
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN DOYLE BURTON, PETITIONER,
vs.
UNITED STATES, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX
[Volume 1 of 3]

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A P P E N D I X 1

FILED

NOT FOR PUBLICATION

MAY 4 2018

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STEVEN DOYLE BURTON,

Defendant-Appellant.

No. 16-50451

D.C. No.

3:16-cr-00746-AJB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Argued and Submitted April 13, 2018
Pasadena, California

Before: SCHROEDER, CLIFTON, and M. SMITH, Circuit Judges.

Defendant-Appellant Steven Doyle Burton appeals from his final judgment of conviction for possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), and being a felon in possession of a firearm and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

ammunition, in violation of 18 U.S.C. § 922(g)(1). Our appellate jurisdiction rests on 28 U.S.C. § 1291, and we **AFFIRM**.

1. The district court did not err in denying Mr. Burton’s motion to suppress the drugs, weapons, and money found as a result of the probation search of his residence, because the search was reasonable under the circumstances. *See United States v. Lara*, 815 F.3d 605, 610 (9th Cir. 2016). Officers Medina and Williams observed Mr. Burton commit two traffic violations, giving them probable cause to initiate a traffic stop and investigate the violations. *See Whren v. United States*, 517 U.S. 806, 810 (1996). A routine records check conducted during the stop revealed that Mr. Burton was driving with a suspended license and was subject to an active Fourth Amendment waiver. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015). The officers possessed a reasonable suspicion that Mr. Burton was reoffending, and their interests in searching his person outweighed his already diminished expectation of privacy. *See United States v. Knights*, 534 U.S. 112, 118–19 (2001); *Lara*, 815 F.3d at 612.

2. The discovery of marijuana on Mr. Burton’s person provided sufficient suspicion of criminal activity to justify the subsequent search of his home, which was located approximately a house length away from where Mr. Burton and the officers were stopped. *See Knights*, 534 U.S. at 121 (“When an officer has

reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable.").

3. We decline to review the merits of Mr. Burton's claim for ineffective assistance of counsel stemming from his attorney's opening statement, but this does not foreclose Mr. Burton from bringing this claim in a habeas proceeding. *See United States v. Dewey*, 599 F.3d 1010, 1014 (9th Cir. 2010). "Collateral review is preferable because in such a proceeding a record may be developed to show what counsel did and any resulting prejudice." *United States v. Simas*, 937 F.2d 459, 463 (9th Cir. 1991).

4. This Court's decision in *Pasterchik v. United States*, 400 F.2d 696 (9th Cir. 1968) forecloses Mr. Burton's argument that conviction records bearing his name were insufficient to establish the prior felony conviction element of the felon in possession counts.

5. The evidence was sufficient to support the jury's unanimous finding that the government, by a preponderance of the evidence, had established a nexus between the \$35,700 and the possession of cocaine base with intent to distribute charge. Congress, in 21 U.S.C. § 853(a)(2), "plainly provided for forfeiture of

property even where only a portion of it was used for the prohibited purposes.”

United States v. Littlefield, 821 F.2d 1365, 1367 (9th Cir. 1987). The jury heard testimony that Mr. Burton kept his belongings in the garage, that Mr. Burton was often seen standing near the outdoor planter where drugs and drug paraphernalia were found, that drug dealing is a cash business, and that it is common for drug dealers to keep a working sack nearby, with the larger stash hidden in a more secure location. The government thus presented the jury with sufficient evidence that at least a portion of the \$35,700 was used “in any manner or part, to commit, or to facilitate the commission of” the drug offense for which Mr. Burton was convicted. 21 U.S.C. § 853(a)(2).

AFFIRMED.

A P P E N D I X 2

FILED

UNITED STATES COURT OF APPEALS

JUL 05 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STEVEN DOYLE BURTON,

Defendant-Appellant.

No. 16-50451

D.C. No.

3:16-cr-00746-AJB-1

Southern District of California,
San Diego

ORDER

Before: SCHROEDER, CLIFTON, and M. SMITH, Circuit Judges.

The panel has voted to deny Defendant-Appellant's petition for panel rehearing. Judge M. Smith has voted to deny the petition for rehearing en banc, and Judges Schroeder and Clifton have so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App.

P. 35.

Defendant-Appellant's petition for panel rehearing and petition for rehearing en banc are denied.

A P P E N D I X 3

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)
4 PLAINTIFF,) CASE NO. 15CR2443-AJB
5 -V-) JANUARY 20, 2016
6 STEVEN DOYLE BURTON,) 9:14 A.M.
7 DEFENDANT.) SAN DIEGO, CALIFORNIA
8 _____)

9
10 TRANSCRIPT OF EVIDENTIARY HEARING

11 BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
12 UNITED STATES DISTRICT JUDGE
13
14

15 APPEARANCES:

16 FOR THE GOVERNMENT: LAURA E. DUFFY, UNITED STATES ATTORNEY
17 BY: ANDREW RICHARD HADEN, ESQ.
18 ASSISTANT U.S. ATTORNEY
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SAN DIEGO, CALIFORNIA 92101

19 FOR THE DEFENDANT: LAW OFFICE OF JOHN COTSIRILOS
20 BY: JOHN COTSIRILOS, ESQ.
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22 OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
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25 REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

JANUARY 20, 2016

1 **THE COURT:** YOU MAY STEP DOWN, SIR.

2 SO, MR. COTSIRILOS, DO YOU HAVE ANY OTHER WITNESSES,
3 THEN, TO CALL?

4 **MR. COTSIRILOS:** NO, I DON'T, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. IF THE RECORD IS OTHERWISE
6 COMPLETE, YOU FOLKS WANT TO ARGUE YOUR RESPECTIVE POSITIONS ON
7 WHAT IS THE MOTION TO SUPPRESS THE EVIDENCE ASSOCIATED WITH THE
8 STOP AND SEARCH ON THE DATE IN QUESTION?

9 **MR. HADEN:** YES, YOUR HONOR.

10 **THE COURT:** OKAY. IT'S YOUR MOTION, MR. COTSIRILOS.
11 YOU WANT TO GO FIRST?

12 **MR. COTSIRILOS:** YOUR HONOR, WHAT I WANT TO ASK THE
13 COURT TO FOCUS ON IS THE INITIAL DETENTION OF MR. BURTON. I'D
14 SUBMIT THAT SOME OF THE TESTIMONY DID NOT MAKE COMPLETE SENSE
15 IN TERMS OF WHAT THE INITIAL COMMUNICATIONS ARE BETWEEN THE
16 OFFICERS.

17 THE INITIAL COMMUNICATION "I'LL BE WITH THE CAR AT
18 SKYLINE AND MEADOWBROOK," WAS OF CONCERN TO ME, AS THAT SOUNDS
19 LIKE A STATEMENT OUT OF CONTEXT, AS IF THERE HAS BEEN MORE
20 COMMUNICATION PRIOR TO THAT STATEMENT. BECAUSE IT JUST DOESN'T
21 SOUND LIKE A STATEMENT SOMEONE WOULD INITIATE A COMMUNICATION
22 WITH.

23 BUT PUTTING THAT ASIDE, WHAT THE OFFICERS TELL THEIR
24 SUPERVISOR SERGEANT ESTRADA IS THE REASON THAT THEY STOPPED
25 MR. BURTON WHEN THEY ARE ASKED POINT-BLANK ON NOVEMBER 7, 2014,

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A007

1 IS THAT HE'S PULLED OVER ILLEGALLY, PURSUANT TO 22108 OF THE
2 VEHICLE CODE. THAT HE HASN'T SIGNALLED 100 FEET PRIOR TO
3 PULLING OVER TO THE SOUTH CURB ON SKYLINE DRIVE.

4 I'D SUBMIT THAT IT'S VERY CLEAR THAT HE COMPLIED IN
5 SUBSTANCE WITH THAT VEHICLE CODE SECTION. OFFICER WILLIAMS
6 INDICATES HE EVEN KNEW MR. BURTON LIVED AT THAT LOCATION, PRIOR
7 TO STOPPING HIM. BOTH OFFICERS INDICATED THEY KNEW HE LIVED AT
8 THAT LOCATION ONCE THEY STOPPED HIM BECAUSE HIS REGISTRATION
9 AND HIS LICENSE REFLECT HE LIVED AT THAT LOCATION. AND I
10 SUBMIT ONCE THE OFFICERS HAD TIME TO REFLECT ON THE DETENTION,
11 IT WAS CLEAR THAT THERE HAD NOT BEEN A VIOLATION OF 22108
12 BECAUSE MR. BURTON SIGNALLED AND PULLED OVER TO THE CURB AS
13 QUICKLY AS ONE FEASIBLY COULD UNDER THOSE CIRCUMSTANCES.

14 I THINK THAT THE CASE THAT IS OF ASSISTANCE TO THE
15 COURT IN UNDERSTANDING THAT THERE WASN'T A VIOLATION OF 22108
16 IS THE *CARMONA* CASE THAT I CITED IN MY PLEADINGS, WHICH
17 INDICATE THAT YOU DON'T EVEN NEED TO SIGNAL UNDER 22108 IF
18 THERE IS NO VEHICLES BEHIND YOU, IF YOU ARE NOT OBSTRUCTING A
19 VEHICLE AND IMPEDING TRAFFIC IN ANY WAY.

