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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE PHILIP S. GUTIERREZ, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
PLAINTIFF,) CASE NO.
) CR 16-850 PSG
VS.)
)
MARIO MANJARREZ,)
)
DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, NOVEMBER 9, 2017

10:05 A.M.

LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; THURSDAY, NOVEMBER 9, 2017

2 10:05 A.M.

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4
5 THE CLERK: Calling Criminal 16-850, United States
6 of America versus Mario Manjarrez.

7 Counsel, please state your appearances.

8 MR. RYBARCZYK: Good morning, Your Honor.
9 Tom Rybarczyk on behalf of the United States.

10 MS. WAKEFIELD: Good morning, Your Honor. Georgina
11 Wakefield on behalf of Mario Manjarrez who is present in
12 custody.

13 THE COURT: I've read the offer of proof. I've read
14 the government response. I've read the reply. I've read the
15 sur-reply. And then I've just this morning received the
16 exhibit regarding the offer of proof, and I scanned it and
17 haven't examined it closely.

18 Here's -- let me tell you where I'm at, and then you
19 can argue to that. You know, generically speaking, I think the
20 government is correct in their analysis that you want to look
21 at what happened that day and objectively look at it.

22 However, this case is a little different. And
23 obviously, if I allow the cross-examination, I'm not going to
24 use that cross-examination to change the facts as to what
25 happened that day. But I think it may be -- or at this point I

1 think it does bear on the deputy's credibility.

2 And I think that is probably -- if I was able to
3 examine the exhibit, that's the way I would have organized the
4 cross-examination. I'm assuming, Ms. Wakefield, that that is
5 probably your outline in some respects to the
6 cross-examination. I haven't examined it to see if it's
7 broader than I had thought or narrower than I had thought.
8 It's probably a little longer, but I haven't sat down as
9 closely as you have.

10 The issue becomes -- so he says it -- and I believe
11 the parties mention this. At least six times he says "based on
12 my training and experience." And the other incidents -- for
13 example, if he says, based on my training and experience, the
14 defendant looking up means nervousness or whatever. I'm just
15 giving examples. Then in some other prior instances, based on
16 my training and experience, looking down means nervousness.
17 And then in other cases he says based on my experience looking
18 straight at me is nervousness.

19 That bears on whether or not the Court should give
20 credibility to his, quote, "training and experience" that
21 it's -- in this particular case. The same applies to "He gave
22 me the license quickly. That means he wants to shorten the
23 stop."

24 In the other case, "He fumbled and gave it to me,
25 and that gives me some other fact that gives me reasonable

1 suspicion to suspect criminal activity." Or he points in a
2 certain direction in this case which means something and
3 pointing in another case means something else.

4 And I don't think it's any surprise because I've
5 never seen any testimony like Deputy Vann's before. I mean, to
6 me, as I said before, it's psychological babble. And from my
7 perspective, even without these other instances, I think the
8 government is going to be hard-pressed for me to give
9 credibility to Deputy Vann not only for the psychological
10 babble, because you can turn any stop -- Deputy Vann is adept,
11 I guess. He could turn any stop into a reasonable suspicion
12 that criminal activity is afoot.

13 But the other clincher for me was his attitude. He
14 has a bad attitude. He had a bad attitude in this court. He
15 was disrespectful. He was short. The public defender was just
16 asking him questions. He didn't need to be disrespectful. The
17 public defender was just doing his job. But he decided he was
18 going to take charge of the cross-examination which he did but
19 it reflected on his credibility as being straightforward.

20 So anyway, that's where I'm at. I think probably
21 the government wants to address the comments first. And I want
22 you to take it serious. You were here. You saw Deputy Vann's
23 attitude. It wasn't good.

24 MR. RYBARCZYK: I think he was at times short with
25 the --

1 THE COURT: I think he was most of the time short
2 until I started stepping in, which I didn't step in very much
3 because I think I needed to see that attitude. So I wasn't
4 going to correct it. So he couldn't correct himself.

5 MR. RYBARCZYK: Very well, Your Honor. In terms
6 of -- you've seen the briefs and I think you've articulated
7 that the Court does agree with the reasoning/rationale
8 generally that you need to look at the circumstances of the
9 stop in total.

