**9.21 PARTICULAR RIGHTS—FOURTH AMENDMENT—UNREASONABLE SEIZURE OF PERSON—EXCEPTION TO WARRANT REQUIREMENT—*TERRY* STOP**

 In general, a seizure of a person for an investigatory stop is reasonable if, under all of the circumstances known to the officer[s] at the time:

 1. the officer[s] had a reasonable suspicion that the person seized was engaged in [criminal activity] [*other conduct justifying investigation, e.g., a traffic infraction*]; and

 2. the length and scope of the seizure was reasonable.

 In order to prove the seizure in this case was unreasonable, the plaintiff must prove by a preponderance of the evidence that the officer[s] lacked reasonable suspicion to stop [him] [her] or that the length or scope of the stop was excessive.

 “Reasonable suspicion” is a particularized and objective basis for suspecting the plaintiff of criminal activity. The officer[s] [is] [are] permitted to draw on [his] [her] [their] own experience and specialized training to make inferences from and deductions about the cumulative information available to [him] [her] [them].

 In determining whether the length or scope of the seizure was reasonable, consider all of the circumstances, including:

 (1) the intrusiveness of the stop, such as the methods the police used, the restriction on the plaintiff’s liberty, and the length of the stop;

 (2) whether the methods used were reasonable under the circumstances; and

 [(3) *insert other factors applicable to this case*.]

**Comment**

 Use this instruction only in conjunction with the applicable elements instructions, Instruction 9.3–9.8, and in conjunction with Instruction 9.20 (Particular Rights—Fourth Amendment—Unreasonable Seizure of Person—Generally).

 A police officer may conduct a brief stop for investigatory purposes when the officer has only “reasonable suspicion” to believe the stopped individual is engaged in criminal activity. *See Terry v. Ohio*, 392 U.S. 1, 23-27 (1968). An investigatory stop of a vehicle is justified under the Fourth Amendment if the officer reasonably suspects that only a traffic violation has occurred. *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012). However, a traffic stop “exceeding the time needed to handle the matter for which the stop was made” violates the constitutional protection against unreasonable seizures. *Rodriguez v. United States*, 135 S. Ct 1609, 1612 (2015). Handling the traffic stop includes checking driver’s licenses, determining whether there are outstanding warrants and inspecting the car’s registration and proof of insurance. *Id*. at 1615. An officer may not conduct unrelated checks (such as a dog sniff) “in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id*.

 “Reasonable suspicion” is defined as “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013). It requires only “a minimal level of objective justification.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). Because the standard is objective, an officer need not

tell the individual the real reason for the stop. *United States v. Magallon-Lopez*, 817 F.3d 671,

675 (9th Cir. 2016) (holding that officer may lie to individual about basis for *Terry*

stop). An officer is permitted to draw on the officer’s own “experience and specialized training to make inferences from and deductions about the cumulative information available to the officer that might otherwise elude an untrained person.”  *Valdes-Vega*, 738 F.3d at 1078 (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). A court must consider the totality of the circumstances when determining whether reasonable suspicion existed. *Id*. Additional information acquired through consensual questioning combined with an officer’s knowledge and training can give rise to reasonable, articulable suspicion. *See United States v. Brown*, 996 F.3d 998, 1007 (9th Cir. 2021)***.***

 In cases involving multiple individuals who are searched or seized, “[a] search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). However, an officer’s lack of individualized suspicion does not, standing alone, make the search and seizure automatically unlawful. *See Lyall v. City of Los Angeles*, 807 F.3d 1178, 1194-95 (9th Cir. 2015). The reasonableness of the search and seizure must be determined in light of the circumstances. *Id*.

“[R]ace is a trait that, when *combined with others*, can reasonably lead an officer to zero in on a particular suspect,” but “[r]ace is of little value in distinguishing one suspect from others, particularly where everyone in the pool of possible suspects is of the same race.” *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1174-75 (9th Cir. 2013).

“[A]voidance of the police, standing alone, does not give rise to a particularized, reasonable suspicion that a person is committing a crime.” *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011).

In the case of a *Terry* stop to investigate a completed misdemeanor, the court must “consider the nature of the misdemeanor offense in question, with particular attention to the potential for ongoing or repeated danger (*e.g.*, drunken and/or reckless driving), and any risk of escalation (*e.g.*, disorderly conduct, assault, domestic violence)” when determining “whether the Fourth Amendment permits an officer to detain a suspected misdemeanant.” *Johnson*, 724 F.3d at 1175.

“There is no bright-line rule to determine when an investigatory stop becomes an arrest.” *Washington v. Lambert*, 98 F.3d 1181, 1185 (9th Cir. 1996) (citing *United States v. Parr*, 843 F.2d 1228, 1231 (9th Cir. 1988)). The analysis depends on the “totality of the circumstances” and is “fact-specific.” *Id.*

In looking at the totality of the circumstances, we consider both the intrusiveness of the stop, *i.e.*, the aggressiveness of the police methods and how much the plaintiff’s liberty was restricted, and the justification for the use of such tactics, *i.e*., whether the officer had sufficient basis to fear for his safety to warrant the intrusiveness of the action taken. In short, we decide whether the police action constitutes a *Terry* stop or an arrest by evaluating not only how intrusive the stop was, but also whether the methods used were reasonable given the specific circumstances. As a result, we have held that while certain police actions constitute an arrest in certain circumstances, *e.g.*, where the “suspects” are cooperative, those same actions may not constitute an arrest where the suspect is uncooperative or the police have specific reasons to believe that a serious threat to the safety of the officers exists. “The relevant inquiry is always one of reasonableness under the circumstances.”

*Id.* (citations omitted); *see also Lyall*, 807 F.3d at 1193 n.13 (permitting jury to conclude that detention of plaintiffs for 30-45 minutes for field identification did not transform detention from *Terry* stop into arrest requiring more demanding showing of probable cause).

 In *Reynaga Hernandez v. Skinner*, 969 F.3d 930, 937-40 (9th Cir. 2020), the Ninth Circuit explained the requirements for a lawful *Terry* stop. This case arose in the context of a person who might not lawfully be in the United States. The Court also noted that, unlike illegal entry into the United States, which is a crime under 8 U.S.C. § 1325, illegal presence is not a crime.  *Id.* at 938.

*Revised June 2021*