20 AND CLEARLY, MR. BURTON SIGNALLED AT THE EARLIEST
21 POSSIBLE TIME HE COULD TO PULL OVER TO THE CURB. AND THE ONLY
22 IMPEDIMENT THAT WAS CAUSED IN THE TRAFFIC WAS BY THE OFFICERS
23 THEMSELVES SPEEDING UP THEIR VEHICLE TO GET CLOSE ENOUGH TO
24 LOOK AT HIS LICENSE PLATE, ACCORDING TO THEIR TESTIMONY.

25 SO I SUBMIT THERE WAS NO VIOLATION OF THAT VEHICLE

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A008

1 CODE SECTION OR THE ADJOINING SECTION, 22107, WHICH SAYS YOU
2 MUST SIGNAL IN A WAY NOT TO IMPEDE TRAFFIC. AND THAT WAS THEIR
3 STATED REASON IN PULLING MR. BURTON OVER THAT EVENING.

4 AFTER THAT, AS ALL THE OFFICERS TESTIFIED, THERE IS A
5 VERY LARGE SEIZURE MADE -- A LARGE ENOUGH SEIZURE THAT AWARDS
6 ARE BEING GIVEN TO THE OFFICERS BY THE SERGEANT. I THINK SOME
7 OF THE TESTIMONY WAS THAT IT WAS THE LARGEST SEIZURE SOME OF
8 THE OFFICERS COULD REMEMBER, OF CASH. AND OTHER OFFICERS SAID
9 IT WAS ONE OF TWO OF THE LARGEST SEIZURES. AND AFTER THAT
10 POINT IN TIME THERE IS A MOTIVATION TO JUSTIFY THE DETENTION
11 AND NOT HAVE THE CASE BE HARMED.

12 SO I THINK THOSE ARE REASONABLE INFERENCES FROM THE
13 EVIDENCE THAT HAS BEEN PRESENTED IN COURT.

14 THE OTHER ISSUE I RAISED IN MY DECLARATION TO THE
15 COURT IS THAT MR. BURTON IS CLEARLY NOT ON PROBATION FOR A 245.
16 WHAT HE WAS ON PROBATION AND HAD A FOURTH WAIVER FOR WAS A
17 23103, A RECKLESS DRIVING.

18 AND THE LAW IS CLEAR THAT A PROBATION VIOLATION -- A
19 CONDITION OF PROBATION HAS TO HAVE SOME REASONABLE CONNECTION
20 TO THE UNDERLYING OFFENSE. A FOURTH WAIVER HAS NO FEASIBLE
21 CONNECTION TO A 23103. AND I THINK THAT LAW ENFORCEMENT SHOULD
22 HAVE SOME RESPONSIBILITY FOR PUTTING OUT ACCURATE INFORMATION
23 FROM THE COURT RECORDS THAT OFFICERS ACT ON AND ARREST AND
24 SEARCH INDIVIDUALS FOR.

25 SO I AM FULLY AWARE OF THE *ARIZONA V. EVANS* CASE THAT

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1 COUNSEL HAS CITED, BUT I'D ASK THE COURT TO TAKE NOTE THAT
2 INACCURATE INFORMATION WAS BEING SUPPLIED, THAT THE OFFICERS
3 ACTED UPON PURSUANT TO THIS FOURTH WAIVER.

4 **THE COURT:** BUT THE INFORMATION WITH REGARD TO THE
5 FOURTH WAIVER AND THE CHARGES ALL COMES RIGHT OUT OF THE COURT
6 DOCKET, ACCORDING TO THIS EXHIBIT, WHICH IS ATTACHED AS
7 DOCUMENT 38.1. WELL, IT'S YOUR DECLARATION. AND YOU'RE SAYING
8 THAT THE OFFICERS CAN'T RELY UPON THE COURT RECORDS AND THE
9 ORDERS OF THE JUDGES? ALBEIT THEY MAY BE INCORRECT. THAT CAN
10 HAPPEN. BUT IF THAT IS PART OF THE OFFICIAL RECORD THAT GOES
11 INTO THE DATABASE, THEY CAN'T RELY ON THAT IN GOOD FAITH?

12 **MR. COTSIRILOS:** NO, THEY CAN. OBVIOUSLY THEY CAN,
13 YOUR HONOR. THAT IS WHAT THE ARIZONA V. EVANS CASE SAYS. I AM
14 CONCEDING THAT IS THE LAW. BUT I WANT TO MAKE A RECORD THAT
15 THAT CONDITION OF PROBATION HAS NO FEASIBLE CONNECTION TO A
16 23103. I DON'T THINK IT WAS A LEGAL CONDITION OF PROBATION TO
17 THAT OFFENSE. HE WAS NOT ON PROBATION FOR THE 245. THE DOCKET
18 IS CLEAR IN THAT REGARD.

19 AND I FEEL HE WAS PREJUDICED BY THAT INFORMATION
20 BEING INACCURATELY RECORDED -- OR HIM BEING PERMITTED TO BE ON
21 PROBATION FOR HAVING THAT CONDITION OF PROBATION FOR THAT
22 OFFENSE.

23 **THE COURT:** OKAY. SORRY IF I INTERRUPTED YOUR TRAIN
24 OF THOUGHT. YOU FINISHED ALL YOUR COMMENTS?

25 **MR. COTSIRILOS:** YES.

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1 **THE COURT:** IT WAS JUST SOMETHING I WANTED TO ADDRESS
2 AT THAT PARTICULAR MOMENT.

3 GO AHEAD, MR. HADEN.

4 **MR. HADEN:** YOUR HONOR, AT THE OUTSET, JUST TO MAYBE
5 ADDRESS THE FOURTH AMENDMENT ISSUE, I THINK THAT THE
6 FOURTH WAIVER -- YOU KNOW, JUDGE THOMPSON OF THE SUPERIOR COURT
7 OF EL CAJON -- NOT ONLY DOES THE COURT HAVE THE MINUTE ORDER
8 WHERE THE FOURTH AMENDMENT WAIVER WAS IMPOSED, BUT WE HAVE THE
9 TRANSCRIPT FROM THE SENTENCING WHERE IT WAS SPECIFICALLY
10 EXPLAINED THAT HE WAS SUBJECTED TO A SEARCH OF HIS PERSON,
11 PLACE, VEHICLE OR RESIDENCE.

12 SO IT WASN'T AN INADVERTENT THING. AND JUDGE
13 THOMPSON WAS AWARE OF THE FACTS OF THAT CASE. AND WE DON'T
14 HAVE ANYTHING TO SUBMIT TO THE RECORD. BUT I THINK THAT
15 CASE -- CONCERNING IT WAS A 245 ASSAULT AND A RECKLESS DRIVING,
16 THERE IS, OBVIOUSLY, SOME CIRCUMSTANCES THERE WHERE JUDGE
17 THOMPSON OF THE SUPERIOR COURT THOUGHT THAT THAT WAS AN
18 APPROPRIATE IMPOSITION RELATED TO THE PROBATION.

19 SO IF THE ARGUMENT IS THAT JUDGE THOMPSON OF THE
20 SUPERIOR COURT MESSED UP, THEN THE APPROPRIATE PLACE TO ATTACK
21 THAT WOULD BE BACK WITH JUDGE THOMPSON. BECAUSE THE OFFICERS
22 ARE ENTITLED -- AS *ARIZONA V. EVANS*, AS A GOOD-FAITH LINE OF
23 CASEWORK SAYS, ARE ALLOWED TO RELY ON IT.

24 AND, OBVIOUSLY, THEY HAVE ALL ACKNOWLEDGED TODAY THAT
25 THEY ARE NOT NECESSARILY AWARE OF THE SEMANTICS OF WHICH COUNT

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1 GOT PROBATION AND WHICH COUNT GOT THE FOURTH WAIVER. BUT THE
2 DOCUMENTS SHOW THAT HE GOT A 245 AT THE SAME TIME HE GOT THE
3 FOURTH WAIVER. AND THE OFFICERS TESTIFIED THAT IN SD LAW THEY
4 SEE THE CHARGE AND THEY SEE THE FOURTH WAIVER AND THEY
5 INCORRECTLY ASSUMED -- I THINK IT'S CLEAR FROM THE EVIDENCE --
6 THAT THE FOURTH WAIVER WAS RELATED TO THE 245.

7 I THINK IT'S A COMPLETELY JUSTIFIED AND
8 UNDERSTANDABLE SEMANTIC DISTINCTION THAT HAS NO LEGAL RELEVANCE
9 HERE TODAY BECAUSE HE HAD A VALID FOURTH WAIVER, AND THAT IS
10 CONCEDED. AND THE OFFICERS GOT IT 99 PERCENT RIGHT AS TO THE
11 CASE, THAT HE HAD RECEIVED A FOURTH WAIVER, WHEN IT EXPIRED,
12 WHERE IT WAS APPLICABLE, AND WHAT RESIDENCE IT APPLIED TO.

13 IN REGARDS TO PROBABLE CAUSE, I WANT TO MAKE THIS
14 REALLY CLEAR. THE ARGUMENT SEEMS TO BE THAT IF MR. BURTON
15 WOULD BE ACQUITTED BY A JURY BASED ON THE TURN SIGNAL, THEN
16 THEY CAN'T PULL HIM OVER. BUT IT'S A DIFFERENT LEGAL STANDARD.
17 IT'S PROBABLE CAUSE.

18 AND THE OFFICERS, FIRST -- WHICH HASN'T BEEN
19 MENTIONED BY THE DEFENSE BUT SHOULD BE REITERATED IN CLOSING --
20 THE FIRST THING IS THEY HEAR THE MUSIC. AND THAT IS THEIR
21 TESTIMONY.