10 What the defendant is doing -- and just so I'm
11 clear, I spoke to defense counsel this morning, and this
12 exhibit that she tendered I had not seen. She did not
13 articulate every one of those cases in her other exhibit. So
14 this is some new facts that --

15 THE COURT: That's why I said that it may be broader
16 than I --

17 MR. RYBARCZYK: It is. And so the government didn't
18 have an opportunity to even look at that to prepare for that
19 response here.

20 So the government has analyzed all 13 of the reports
21 that the defendant has tendered and attached to their offer of
22 proof. And it goes to the point that the government was making
23 in its briefing which is you need to look at the totality of
24 the circumstances of each stop.

25 THE COURT: But I need to look at his credibility.

1 And if at one time he says looking up means -- based on my
2 training and experience means nervousness and then he says
3 looking down based on my training and experience -- I'm not
4 judging -- what I'm -- if I use it, it's not to change the
5 facts about what happened.

6 I can see -- I think the only thing that's disputed
7 in the stop is the rocking. You can't see -- it's been a while
8 since I looked at the video. But based on the briefs, it seems
9 that probably the only factual dispute is is he rocking or not.
10 And the defense makes the position you don't see the car
11 rocking and he weighs over 300 pounds.

12 But I think everything else -- you know, I don't
13 think anybody is disputing necessarily that he gave his license
14 fast. No one is disputing necessarily that he looked upwards.
15 No one is necessarily disputing that he said, "uh" before he
16 answered each time which I find particularly amusing because
17 lawyers do that all the time when they get nervous in here.

18 So I don't think you can use those other cases to
19 change the totality of the circumstances here. But what I'm
20 saying -- and I agree with you. That's what I started the
21 whole thing saying I agree with the generic statement of the
22 law as to what I'm supposed to look at to determine whether or
23 not there was reasonable suspicion to prolong the stop.

24 But what I'm saying in addition to that though is
25 what's at the heart of this case though is do I accept his

1 training and experience to tell me what these other actions
2 mean. So to me they inform his opinions based on his training
3 and experience whether I should accept them or not accept them
4 in this case.

5 I don't think it changes the facts in this case. It
6 just bears do I give the deputy any credibility when he uses
7 the same scenarios to come up with -- different scenarios to
8 come up with the same conclusion to support reasonable
9 suspicion. That's my point.

10 MR. RYBARCZYK: Three points. The first point is in
11 terms of what's in dispute, as the Court is aware, the
12 defendant did not dispute that he was rocking back and forth in
13 his declaration. That factual dispute is not in the record.

14 THE COURT: I'm not fresh --

15 MR. RYBARCZYK: So that's not in the record.

16 THE COURT: I said from the briefs.

17 MR. RYBARCZYK: And I appreciate that. So that's
18 not in the record, and the defendant does not dispute that in
19 his declaration.

20 Second, I think there is another thing that you
21 can't see on the video, and I think that's the looking up just
22 to make sure the Court is aware. Deputy Vann observed the
23 defendant --

24 THE COURT: At this point, for purposes of the
25 analysis, I'm saying -- I'm not disputing that's not true or --

1 MR. RYBARCZYK: Fair enough. I just wanted to
2 clarify for the Court. The second point is --

3 THE COURT: Sorry to interrupt. But I think that
4 bears repeating. I'm not using any of this other information
5 to dispute the facts that -- the observations that are made by
6 Deputy Vann. What I'm using this is to look at the credibility
7 of the conclusions or the opinions based on training and
8 experience.

9 MR. RYBARCZYK: And that goes to my second point,
10 Your Honor, which is from *Arvizu*, the Supreme Court case that
11 we cited, which did state specifically that facts in some cases
12 that otherwise may be completely innocent and may be completely
13 inconsistent, in fact, with criminal conduct can in different
14 instances suggest to a trained officer that there's criminal
15 activity afoot looking at the rest of the circumstances in the
16 case.

17 So in this case, what we have is a unique set of
18 circumstances. And to take that in or what his observations
19 are in other cases where it may be a different observation, you
20 have to look at all the facts in that particular report to
21 determine why he's coming to the observation, that looking down
22 in this instance versus looking up is suspicious.

