffed. Before Kaos began sniffing, Officer Wright had him sit down on the road behind the bus. Officer Wright then brought Kaos to the luggage hold, which was open and contained a pile of approximately fifteen pieces of luggage in a confined area. Kaos was taken past the luggage compartment twice, but he did not sit down. Even so, Officer Wright determined that Kaos had alerted him to the presence of drugs based on his assessment of Kaos's "breathing," "walking speed," and the speed and "pattern" of Kaos's tail. J.A. 253.

After receiving Kaos's alert, the officers searched several bags in the luggage compartment until they uncovered ten bricks of cocaine in a black suitcase. Officer Wright then asked the bus passengers to exit the bus and claim their luggage. Officer Wright asked Duran which bag was his as he exited the bus, but Duran responded that his only bag was inside the bus and he had no luggage stored in the compartment:

> Wright: Which bag is yours, sir?
>
> Defendant: Huh?
>
> Wright: Which bag is yours, sir?
>
> Defendant: I don't have a bag.
>
> Wright: You don't have any bag down south…?
>
> Defendant: No.

J.A. 50 at 07:43-08:06.

Shortly after that exchange, Officer Wright asked Duran whether he "checked any bags with [the bus company]," to which Duran replied, "no." J.A. 51 at 02:07-02:30.

After all the passengers claimed their luggage, only two black suitcases—one that the officers had already searched, and an identical unopened suitcase—were unclaimed. At that point, Officer Wright stated that he had reasonable suspicion to believe the suitcases were Duran's. Officer Wright searched Duran's pockets. The officers then searched the second suitcase and discovered an additional ten bricks of cocaine. Surveillance video from the bus terminal eventually revealed that Duran had placed those black suitcases in the luggage hold.

Duran was indicted on three counts: conspiracy with intent to distribute cocaine, interstate travel and transportation in aid of drug trafficking, and possession with intent to distribute cocaine.

B.

After the suppression hearing, the district court determined that because Duran had no property or possessory interest in the commercial bus, he could not challenge the bus driver's consent to search the luggage hold. The court then held that Duran lacked standing to challenge the search of both suitcases because he had denied ownership of the luggage on the scene. The district court ignored the timing of Duran's disavowal of ownership, instead stating that the officers were not required to determine ownership of the luggage before their search. J.A. 624. The court likewise noted that Duran had never claimed ownership of the suitcases. Finally, the court determined that, even if Duran had standing to bring a Fourth Amendment challenge, suppression would still be inappropriate because

Kaos reliably alerted Officer Wright to the presence of drugs in the luggage hold and therefore created probable cause to search the luggage.

Duran ultimately pleaded guilty to conspiracy with intent to distribute cocaine and possession with intent to distribute cocaine. The district court accepted his conditional plea, which permitted him to appeal the denial of his motion to suppress. The district court ultimately imposed a sentence of 108 months plus a term of supervised release and a mandatory special assessment of $200.

II.

We review legal conclusions in a motion to suppress de novo. *United States v. Castellanos*, 716 F.3d 828, 832 (4th Cir. 2013). We review a district court's factual findings—including its determination that property was abandoned—for clear error. *United States v. Ferebee*, 957 F.3d 406, 416 (4th Cir. 2020). When a motion to suppress "has been denied, we review the evidence in the light most favorable to the government." *United States v. Rush*, 808 F.3d 1007, 1010 (4th Cir. 2015).

III.

On appeal, Duran challenges the district court's determination that he lacked standing to challenge the officers' search of the first suitcase, which was searched before any disclaimer by Duran, and the second suitcase, which was searched after Duran's disclaimer. Because Duran had not abandoned the first suitcase prior to the officers' search, the district court's determination that Duran lacked standing to challenge the search of that suitcase was clearly erroneous.

A.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *Whren v. United States*, 517 U.S. 806, 809 (1996). Fourth Amendment rights are "personal" and "must be invoked by an individual." *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). To challenge the legality of a search, an individual must prove he has a "legitimate expectation of privacy" in the item or area searched. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). It is the defendant's burden to establish standing by a preponderance of the evidence. *United States v. Daniels*, 41 F.4th 412, 415 (4th Cir. 2022). But the government bears the burden of demonstrating that a warrantless seizure was reasonable. *United States v. Watson*, 703 F.3d 684, 689 (4th Cir. 2013); *see United States v. Denny*, 441 F.3d 1220, 1226 (10th Cir. 2006).

To determine whether a defendant has a reasonable expectation of privacy in property, we ask "whether that person claims an ownership or possessory interest in the property, and whether he has established a right or taken precautions to exclude others from the property." *Castellanos*, 716 F.3d at 833–34 (citing *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992)). An individual who abandons property relinquishes their privacy interest in the property and lacks standing to challenge a search. *Ferebee*, 957 F.3d at 413. We assess an individual's standing to challenge a search at the time of the search. *United States v. Smith*, 21 F.4th 122, 132–33 (4th Cir. 2021).

B.

First, we agree with the district court that Duran abandoned the second suitcase when he twice disavowed ownership of the suitcases before the officers searched it. *See*

J.A. 267; J.A. 624. Therefore, he lacks standing to challenge the search of the second suitcase.[2]

But we hold that the district court clearly erred in determining that Duran abandoned the first suitcase. Again, a defendant's standing is assessed at the time of the officer's search. *Smith*, 21 F.4th at 132–33. Because the search of the first suitcase occurred before Duran's disavowal, J.A. 50–51, the officers had no indication that anyone disclaimed the suitcases prior to their initial search. What's more, it was the government's burden to establish that the officers' warrantless search of the first suitcase was permissible. So though a district court's determination that a defendant "abandoned his privacy interest" in certain property is "a finding of fact," *Ferebee*, 957 F.3d at 416, that determination was "against the clear weight of the evidence" here. *United States v. Mayberry*, 125 F.4th 132, 145 (4th Cir. 2025), *cert. denied*, 145 S. Ct. 2722 (2025) (internal citations omitted).