22 AND IF THIS COURT FINDS THEY ARE CREDIBLE, THAT BOTH
23 OFFICER MEDINA SAID HE HEARD THE MUSIC AND OFFICER BURTON SAID
24 HE HEARD IT AND FELT IT. AND FELT IT IS DIFFERENT. FELT IT
25 MEANS IT REALLY WAS LOUD BASS. THAT WAS THE FIRST REASON.

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A012

1 THE SECOND REASON IS THEY PULLED UP BEHIND THE CAR --
2 AND IT WASN'T THAT THIS PERSON FAILED TO COMPLETELY PUT ON A
3 TURN SIGNAL AND PULL OVER. THAT WASN'T IN THEIR DISCRETION WHY
4 THEY DID IT. OFFICER WILLIAMS TESTIFIED THAT THE CAR CAME TO
5 AN ABRUPT STOP AND THEY ALMOST REAR-ENDED HIM, AND THEN HE PUT
6 ON HIS SIGNAL SORT OF SIMULTANEOUSLY AND PULLED OVER. AND THAT
7 IS PROBABLE CAUSE THAT THE VIOLATION HAS OCCURRED.

8 NOW, IF THEY GO BACK AND THEY MEASURE, AND THEY TALK
9 TO THE DRIVER AND THEY FIGURE OUT WHAT IS GOING ON, AND THEY
10 DON'T WANT TO ISSUE A CITATION OR TRY TO PROCEED WITH THE CASE,
11 THAT'S DIFFERENT THAN PROBABLE CAUSE TO INVESTIGATE WHETHER THE
12 VIOLATION HAS OCCURRED.

13 SO THERE ARE AT LEAST TWO VALID REASONS UNDER THE
14 VEHICLE CODE TO PULL OVER MR. BURTON. AND THEN, OF COURSE, HE
15 DOESN'T HAVE A VALID DRIVER'S LICENSE. THERE IS NOTHING TO
16 REFUTE THAT IN THE RECORD TODAY. HE DOESN'T HAVE A VALID
17 DRIVER'S LICENSE, AND HE HAS A FOURTH AMENDMENT WAIVER, AND
18 AWAY WE GO.

19 AND THE OTHER ARGUMENTS, WHICH HAVEN'T NECESSARILY
20 BEEN HOUNDED ON, BUT WE WANT TO JUST MAKE SURE WE TOUCH UPON
21 THEM TODAY, YOUR HONOR, IS THAT IT'S ACTUALLY FAIRLY QUICK.
22 YOU KNOW, WITHIN TWO AND HALF MINUTES, THREE MINUTES THEY HAVE
23 DONE THE RECORDS CHECK. THEY ARE TALKING TO OTHER OFFICERS.
24 THE CST -- COMPLETELY CONSISTENT WITH THE WAY THEY SAID THEY
25 OPERATE -- BEGINS TO ARRIVE AT THE SCENE.

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A013

1 THEY DO THE SEARCH OF HIS PERSON, WHERE THEY FIND
2 MARIJUANA, WHICH THERE HAS BEEN NO PROFFER THAT HE WAS IN LEGAL
3 POSITION OF THAT, AND IT'S, FEDERALLY, STILL A CRIME IN ALL
4 CIRCUMSTANCES. AND THEN THEY HAVE MONEY AND PHONES. AND
5 OFFICER SCHMIDT, WHO KNOWS ABOUT MR. BURTON, COMES.

6 AND ABOUT NINE MINUTES TRANSPIRES FOR THE SEARCH OF
7 HIS PERSON AND HIS VEHICLE, WHICH IS RELATIVELY QUICK. AND
8 THEN THEY CONTACT SERGEANT ESTRADA AND SAY WE THINK WE ARE
9 GOING TO DO A FOURTH WAIVER ON THE HOUSE. AND THEN THEY BEGIN
10 THE OPERATIONS PLAN, WHICH IS NECESSARY AS A LAW ENFORCEMENT
11 THING, TO DECONFLICT. AND I THINK THE COURT UNDERSTOOD THE
12 REQUIREMENTS AND SORT OF THE NECESSITY OF THOSE CHECKS.

13 AND THE ENTIRE THING -- THE ENTIRE CHECK, THE ENTIRE
14 OPERATIONAL PLAN TAKES ABOUT THIRTY MINUTES. AND THEN THEY GO
15 EXECUTE THE FOURTH WAIVER.

16 SO I THINK THAT THE TRAFFIC STOP IS CLEARLY JUSTIFIED
17 BY PROBABLE CAUSE. IF THE COURT FINDS THAT IT'S SIGNIFICANT,
18 WHETHER IT WAS THE 245 OR THE RECKLESS DRIVING, IT'S OBVIOUSLY
19 COVERED BY THE GOOD-FAITH EXCEPTION, THAT THESE OFFICERS WERE
20 RELYING ON THE INFORMATION IN THE DATABASE THAT WAS PRETTY MUCH
21 ACCURATE.

22 THE FOURTH WAIVER APPLIES TO HIS HOME. HE COULD HAVE
23 PARKED SOMEWHERE ELSE ON THE STREET. IT WASN'T REQUIRED THAT
24 HE PARK AT THE FIRST PLACE. HE DIDN'T SEEM TO HAVE SEEN THE
25 OFFICERS.

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1 SO THE UNITED STATES BELIEVES THAT IT'S JUSTIFIED,
2 THE FOURTH WAIVER WAS VALID, THERE IS NOTHING THAT PROHIBITED
3 THE SEARCH, AND THAT THE COURT SHOULD DENY THE REQUEST TO
4 SUPPRESS THE EVIDENCE BECAUSE, AT WORST, THE GOOD-FAITH
5 EXCEPTION APPLIES. AND THE EXCLUSIONARY RULE JUST SEEMS TO
6 HAVE NO APPLICABILITY HERE IF THE COURT GIVES CREDIT TO THE
7 OFFICERS' TESTIMONY.

8 **THE COURT:** OKAY. THANK YOU.

9 ANY REPLY, MR. COTSIRILOS?

10 **MR. COTSIRILOS:** NO, YOUR HONOR. AGAIN, THE FOCUS OF
11 MY ARGUMENT IS THE 22108 VIOLATION. I THINK EVEN FROM THE
12 OFFICER'S OWN TESTIMONY, WHEN HE WENT BACK AND MEASURED, THERE
13 WAS 36 FEET FROM WHERE MR. BURTON PUT ON THE SIGNAL AND WHERE
14 HE PULLED OVER. HE DIDN'T HAVE 100 FEET TO SIGNAL AND PULL
15 OVER SO HE COULD NOT COMPLY ANY MORE WITH THAT SECTION THAN HE
16 DID.

17 IF THE COURT READS THE CARMONA CASE, THE ONLY OTHER
18 ISSUE FOR THE OFFICERS IS DID HE IMPEDE TRAFFIC. THE OFFICERS'
19 OWN TESTIMONY WAS THAT THEY WERE THE ONES THAT IMPEDED TRAFFIC
20 BY SPEEDING UP. IF THEY HAD GONE AT 25 MILES AN HOUR FROM
21 164 FEET BEHIND WHERE THEY WERE AT THE INTERSECTION, MR. BURTON
22 WOULD HAVE PULLED OVER AND PARKED BY THE TIME THEY ARRIVED AT
23 THAT AREA. THEY SPED UP TO SEE HIS LICENSE PLATE AND CAUSED
24 THE IMPEDING OF TRAFFIC.

25 SO THAT WAS THEIR STATED REASON IN PULLING HIM OVER,

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1 WHICH, AGAIN, QUICKLY WOULD HAVE BEEN DETERMINED NOT -- THIS
2 SECTION WOULD NOT HAVE BEEN VIOLATED ONCE THEY REALIZED HE
3 LIVED RIGHT THERE. THE REST OF IT IS A CREDIBILITY ISSUE
4 REGARDING THE VIOLATION OF 27007, WHICH IS THE SOUND ISSUE, AND
5 I SUBMIT THAT TO THE COURT.

6 **THE COURT:** BUT DO YOU TAKE ISSUE WITH MR. HADEN'S
7 STATEMENT THAT IT'S NOT A QUESTION OF WHETHER OR NOT MR. BURTON
8 COULD BE CONVICTED OF THAT OFFENSE, BUT IT'S A QUESTION OF
9 PROBABLE CAUSE TO STOP AND INVESTIGATE?

10 **MR. COTSIRILOS:** I THINK ONCE THEY REALIZED THAT --
11 NO, I TAKE ISSUE WITH THAT. I THINK OFFICER WILLIAMS TESTIFIED
12 HE KNEW MR. BURTON LIVED RIGHT THERE. SO I THINK HE CLEARLY
13 WOULD HAVE KNOWN THAT THERE WAS NO VIOLATION OF 22108 AT THE
14 TIME THAT MR. BURTON PULLED OVER.

15 **THE COURT:** BUT YOU DO COMPLETELY DISMISS THE SOUND?

16 **MR. COTSIRILOS:** I SUBMIT THAT TO THE COURT. THAT IS
17 A CREDIBILITY ISSUE. AGAIN, WITH RESPECT TO THE OFFICERS,
18 THERE IS A LOT OF CELEBRATING AFTER THE SEARCH IS COMPLETED,
19 AND THERE IS A MOTIVATION TO JUSTIFY THE DETENTION AT THAT
20 POINT. BUT I SUBMIT THAT TO THE COURT. THAT IS THE
21 CREDIBILITY EVALUATION.

22 **MR. HADEN:** YOUR HONOR, JUST A LAST COMMENT. I HAD
23 IT IN MY NOTES AND I DIDN'T ADDRESS IT. I JUST WANT TO BE ON
24 THE RECORD FOR THE OFFICERS.