23 It's not one isolated fact. It goes to the divide
24 and conquer analysis that the defendant is really pushing in
25 this case. And as the government pointed out, many of the

1 cases that the defendant cited where -- not explicitly
2 overruled by *Arvizu*, but the logic of divide and conquer was.

3 THE COURT: Why do you say this is -- why do you
4 call this a divide -- I can see the divide and conquer when you
5 isolate specific instances. But I'm not sure I can equate this
6 with divide and conquer.

7 It's more -- I'm trying to come up with a decent
8 example. This isn't medical science. So whatever the
9 officer's training is based on, based on my training and
10 experience -- so it's not like, if a doctor testifies in one
11 case a high fever indicates pneumonia, and then he says no
12 fever indicates pneumonia, below average fever indicates
13 pneumonia, I don't know. That seems kind of funny.

14 In the same respects, I think what you are saying
15 when you say divide and conquer, you say that the professional
16 opinions based on training and experience can't be collaterally
17 attacked in any way.

18 MR. RYBARCZYK: I'm not suggesting that, Your Honor.
19 I'm saying that they can't be attacked --

20 THE COURT: How would they be attacked in any case?

21 MR. RYBARCZYK: You can ask whether he's had other
22 instances of this occurring and --

23 THE COURT: That's what they want to do.

24 MR. RYBARCZYK: I guess I'm saying is you can't use
25 specific instances. Their training and --

1 THE COURT: I can get around that. I used to be a
2 good lawyer. I could say -- I could fashion all of these as
3 hypotheticals. I could fashion every one of these examples as
4 "assume," and you would just go through and you would give the
5 Gonzalo Gonzalez example.

6 MR. RYBARCZYK: Certainly. And I think that's been
7 done in other instances in suppression motions, that they have
8 articulated such hypotheticals, and it has been done by
9 lawyers. But here they are looking to use specific instances.

10 THE COURT: What happens if he says something
11 different to the hypothetical that he concluded in the other
12 case? And why can't you use that other case as a little bit of
13 impeachment like, you don't know what you are talking about
14 because I thought in Gonzalo Gonzalez you said X and now you
15 are saying Y? What's the difference? And then allow him to
16 explain.

17 MR. RYBARCZYK: The government's position is that
18 that, again, goes to the totality of the circumstances in each
19 of the cases.

20 And the government's understanding at least from the
21 initial -- when we were here before the Court on June 5th
22 earlier this year was that the defendant was going to proffer
23 reports that showed almost identical reasonable suspicion.

24 THE COURT: So it's a moving target. Litigation is
25 litigation. I don't think my marching orders were -- that was

1 their theory now. This is a different theory. I think it's a
2 better theory.

3 But I am still looking -- even if I have that, I am
4 looking at the totality of the circumstances. But what I'm
5 saying is that this is not impacting the totality of the
6 circumstances. This is impacting how much credibility or
7 credence or weight I give to his professional expert opinion
8 that certain behavior warrants conduct that creates reasonable
9 suspicion.

10 MR. RYBARCZYK: So take, for instance, Your Honor --
11 so let's go through some of the examples that defendant
12 proffered. So, for instance, you've got a -- on Vann 15 the
13 defendant cites this --

14 THE COURT: Do you have a page number from the -- I
15 didn't have the chart. So I organized it --

16 MR. RYBARCZYK: No, I have a different chart. In
17 preparing for the hearing, I assumed that defendant would have
18 proffered all their reports and not added additional reports at
19 9:15 on the day of the hearing.

20 THE COURT: Just stop it. You know, you did that in
21 your sur-reply. There's no bad motives here. Ms. Wakefield is
22 not a sneaky person. And she's just doing the best she can for
23 her client. I'm really kind of tired -- we are all big boys
24 and girls. You got something at 9:15. I got something at
25 9:15. This is a criminal case. It's not a civil case. We are

1 going to deal with it because we are going to do the right
2 thing.

3 Whether we got it two minutes before trial, I'm
4 sorry. I don't like that behavior. Not in this case. But we
5 are big boys and girls, and we can deal with late filings, and
6 the target is a little moving. I know it's not easy. It's not
7 easy for me. Ms. Wakefield I don't think is doing anything to
8 make my life more difficult. She's just defending her client.

