

APR 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAFAEL MACIAS-ENCINAS,

Defendant - Appellant.

No. 09-50600

D.C. No. 3:06-cr-01708-H-3

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted April 15, 2011**
Pasadena, California

Before: KOZINSKI, Chief Judge, D.W. NELSON and BYBEE, Circuit Judges.

In determining the reasonableness of a detention, we look to both (1) the absolute length of the detention, “regardless of the police officers’ assiduousness in seeking probable cause,” and (2) the context of the *Terry* stop length, i.e., “whether

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

law enforcement officers unduly extended the detention by their lack of diligence.”
United States v. \$191,910.00 in U.S. Currency, 16 F.3d 1051, 1059–60 (9th Cir. 1994); *see Terry v. Ohio*, 392 U.S. 1 (1968).

The forty-five minute stop here was not per se unreasonable. *See United States v. Sharpe*, 470 U.S. 675, 685–86 (1985) (twenty-minute detention was reasonable); *United States v. Place*, 462 U.S. 696, 710 (1983) (ninety-minute detention was unreasonable). We also find that the context of this detention did not render it unreasonable. The record does not indicate that, during the detention, Defendant-Appellant Rafael Macias-Encinas (“Macias”) objected to being detained in the heat or that he suffered any harm, injury, or ill effects from the heat. Accordingly, we do not find that Macias’s discomfort rendered the detention unconstitutional.

We likewise reject Macias’s argument that the U.S. Border Patrol agents unnecessarily prolonged his detention by failing to diligently pursue their investigation. The record indicates that the agents attempted to locate a narcotic detector dog shortly after pulling over the truck in which Macias was a passenger. The border patrol agents diligently located a narcotics dog from the nearest checkpoint as soon as they knew where it was needed.

AFFIRMED.