Additionally, Duran maintains standing to challenge the search of the first suitcase. In his post-suppression hearing memorandum, Duran pointed to the government's evidence connecting Duran to the suitcases: the surveillance video footage of Duran loading the two suitcases into the bus's luggage compartment at the Atlanta bus terminal. *See* J.A. 196, 301–02. Indeed, the government pointed to that footage to establish Duran's "possession" of or "control" over the suitcases. *United States v. Rose*, 3 F.4th 722, 727 (2021). This

[2] We reject Duran's argument that his statement disavowing ownership of the suitcases should have been suppressed. Duran did not need to be *Mirandized* before he was questioned because the circumstances of the officers' questioning did not constitute custodial interrogation. *See United States v. Leggette*, 57 F.4th 406, 410 (4th Cir. 2023) ("[S]o long as a defendant is not 'in custody,' then statements made during an interrogation remain admissible, even if the defendant were not given *Miranda* warnings.").

surveillance footage suffices to establish that Duran maintained an ownership or possessory interest in the suitcases and accordingly maintained a reasonable expectation of privacy in the suitcases.[3] *See Bond v. United States*, 529 U.S. 334, 336 (2000) (recognizing that an individual possesses a privacy interest in a bag they carry onto a bus).

Duran therefore has standing to challenge the search of the first suitcase.

IV.

We now turn to the merits of Duran's Fourth Amendment claim. Neither party disputes on appeal that the officers stopped the bus pursuant to a lawful traffic stop, received consent from the bus driver to search the bus's luggage hold, and permissibly deployed Kaos to sniff the hold. *See United States v. Branch*, 537 F.3d 328, 336–37 (4th Cir. 2008) (noting that because a dog sniff is not a search, its use need not be justified during a lawful traffic stop). Instead, Duran asks us to consider whether Kaos's alert created probable cause to search his suitcase. We hold that the district court's determination that Kaos alerted was not clearly erroneous, so it provided probable cause to conduct the warrantless search.

A.

A warrantless search or seizure is presumptively unreasonable under the Fourth Amendment, subject only to certain "specifically established and well-delineated

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[3] For the first time on appeal, Duran argues that he has a common-law property interest in the luggage as a bailee. We need not address this argument, both because the record establishes that Duran maintained a legitimate expectation of privacy in the suitcases prior to his disavowal of ownership and because the argument is forfeited. *See Richardson v. Clarke*, 52 F.4th 614, 625 (4th Cir. 2022) ("Generally, parties may not raise new arguments on appeal that were not first presented to the district court below, absent exceptional circumstances.").

exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)). One such exception involves searches of automobiles: "[i]f a car is readily mobile and probable cause exists to believe it contains contraband," the Fourth Amendment permits a warrantless search. *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per curiam). Once police have probable cause to conduct a search, they may search "every part of the vehicle and its contents that may conceal the object of the search." *United States v. Kelly*, 592 F.3d 586, 590 (4th Cir. 2010) (citing *United States v. Ross*, 456 U.S. 798, 825 (1982)). This includes containers in vehicles. *California v. Acevedo*, 500 U.S. 565, 570 (1991).

We have not explicitly determined that the automobile exception applies to buses. But the justifications for the automobile exception—the movability and lesser privacy expectations inherent in vehicles—apply with equal, if not greater, force to buses. *See Kelly*, 592 F.3d at 590 (recognizing that this "lesser expectation of privacy" is because cars are "movable public objects" subject to "'pervasive schemes of regulation'") (citing *California v. Carney*, 471 U.S. 386, 392 (1985)). We see no reason to depart from our sister circuits on this point. *See United States v. Tuton*, 893 F.3d 562, 571 (8th Cir. 2018) (affirming denial of a motion to suppress evidence seized from luggage during a traffic stop of a bus); *United States v. Pina*, 648 F. App'x 899, 901 (11th Cir. 2016) (search of commercial bus and passengers' luggage was lawful under the automobile exception).

Of course, warrantless searches must still be supported by probable cause. A reliable dog alert can create that probable cause. *See United States v. Green*, 740 F.3d 275, 282 (4th Cir. 2014). Probable cause to conduct a search based on a dog's alert exists when the totality of the circumstances, "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*, 568 U.S. 237, 248 (2013). Whether a drug detection dog has reliably alerted is a question of fact. *See United States v. Curry*, 478 F. App'x 42, 43–44 (4th Cir. 2012) (citing *United States v. Mason*, 628 F.3d 123, 130 (4th Cir. 2010)). The scope of a warrantless search may only be as broad as a magistrate, in accordance with the warrant particularity requirement, could authorize. *United States v. Ross*, 456 U.S. 798, 800 (1982).