9 Anyway --

10 MR. RYBARCZYK: Fair enough, Your Honor. Looking at
11 page 7 of the defendant's brief, they are talking about why the
12 defendant -- the extremely nervous conduct fumbling for the
13 credit cards. In that case the driver has no driver's license
14 or ID. So, I mean, it's not inconsistent that that conduct
15 would have happened, and it seemed suspicious to him.

16 And so in a different instance they also cite on
17 page -- the recycled profile theory that they advanced in their
18 opening offer of proof on page 9 of their brief. And that goes
19 to Vann 122. Specifically it says that Deputy Vann in that
20 case thought that the quick registration and insurance
21 retrieval was quick. Again, saying that there's some sort of
22 recycled profile theory.

23 But in that case, the defense -- the defendant
24 admits in the report that it's actually the passenger who is
25 doing that in that case and not the driver, and that's why he

1 thought it was particularly odd from the report.

2 So there are facts like that --

3 THE COURT: Well, I guess that's great -- I mean,
4 here's what I'm concerned about. Just on my own, I have doubts
5 about the magical psychological powers of Deputy Vann. So just
6 without these. So I wanted to see whether or not that
7 suspicion would be born out by looking at other cases.

8 It seems to me that you already have good -- if I
9 allow that, it's not going to be very long cross-examination I
10 don't think. I don't really want -- I just want to see a
11 little bit. And so all of a sudden I think you've come up with
12 very good responses as to why you are arguing that
13 cross-examination is useless because of these different
14 situations.

15 It seems to me, as to the license, you may have them
16 beat. But it seems to me that based on my preliminary opinion
17 or view of Deputy Vann's psychological powers, I want to hear
18 more about it, and I want to test his psychological powers as
19 he relates them to other cases because I think it's sort of
20 babble speak.

21 I just think Deputy Vann could stop me and find
22 reasonable suspicion based on -- I don't know -- I got nervous
23 because it was Deputy Vann stopping me.

24 You have a third point?

25 MR. RYBARCZYK: Yes, Your Honor. The third point

1 was, as the government pointed out in its sur-reply, that
2 *Rodriguez* doesn't require that you can't ask any unrelated
3 questions during the traffic stop.

4 THE COURT: I'm on board with that. As you are
5 getting the license, I think you -- what you are saying to me
6 is, you know, "Can I have your license?" And as you are
7 handing the license, you say "Do you have anything illegal in
8 the car? Where are you coming from?" You know, even as you
9 are writing the ticket; right?

10 MR. RYBARCZYK: Exactly as you pointed out, Your
11 Honor. That's exactly what happened in this case. He asked
12 him briefly to come out of the car. And *Pennsylvania v. Mimms*
13 says you can do that for officer safety.

14 THE COURT: He's never articulated -- did he say he
15 asked him to leave the car in this case because of officer
16 safety?

17 MR. RYBARCZYK: He did not say that, no, Your Honor.

18 THE COURT: He did it because he was fishing.

19 MR. RYBARCZYK: Your Honor, he asked him to
20 remove -- come out of his car. But *Pennsylvania v. Mimms* says
21 you can do that.

22 THE COURT: Well, under these circumstances, maybe
23 he can't. I don't know. It seems to me, if you stopped him
24 because speeding, weaving, whatever and you are not worried
25 about your safety, why are you prolonging the stop even by 30

1 seconds?

2 MR. RYBARCZYK: In this case, Your Honor, I think he
3 believed there was some additional questions he had to ask and
4 he hadn't written a warning yet.

5 THE COURT: You make that point a lot. So basically
6 an officer can delay doing what he set out to do because he can
7 buy himself 30 more seconds?

8 MR. RYBARCZYK: That's not what I'm suggesting. The
9 traffic stop hasn't concluded yet by not giving the warning.

10 THE COURT: I don't know. I'm driving along. I'm
11 speeding in my red car. He pulls me over. I get nervous
12 because I don't like being stopped even today. I give him my
13 driver's license and registration. He then asks me to get out
14 of the car. I don't think I'd be a happy camper. Would you?

