The California Legal Update

Remember 9/11/2001; Support Our Troops

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This Edition is dedicated to the Memory of retired San Diego Deputy District Attorney and former colleague Robert Sickels, who passed away on March 23, 2014.

THIS EDITION'S WORDS OF WISDOM:

"*82.7% of all statistics are made up on the spot*." (Steven Wright)

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ADMINISTRATIVE NOTES:

Buccal Swap DNA Samples from Arrested Felons: The constitutionality of taking buccal swap DNA samples from all persons arrested for, or charged in court with, *any* felony, whether serious or not, as mandated by P.C. § 296(a)(2)(C), was upheld by the Ninth Circuit Court of Appeal in *Haskell v. Harris* (9th Cir. Mar. 20, 2014) ___ F.3rd ___ [2014 U.S. App. LEXIS 5285]. This is a bit of an extension of the U.S. Supreme Court's decision in *Maryland v. King* (June 3, 2013) __ U.S. __ [133 S.Ct. 1958], which upheld a similar, but somewhat more restrictive

procedure limted to serious felonies. The same issue is still pending in state court in *People v. Buza* (2011) 197 Cal.App.4th 1424 (review granted), which has been remanded to the district court of appeal (July 10, 2013; 2013 Cal. LEXIS 5627.) for redetermination in light of *Maryland v. King*. So pending a new decision in *Buza*, don't get too comfortable with this rule. We're not done yet.

Concealed Firearms Laws: I've recently received my 2014 editions of two informative pamphlets on carrying concealable (and other) firearms in the fifty states (and Canada and Mexico). I highly recommend both of these books to anyone who is interested in the rules and regulations on this important Second Amendment issue; necessary information when you're traveling with a firearm. "*50 State Guide to Firearm Laws and Regulations*" is available through www.mylegalheat.com. And "*Traveler's Guide to the Firearm Laws of the Fifty States*" can be obtained at www.gunlawguide.com. Both are cheap ($15 and $13.95, respectively) and very well-researched. If you wish to purchase only one, the second one, in my opinion, is more informative and more up-to-date.

CASES:

***Informants*:**

United States v. Hullaby **(9th Cir. Dec. 4, 2013) 736 F.3rd 1260**

Rule: Using an informant who, despite a significant criminal history of his own and who is cooperating only out of his own self-interest, does constitute "outrageous government conduct" and is not generally a due process violation.

Facts: Defendant was convicted in federal court of conspiracy to possess with intent to distribute more than five kilograms of cocaine (21 U.S.C. § 841(a)(b)(1) & (b)(1)(A)(ii)) and possession of a firearm in furtherance of the conspiracy (18 U.S.C. § 924(c)(1)(A)(i)). His conviction stemmed from a "reverse sting" operation in Phoenix, Arizona, where undercover agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) met with defendant and others to plan and carry out a robbery of a fictional cocaine stash house. In setting up this fake robbery, ATF used a confidential informant by the name of Pablo Cortina to help draw defendant into the operation. The plan was for defendant to enter the stash house, along with three others, and subdue the guards that the undercover ATF agents and Cortina told him would be there. Defendant, Cortina, and other co-conspirators all met in a parking lot on an appointed day and time from where they were to proceed to the stash house and commit the robbery. As they prepared to leave, ATF agents swooped in and arrested defendant and his co-conspirators. Cortina had become an informant for the ATF after he himself had gotten busted sometime earlier for a series of home invasion robberies where he and others, dressed in law enforcement uniforms, used a battering ram to break down locked front doors. Carrying AK-47s, shotguns, and other weapons, Cortina and his co-conspirators bound their victims and stole possessions from their homes. Charged in a 115-count federal indictment carrying a potential life sentence, Cortina worked a (sweetheart) deal where