In *Florida v. Harris*, the Supreme Court specified that "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert." 568 U.S. at 246. The Court emphasized that a dog's reliability should be measured based on performance "in controlled testing environments," rather than its field performance. *Id.* Therefore, the Court counseled that, to challenge a dog's reliability, a defendant may "contest the adequacy of a certification or training program." *Id.* at 247. Evidence of the dog or handler's history in the field may also at times be relevant. *Id.* And even a generally reliable dog's alert may undermine probable cause if the handler cued the dog or "the team worked under unfamiliar conditions." *Id.*

In any case, the Court was clear: "[i]f the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause." *Id.* at 248. *See Green*, 740 F.3d at 283 (applying *Harris* framework to hold that dog's 43% accuracy in the field, in conjunction with dog's training and certification record, sufficed to establish dog's reliability). When a dog has been certified and otherwise proven generally reliable, "the only question is whether the police manufactured [the dog's alert]." *Varner v. Roane*, 981 F.3d 288, 294 (4th Cir. 2020).

B.

At the suppression hearing, the district court had the opportunity to consider testimony from Officer Wright and Duran's expert witness, Andre Falco Jimenez, regarding Kaos's non-final alert. Based on his experience handling Kaos, Officer Wright testified that Kaos had alerted but had not sit down because he "won't sit in the mud." J.A. 257. Mr. Jimenez, offered as an expert in dog training, handling, and identification of alerts for narcotics, provided his opinion that Kaos did not alert to the presence of narcotics at all. J.A. 345.

The district court also considered Kaos's training and certification records. Kaos was certified as a drug detection dog in 2020 and had been recertified every year since by the National Narcotic Detector Dog Association. His training records demonstrated that he had achieved 100% accuracy during his training in a controlled environment. Moreover, he had positively alerted to the presence of narcotics fourteen out of the nineteen times he was deployed in the field. Based on this record, the district court found Kaos "sufficiently reliable and that his positive alert for the presence of the odor of narcotics provided probable cause for the search of the luggage contained in the compartment." J.A. 626.

This district court's factual determination was not clearly erroneous. The district court was within its right to credit Officer Wright's testimony over Mr. Jimenez. *See United States v. Patiutka*, 804 F.3d 684, 689 (4th Cir. 2015) ("We owe particular deference to a district court's credibility determinations, for it is the role of the district court to observe witnesses and weigh their credibility during a pre-trial motion to suppress.") (cleaned up). In conjunction with the evidence of Kaos's training record and continued certification, the district court justifiably concluded that Kaos alerted in this case. The record provides no reasonable basis for us to revisit the district court's factual determination on appeal, particularly here, where there was a robust record establishing Kaos's reliability.

Kaos's alert also sufficed to create probable cause. The video evidence reflects that Kaos alerted to the limited area of the luggage hold where the suitcases were located. *See Kelly*, 592 F.3d at 592 ("Probable cause is simply not so exacting a standard that it requires a dog to be able to pinpoint the location of drugs within a foot or two."). The limited geographic scope of Kaos's alert, alongside the record evidence of Kaos's reliability, justifies affirmance of the district court's probable cause determination.

While we recognize that the district court's factual finding was not clearly erroneous, the district court could have properly found Kaos's alert to be unreliable. Mr. Jimenez testified that Kaos did not alert to the presence of narcotics and that Officer Wright cued Kaos. He also questioned the reliability of Kaos's training record. The district court could have justly found that such testimony undermined the credibility of Kaos's alert.

And we agree with our sister circuit that reliance on such an alert does not provide law enforcement with unbounded authority to search for contraband. *See Tuton*, 893 F.3d at 571 ("This conclusion obviously does not mean that hundreds of bags in the luggage compartment of another bus could be searched without consent or a warrant based on a drug dog's general alert."). As always, we look to the totality of the circumstances to determine whether probable cause exists in a specific case. *Harris*, 568 U.S. at 244.

* * *

The district court did not clearly err in finding that Kaos alerted to the presence of narcotics. On this record, we see no reason to overturn the district court's decision finding probable cause.

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America v. Jose Gabriel Duran Garcia, Defendant.	CR/A No. 7:21-cr-00523-DCC-1 **OPINION AND ORDER**

This matter is before the Court on Defendant Jose Gabriel Duran Garcia's Motion to Suppress. ECF No. 50. The Government filed a Response in Opposition. ECF No. 56. The Court held a suppression hearing on June 29, 2022, and directed the parties to file supplemental briefing regarding certain issues. ECF No. 64. Mr. Garcia and the Government filed supplemental briefs and responses as requested. ECF Nos. 72, 73, 75, 76. For the reasons set forth below, the Court denies Mr. Garcia's Motion.

BACKGROUND

On August 18, 2021, Mr. Garcia was charged in a three-count Indictment for conspiracy to possess and possession with intent to distribute cocaine, and interstate travel and transportation in aid of drug trafficking, all in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846, and 18 U.S.C. § 2. ECF No. 2 at 1–2. The Court determines the following facts, which are drawn from the record, the parties' exhibits, and the testimony provided at the evidentiary hearing, by a preponderance of the evidence. *See United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974) ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence.") (citation omitted); *United States v. Stevenson*, 396 F.3d 538, 541 (4th

Cir. 2005) ("In the course of deciding a motion to suppress, the district court may make findings of fact[.]").