15 MR. RYBARCZYK: Your Honor, I haven't been in that
16 situation.

17 THE COURT: I haven't either because it doesn't
18 happen unless somebody has reasonable suspicion or has an
19 officer safety issue. Now, if --

20 MR. RYBARCZYK: Well, Your Honor, the government's
21 position, and it stands by that position, which is that general
22 proposition that the totality of the circumstances controls in
23 this case, and it's going to stay with that argument.

24 THE COURT: Okay. Ms. Wakefield, anything to add?
25 I would say this though. And I haven't read your chart. I

1 think you've got to -- you've heard where I'm at, and I think
2 that your cross-examination, if I allow it, needs to be
3 pinpoint and not long and just you know what the theme needs to
4 be. I think it's clear without dragging me through three hours
5 of multiple instances.

6 I think there's some points to be made if you can
7 make them. Maybe after hearing the government, you may not
8 think you can make the points you need to make on the driver's
9 license. I don't know. I'm just -- I think, if I do allow
10 this, I'm asking you to be surgical.

11 MS. WAKEFIELD: Yes, Your Honor. And I will try my
12 best to do that.

13 I have a few points to make, and I'll be brief. But
14 I think the Court has really hit at the issue here which is the
15 factors that Deputy Vann has proffered and his impressions and
16 inferences are all highly subjective. There aren't the type of
17 objective factors that you would expect to see or you see in
18 other cases --

19 THE COURT: I'm sorry to -- but it would be easy
20 like the example like you see multiple air fresheners. You
21 know, that's -- maybe the common lay folk -- and I hadn't
22 thought about it until that example because I've never seen it
23 as a reason for prolonging a stop. But it makes perfect -- but
24 once you hear it, it's an objective -- you know, six
25 air fresheners. They are trying to hide an odor of some kind.

1 Not everybody has six things. What kind of odor are they
2 trying to hide? Marijuana, this -- you know, some kind of
3 contraband smell.

4 MS. WAKEFIELD: Exactly. And I think that's
5 something where we could take that factor and look at an
6 officer's training and experience and say, okay, every time
7 there's multiple air fresheners, he says there's reasonable
8 suspicion or that causes him to ask more questions or something
9 like that.

10 But we don't have any of those objective factors
11 here. They are pretty much all subjective, how quickly
12 Mr. Manjarrez handed his driver's license or his registration,
13 pausing or looking up, eye contact. Those kinds of things are
14 all highly subjective, and his inferences are not really easily
15 measured or capable of sort of being measured as some sort of
16 consistent profile.

17 So I think that's why these reports are so relevant
18 is it shows that this is really a moving target. There's no
19 consistent profile. Deputy Vann is not an expert in human
20 behavior, and he doesn't consistently apply what he proffers
21 here as a profile. So I think that's exactly why these arrest
22 reports are highly relevant.

23 THE COURT: How long do you think it will -- without
24 having -- you've heard my comments now. How long do you think
25 the cross-examination will take with regard to these instances?

1 MS. WAKEFIELD: I'm not sure. I tried to make -- as
2 the Court noted, I tried to make this chart as some sort of
3 outline of --

4 THE COURT: I wish I had gotten the chart yesterday
5 actually.

6 MS. WAKEFIELD: Yeah.

7 THE COURT: Because I kind of was doing the same
8 thing, and it's much better organized than what I prepared.

9 MS. WAKEFIELD: Exactly. And so I don't anticipate
10 asking about every sort of possible, you know, stop or every
11 possible inconsistency. I think I've organized it into
12 categories of inconsistencies and with specific examples. But
13 those would be the categories that I would be looking to ask
14 Deputy Vann about.

15 I mean, if the Court -- if there's a way of sort of
16 avoiding cross-examination, if the Court wants to accept the
17 arrest reports --

18 THE COURT: Well, I thought about that, but I
19 think -- I've thought about that, and I would throw that out to
20 the government. But I think that then -- that might be a
21 defined way to go because then they can point out to me just
22 what they pointed out, and that is this isn't inconsistent
23 because in that case it was the passenger. That's useless. In
24 this particular case, he didn't have a driver's license. So
25 any comparison is, again, useless.