he informed on his associates in exchange for being allowed to plead to *one felony count* with a four-year probationary sentence. Back out on the street, Cortina soon got caught stealing from his employer. Fearing a potential violation of his probation and a healthy prison sentence where he was likely to be meeting again with his prior associates, Cortina offered to disclose more information about new home invasion robberies in the area. Over his probation officer's objection, ATF accepted his offer and signed him up as a "registered" confidential informant. It was in this capacity that Cortina helped set up defendant. Defendant appealed from his conviction.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant complained on appeal that it was a violation of his Fifth Amendment "*due process*" rights, as "*outrageous governmental conduct*," to use Cortina as an informant in a sting operation that resulted in defendant's arrest and prosecution. Specifically, defendant complained "that the government's conduct was outrageous, insofar as the government collaborated with 'a repeat violent home-invader . . . whose motivation in spurring the government to create this fictional offense was to continue to avoid accountability for his own heinous crimes.'" The Court rejected this argument, ruling that this "state of affairs" did not constitute a "due process" violation. The Court noted that this defense is rarely allowed, and then only "when the actions of law enforcement officers or informants are so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." The Court could find only two examples where this due process argument was allowed, both involving instances where the government and/or its informant's own participation in serious illegal activities, although falling short of entrapment, was what caused the respective defendants to commit the acts for which they were prosecuted. (See *United States v. Twigg* (3rd Cir. 1978) 588 F.2nd 373, and *Greene v. United States* (9th Cir. 1971) 454 F.2nd 783.) In this case, the fact that Cortina had engaged in any number of prior criminal acts does not raise due process concerns sufficient to preclude the government from using him as a confidential informant. While the liberal plea bargain Cortina had received for his home-invasion robbery series may itself have been "outrageous," as noted by the Court, the propriety of his plea bargain was not the issue here. The issue here was whether it was outrageous to the point of a 'due process" violation for the government to be using such an unsavory character in their sting operations. The fact that Cortina may have been cooperating out of self-interest is irrelevant, or at least is not "shocking." It is a common practice for the government to reduce or drop charges against one person in exchange for his cooperation in the prosecution of another. "We do not require the government to recruit solely informants who will work in a spirit of altruism for the good of mankind." As such, defendant's due process rights were not violated.

Note: I briefed this case as a reminder to those of you who choose (or have) to use paid or confidential informants that you're not likely to find any such persons who will help you in your case out of "a spirit of altruism for the good of mankind." While it may not be "outrageous governmental conduct" to use an informant, even someone as unsavory as Pablo Cortina, just remember that they are typically rotten people, through and through. More importantly, you need to remember that *they are not your friends*. Informants are typically interested only in what's in it for them. It they perceive an advantage to

themselves by feeding you false information, or even by lying on the witness stand, they will do just that. It's your responsibility in using informants to keep that from ever happening. I've seen more than one law enforcement/prosecutorial career ruined by placing too much trust in informants. So while you may use them to your own advantage, just remember to hold them at arms-length, corroborate what they give you, and *never* turn your back on them.

***Theft by False Pretenses and Robbery*:**

People v. Williams **(Aug. 26, 2013) 57 Cal.4th 776**

Rule: Force or fear used to escape from a theft by false pretenses is not a robbery.

Facts: Defendant went into a Walmart department store in Palmdale with several "payment cards" that were "re-encoded with a third party's credit card information" (which, from the description in the decision, appear to have been credit cards with the card numbers altered). Hitting on an inexperienced cashier, defendant used one of the payment cards (a Visa or MasterCard) to purchase a $200 Walmart gift certificate. That went so easy that he tried to purchase three more such gift cards from the same cashier. However, a more experienced cashier intervened and told defendant that although he could keep the gift card he'd already purchased, they had a policy of not allowing the purchase of gift cards with a credit card. Undeterred, defendant went to a different cashier and purchased another $200 Walmart gift card using another re-encoded payment card. This transaction was observed by Walmart security guards who confronted defendant and asked to see his receipt and the payment card used. When defendant showed these to the guards, it was noted that the last four digits on the payment card did not match those on the receipt. Defendant therefore pulled out two more re-encoded payment cards, but their numbers also did not match those on the receipt. Starting to worry, defendant began to move towards the exit. The guards told him to stop, which he did. Defendant then produced yet another re-encoded payment card. This card's last four digits also did not match those on the receipt defendant had already produced. Panicking, defendant decided to push his way out of the store. The guards wrestled a resisting defendant to the ground and handcuff him. Recovered from his person were four MasterCard and Visa payments cards as well as several gift cards from Walmart and elsewhere. Defendant was charged in state court with four counts of robbery and one count of grand theft. The grand theft count was prosecuted (with corresponding jury instructions) under a theory of a "*theft by false pretenses*." Convicted of all offenses and as a second striker, defendant was sentenced to over 23 years in prison. On appeal, the Court of Appeal affirmed. Defendant petitioned to the California Supreme Court.