On the evening of November 12, 2020, Mr. Garcia was traveling from Atlanta, Georgia to New York, New York on a Wanda Coach bus. Hearing Transcript ("Tr.") at 85:5–8; 90:24–25; 91:1–2. At approximately 6:58 p.m., an officer with the Duncan Police Department observed the bus speeding on I-85 North in Spartanburg County, and at 7:01 p.m., proceeded to stop the bus for two traffic violations, a speeding violation and failure to maintain a single lane of traffic. Gov't's Ex. 1. Upon approaching the bus, the officer encountered the bus driver and asked him for his license, registration, insurance, and notebook, and for permission to search the exterior luggage compartment. Gov't's Ex. 2. The driver verbally agreed and lifted the doors to the compartment, which contained several pieces of passenger luggage. *Id.* The officer returned to his patrol car, called the driver's information into dispatch, prepared the traffic citation, and requested a National Crime Information Center ("NCIC") database check. *Id.*

Meanwhile, at 7:06 p.m., another officer, a K9 handler, deployed K9 Kaos onto the undercarriage of the bus and the open luggage compartment to perform a drug dog sniff. Gov't's Exs. 2, 3a. K9 Kaos's certification records indicate that he is a drug detection dog trained and certified in the detection of marijuana, cocaine, heroin, and methamphetamine. Approximately one minute into the dog sniff, the dispatcher reported the NCIC check returned clear. Gov't's Ex. 3a. Less than one minute later, the handler indicated that K9 Kaos alerted for the presence of the odor of narcotics in the exterior luggage compartment. *Id.* The officers proceeded to search the luggage in the compartment, and at approximately 7:10 p.m., discovered a black Samsonite suitcase containing ten individually packaged bricks of cocaine wrapped in plastic, clothing, fabric, and a blanket. *Id.* A second suitcase, identical to the first, was later discovered during the search and also contained ten bricks of cocaine wrapped in the same manner. *Id.*

At around 7:20 p.m., the officers asked the passengers to exit the bus and claim their luggage from the exterior compartment. Gov't's Ex. 3b. Upon exiting the bus, one of the officers asked Mr. Garcia which bag was his, to which he responded that he did not have any luggage stored in the compartment and that his only bag was above his seat inside the bus. *Id.* Only the two identical, black, Samsonite suitcases were unclaimed. *See* Tr. at 54:1–18. Surveillance video from the Atlanta bus terminal later revealed that Mr. Garcia had loaded the two bags onto the bus. *Id.* at 87:13–18; 90:22–25; 91:1–25; 92:1–11. At no time has Mr. Garcia ever claimed ownership of the luggage.

On May 2, 2022, Mr. Garcia filed a Motion to Suppress, arguing that the drug evidence was obtained by law enforcement in violation of the Fourth Amendment. ECF No. 50. On May 17, 2022, the Government filed a Response in Opposition. ECF No. 56. The Court held a suppression hearing on June 29, 2022, and directed the parties to file supplemental briefing regarding certain issues. ECF No. 64. Officer Jacob Bembenek, Corporal James Owens, Officer and K9 Handler Andrew Wright, U.S. Drug Enforcement Administration ("DEA") Special Agent Tonya Kelly, and Defense Expert Witness Andy Falco Jimenez testified at the hearing. Mr. Garcia and the Government filed supplemental briefs and responses as requested on July 14, 2022, and July 21, 2022. ECF Nos. 72, 73, 75, 76. The Motion is now before the Court.

APPLICABLE LAW

Fourth Amendment and Traffic Stops

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This right is enforced via the exclusionary rule, a judicial remedy that "prevents the government from using evidence obtained as a result of an illegal search against the victim of that search." *United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017) (citing *Utah v. Strieff*, 579 U.S. 232, 237 (2016)). "The right to be free from an unreasonable search is personal in nature and cannot be vicariously asserted." *United States v. Gray*, 491 F.3d 138, 144 (4th Cir. 2007) (citing *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978)). Suppression based on a Fourth Amendment violation "can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." *Alderman v. United States*, 394 U.S. 165, 171–72 (1969). Therefore, "the protections of the Fourth Amendment are activated only when the state conducts a search or seizure in an area in which there is a 'constitutionally protected reasonable expectation of privacy.'" *United States v. Davis*, 690 F.3d 226, 241 (4th Cir. 2012) (quoting *New York v. Class*, 475 U.S. 106, 112 (1986)).

"Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of [the Fourth Amendment]." *Whren v. United States*, 517 U.S. 806, 809–10 (1996) (citations omitted). "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Id.* at

810. "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred." *Id.* Thus, "[o]bserving a traffic violation provides sufficient justification for a police officer to detain the offending vehicle for as long as it takes to perform the traditional incidents of a routine traffic stop." *United States v. Branch*, 537 F.3d 328, 335 (4th Cir. 2008).

Officers may then conduct unrelated investigations by questioning the driver or passengers. *Rodriguez v. United States*, 575 U.S. 348, 355 (2015) ("An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop."). A traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete [the] mission" of performing the necessary checks on the driver and issuing a warning or ticket. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); *see also Branch*, 537 F.3d at 335 ("[P]ursuant to such a stop, a police officer may 'request a driver's license and vehicle registration, run a computer check, and issue a citation.'" (quoting *United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004))).

While the Supreme Court has held that officers do not need a warrant to search a vehicle for contraband, they must have probable cause that the vehicle contains contraband. *See California v. Carney*, 471 U.S. 386, 390 (1985) (recognizing the automobile exception to the Fourth Amendment's warrant requirement); *see also Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." (citing *Carney*, 471 U.S. at 393)). Often during traffic stops, law enforcement will observe contraband in plain view in the vehicle, which provides probable cause for a search. *See United States v. Green*, 599 F.3d 360, 376

(4th Cir. 2010). Other times, the driver may consent to a search of the vehicle. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 221 (1973).