1 I don't mind -- I thought about that. And I think
2 the question then for -- the strategy decision for the
3 government whether accepting me to do that, then that doesn't
4 allow Deputy Vann to explain.

5 It seems to me that the government can probably --
6 at least on the two examples we just talked about they just did
7 it. That Deputy Vann would say, well, wait a minute. This guy
8 didn't have a driver's license. That's why it was suspicious.
9 In this case I thought it was really odd. That wasn't
10 significant to me because it was the passenger who was getting
11 the information not the driver.

12 So I thought about that, and then I thought, well,
13 maybe the government wants Deputy Vann to be able to explain
14 this. I would prefer that process of taking these -- you
15 submit a brief as to -- your cross-examination brief and they
16 respond, and then I kind of decide whether or not I want to use
17 those to either conclude that his conclusions or opinions are
18 valid or then use them to buttress a concept that his opinions
19 are invalid.

20 Government?

21 MR. RYBARCZYK: Your Honor, I think you rightly
22 point out, since I haven't spoken to Deputy Vann in over five
23 months because he's still on cross-examination, I don't know if
24 that's the right approach. I don't know that I can divine
25 every reason for what's happening in those instances from what

1 are the totality of the circumstances. So I don't think I
2 would be in a great position to do it.

3 THE COURT: Right. So then you'd want to hear from
4 Deputy Vann.

5 MR. RYBARCZYK: Correct, Your Honor.

6 THE COURT: That's sort of what I thought going
7 through this. That would be part of your redirect. You would
8 have in your mind -- you wouldn't lead him but basically you
9 know where you want to take him in the sense of, well, in that
10 case the guy didn't have a valid driver's license.

11 All right. I think that answers that question.

12 MS. WAKEFIELD: I think -- does the Court have any
13 questions? I had a longer argument and presentation prepared,
14 but I don't know that I need to go into that.

15 THE COURT: Unless you think I'm missing something.
16 I don't know. I think that's -- I think the bottom line is --
17 I think your approach is a little broader than what I'm saying
18 I'm going to use it for necessarily.

19 But I think at the end of the day based on my
20 comments before and my comments now, I think, since I'm the --
21 I mean, if I believe Deputy Vann and I accept his opinions, the
22 motion to suppress is denied, isn't it?

23 MS. WAKEFIELD: Well, I don't want to waive
24 anything.

25 THE COURT: But the bottom line is I have to decide

1 what I -- as in a lot of motions to suppress, if I believe the
2 officer, the motion to suppress is denied because I accept that
3 there was a cracked windshield or there was something on the --
4 a rosary on the rearview mirror that obstructed sight.

5 It's not that different than other -- it's a little
6 different based on my training and experience as opposed to I
7 was driving along and I saw a cracked windshield. It's a
8 little different. But I think the bottom line is whether I'm
9 going to accept the opinions based on the deputy's training and
10 experience at the end of the day.

11 MS. WAKEFIELD: Yes, Your Honor. I think the only
12 difference here is we have the video evidence. So the Court is
13 able to review that independently and determine how much weight
14 to give to Deputy Vann's sort of subjective interpretations of
15 what happened. So that's another difference.

16 THE COURT: And then I'm interested in pulling this
17 all together and looking at the video again and read the
18 transcript again, have this cross-examination and then probably
19 have one last briefing round to hear either argument or an
20 additional brief how -- what does this whole thing mean.

21 Okay. So the --

22 MR. RYBARCZYK: Your Honor, I had just one point.
23 Just to make clear for the defendant, there is a report that
24 they put into Exhibit B at Vann 4. It's actually not authored
25 by Deputy Vann. It's authored by Deputy Leitelt. And it's

1 actually Deputy Leitelt's observations and not
2 Deputy Vann's. I just want to make sure that's not part of the
3 sum and substance that we end up using here.

4 THE COURT: Well, I think you are going to have to
5 help me at some point in time during the -- I'm going to allow
6 cross-examination. I want it surgical. I want it based on
7 Deputy Vann's observations. So if I miss it, I expect you to
8 say "objection, this is not Deputy Vann's observation."