25 I WOULD JUST SUBMIT TO THE COURT THAT THE EVIDENCE

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A016

1 TODAY -- THE INFERENCE IS THAT THEY MADE THIS BIG SEIZURE AND
2 THEY ILLEGALLY COLLUDED TO BACKFILL PROBABLE CAUSE.

3 AND I WOULD JUST SUBMIT TO THE COURT THAT THIS COURT
4 WAS ABLE TO MEET THE WITNESSES, MEET THE OFFICERS AND ASSESS
5 THEIR CREDIBILITY. AND I THINK WHAT THEY SAID WAS UNIQUE. AND
6 WHY THEY WENT BACK AND MEASURED IS BECAUSE IT IS SUCH A BIG
7 SEIZURE AND THEIR SERGEANT IS SORT OF FOCUSED ON "WOW, LIKE, WE
8 REALLY HIT A BIG SEIZURE HERE; LET'S MAKE SURE WE'VE DONE
9 EVERYTHING RIGHT."

10 SO THE UNITED STATES WOULD SUBMIT THAT THEY DIDN'T GO
11 BACK AND START MEASURING TO CREATE VEHICLE CODE VIOLATIONS THAT
12 HADN'T TRANSPIRED AT THE TIME MR. BURTON STOPPED. THEY WENT
13 BACK TO INVESTIGATE BECAUSE THEY KNEW THAT THIS CASE WAS GOING
14 TO ULTIMATELY BE A BIG DEAL BASED ON MR. BURTON'S CRIMINAL
15 HISTORY AND WHAT THEY FOUND.

16 SO I WOULD SUBMIT THAT TO THE COURT AS A CREDIBILITY
17 ISSUE. THE OFFICERS DID AN EXCEPTIONAL JOB. THIS IS THE
18 DEFINITION OF PROACTIVE POLICE WORK. AND I THINK THAT THEY
19 SHOULD NOT ONLY BE FOUND TO BE CREDIBLE IN THEIR TESTIMONY, BUT
20 COMMENDED FOR THEIR EFFORTS TO KEEP THIS COMMUNITY SAFE FROM
21 THIS TYPE OF CRIME.

22 **THE COURT:** WHAT IS BEFORE THE COURT IS THE QUESTION
23 OF SUPPRESSION OF THE EVIDENCE RECEIVED THE NIGHT IN QUESTION.
24 AND IT STARTS WITH THE QUESTION OF PROBABLE CAUSE TO STOP
25 MR. BURTON ON SKYLINE DRIVE.

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1 I DO THINK THAT IT'S IMPORTANT TO START WITH WHAT
2 BROUGHT THE OFFICERS' ATTENTION TO MR. BURTON, AND THAT IS THE
3 LOUD NOISE VIOLATING A SECTION OF THE VEHICLE CODE THAT TALKS
4 ABOUT A FIFTY-FOOT LIMIT. AND IT'S UNDISPUTED, I FIND, THAT
5 THIS WAS SOMETHING THAT WOULD HAVE EXCEEDED THE FIFTY FEET AND
6 THEN BEEN A VIOLATION OF THAT LAW. THAT PIQUED THE INTEREST OF
7 THE OFFICERS.

8 WE DON'T HAVE ANY REAL EVIDENCE AS TO SPEEDS OF THE
9 VEHICLES, OTHER THAN THERE WAS A SPEED LIMIT AND THE OFFICERS
10 DID ACCELERATE TO SOME DEGREE TO CATCH UP BECAUSE THEY HAD AN
11 INTENTION OF GETTING A LICENSE PLATE AND RUNNING THE PLATES ON
12 MR. BURTON AND, POTENTIALLY, PULLING HIM OVER.

13 WITHOUT CONTROVERSY, IT WAS A VERY QUICK TURN ACROSS
14 WHAT WOULD HAVE BEEN THE INSIDE LANE TO THE OUTSIDE AND OVER TO
15 THE CURB, WHICH BOTH OFFICERS TESTIFIED CAUSED THE NEED TO TAKE
16 SOME, ALBEIT PERHAPS MINOR, BUT SOME EVASIVE ACTION PUTTING ON
17 THE BRAKES AND NOT WANTING TO REAR-END MR. BURTON.

18 I THINK AT THAT POINT THERE WAS PROBABLE CAUSE TO
19 DETAIN AND CONTINUE THE INVESTIGATION WITH REGARD TO THE SOUND
20 VIOLATION, THE LATE SIGNAL. AND WHETHER OR NOT A CONVICTION
21 WOULD HAVE OCCURRED, ULTIMATELY, HAD THAT CITATION BEEN ISSUED
22 AND LITIGATED ISN'T, I THINK, THE STANDARD.

23 THESE OFFICERS, BOTH OF THEIR OWN ACCORD, PERCEIVED
24 THE SAME EVENTS WHICH WOULD HAVE LED TO A PROBABLE CAUSE TO
25 STOP OR DETAIN, INVESTIGATE, AND GO FORWARD.

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1 ON SEARCH OF MR. BURTON, THEY FIND MARIJUANA, THEY
2 FIND CASH -- CASH OF A COUPLE HUNDRED BUCKS. BUT THEY FIND
3 MARIJUANA AND DETERMINE, THROUGH THEIR INVESTIGATION, THAT THE
4 RECORDS REFLECT HE IS SUBJECT TO A FOURTH AMENDMENT WAIVER -- A
5 MUCH DEBATED WAIVER HERE. THEY PROCEED TO THEN SEARCH THE
6 VEHICLE; IT'S NEGATIVE. THEY SEARCH THE HOUSE; IT'S QUITE
7 POSITIVE, AS WE KNOW, FOR WEAPONS, AMMO, DRUGS, AND LARGE
8 AMOUNTS OF CASH.

9 I THINK THE UNDERCURRENT OF WHAT THE DEFENSE IS
10 SUGGESTING IS THIS WAS A SETUP. MR. BURTON WAS TARGETED. BUT
11 THE EVIDENCE DOES NOT SHOW THAT TO BE THE CASE. THERE DOES NOT
12 APPEAR TO BE ANY CONSPIRACY AMONGST THESE OFFICERS. SOME HAD
13 PRIOR CONTACT WITH MR. BURTON IN A LAW ENFORCEMENT SETTING.
14 BUT ALL TOLD, IT DOESN'T AMOUNT TO SOME TARGETED EFFORT, SOME
15 PRETEXT FOR A STOP.

16 AND I THINK THE DEMEANOR OF THE OFFICERS BELIES
17 TARGETING ANY UNTOWARD MISCONDUCT, PRETEXT, OR DESIRE TO
18 ENGINEER PROBABLE CAUSE RETROSPECTIVELY TO SUPPORT THIS SEARCH.

19 I JUST FIND ALL OF THE OFFICERS TO BE -- WHILE THEY
20 DON'T AGREE ON EVERY SPECIFIC FACT -- AND I WILL CONCEDE THE
21 VERNACULAR ON DISPATCH IS JUST THAT. IT'S POLICE TALK. AND SO
22 THINGS AREN'T EXACTLY CORRECT, BUT I THINK THERE IS A
23 CONSISTENCY HERE AND A DEMEANOR THAT JUST FLIES IN THE FACE OF
24 FINDING THIS WAS A SETUP, A PRETEXT.

25 I DO, INDEED, BELIEVE THAT THE EVIDENCE SHOWS THERE

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1 WAS PROBABLE CAUSE TO STOP, THE SEARCH LEADING TO THE
2 MARIJUANA, AND WHAT FOLLOWS FROM THERE ALL WOULD BE REASONABLE.

3 SO I'M GOING TO DENY THE MOTION TO SUPPRESS. I WILL
4 FIND THAT NONE OF THE FRUITS WERE ILLEGALLY OBTAINED AND WOULD
5 BE ADMISSIBLE IN EVIDENCE ON THE CHARGES NOW PENDING -- THE
6 DRUGS, THE MONEY, THE WEAPONS. BECAUSE I JUST DON'T FIND ANY
7 CONSTITUTIONAL VIOLATION ON THE BASIS OF THE STOP.

8 I DON'T HAVE A CASE, I DON'T THINK, THAT SAYS IT'S
9 ILLEGAL TO IMPOSE THAT FOURTH AMENDMENT WAIVER ON A WET
10 RECKLESS. MAYBE I MISSED IT. BUT I THINK THAT THE OFFICERS
11 SHOULD, IN GOOD FAITH, BE ALLOWED TO TRUST IN THE COURT
12 RECORDS.

13 AND THERE IS NO QUESTION WITH THE TRANSCRIPT AS TO
14 WHAT JUDGE THOMPSON INTENDED. HE MAY HAVE BEEN WRONG, BUT HE
15 SAID IT, HIS MINUTES REFLECTED IT, IT'S MADE ITS WAY INTO THE
16 RECORDS, AND THE OFFICERS ACTED UPON THAT IN ENTERING THE HOUSE
17 AND FINDING THE REST OF WHAT THEY FOUND.

18 I MEAN, MR. HADEN ASKED ALL THE WITNESSES ABOUT THE
19 UNIQUENESS OF THIS EVENT, AND IN THEIR EXPERIENCES GOING BACK
20 IN SOME INSTANCES EIGHT YEARS, SOME INSTANCES SIX YEARS, THIS
21 WAS THE FIRST TIME THAT A STOP ON A VEHICLE CODE VIOLATION --
22 OR POTENTIAL VIOLATION -- LED TO SUCH A FIND.