Law enforcement may also develop probable cause through a dog sniff. “A canine sniff is . . . constitutionally acceptable if performed within ‘the time reasonably required’ to issue a traffic citation.” *Branch*, 537 F.3d at 335 (quoting *Caballes*, 543 U.S. at 407). “This is because a dog sniff is not a search within the meaning of the Fourth Amendment, and it therefore requires no additional justification.” *Id.* at 335–36. The timing of the canine sniff, however, is critical when evaluating the propriety of a search during a traffic stop. This issue was most recently addressed by the Supreme Court in *Rodriguez v. United States*, 575 U.S. 348 (2015).

In *Rodriguez*, the Supreme Court “granted certiorari to resolve a division among lower courts on the question whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff.” 575 U.S. at 353. The Court first outlined the “mission” of a traffic stop—“to address the traffic violation that warranted the stop and to attend to related safety concerns.” *Id.* at 354 (internal citations omitted). “Beyond determining whether to issue a traffic ticket, an officer's mission includes ‘ordinary inquiries incident to [the traffic] stop.’” *Id.* at 355 (quoting *Caballes*, 543 U.S. at 408) (alteration in original). “Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.” *Id.* The Court noted “[a] dog sniff, by contrast, is a measure aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing.’” *Id.* (quoting *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)) (alteration in original). The Court thus determined that “a dog sniff is not fairly characterized as part of the officer's traffic mission." *Id.* at 356. Because of this, the Court held that law enforcement may not extend an otherwise-completed traffic stop to conduct a dog sniff absent reasonable suspicion. *Id.* at 358 (remanding the case to the Eighth Circuit Court of Appeals for a determination of whether officers had reasonable suspicion to detain Mr. Rodriguez beyond completion of the traffic infraction investigation).

Reasonable Suspicion

"The concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'" *United States v. Sokolow*, 490 U.S. 1, 7, (1989) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). Courts have struggled to neatly define the concept of reasonable suspicion, "[b]ut the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account." *United States v. Cortez*, 449 U.S. 411, 417 (1981). "Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Id.* at 417–18. "[T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Id.* at 418; *see also United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) ("Reasonable suspicion is a commonsensical proposition. Courts are not remiss in crediting the practical experience of officers who observe on a daily basis what transpires on the street."). Indeed, "[r]easonable suspicion is a commonsense, nontechnical standard that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *United States v. Bowman*, 884 F.3d 200, 213 (4th Cir. 2018) (internal quotation marks and citations omitted). "[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (citation omitted).

DISCUSSION

I. Traffic Stop

Mr. Garcia first challenges the legality of the traffic stop because the officer allegedly pulled the bus over outside of his jurisdictional authority.[1] ECF No. 72 at 10. He also claims that while reasonable suspicion may have existed to justify the traffic stop due to the driver's traffic violations, the stop was unlawfully prolonged beyond the time reasonably required to complete the issuance of a traffic ticket. ECF Nos. 50 at 4; 72 at 13–14. Specifically, Mr. Garcia asserts that the stop was prolonged to conduct the drug dog sniff because it could have been completed when the NCIC check returned clear, which occurred prior to the dog's purported alert to the presence of narcotics and the officers' search of the luggage. ECF No. 72 at 14.

In contrast, the Government responds that the Fourth Circuit Court of Appeals' decision in *United States v. Clyburn*, 24 F.3d 613, 616 (4th Cir. 1994), forecloses Mr. Garcia's argument regarding the location of the stop, explaining that "the Fourth Amendment, not federal rules or state law, governs the admissibility of evidence obtained by state officers but ultimately used in federal prosecution." ECF No. 76 at 1–2. Regardless, the Government asserts that the officer did not act in bad faith, and testimony

[1] Law enforcement observed the traffic violations on I-85 North at mile marker 62, within the Duncan Police Department's jurisdiction, but stopped the bus at mile marker 66, which is located in Wellford, South Carolina. Tr. at 6:14–25; 7:1–23.

at the hearing confirmed law enforcement's belief that the stop was properly conducted within the officer's jurisdictional limits. *Id.* at 3. The Government also argues that law enforcement conducted a valid *Terry* stop of the bus because the officer observed the bus driver commit two traffic violations. ECF No. 56 at 6–8. The Government further contends that the stop was not extended, and even if it was, the extension was justified by the driver's consent to search the exterior luggage compartment. *Id.* at 8–10.

As an initial matter, the Court finds Mr. Garcia has standing to challenge the legality of the traffic stop. *See Brendlin v. California*, 551 U.S. 249, 254 (2007) ("A person is seized by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, 'by means of physical force or show of authority,' terminates or restrains his freedom of movement, '*through means intentionally applied*.'"); *id*. at 257 ("A traffic stop necessarily curtails the travel a passenger has chosen as much as it halts the driver, diverting both from the stream of traffic to the side of the road . . . .").

Upon review, the Court finds that there was reasonable suspicion to justify the traffic stop. Speeding and failure to maintain a single lane of traffic are violations of South Carolina law, and therefore, "provide[] an officer reasonable suspicion to initiate a traffic stop." *State v. Provet*, 747 S.E.2d 453, 457 (S.C. 2013); *see also* S.C. Code Ann. § 56-5-1520(B)(2) (prohibiting drivers from driving a vehicle on certain highways in excess of sixty miles an hour); *id.* § 56-5-1900(a) (requiring drivers to maintain a single lane of traffic). The Court is not persuaded by Mr. Garcia's jurisdictional limits argument regarding where the bus was ultimately pulled over because the stop was permitted by state law. *See* S.C. Code Ann. § 17-13-40(A) (allowing police officers who are in pursuit of an offender for violations of municipal or state law committed within their jurisdiction to arrest the offender "at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits").