Held: The California Supreme Court, in a split 6-to-1 decision, reversed as to the robbery counts. In a lengthy decision, the Court reviewed the history of California's larceny statutes as they developed from, and were influenced by, English common law. In so doing, it was noted that any "*larceny*" type of theft includes an element of a "*felonious taking*." (P.C. § 848(a)) A "*felonious taking*" means a taking that was perpetrated with the intent to commit the crime of larceny. "*Larceny*" is the taking of

another's property with the intent to steal (i.e.; permanently deprive) and carry it away. A "*theft by false pretenses*," as it developed under the common law and has been adopted under California law (also P.C. § 484(a)), involves (1) the making of a false pretense or representation to the owner of property, (2) with the intent to defraud the owner of that property, and (3) where the owner therefore transfers the property (both possession and title) to the defendant in reliance on the representation. There are two differences between common law larceny and theft by false pretenses. (1) Larceny requires an "*asportation*" (i.e.; some movement, no matter how slight) of the property. Theft by false pretenses does not require any such movement, the crime being complete immediately upon the thief taking possession and receiving title to the property. (2) Larceny requires a "*trespassory taking*," i.e.; a taking against the will of the owner. A theft by false pretenses involves a consensual transfer of possession and title to the property. No trespass is involved. Recognizing this, a larceny is a continuing offense, extending from the first movement of the stolen property (i.e., "*caption*" and "*asportation*"), through the escape, up until the thief has completed his escape and reached a place of temporary safety with that property. A theft by false pretenses, on the other hand, is *not* a continuing offense. It's complete once the thief takes possession of (and title to) the property. A robbery is no more than a common law larceny accomplished by force or fear. Thus, any force or fear used to aid in the escape with the property (i.e.; before the thief has reached a place of temporary safety with the stolen property) converts a simple theft into a robbery. But a theft by false pretenses, being complete upon the thief taking possession and receiving title to the stolen property, does not include the thief's escape with the property. Therefore, any force or fear used by the thief *after* he's obtained possession of, and title to, the property is not a part of theft by false pretenses. Such a consensual transfer of possession and title, therefore, can never constitute a robbery even though the thief uses force or fear to escape. Defendant, therefore, should not have been convicted of robbery. Lastly, the Court noted that enactment of P.C. § 490a, which purports to unite "larceny," "embezzlement," or "stealing," under the general category of a "theft," did not change the common law elements of these offenses. The case, therefore, was remanded to adjust defendant's convictions and sentencing accordingly.

Note: The Court included in its historical discussion the development of a "*theft by trick or device*" (or "*larceny by trick*") (pgs. 783-784), and "*embezzlement*." (pg. 784). A "*theft by trick or device*," which is easily confused with a theft by false pretenses, involves the consensual transfer of "*possession*" of personal property accomplished by fraud. "*Title*," however, is not intended in such a circumstance to be transferred along with the possession of the stolen property. Because the transfer of the property is accomplished in reliance upon the thief's fraud, the victim's consent is said to be "*vitiated*" by the fraud, making such a theft (like larceny) to be one accomplished by "*trespass*." (The Court did not explain why this same "vitiate" argument couldn't also be made for a "theft by false pretenses.") A theft by trick or device, therefore, is actually another form of larceny. As such, although the Court here does not discuss the issue, a "larceny by trick," arguably, may be converted to a robbery when the thief uses force or fear at any time before reaching a place of temporary safety with the stolen property, just as with any other form of larceny. Embezzlement, on the other hand, is when the thief, who has been consensually given possession of the property by the victim, thereafter

converts it to his own use. As such, there is no "*trespassory taking*." It cannot, therefore, ever be converted to a robbery. This is a great case for anyone interested in how California's confusing theft statutes and its alternate theories have developed, with the history of such development via the English common law since as early as 1275, and earlier.

***Medical Marijuana and Expert Testimony*:**

People v. Dowl **(Aug. 29, 2013) 57 Cal.4th 1079**

Rule: To properly establish a police officer's expertise on the topic of marijuana possession and use, where marijuana used for medical purposes is a defense, there must be evidence of not only the officer's training and experience on the illegal use of marijuana, but also the contrasting lawful possession and use of medical marijuana.