23 ONE WOULD THINK IF THIS WAS A PATTERN AND PRACTICE OF
24 PRETEXT TARGETING AND ILLEGAL ACTIVITY ON BEHALF OF LAW
25 ENFORCEMENT, THEY WOULD HAVE SCORED MANY TIMES. AND WE WOULD

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1 BE TALKING ABOUT A RECORD REplete WITH SUCCESS, THAT WOULD
2 SUGGEST LESS IN TERMS OF THE CREDIBILITY. BUT I FOUND THE
3 OFFICERS CREDIBLE.

4 YOU KNOW, THEY ARE IN AN AREA THAT HAS A PROPENSITY
5 FOR DRUGS AND GANG VIOLENCE AND WHATEVER. THAT'S ALL TRUE.
6 BUT I THINK THE FACTS STAND UP TO JUSTIFY THE STOP IN THIS
7 INSTANCE AND THE CONTRABAND THAT WAS ULTIMATELY FOUND.

8 SO I KNOW THAT IS RAMBLING, BUT I'M TRYING TO GO
9 THROUGH THE NOTES OF OUR SIX OR SEVEN HOURS OF TESTIMONY, TO
10 MAKE SURE I TOUCH ON THE ESSENTIAL INGREDIENTS.

11 SO, AGAIN, I THINK I HAVE TO AFFORD FULL FAITH AND
12 CREDIT TO THE ORDERS OF JUDGE THOMPSON. I DON'T FIND A CASE IN
13 HERE THAT SAYS WHAT HE DID IS ILLEGAL. BUT EVEN IF IT WAS, THE
14 OFFICERS ACTED IN GOOD FAITH ON THE OFFICIAL RECORDS OF THE
15 COURT TRANSMITTED TO LAW ENFORCEMENT, WITHOUT WHICH WE WOULD BE
16 STYMIED IF IN EVERY CASE THE OFFICERS HAD TO GO BACK TO COURT
17 RECORDS AND SO FORTH. THAT IS NOT A WAY TO RUN PUBLIC
18 PROTECTION, COMMUNITY SAFETY, OR ENFORCE THE LAWS. SO I THINK
19 IT WOULD BE UNREASONABLE TO SUGGEST THEY DID ANYTHING IMPROPER,
20 BASED UPON WHAT WAS AVAILABLE TO THEM. SO THAT'S IT IN A
21 NUTSHELL.

22 THE MOTION IS DENIED. AND THAT IS MOTION, FOR THE
23 DOCKET, 26-1, LEAVING SOME DISCOVERY MOTIONS, ESSENTIALLY,
24 LEFT.

25 WHAT SHOULD WE DO WITH THE CASE GOING FORWARD AT THIS

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A021

A P P E N D I X 4

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)
4 PLAINTIFF,) CASE NO. 16CR746-AJB
5 -V-) JULY 18, 2016
6 STEVEN DOYLE BURTON,) 3:15 P.M.
7 DEFENDANT.) SAN DIEGO, CALIFORNIA
8 _____)

9
10 TRANSCRIPT OF MOTION HEARING

11 BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
12 UNITED STATES DISTRICT JUDGE
13
14

15 APPEARANCES:

16 FOR THE GOVERNMENT: LAURA E. DUFFY, UNITED STATES ATTORNEY
17 BY: ANDREW RICHARD HADEN, ESQ.
18 FRANCIS A. DIGIACCO, ESQ.
19 ASSISTANT U.S. ATTORNEYS
20 880 FRONT STREET
21 SAN DIEGO, CALIFORNIA 92101

22 FOR THE DEFENDANT: WARREN & BURSTEIN
23 BY: JEREMY WARREN, ESQ.
24 KATIE JENKINS, ESQ.
25 501 WEST BROADWAY, SUITE 240
SAN DIEGO, CALIFORNIA 92101

OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
U.S. COURTHOUSE
333 WEST BROADWAY, RM 420
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REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

JULY 18, 2016

SAN DIEGO, CALIFORNIA; MONDAY, JULY 18, 2016; 3:15 P.M.

DEPUTY CLERK: CALLING MATTER SEVEN ON CALENDAR, CASE NUMBER 16CR746, UNITED STATES OF AMERICA VERSUS STEVEN DOYLE BURTON, ON FOR MOTION IN LIMINE HEARING.

MR. WARREN: GOOD AFTERNOON, YOUR HONOR. JEREMY WARREN AND KATIE JENKINS FOR MR. BURTON.

THE COURT: GOOD AFTERNOON.

MR. HADEN: GOOD AFTERNOON, YOUR HONOR. ANDREW HADEN AND FRANCIS DIGIACCO ON BEHALF OF THE UNITED STATES. AND JOINING US AT COUNSEL TABLE IS ATF SPECIAL AGENT RICKY JIMENEZ.

THE COURT: THANK YOU. AND I CUT OFF OUR YOUNG LADY. YOU WERE ABOUT TO SAY YOUR NAME.

MS. JENKINS: GOOD AFTERNOON. KATIE JENKINS ON BEHALF OF MR. BURTON.

THE COURT: SHE IS GOING TO BE ASSISTING YOU AS A PARALEGAL FOR PURPOSES OF THE TRIAL?

MR. WARREN: YES, YOUR HONOR.

THE COURT: I CERTAINLY FIND THAT APPROPRIATE SINCE I GAVE THE DEFENSE THE LICENSE TO HAVE AN INVESTIGATOR. AND I THINK LOOKING AT THE AMOUNT OF EVIDENCE AND THE NUMBER OF WITNESSES, YOU PROBABLY NEED SOME EXTRA HANDS AND MIND.

MR. WARREN: I APPRECIATE IT.

THE COURT: THAT IS FINE, UNLESS THE GOVERNMENT HAS AN OBJECTION AT THIS POINT.

MR. HADEN: NO, YOUR HONOR. I THINK WE ALL AGREE SHE

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1 IS PRETTY VITAL IN KEEPING JEREMY ON TASK.

2 **THE COURT:** SO WE LEFT A COUPLE THINGS HANGING THE
3 LAST TIME WE MET. THE RECONSIDERATION UNDER *UNITED STATES V.*
4 *LARA*; AND THE FLIP, THE RECONSIDERATION OF THE SUPPRESSION
5 RULING, BASED ON THE NINTH CIRCUIT.

6 IN THE INTERIM, I DID GET THE GOVERNMENT'S
7 OPPOSITION. AND THEN WE HAVE GOTTEN THIS OTHER DOCUMENT, BUT
8 WE BETTER GET MR. BURTON HERE.

9 **MR. HADEN:** AND I APOLOGIZE, YOUR HONOR, IF I CALLED
10 MR. WARREN BY HIS FIRST NAME.

11 **THE COURT:** OH, WELL, DON'T DO THAT IN TRIAL.

12 **MR. HADEN:** I WILL DO BETTER TOMORROW.

13 **THE COURT:** I'M SURE YOU WILL.

14 **MR. WARREN:** I HAVE SEEN PEOPLE CALL THEIR CLIENT BY
15 THEIR FIRST NAME DURING TRIAL AND IT RUBS ME THE WRONG WAY.
16 YOU WON'T SEE THAT.

17 **THE COURT:** IT ACTUALLY TURNS THE JURY OFF. THEY
18 THINK IT'S OVERLY FAMILIAR.

19 **MR. WARREN:** I HAVE SEEN SOME LAWYERS, AT SENTENCING,
20 CALL THEIR CLIENT BY THEIR FIRST NAME. I HAVE NEVER DONE THAT.
21 I DON'T REALLY LIKE THAT.

22 **THE COURT:** I THINK YOU NEED TO GIVE THEM THE RESPECT
23 TO WHICH THEY ARE ENTITLED, OF A FULL FORMAL NAME.

24 **MR. WARREN:** THE FUNNY THING IS JUDGE THOMPSON, THE
25 ONE WHO IS THE SUPERIOR COURT JUDGE IN THIS CASE, OFTEN CALLS

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1 ATTORNEYS BY THEIR FIRST NAME. SO YEARS AGO I WAS DOING A
2 GUILTY PLEA IN FRONT OF HIM WITH MY CLIENT, AND HE SAYS HAVE
3 YOU SPOKEN TO JEREMY ABOUT YOUR PLEA. AND I AM LOOKING AT HIM,
4 LIKE, WE DON'T KNOW EACH OTHER THAT WELL. AND THEN I NOTICED
5 HE WAS DOING THAT WITH A LOT OF THE OTHERS.

6 **THE COURT:** TO EACH HIS OWN.

7 (DEFENDANT PRESENT)

8 **MR. WARREN:** YES. MR. BURTON IS PRESENT BEFORE THE
9 COURT.

10 **THE COURT:** AND, MR. BURTON, IF YOU WOULD LIKE TO BE
11 SEATED FOR THE HEARING, YOU MAY.

12 AND WHILE WE WERE WAITING FOR YOU, WE CONFIRMED THE
13 APPEARANCES OF ALL. AND I MENTIONED THAT WE HAVE SOME MATTERS
14 PENDING BEFORE TRIAL TOMORROW, AND WE ARE ABOUT TO TALK ABOUT
15 THOSE.

16 ALL RIGHT. THE LAST DOCUMENT NOW FILED IS THE
17 SUPPLEMENTAL DOCUMENT. IT'S THE LETTER FROM THE LAWYER THAT
18 DOESN'T MENTION PROBATION. AND I GUESS THE ESSENCE OF THIS IS
19 MR. BURTON DID NOT KNOW ABOUT THE SEARCH CONDITION, AT LEAST
20 THROUGH HIS ATTORNEY, IS HOW I'M READING THIS.