The Court further finds that the traffic stop was not impermissibly prolonged. Here, upon stopping the bus, the officer asked the driver for his driver's license, registration, and insurance and returned to his patrol car to check the information. While he waited for the license check to come back, another officer arrived with K9 Kaos and began to conduct a dog sniff of the bus's undercarriage. *See, e.g.*, *United States v. Idleman*, 853 F. App'x 819, 822 (4th Cir. 2021) (concluding "there was no Fourth Amendment violation as the use of the drug dog within five minutes of initiating the stop did not unduly prolong the stop"). The dog was in the process of conducting the sniff when the NCIC check returned clear, and the sniff was completed less than one minute later. *See, e.g.*, *United States v. Junkins*, 860 F. App'x 297, 302 (4th Cir. 2021) (holding "the officers didn't impermissibly extend the stop because, while the dog sniff was taking place, they were still conducting '[o]rdinary tasks incident to a traffic stop includ[ing] . . . verifying the registration of a vehicle and existing insurance coverage'" (alterations in original) (quoting *United States v. Bowman*, 884 F.3d 200, 210 (4th Cir. 2018))). Thus, at the time the dog sniff was performed, the mission of performing the necessary checks on the driver incident to the traffic stop had not yet been completed. *See Branch*, 537 F.3d at 335 ("A canine sniff is . . . constitutionally acceptable if performed within 'the time reasonably required' to issue a traffic citation.'" (quoting *Caballes*, 543 U.S. at 407)); *see also Caballes*, 543 U.S. at 407 (noting that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete [the] mission" of issuing a traffic ticket);

cf. United States v. Williams, 321 F.Supp.3d 594, 608 (D.S.C. May 14, 2018) (holding an officer prolonged a traffic stop longer than reasonably necessary to accomplish the mission of the stop, where the officer had finished writing the traffic ticket and conducting the necessary checks of the driver prior to the drug dog's arrival). Moreover, the traffic stop lasted less than ten minutes in total from the moment the bus was pulled over until the time that the dog sniff was completed. *See United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017) ("The 'acceptable length of a routine traffic stop,' however 'cannot be stated with mathematical precision.'" (quoting *United States v. Digiovanni*, 650 F.3d 498, 511 (4th Cir. 2011))); *see, e.g.*, *id.* at 382 (holding a 20-minute traffic stop was not unlawfully extended where the officers investigated the driver's and passenger's licenses and wrote two summonses prior to the drug dog's arrival); *United States v. Diaz*, 30 F.4th 369, 376 (4th Cir. 2022) (holding a 15-minute traffic stop was not impermissibly prolonged). Accordingly, the Court finds that there was reasonable suspicion to justify the traffic stop and that the stop was not impermissibly prolonged.

II. Search and Seizure of Luggage

At the outset, the Government claims Mr. Garcia lacks standing to challenge the search of the bus's exterior luggage compartment and the luggage itself. ECF Nos. 56 at 10; 73 at 4–7. The Government contends Mr. Garcia has not demonstrated any reasonable expectation of privacy in the exterior luggage compartment searched nor in the luggage containing the drugs seized. ECF Nos. 56 at 10–12; 73 at 5, 7. Specifically, the Government argues that bus passengers do not have any reasonable expectation of privacy in the luggage compartment, particularly where the driver consents to inspection; rather, any expectation of privacy extends only to their personal luggage. ECF No. 56 at

10–12. The Government notes, however, that Mr. Garcia disclaimed any ownership of the luggage searched, and therefore, forfeited any privacy interest he may have had in the property. *Id.* at 12–14.

The Court agrees that Mr. Garcia lacks standing to challenge the search of the bus's exterior luggage compartment and of the luggage contained therein. "A passenger in a car normally has no legitimate expectation of privacy in an automobile in which he asserts neither a property interest nor a possessory interest and where he disclaims any interest in the seized object." *United States v. Carter*, 300 F.3d 415, 421 (4th Cir. 2002) (citing *Rakas v. Illinois*, 439 U.S. 128, 148–49 (1978)); *see also United States v. Allison*, 398 F. App'x 862, 863 (4th Cir. 2010) ("To challenge the search of a vehicle, a passenger must have a reasonable expectation of privacy in the vehicle and its contents. Where, as here, he does not own the vehicle and does not claim ownership of its contents, he typically does not have such an expectation."). The Fifth Circuit Court of Appeals has held that "[p]assengers traveling on commercial buses resemble automobile passengers who lack any property or possessory interest in the automobile." *United States v. Wise*, 877 F.3d 209, 218 (5th Cir. 2017). Thus, they "have 'no reasonable expectation of privacy in the exterior *luggage compartment* of a commercial bus, and therefore no standing to contest the actual inspection of that compartment, to which the bus operator consented.'" *Id.* (quoting *United States v. Ventura*, 447 F.3d 375, 380 (5th Cir. 2006)).

Here, Mr. Garcia had no reasonable expectation of privacy in the area searched—that is, the exterior luggage compartment of the bus—because he has not, and indeed cannot, assert a property or possessory interest in the commercial bus. Consequently, he lacks standing to challenge the bus driver's consent to search the compartment, which was manifested by the driver's affirmative response to law enforcement when asked to open the compartment's doors and his conduct in proceeding to open them. *See Wise*, 877 F.3d at 218 (holding the defendant-passenger lacked standing to challenge the driver's decision to consent to the search of the bus where he had no possessory interest in the area searched); *United States v. Flowers*, 173 F. App'x 240, 242 (4th Cir. 2006) (holding the defendant-passenger lacked standing to challenge the search of a car where he lacked a legitimate expectation privacy in the car and the car's driver had consented to the search).