Facts: Defendant was stopped in his car by Officer Jason Williamson and his partner for playing his radio too loud. When stopped, defendant proudly presented, along with his driver's license, his medical marijuana identification card, volunteering that he had marijuana in his car. The officers searched his car and found $21 in cash and a fake WD-40 can with a hidden compartment in which there was marijuana residue. In defendant's pocket was 17.2 grams of marijuana in a single bag. Ten bags containing three grams each were found in the driver's door storage compartment. Three more bags containing 6.5 grams each were on the back seat. There was no marijuana-related paraphernalia in the car and it did not appear that defendant had been using any of it. Defendant's belt buckle read, "CA$H ONLY." Defendant was arrested for the unlawful transportation of marijuana (H&S § 11360(a)) and possession of marijuana for purposes of sale (H&S § 11359). At trial, Officer Williamson, after testifying to his training and experience relative to the crime of illegally possessing marijuana, told the jury that in his expert opinion defendant possessed the marijuana for purposes of sale. He based this opinion on the packaging and location of the marijuana found in the car, defendant's "CA$H ONLY" belt buckle, and the fact that defendant was already on probation for a prior conviction for possession of marijuana for sale. There was no evidence presented relative to any expertise Officer Williamson might have had concerning persons who possess marijuana for medical purposes. Defendant testified at trial that he had a "prescription" for medical marijuana to help with his chronic pain and insomnia related to a 2007 shoulder injury. He also noted that he had obtained a medical marijuana I D card from the Kern County Health Department which was still valid at the time of his arrest. He claimed to have divided his marijuana, purchased at a Los Angeles marijuana dispensary (the name of which he could not remember), based upon the amount he smoked on a daily basis. He also claimed that the number of baggies of marijuana in his car was because he had been in a rush and merely tossed them all into the car. The jury didn't buy it, convicting him of unlawfully transporting and possessing the marijuana for sale. Defendant was sentenced to three years in prison. He appealed. His conviction was upheld by the Fifth District Court of Appeal (183 Cal. App. 4th 702). Defendant's petition for review to the California Supreme Court was granted.

Held: The California Supreme Court unanimously affirmed. On appeal, defendant's primary contention was that the officer's expert opinion was legally insufficient to support a conviction in that it needed, but lacked, any evidence of the officer's training or experience in differentiating between those who possess marijuana lawfully for medical purposes from those who possess it unlawfully with the intent to sell. This argument was based upon prior California Supreme Court authority to the effect that while a conviction will be upheld even though based upon no more than expert's opinion that an unlawful drug is held for purposes of sale, the same cannot be said when the drug is one that may be legally purchased by prescription. (*People v. Hunt* (1971) 4 Cal.3rd 231.) In medical marijuana cases, this means that an expert police officer's testimony that a person possessed marijuana for sale is not sufficient evidence to support a conviction in the absence of other expert testimony distinguishing lawful patterns of marijuana possession from unlawful patterns of holding the marijuana for purposes of sale. (*People v. Chakos* (2007) 158 Cal.App.4th 357.) The Fifth District Court of Appeal, in affirming defendant's conviction, ruled that *Chakos* had misinterpreted Hunt, and was inapplicable where the defense of lawful use is an affirmative defense as in medical marijuana cases. The California Supreme Court, in this decision, first ruled that because defendant had not objected to Officer Williamson's expert opinions, he had waived the argument on appeal. However, even without expert testimony on the use of medical marijuana, the Court found that the evidence in this case, taken as a whole, was sufficient to support defendant's conviction. In addition to the officer's expert opinion that defendant possessed the marijuana for purposes of sale (with the Court describing in detail all the factors the officer described in his testimony), the Court noted that there was no paraphernalia in the car associated with the personal use of marijuana, nor any indication that he himself had been using it. Also, defendant's wages as a part-time baby sitter—$300 a month—constituted his only income, which were shown in testimony to be insufficient to cover his monthly expenses. Taken as a whole, when included with Officer Williamson's expert opinion on the illegal use of marijuana, this was sufficient to sustain his conviction.

Note: This deficiency in the evidence, by failing to include in the officer's testimony his expertise as it related to the use of medical marijuana, was not the officer's fault; it was the prosecution's for not having asked the right questions. The Officer's expertise in this area was in fact brought out at the preliminary examination, but it was defense counsel (and not the prosecutor), on cross-examination, who asked the relevant questions. Here, without that testimony being repeated at trial, the conviction was saved only because there was other evidence supporting the officer's conclusions concerning defendant's intent in possessing the dope. But the importance of this case is to note for police officers and prosecutors alike the need to present evidence of not only the expert-officer's training and experience on the illegal possession and use of marijuana, but also on the related, but still separate issue of the lawful use of medical marijuana, and how the two contrast. Officers should make it a habit to write out your expertise *in detail* on any topic where you're going to be asked for an expert opinion, print it out, and hand it to the prosecutor before testifying, with a copy to the defense, and maybe even a third to the judge and a fourth to the court reporter. That way nothing is missed and we don't necessarily have to be fishing around for other corroborating evidence.