21 **MR. WARREN:** CORRECT, YOUR HONOR. IT SUPPORTS OUR
22 ARGUMENT THAT -- YOU KNOW, THIS IS A VERY UNUSUAL CIRCUMSTANCE.
23 IT'S NOT THAT SOMEONE APPEARS 977 AND EVEN ENTERS A GUILTY PLEA
24 TO A MISDEMEANOR OR IS SENTENCED ON A MISDEMEANOR PURSUANT TO
25 PENAL CODE 977, BUT THAT THERE IS A FOURTH WAIVER THAT IS PUT

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1 IN ON A WET RECKLESS. AND OUR CONTENTION IS THAT, AS YOU KNOW,
2 MR. BURTON WAS NOT AWARE OF IT AT THE TIME THAT IT WAS IMPOSED,
3 AND THAT HE CERTAINLY DIDN'T KNOWINGLY, INTELLIGENTLY, AND
4 VOLUNTARILY WAIVE A CONSTITUTIONAL RIGHT.

5 AND THIS, I JUST THINK, SUPPORTS THAT -- THIS
6 PARTICULAR DOCUMENT -- BECAUSE HIS ATTORNEY IS TELLING HIM HERE
7 ARE ALL YOUR CONDITIONS OF PROBATION, AND LISTS THE FIVE: YOU
8 HAVE THREE YEARS' SUMMARY, YOU HAVE A FINE, YOU HAVE SOME
9 CLASSES THAT YOU HAVE TO DO, AND YOU HAVE TO STAY AWAY FROM THE
10 GUY INVOLVED IN THE ASSAULT PORTION OF IT.

11 I'M NOT SAYING THIS IS DEFINITIVE. THIS CERTAINLY
12 DOESN'T TRUMP THE WRITTEN ORDER THAT THE COURT IMPOSED. BUT
13 REMEMBER WE'RE TALKING ABOUT THE FOURTH AMENDMENT HAS TO BE
14 VIEWED FROM THE DEFENDANT'S PERSPECTIVE AND THE REASONABLENESS
15 TEST, ALTHOUGH, OBVIOUSLY, THERE ARE OBJECTIVE PORTIONS OF IT
16 THAT GO TO THE LAW ENFORCEMENT'S UNDERSTANDING.

17 BUT I THINK THAT UNDER THESE CIRCUMSTANCES THIS
18 PARTICULAR DOCUMENT -- IT'S NOT EARTH-SHATTERING. I'M NOT
19 SAYING THAT. BUT I DO THINK IT IS ANOTHER PIECE OF EVIDENCE
20 THAT SUPPORTS OUR POSITION.

21 **THE COURT:** BUT DOES HE HAVE TO WAIVE THE IMPOSITION
22 OF A SEARCH CONDITION? ISN'T THAT UP TO THE COURT'S DISCRETION
23 TO IMPOSE OR NOT IMPOSE WHEN WE'RE DEALING AT THE TIME OF
24 SENTENCING, AS OPPOSED TO ALLOWING DIFFERENT CHANGES IN
25 SUPERVISION OR PROBATION LATER ON?

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1 **MR. WARREN:** ACTUALLY, YOU DO HAVE TO, AND HERE IS
2 WHY. IT'S A LITTLE BIT DIFFERENT THAN WHAT WE SEE IN FEDERAL
3 COURT. IN STATE COURT -- AND I'VE CITED A CASE IN MY
4 PAPERWORK -- PROBATION IS AN OFFER TO A DEFENDANT THAT HAS TO
5 BE ACCEPTED OR DECLINED. AND WHEN I HANDLE SOME CASES IN
6 SUPERIOR COURT, THE JUDGE WILL GO THROUGH THE PROPOSED
7 CONDITIONS OF PROBATION, AND THEN TURN TO THE DEFENDANT AND SAY
8 "NOW, MR. JONES, DO YOU ACCEPT THE TERMS OF PROBATION THAT I
9 INTEND TO GIVE?" AND THEN THE DEFENDANT HAS TO SAY YES.

10 IF THE DEFENDANT SAYS NO, THEN THE JUDGE WILL DENY
11 PROBATION AND WILL SENTENCE.

12 TYPICALLY, CERTAINLY ON FELONIES, BEING DENIED
13 PROBATION MEANT YOU WENT TO STATE PRISON. ON A MISDEMEANOR IT
14 WOULD PROBABLY MEAN THAT YOU WOULD GET A JAIL SENTENCE OF SOME
15 SORT.

16 AND, AGAIN, I APPEAR IN STATE COURT, AND I'VE ALWAYS
17 THOUGHT A 977 APPEARANCE FOR A GUILTY PLEA -- YOUR HONOR AS A
18 MAGISTRATE JUDGE DID THOUSANDS OF GUILTY PLEAS AND YOU HAVE TO
19 MAKE A FINDING AS TO THE KNOWINGNESS, THE INTELLIGENTNESS, THE
20 VOLUNTARINESS OF THE WAIVER. I ALWAYS WONDERED HOW THAT WAS
21 DONE IN THE ABSENCE OF THE DEFENDANT, AND I KNOW THAT IS BEING
22 DONE FOR COURT EFFICIENCY.

23 BUT REALLY, I COULD NOT FIND A SINGLE CASE IN
24 CALIFORNIA COURT THAT DEALT WITH A CHALLENGE TO THAT 977. I'M
25 NOT SAYING THAT THE COURT HAS TO THROW OUT THE ENTIRETY OF THE

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1 CALIFORNIA PROCEDURE, BUT I THINK THAT WHEN WE'RE TALKING ABOUT
2 THE WAIVER OF A CONSTITUTIONAL RIGHT FOR SOMETHING THAT'S NOT
3 DONE, NORMALLY, ON A WET RECKLESS -- IN FACT, I'VE NEVER SEEN
4 IT -- I'M NOT AWARE OF IT.

5 **THE COURT:** AND THAT ARGUMENT ABOUT THE NORMAL
6 SENTENCING OR TYPICAL SENTENCING WAS MADE BEFORE, BY
7 MR. COTSIRILOS, BUT THIS ASPECT IS SOMETHING NEW YOU HAVE BEEN
8 ABLE TO BRING FORWARD.

9 BUT THE ATTORNEY THAT APPEARS WITH THE CLIENT'S
10 AUTHORITY TO BIND ON A PLEA, IN ESSENCE, ACCEPTS AS AN AGENT,
11 DO THEY NOT?

12 **MR. WARREN:** OF COURSE. THAT IS WHAT 977 SAYS, THAT
13 THE MISDEMEANOR DEFENDANT MAY APPEAR THROUGH COUNSEL. AGAIN,
14 THAT'S FINE. I MEAN, THAT CAN BE DONE FOR CERTAIN THINGS. BUT
15 THERE IS A REAL QUESTION AS TO THE CONSTITUTIONALITY, IN THIS
16 PARTICULAR CONTEXT, OF SOMETHING THAT IS ABNORMAL FOR A
17 MISDEMEANOR SENTENCING WITH REGARD TO A WET RECKLESS: A
18 WAIVER -- A BLANKET WAIVER OF SUSPICIONLESS SEARCH -- WAIVER
19 IMPOSED WITHOUT THE DEFENDANT'S KNOWLEDGE AND WITHOUT THE
20 DEFENDANT'S PERSONAL ACCEPTANCE.

21 AND THEN YOU HAVE -- EVEN THE AGENT WHO IS TELLING
22 HIM, THIS GUY MICHAEL KERN, THE ATTORNEY, SAYING HERE ARE YOUR
23 CONDITIONS. AND HE LISTS THE FIVE, AND DOESN'T TELL HIM YOU
24 HAVE THE WAIVER. SO I THINK UNDER THESE CONTEXTS THESE ARE ALL
25 PART OF THE FACTORS I THINK THE COURT HAS TO TAKE INTO

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1 CONSIDERATION AS TO THE REASONABLENESS OF WHETHER HE WAS EVEN
2 ON A VALID FOURTH WAIVER OR NOT.

3 **THE COURT:** BUT HOW WOULD THAT AFFECT, ESSENTIALLY,
4 THE GOOD FAITH OF THE OFFICERS WHO DO A COMPUTER CHECK AND FIND
5 A FULL FOURTH WAIVER AT THE TIME THAT THEY ARE FINDING THE
6 DRIVING CONDUCT OR MISCONDUCT, AND THE SEARCH REVEALS THE
7 PRESENCE OF MARIJUANA AND, OF COURSE, A CRIMINAL RECORD ON THE
8 CHECK?

9 **MR. WARREN:** WELL, I THINK YOU HAVE TO BREAK IT DOWN.
10 SO FROM THE 35,000-FOOT VIEW, YOU HAVE A SEARCH OF A HOUSE
11 WITHOUT A WARRANT. AND A SEARCH OF A HOUSE WITHOUT A WARRANT
12 IS, PER SE, UNREASONABLE UNLESS THERE IS A VALID EXCEPTION TO
13 THE FOURTH AMENDMENT.

14 HERE, WE HAVE THE FOURTH CONDITION. NOW, YOUR HONOR
15 IS JUMPING AHEAD TO THE VERY END OF THIS, WHICH IS THE
16 GOOD-FAITH DOCTRINE APPLIES TO SORT OF SALVAGE A SEARCH THAT IS
17 OTHERWISE ILLEGAL. AND SO I THINK WE DO HAVE TO GET THERE,
18 BECAUSE I DO THINK THAT UNDER A NUMBER OF DIFFERENT APPROACHES
19 THIS IS NOT A VALID SEARCH.