Moreover, Mr. Garcia further lacks standing to challenge the search of the luggage found in the bus's exterior luggage compartment because he disclaimed any ownership in the property when asked by law enforcement to claim his bags.[2] *See Carter*, 300 F.3d at 421 (holding the defendant-passenger lacked standing to challenge the search of the seized object found in the car, where he asserted no property or possessory interest in the vehicle and disclaimed any interest in the seized object); *see also United States v. Ferebee*, 957 F.3d 406, 412 (4th Cir. 2020) ("The law is well established that a person

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[2] Mr. Garcia contends that his statements disclaiming ownership of the luggage should be suppressed because he was not given any warnings against self-incrimination pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), prior to the officer's question regarding whether Mr. Garcia had any luggage stored in the exterior compartment of the bus. ECF No. 72 at 26 n.9. Even if the Court suppressed Mr. Garcia's statements disclaiming ownership, he would still lack standing to challenge the search because he has failed to demonstrate any property or possessory interest in the luggage sufficient to establish a reasonable expectation of privacy in the area searched. Mr. Garcia also emphasizes the fact that he did not disclaim ownership until *after* the search was completed. ECF No. 75 at 2. However, the timing of Mr. Garcia's disavowal of ownership is of no consequence because the officers were not required to determine the ownership of the luggage prior to the search, as the drug dog's positive alert to the presence of the odor of narcotics provided probable cause to search the luggage, as discussed in more detail below.

who voluntarily abandons property loses any reasonable expectation of privacy in the property and is consequently precluded from seeking to suppress evidence seized from the property." (quoting *United States v. Leshuk*, 65 F.3d 1105, 1111 (4th Cir. 1995))); *id*. at 413 ("[T]his court and most others treat disavowal of ownership of property as an abandonment of the property."). Indeed, to this day, Mr. Garcia has never claimed ownership of the luggage from which the drugs were seized. Therefore, he lacks standing to challenge the search and seizure.

Even if Mr. Garcia had standing to challenge the search and seizure, his request for suppression fails on the merits. As previously acknowledged, law enforcement received the bus driver's valid consent to search the exterior luggage compartment when he verbally agreed to open the compartment doors and proceeded to open them.[3] *See United States v. Buckner*, 473 F.3d 551, 553–54 (4th Cir. 2007) ("Although the Fourth Amendment generally prohibits warrantless searches, valid consent to seize and search items provides an exception to the usual warrant requirement." (internal citations omitted)); *id.* at 554 ("Consent to search is valid if it is (1) 'knowing and voluntary,' and (2) given by one with authority to consent." (internal citations omitted)); *id.* ("A third-party has authority to consent to a search of property when she possesses 'common authority over or other sufficient relationship to the . . . effects sought to be inspected." (quoting *Matlock*,

[3] Mr. Garcia argues the bus driver did not validly consent to law enforcement's search of the exterior luggage compartment because English was the driver's second language. ECF No. 72 at 15–16. Upon review, the Court finds Mr. Garcia has presented no evidence to show that the bus driver did not understand law enforcement's request or that his consent was not knowing and voluntary. In fact, Mr. Garcia's argument is directly contradicted by the fact that when asked to provide his driver's license, registration, and insurance, he gave the officer those documents, demonstrating that he understood the officer's request.

415 U.S. at 171)); *United States v. Morales*, 861 F.2d 396, 399 (3d. Cir. 1988) ("Under the *Matlock* test, a driver of a vehicle has the authority to consent to a search of that vehicle. As the driver, he is the person having immediate possession of and control over the vehicle.").

The question then becomes whether there was probable cause to search the luggage contained inside the compartment. Upon review of the record, the parties' briefing and exhibits, and the testimony provided at the evidentiary hearing, the Court finds that the drug dog, K9 Kaos, was sufficiently reliable and that his positive alert for the presence of the odor of narcotics provided probable cause for the search of the luggage contained in the compartment. "Probable cause to conduct a search based on a drug-detection dog's alert exists when the totality of the circumstances, '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.'" *Green*, 740 F.3d at 282 (quoting *Florida v. Harris*, 568 U.S. 237, 243 (2013)). "In assessing the existence of probable cause and whether a dog's alert was reliable, the Supreme Court has found that 'evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert.'" *Pimentel v. Plyler*, C.A. No. 9:19-cv-03035-RMG-MHC, 2021 WL 1413332, at *8 (D.S.C. Jan. 22, 2021) (quoting *Harris*, 568 U.S. at 246), *report and recommendation adopted*, 2021 WL 973315 (D.S.C. Mar. 16, 2021). "However, the credibility of a dog's alert rests 'almost entirely on the credibility of the dog handler's testimony [b]ecause the handler is the only witness who can speak to the subjective interaction during a particular dog alert.'" *United States v. Christian*, 452 F. App'x 283, 286 (4th Cir. 2011) (quoting *United States v. Howard*, 621 F.3d 433, 449 (6th Cir. 2010), *cert. denied* 562 U.S. 1278 (2011)); *see also United States v. Stanley*, 4 F. App'x 148, 150 (4th Cir. 2001) (finding the dog handler's "testimony regarding his familiarity with the dog and its training sufficient to establish the dog's reliability"). Whether a drug detection dog has alerted is a question of fact for the Court to decide. *See United States v. Curry*, 478 F. App'x 42, 43–44 (4th Cir. 2012) (citing *United States v. Mason*, 628 F.3d 123, 130 (4th Cir. 2010)).