9 Because I think at the end of the day even once I
10 get this chart and I review the exhibits, both of you are going
11 to have a better grip of them on the day of hearing. If that's
12 the case -- I want this to be as closely related to the
13 observations in this case, the opinions based on this case.

14 And based on the categories, it seems that the
15 defense has the categories limit correct. Whether or not each
16 of these incidents support an examination in this case, I'm
17 just going to have to see it and either stop it because I'm not
18 interested -- if it's not helping me determine the credibility
19 of the opinions, I'm going to stop it. If it's helping me, I'm
20 going to let it -- if I'm not sure, it's probably going to go
21 forward. It's not like we have a jury here. I allowed it, but
22 it really wasn't helpful to my credibility determination.

23 But I think it's up to -- I don't expect
24 Ms. Wakefield to go off the deep end and go broad, and then I
25 don't expect you to object to everything. But I expect you to

1 stand up and object when -- exactly the point you just made, if
2 it's not Deputy Vann's observation, you shouldn't be talking
3 about it. Somebody else's observations is not helping me
4 determine Deputy Vann's observations and his conclusions based
5 on those observations which I think is the issue in this case.

6 MR. RYBARCZYK: Fair enough, Your Honor. And the
7 other thing I would request, because he's on cross-examination,
8 we haven't talked with him. After cross ends, would the Court
9 give us a brief recess to talk to him because there's 83 --

10 THE COURT: I think that will be helpful to me
11 because in a sense I think that will help the redirect in terms
12 of it being more precise.

13 Not fine? Of course not.

14 MS. WAKEFIELD: My only concern with that would be
15 sort of --

16 THE COURT: Coaching, whatever.

17 MS. WAKEFIELD: Exactly.

18 THE COURT: It's the same concerns everywhere.
19 Why don't you -- let's see what happens and make the request at
20 that point, and I'll decide.

21 MR. RYBARCZYK: Very well, Your Honor. Do we
22 know -- is there a universe? Are we talking about all 83
23 reports? Are we talking about the ones in this Exhibit B?

24 THE COURT: I certainly don't want to hear about 83.

25 MS. WAKEFIELD: I don't plan on crossing on all 83.

1 But I will in my preparation for the cross-examination go
2 through everything again. So I don't want to necessarily be
3 limited.

4 THE COURT: I think it's fair -- can maybe 24 hours
5 before the hearing, can the Court and the government have the
6 reports that you are going to focus on?

7 MS. WAKEFIELD: Certainly. I think --

8 THE COURT: Is that enough time?

9 MR. RYBARCZYK: That's fine, Your Honor. As long as
10 I have some time versus 45 minutes before.

11 MS. WAKEFIELD: That won't be shared with Deputy
12 Vann.

13 THE COURT: Right. He'll be able to start preparing
14 his redirect and maybe his thinking of an objection because it
15 doesn't relate to Deputy Vann's observations. I think a
16 minimum 24 hours for getting ready to be able to object or
17 redirect.

18 You don't know Deputy Vann's schedule. Do we want
19 to have a stipulation and order with regard to when the next
20 hearing date is?

21 MR. RYBARCZYK: I don't know it, Your Honor. I can
22 check and try to get something into the Court today.

23 THE COURT: It doesn't matter -- I can set a date
24 today but the date might not work because the witnesses are not
25 available. Was there another witness? Who else do we have

1 besides Deputy Vann?

2 MR. RYBARCZYK: I believe the government would at
3 least get an opportunity to cross Mr. Manjarrez on his
4 declaration. But that's I think the only -- I don't know if
5 the defendant has any additional witnesses. They haven't told
6 me of any.

7 THE COURT: Do you anticipate much other than cross
8 of Deputy Vann, redirect, some cross of the defendant's
9 declaration?

10 MS. WAKEFIELD: Not much more beyond that. Again,
11 I'm sort of new on the case. But I'll take a look at
12 everything. If there's something else I plan on --

13 THE COURT: So we will be able to wrap this up in a
14 morning or an afternoon?

15 MS. WAKEFIELD: A day.

16 THE COURT: You have to be careful because I've
17 already told you where my mind is going. So I think you have
18 to be careful not to lose that momentum or the track. I've
19 told you the four areas that I'm concerned about. So if you
20 really want the motion to suppress to get granted, you have to
21 think about me writing that order and what specific examples
22 that I could use in that order to support not accepting the
23 opinions.