20 A, BECAUSE LIKE I SAID, I DON'T THINK THAT THERE IS A
21 VOLUNTARY WAIVER. AND SO IF THERE IS NO VOLUNTARY WAIVER, IF
22 HE HASN'T RELINQUISHED HIS FOURTH AMENDMENT RIGHTS, THEN I
23 THINK THAT IS JUST THE END OF THE STORY. I DON'T THINK YOU CAN
24 SALVAGE THAT THROUGH GOOD FAITH BECAUSE IT SIMPLY JUST NEVER
25 EXISTED IN THE FIRST PLACE.

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1 BUT SECONDLY, YOUR HONOR, LET ME SAY THIS. YOU HAVE
2 TO LOOK AT THE *LARA* CASE AND THE DISCUSSION OF THE
3 REASONABLENESS STANDARD. WE KNOW FROM THE *KNIGHTS* CASE BEFORE
4 THE SUPREME COURT, AND THE *KING* CASE, TO A CERTAIN EXTENT,
5 BEFORE THE NINTH CIRCUIT, AND THEN ULTIMATELY *LARA*, WHICH JUST
6 CAME DOWN RECENTLY, THE TOUCHSTONE OF ANY FOURTH-AMENDMENT
7 ANALYSIS IS JUST SIMPLY REASONABLENESS. AND I THINK YOU CAN
8 LOOK AT *LARA* AND YOU CAN SAY *LARA* REALLY IS KIND OF CARVING OUT
9 THIS EXCEPTION, AFTER *RILEY*, FOR CELL PHONES, AND SORT OF IN
10 THIS WEIRD WAY CELL PHONES MAY HAVE EVEN MORE PROTECTION THAN A
11 HOUSE DOES, WHICH IS KIND OF NONSENSICAL.

12 **THE COURT:** IT'S THE CONTAINER ANALYSIS. THE HOUSE
13 IS THE CONTAINER. THE CELL PHONE IS NOT A CONTAINER. IT'S
14 APPARENTLY SOMETHING MUCH GRANDER, ACCORDING TO THE AUTHORITY.
15 I DON'T MEAN THAT PEJORATIVELY. IT'S JUST DIFFERENT BECAUSE
16 IT'S A CELL PHONE.

17 **MR. WARREN:** AGREED. AND I THINK WHAT *RILEY'S* POINT
18 IS, AND *LARA'S* IS, IS THAT CELL PHONES TAP INTO THE NET. AND
19 SO THEN THE CELL PHONE YOU CAN HAVE EVERY PIECE OF LITERATURE
20 EVER WRITTEN IN THE ENGLISH LANGUAGE, THAT YOU CAN TAP INTO
21 THROUGH THAT. SO THERE ARE SOME DISTINCTIONS THERE WITH REGARD
22 TO A CELL PHONES VERSUS A HOUSE.

23 BUT ULTIMATELY, A SEARCH HAS TO BE REASONABLE. AND
24 HERE, YOUR HONOR, WHEN YOU BOIL DOWN THIS PARTICULAR CASE, I
25 THINK THE REALLY NUB OF THIS FOURTH AMENDMENT ANALYSIS IS THIS.

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1 YOU HAVE TO COMPARE MR. BURTON'S EXPECTATION OF PRIVACY, WHICH
2 IS DIMINISHED. BUT AS THE SUPREME COURT HAS TOLD US, WHEN YOU
3 LOOK AT THE SCALE OF PEOPLE WHO ARE IN THE CRIMINAL JUSTICE
4 SYSTEM, FROM PEOPLE IN PRISON WHO HAVE BASICALLY ZERO, TO
5 PEOPLE WHO ARE ON PAROLE WHO HAVE ALMOST ZERO, ALTHOUGH THEY
6 HAVE SOME LIBERTY BUT THEY ARE STILL CONSIDERED A PRISONER, AND
7 THEN THE OPPOSITE EXTREME ARE PEOPLE ON PROBATION.

8 AND IN *LARA* THEY TALK ABOUT HOW EVEN THOUGH YOUR
9 RIGHTS ARE DIMINISHED, THEY ARE STILL SIGNIFICANT AND
10 SUBSTANTIAL. I THINK THOSE ARE THE TERMS THEY USE.

11 BUT AGAIN, GETTING TO THE NUB OF IT IS THIS. IN MY
12 MIND, YOUR HONOR, THERE IS A HUGE DISTINCTION BETWEEN A PERSON
13 IN THEIR CAR ON THE ONE HAND, AND THE HOUSE. THE HOUSE IS
14 GIVEN THE GREATEST PROTECTION, UNDER THE FOURTH AMENDMENT, OF
15 ANYTHING, AND NOTWITHSTANDING, I GUESS, CELL PHONES. AND I
16 HAVE CITED SOME OF THE CASE LAW REGARDING THE PROTECTIONS
17 AFFORDED TO THE HOUSE.

18 YOU HAVE A MAN WHO HAS REOFFENDED. THERE IS NO DOUBT
19 HE HAS COMMITTED SOME VIOLATIONS, BASED ON THE COURT'S FINDING.
20 YOU HAVE A LOUD NOISE, WHICH IS A TRAFFIC TICKET. YOU HAVE A
21 FAILURE-TO-TURN-SIGNAL WITHIN 100 FEET OF WHERE YOU'RE
22 STOPPING. THAT IS ANOTHER TRAFFIC INFRACTION. YOU HAVE SOME
23 SORT OF EITHER DRIVING ON A SUSPENDED LICENSE OR WITHOUT A
24 VALID LICENSE, WHICH IS A TRAFFIC MISDEMEANOR. I WOULD SAY
25 THOSE ARE THE THREE.

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1 NOW, WE HAVE THE MARIJUANA FOUND IN THE POCKET. I
2 RESPECTFULLY SUGGEST THAT THAT IS A FRUIT OF THE ILLEGAL
3 PROBATION SEARCH. IT'S CRYSTAL CLEAR IN MY MIND, FROM THE
4 TRANSCRIPT, THAT THE OFFICERS TESTIFIED THAT AFTER THEY PULLED
5 HIM OVER, AFTER THEY FOUND THAT HE WAS DRIVING IN VIOLATION,
6 THEY DECIDED TO DO A PROBATION SEARCH. THEY PULLED HIM FROM
7 THE CAR, THEY HANDCUFFED HIM, AND THEY EMPTIED HIS POCKETS.
8 AND THAT WAS THE TESTIMONY OF OFFICER MEDINA. AND THAT IS WHEN
9 HE FINDS THE MARIJUANA.

10 SO I DON'T THINK THAT THE COURT IS IN A POSITION TO
11 USE THE MARIJUANA TO JUSTIFY THE SUBSEQUENT SEARCH, UNLESS THE
12 COURT WERE TO FIND -- I GUESS WHAT YOUR HONOR COULD SAY IS THAT
13 AT A MINIMUM THERE IS A SUFFICIENT VIOLATION THAT THEY CAN
14 SEARCH HIS BODY AS A PROBATION SEARCH, AND THEN USE THAT TO
15 CONSIDER WHAT TO DO NEXT.

16 BUT EVEN IF YOU CALCULATE IN THE MARIJUANA, YOU HAVE
17 A SMALL AMOUNT OF PERSONAL-USE MARIJUANA. I THINK THE REPORTS
18 ARE THREE GRAMS. IN CALIFORNIA, MARIJUANA IS DECRIMINALIZED.
19 IT'S A TICKET. IT'S AN INFRACTION, NOT A MISDEMEANOR, TO HAVE
20 LESS THAN AN OUNCE. IT'S CITEABLE, NOT ARRESTABLE.

21 AND WHEN YOU LOOK AT LARA, THE TWO GOVERNMENT
22 INTERESTS THAT ARE AT STAKE ARE REINTEGRATION INTO SOCIETY AND
23 NEW CRIMINALITY -- REOFFENDING.

24 EVEN IF YOU COULD SAY THAT THERE IS SOME
25 REOFFENDING -- I MEAN, IF IT'S A BINARY QUESTION, YES OR NO --

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1 YES, THERE IS SOME REOFFENDING THERE.

2 THE QUESTION IS WHAT PURPOSE DOES SEARCHING THE
3 RESIDENCE ACCOMPLISH? BECAUSE A SEARCH IS A SEARCH FOR
4 CONTRABAND. IT'S NOT A SEARCH TO SAY OKAY, IS HE DRINKING, YOU
5 KNOW, WHOLE MILK VERSUS TWO PERCENT. IT'S TO FIND OUT WHETHER
6 THERE IS EVIDENCE OF CRIMINALITY.

7 SO IF YOU LOOK AT THE VIOLATIONS THEMSELVES, YOU SAY
8 WHAT COULD POSSIBLY BE DISCOVERED IN THE HOUSE, CONNECTED TO A
9 TRAFFIC VIOLATION, THAT WOULD BE EVIDENCE OF THAT? NOTHING.
10 AND EVEN WITH REGARD TO PERSONAL-USE MARIJUANA, WHAT ARE YOU
11 SEARCHING FOR?

12 IN OTHER WORDS, THE FACT THAT SOMEONE HAS COMMITTED
13 AN OFFENSE AS MINOR AS THESE, DOES THAT JUST, AGAIN, PRESS A
14 BUTTON AND SAY OKAY, ALL BETS ARE OFF? I THINK THESE ARE
15 THINGS THAT YOU TAKE INTO CALCULATION IN DETERMINING THE
16 REASONABLENESS OF THE ENTRY INTO THE HOUSE.