***Miranda*; *Non-Custodial Questioning*:**

***People v. Davidson* (Nov. 26, 2013) 221 Cal.App.4th 966**

Rule: Initial on-the-scene questioning of a criminal suspect, so long as "brief and causal," is not likely to require a *Miranda* admonishment and wavier. The fact that the suspect has been handcuffed is but one factor to consider when determining whether *Miranda* is implicated.

Facts: A brand new Suzuki motorcycle disappeared from the driveway of its owner in Simi Valley at some time during the early morning hours of April 22, 2012. At about 9:45 a.m., defendant was seen pushing the victim's motorcycle down a nearby street by a witness who figured something was suspicious when he saw loose wires hanging from its ignition. The witness called police, providing a description of the defendant. Simi Valley Police Officer Patrick Coulter responded to the call. He observed defendant, matching the broadcast description, still pushing the motorcycle with "jumper wires' hanging from its ignition. When defendant saw Officer Coulter, he pushed the motorcycle behind a high profile vehicle in a vain attempt to hide. Officer Coulter ordered defendant to put the bike down, remove his backpack, and step towards him. Defendant was carrying a flat-blade screwdriver at the time, which he set on the seat of the motorcycle. Officer Coulter was concerned about the screwdriver being available as a weapon, the fact that defendant was acting "hanky," and that he appeared as if he were thinking about fleeing. So he immediately handcuffed defendant and, while telling him that he was being detained for investigation, had him sit on the curb. Immediately upon applying the cuffs, Officer Coulter asked defendant, referring to the motorcycle, "*Is this your vehicle*?" Defendant responded that he'd found the motorcycle in some bushes in a nearby industrial-office area. Not finding this explanation to be plausible under the circumstances, Officer Coulter arrested defendant and searched him, finding a meth pipe in his pocket. At trial, defendant made a motion to suppress his statement, arguing that because he had not been admonished of his *Miranda* rights when asked about the motorcycle, his statement was inadmissible. The trial court found that defendant was not in custody for purposes *Miranda*, making any such admonishment legally unnecessary, and denied the motion. Defendant was convicted of auto theft and appealed.

Held: The Second District Court of Appeal (Div. 6) affirmed. In finding that no *Miranda* admonishment was necessary under the circumstances, the Court quoted an earlier case in setting out the guiding principle for this type of situation. "*When circumstances demand immediate investigation by the police, the most useful, most available tool for such investigation is general on-the-scene questioning, designed to bring out the person's explanation or lack of explanation of the circumstance which aroused the suspicion of the police, and enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.*" (*People v. Manis* (1969) 268 Cal.App.2nd 653, 665.) In considering all the surrounding circumstances of this case, including that the defendant had been handcuffed, the Court found that defendant's situation fell squarely within the above principle. Handcuffing a suspect during an investigative detention is but one factor to consider, and does not

automatically make subsequent questioning a "custodial interrogation" for purposes of *Miranda***.** Defendant in this case was handcuffed only because he was acting "hanky," he appeared that he might be ready to flee, and he had access to a possible weapon; i.e., the screwdriver. He was told he was only being detained immediately before being asked about the motorcycle. The detention was brief, with the challenged question being asked on a public sidewalk and not at a police station where interrogations are typically prolonged and intense. So what defendant perceived as a custodial interrogation was in fact no more than a single question asked to confirm or dispel the officer's suspicions. Under these circumstances, there was no need for a *Miranda* admonishment and wavier before asking about the motorcycle.

Note: The bottom line is that defendant was not under arrest, but only being detained. *Miranda* is typically not required in the detention situation. And it was only a detention (as opposed to a "de facto arrest") because the officer had some valid safety-related reasons for applying the handcuffs. But the Court also pointed out that there are limits to this rule. "*Miranda* warnings are not required 'until such time as the point of arrest or accusation has been reached or the questioning has ceased to be brief and casual and became sustained and coercive'"(quoting *People v. Manis*, *supra*, at p. 669.). So don't push this envelope too far. The whole purpose in finding such questioning to be a "non-custodial interrogation," not requiring *Miranda*, is that such questions are necessary for a quick determination whether a crime has in fact been committed and whether the right suspect has been detained. Once this determination is made and the detainee is in fact arrested, then any further questioning can no longer be considered "*brief and causal*." And by the same token, letting the questioning get more direct, intense, and accusatory may itself very well convert the detention into an arrest.