Here, the Government provided extensive evidence regarding the dog's detailed training and continuing certification. Specifically, the record indicates that K9 Kaos and his handler were initially certified in June of 2020 and have been recertified each year by the National Narcotic Detector Dog Association. K9 Kaos was trained and certified in the detection of marijuana, cocaine, heroin, and methamphetamine. K9 Kaos and his handler participated in monthly in-service training from June through November of 2020, and the dog achieved an 100% accuracy rate during his training in a controlled environment. Prior to the sniff at issue in this case, K9 Kaos had been deployed in the field a total of 19 times in September and October of 2020, 14 of which he positively alerted to the presence of narcotics. Of those positive alerts, K9 Kaos alerted 6 times through exhibiting behavioral changes, including changes in his breathing pattern and attempts to sit. In each of those instances, narcotics and/or paraphernalia was found.

In addition, K9 Kaos's handler testified at the hearing that, during the sniff, he did not control the dog, drag him along the bus, or cue him. He also explained that he tried to have K9 Kaos pinpoint the odor in the compartment but that the dog was so overwhelmed by the odor that he had difficulty locating its strongest source. He further described certain behavioral changes K9 Kaos exhibited during the sniff, such as a change in breathing, walking at a slower speed with his mouth closed, a change in his tail pattern, that his head kept rapidly turning back, and that his rear end posture changed, which, taken together, the handler testified constituted an alert. *See, e.g.*, *Florida v. Jardines*, 569 U.S. 1, 4 (2013) ("The dog was trained to detect the scent of marijuana, cocaine, heroin, and several other drugs, indicating the presence of any of these substances through particular behavioral changes recognizable by his handler.").

Although Mr. Garcia's expert witness[4] testified that, in his opinion, K9 Kaos did not alert because he did not sit down as trained to indicate a final alert, there is no controlling authority in this circuit which requires the dog to sit in order to have positively alerted to the presence of narcotics. *See United States v. Diaz*, CR/A No. 2:16-cr-00055-DCN, 2018 WL 1697386, at *13 (D.S.C. Apr. 6, 2018) ("The Fourth Circuit has not yet determined what the proper 'alert' standard is for a drug detection dog."). Indeed, there is a split among other circuits regarding the approach courts should use when determining the sufficiency of a drug dog's response. *Compare United States v. Parada*, 577 F.3d. 1275, 1282 (10th Cir. 2009) ("We decline to adopt the stricter rule urged by [the defendant], which would require the dog to give a final indication before probable cause is established."), *and United States v. Thomas*, 726 F.3d 1086, 1098 (9th Cir. 2013) ("Evidence from a trained and reliable handler about alert behavior he recognized in his dog can be the basis for probable cause. Whether a particular dog displays enough signaling behavior will depend on the facts and circumstances of each case."), *with United*

[4] *See United States v. Braddy*, 11 F.4th 1298, 1313 (11th Cir. 2021) (concluding "the district court's finding in crediting the officers' testimony over the testimony of [Jimenez] was not clearly erroneous.").

States v. Rivas, 157 F.3d 364, 368 (5th Cir. 1998) ("[C]asting[5] is too distantly related to an alert to create reasonable suspicion on its own as a matter of law.").[6] However, the Fourth Circuit Court of Appeals has at least acknowledged the *Parada* court's view. *See Curry*, 478 F. App'x at 44 (citing *Parada* and noting its distinction between a "general alert" and a "pinpoint location" and its holding that "an alert provided probable cause to search a car, even in the absence of a pinpoint indication of the location of the drugs"). Upon review, the Court finds the evidence of K9 Kaos's satisfactory performance during certification and training as well as his handler's credible testimony sufficient to establish K9 Kaos's reliability, and thus, that his positive alert provided probable cause for the

[5] The *Rivas* court explained "casting" as follows:

> The phrase of "casting" is in a sense the dog maybe feels not a strong alert, but something that temporarily stops him and deters his attention at that point. And although he doesn't pursue as aggressive alert, he does stop and give it minute attention and continues with his duties by continuing his examination.

157 F.3d at 368; *see also United States v. Peterson*, 2019 WL 1793138, at *7 (E.D. Va. Apr. 24, 2019) (describing "casting" as "giv[ing] a weak response, or some other change in behavior" such as stopping and staring).

[6] *But see United States v. Sanchez-Pena*, 336 F.3d 431, 444 (5th Cir. 2003) (noting that "the evidence that the dog was certified was sufficient proof of his training to make an effective alert" and holding "there was sufficient evidence in the record to support the district court's finding that the dog's alert was reliable and established probable cause for a search of the vehicle"); *see also United States v. Clayton*, 374 F. App'x 497, 502 (5th Cir. 2010) ("Although [the dog] did not passively indicate or sit in this instance, our Fourth Amendment jurisprudence does not require drug dogs to abide by a specific and consistent code in signaling their sniffing of drugs to their handlers. 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 in the evaluation of whether that dog should have used alternative means to indicate the presence of the drugs."); *United States v. Shen*, 749 F. App'x 256, 261 (5th Cir. 2018) (finding the reasoning in *Clayton* persuasive and consistent with the decisions of several sister circuits).

search of the luggage in the compartment. Accordingly, Defendant's Motion to Suppress is denied.

CONCLUSION

For the reasons set forth above, Defendant's Motion to Suppress [50] is **DENIED**.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

August 10, 2022
Spartanburg, South Carolina