24 So it's not going to be helpful to me to go through
25 84 -- I'm not going to cite 84 instances. If I do cite, it's

1 going to be one, two, three. Again, we haven't said that
2 that's actually going to work that way. So if in one instance
3 in this case looking up means you are nervous and then you have
4 another case looking down and there's no differences -- looking
5 down makes you nervous and looking straight in your eye makes
6 you nervous, that's all I need to, I think, support a
7 conclusion that that opinion is not acceptable. I don't need
8 15. I just need two or three on each example. So if there's
9 four areas, I'm not quite sure why we need more than eight to
10 12.

11 MS. WAKEFIELD: Yes, Your Honor. I understand.

12 Then I guess on -- I have to take a look again at
13 the declaration that was submitted for Mr. Manjarrez, but I
14 believe it only had to do with the initial traffic stop. So I
15 don't know that that's still an issue at play.

16 THE COURT: I'll go back and -- it's been a while
17 since I looked at it. I don't think -- at this point in time,
18 I don't think -- you know, whether or not -- again, I haven't
19 looked at the tape. Whether or not it supports -- you know, if
20 I recall, there's not something that shows cutting off
21 somebody.

22 I think the tape does -- if I just had the tape,
23 that I think that the tape would support the stop at the end of
24 the day. So I'm not -- I don't think this case is about
25 whether the stop was proper. From my perspective, the stop was

1 proper. There was reason to make the stop. That's where I'm
2 at now.

3 The question that where I'm at is whether it was
4 illegally prolonged. That's where I'm at.

5 MS. WAKEFIELD: Yes, Your Honor.

6 THE COURT: Maybe by next Thursday pick a date for a
7 hearing. Don't set it on a Monday because I won't have half a
8 day. Half a day, not a day on Monday. So set it Tuesday
9 through Friday. Give me at least a week -- don't just set it
10 the following -- I want to make sure that, if I'm in trial, I
11 tell them I'm going to break off and -- because I'm not going
12 to continue this. We are just going to go.

13 MR. RYBARCZYK: We have obviously the Thanksgiving
14 holiday coming up too.

15 THE COURT: Right. Just give me enough lead time if
16 I'm in trial.

17 MR. RYBARCZYK: So I understand, Your Honor, at this
18 continued hearing, are we going to do argument at that hearing,
19 or are you going to reserve it until a later date or --

20 THE COURT: I guess it depends how much time we have
21 and what I feel -- we've had a lapse in time. So I read the
22 transcript again last week. So whenever we have that, I'm
23 going to have to look at it again to refresh.

24 So it may be helpful to both or -- I think where I'm
25 at now -- I may not be that way then. But I think what might

1 be more helpful is get the transcripts, do a final brief, and
2 then have argument. There's been so many gaps in time, that
3 might be the most organized for each side to be able to marshal
4 their arguments and have the facts right at their fingertips
5 and then come back and argue it. Maybe like in a couple weeks
6 prepare a brief and a week after that have argument on it.

7 MR. RYBARCZYK: Okay. We'll obviously prepare a
8 speedy trial stip because that's coming up against the current
9 trial date.

10 THE COURT: As long as this is going, this is
11 excludable time.

12 MR. RYBARCZYK: Thank you, Your Honor.

13 MS. WAKEFIELD: Thank you.

14 THE COURT: Thank you.

15 (At 10:42 a.m. the proceedings adjourned.)
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1 CERTIFICATE OF OFFICIAL REPORTER
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5 I, MAREA WOOLRICH, FEDERAL OFFICIAL REALTIME COURT
6 REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE
7 CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
8 TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING
9 IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY
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11 THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
12 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
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15 DATED THIS 27TH DAY OF NOVEMBER, 2017.
16
17

18 /S/ MAREA WOOLRICH

19 _____
MAREA WOOLRICH, CSR NO. 12698, CCRR
20 FEDERAL OFFICIAL COURT REPORTER
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