Border Patrol Roving Patrol Stops and Reasonable Suspicion:

United States v. Valdes-Vega **(9th Cir. Dec. 24, 2013) 738 F.3rd 1074**

Rule: Border Patrol "roving patrol" stops must be based upon a reasonable suspicion of criminal activity. Reasonable suspicion is based upon a consideration of the totality of the circumstances even though such circumstances, standing alone, may be very innocent.

Facts: Border Patrol Agent Luis Lopez, an eight-year veteran, while in an unmarked vehicle in the north-bound lanes of Interstate 15, north of San Diego and 70 miles north of the U.S.-Mexican border, observed an older Ford F-150 pickup truck traveling at a high rate of speed in the far right lanes. The truck, with Baja California plates, was driving erratically, making at least 10 lane changes without signaling. Losing the truck, Agent Lopez radioed ahead to a second border patrol agent in a marked vehicle to watch for the truck. The second agent, Jeffery Hays, an eleven-year veteran, caught up with the truck near the closed Temecula Border Patrol Checkpoint. He also saw the truck driving in the right-hand lanes at about 90 miles an hour, passing other cars that were traveling at about 70 to 80 mph, while making numerous lane-changes without signaling, cutting off other drivers, and causing them to have to brake. At the Temecula Border Check, the truck slowed down to the speed of other vehicles and moved into the left lanes, only to

speed up once again. Agent Hayes drove up next to the truck, noting that the driver, defendant, was alone and that he was looking straight ahead, ignoring the presence of the marked Border Patrol vehicle. Agent Hayes also noted the truck's older body style, clean appearance, and Baja California plates. Agent Hayes activated his emergency lights, noting that it took longer than normal for defendant to finally pull over and stop. When contacted, defendant consented to a search of his truck. Approximately eight kilograms of cocaine were found. Charged in federal court with possession of cocaine with the intent to distribute (21 U.S.C. § 841(a)(1) & (b)(1)(A)), defendant filed a motion to suppress, which was denied. He pled guilty and appealed. The Ninth Circuit Court of Appeal initially reversed (see 714 F.3rd 1134), finding the traffic stop to have been made without sufficient reasonable suspicion. However, a rehearing before an en banc panel (i.e., 11 justices) was granted.

Held: An en banc panel of the Ninth Circuit Court Appeal, in a split 8-to-3 decision, upheld the denial of defendant's suppression motion, affirming the conviction. It was first noted that for a "roving patrol" by the Border Patrol to make a traffic stop away from the border itself, the stop must be supported by a "reasonable suspicion" that the occupant(s) of the vehicle are engaged in some sort of criminal activity. In evaluating the existence of a reasonable suspicion, which is something less than a "preponderance of the evidence," or even "probable cause," but more than a mere "hunch," the "*totality of the circumstances*" must be taken into account. This includes the concept that acts that may be purely innocent in isolation, but when added to other factors (including the agents' training and experience), can, in the right context, still amount to a reasonable suspicion. In this case, two experienced Border Patrol agents testified that defendant's erratic driving was something that is indicative of being a smuggler. When added to the fact that they were on a highway where smuggling is commonplace, coming from the direction of the U.S.-Mexican border, in a vehicle with Mexican license plates, in the a type of vehicle (i.e., a pickup truck) that is suitable for carrying contraband, and then slowing at the border checkpoint while avoiding looking at a marked Border Patrol vehicle, that's enough to constitute a reasonable suspicion. The fact that the Border Patrol agents are not tasked with enforcing state traffic regulations is irrelevant. The stop was legal.

Note: The dissenting justices are convinced that the "Border Patrol Agents stopped Valdes-Vega because of his Hispanic Appearance," noting that every other factor talked about constitutes no more than purely innocent acts. They miss the point. In this full decision are a lot of quotes from a number of U.S. Supreme Court cases talking about how just because a single factor in isolation may mean very little doesn't mean you can't add it to other seemingly innocent factors, eventually establishing a reasonable suspicion. That's what the courts mean when they talk about the "totality of the circumstances." But I can't argue that the reasonable suspicion in this case is not a bit thin. For instance, I'm not sure that erratic driving, considered to be one of the more important factors considered, is in fact indicative of being a drug smuggler. I would think that someone with eight kilograms of cocaine in his vehicle would want to make himself a little *less* conspicuous, not more. But then we're not dealing with rocket scientist here, so I could be wrong. Either way, this is a great case to review for an excellent explanation of the "*reasonable suspicion*" standard and the "*totality of the circumstances*" concept.