17 AND, YOUR HONOR, LET'S SAY HE WAS PULLED OVER
18 100 MILES AWAY FROM HIS HOUSE. WOULD IT BE REASONABLE FOR
19 OFFICERS TO DRIVE 100 MILES TO GO SEARCH A HOUSE, BASED ON
20 THESE VIOLATIONS? AND, OF COURSE, THE ANSWER WOULD BE NO.

21 THE FACT THAT THE HOUSE HAPPENS TO BE NEARBY, IN MY
22 OPINION, DOESN'T ADD ANYTHING TO THE CALCULATION THAT MAKES IT
23 A MORE REASONABLE SEARCH.

24 AND SO THOSE ARE MY ARGUMENTS, YOUR HONOR, UNLESS THE
25 COURT HAS ANY OTHER QUESTION.

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A033

1 **THE COURT:** WELL, YOU ARE QUITE ARTICULATE AND I
2 APPRECIATE THE DISCUSSION, AND I'LL EQUALLY APPRECIATE THE
3 COMMENTS OF MR. HADEN, WHO MIGHT HAVE A THING OR TWO TO SAY
4 ABOUT ALL OF THAT.

5 **MR. HADEN:** YES, YOUR HONOR. I WANT TO START WITH
6 THE FIRST PIECE, WHICH IS I APPRECIATE NEW EVIDENCE BEING FILED
7 TODAY, BUT PROCEDURALLY WE DON'T HAVE ANY FOUNDATION FOR IT.

8 AND I WANT TO MAKE SURE I'M REALLY CLEAR. I DON'T
9 THINK MR. WARREN WOULD SUBMIT SOMETHING THAT HE DOESN'T BELIEVE
10 TO BE TRUE. WHAT I'M SAYING IS I DON'T KNOW WHEN IT WAS
11 RECEIVED, I DON'T KNOW WHO RECEIVED IT, I DON'T HAVE ANYONE
12 SWEARING THAT MR. BURTON GOT THE LETTER OR WHEN HE GOT IT.

13 AND, MORE IMPORTANTLY, IN THE CONTEXT OF MOTIONS FOR
14 RECONSIDERATION, IS IT NEWLY DISCOVERED? BECAUSE IT DOESN'T
15 SEEM LIKE EFFORTS BY MR. COTSIRILOS WOULD HAVE PRECLUDED HIM
16 FROM GETTING THAT LETTER AT THE TIME OF THE ORIGINAL
17 SUPPRESSION HEARING. SO WE OBJECT TO IT PLAINLY, FOR THAT
18 REASON. MORE IMPORTANTLY, BECAUSE IT'S IRRELEVANT.

19 IF YOU WAIVE YOUR APPEARANCE 977 -- YOU KNOW,
20 EVERYONE KEEPS SAYING AS A MATTER OF FACT THAT IT'S UNUSUAL TO
21 GET A FOURTH WAIVER FOR A WET RECKLESS. THEY'VE NEVER HEARD OF
22 IT. THEY'VE NEVER HEARD OF IT. THAT DOESN'T MAKE IT TRUE AND
23 THAT DOESN'T MAKE IT LEGALLY UNAVAILABLE.

24 AND WE KEEP FORGETTING THE FACT THAT HE ALSO GOT A
25 245. AND HIS PROBATION CONDITIONS INCLUDED STAYING AWAY FROM

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1 SOMEBODY THAT HE HAD ASSAULTED. SO IN THE TOTALITY OF THE
2 CIRCUMSTANCES, IT MADE TOTAL SENSE TO JUDGE THOMPSON AND IT WAS
3 LEGALLY AVAILABLE. MR. BURTON WAIVED HIS PRESENCE AND HIS
4 ATTORNEY ACCEPTED THE CONDITION AND DIDN'T OBJECT, AND THE
5 TRANSCRIPT IS IN THE RECORD AND WAS OFFERED BY THE UNITED
6 STATES.

7 SO WE CAN GO BACK NOW AND WE CAN DO FOURTH AMENDMENT
8 ANALYSIS, BUT I THINK WHAT IS REALLY CLEAR IS THAT JUDGE
9 THOMPSON WAS LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES, HE
10 IMPOSED IT, AND THERE WAS NO OBJECTION.

11 WHAT MR. BURTON WAS TOLD AFTER -- I THINK THE COURT
12 HAS RIGHTLY HIT ON THE FACT -- DOESN'T AFFECT WHETHER IT
13 RIGHTFULLY AND LEGALLY WENT INTO THE SYSTEM THAT IS RELIED ON
14 BY THE OFFICERS.

15 THE OTHER THING THAT I WANTED TO MAKE SURE WE CLEAR
16 UP IS THE SITUATION IS CLEARLY ESCALATING. FIRST OF ALL, IT'S
17 A SUSPICIONLESS FOURTH WAIVER. IT DOESN'T REQUIRE ANYTHING.
18 SO THIS ARGUMENT THAT MARIJUANA HAS TO BE LEADING TO OTHER
19 CONTRABAND, THAT IS JUST NOT TRUE.

20 AND BY THE WAY, HAVING MARIJUANA ON YOUR PERSON WHILE
21 YOU'RE DRIVING A VEHICLE, THAT'S ACTUALLY NOT JUST A CITATION.
22 THAT IS ACTUALLY AN ARRESTABLE OFFENSE. IF YOU HAVE IT ON THE
23 STREET OR IN YOUR HOUSE, THAT MAY BE DIFFERENT, BUT HAVING IT
24 ON YOUR PERSON WHILE YOU'RE DRIVING A VEHICLE IS AN AGGRAVATED
25 OFFENSE, COMPARATIVELY.

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A035

1 AND IN THE PROXIMITY OF THE HOUSE THAT MR. WARREN HAS
2 MENTIONED, I THINK, IN THE TOTALITY OF THE CIRCUMSTANCES, THAT
3 THE COURT UNDERSTOOD WHAT WAS HAPPENING.

4 MR. BURTON HAS THE LOUD MUSIC. AS HE IS TURNING,
5 OFFICER MEDINA TESTIFIED THAT HE RECOGNIZED HIM IMMEDIATELY AS
6 MR. BURTON, SOMEONE THAT THEY HAD STOPPED PREVIOUSLY, THAT WAS
7 A PROBLEMATIC CRIMINAL IN THE NEIGHBORHOOD.

8 THEN THEY RUSH UP BEHIND THE CAR, AND THE CAR
9 ABRUPTLY DARTS TO THE SIDE, AND THEY ALMOST -- BARELY AVOID
10 HITTING HIM. THERE IS VIOLATION NUMBER TWO. THERE IS NOTHING
11 REQUIRED.

12 THEN HE DOESN'T HAVE A VALID LICENSE AND IS ON HIS
13 WAY TO THIS HOME. THEY SEARCH HIM AND NOW HE HAS CONTRABAND ON
14 HIS PERSON WHILE HE IS DRIVING A VEHICLE.

15 SO THE SITUATION IS ESCALATING. SO WHETHER IT'S
16 SUSPICIONLESS, WHETHER IT'S REASONABLE SUSPICION, WHETHER IT'S
17 PROBABLE CAUSE -- ALL OF THAT SUPPORTS THEIR KNOWING AND
18 INTELLIGENT USE OF THE FOURTH WAIVER, TO SEE IF MR. BURTON IS
19 COMPLYING WITH HIS CONDITIONS OF PROBATION OR IF HE IS HAVING
20 TROUBLE WITH RECIDIVISM AND OTHERWISE OFFENDING IN A DIFFERENT
21 WAY.

22 AND EVEN IF THE COURT FOUND A PROBLEM WITH THE WAIVER
23 AND ALL OF THOSE OTHER THINGS, I THINK THE COURT HAS HIT ON THE
24 FACT THAT IT WOULD BE REMARKABLE -- IT WOULD BE INCREDIBLY
25 UNUSUAL FOR THE OFFICERS NOT TO BE ABLE TO RELY ON THIS.

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A036

1 AND I THINK IF YOU LOOK AT THE ACTUAL LANGUAGE OF
2 LARA, THE PRIMARY REASON THAT THE NINTH CIRCUIT DIDN'T GIVE
3 GOOD FAITH TO THE OFFICERS IS THE ARGUMENT HADN'T BEEN MADE.

4 **THE COURT:** IT HADN'T BEEN RAISED.

5 **MR. HADEN:** AND THE UNITED STATES MADE THAT ARGUMENT
6 AT THE FIRST SUPPRESSION HEARING, WHICH IS WHY THE COURT
7 INCLUDED IT IN ITS RULING, AND WE, OF COURSE, ARE INSERTING IT
8 HERE.

9 I APPRECIATE THE ARGUMENT BY MR. WARREN. I DON'T
10 THINK THAT THE COURT CAN OR SHOULD CONSIDER THE LETTER FROM THE
11 LAWYER. ONE, BECAUSE IT DOESN'T HAVE THE FOUNDATION; AND, TWO,
12 I DON'T THINK IT REALLY HELPS THE ANALYSIS, BASED ON WHAT WAS
13 ACTUALLY IMPOSED AND WHAT WAS DONE BY JUDGE THOMPSON IN
14 EL CAJON.

15 AND I THINK IN THE TOTALITY OF THE CIRCUMSTANCES THE
16 COURT SHOULD MAINTAIN THE BALANCING TEST, AND THAT THE OFFICERS
17 ACTED REASONABLY, ESPECIALLY IN LIGHT OF THE FACT THAT THEY
18 THOUGHT THE FOURTH WAIVER WAS PURSUANT TO A VIOLENT FELONY OR A
19 VIOLENT CONVICTION. THAT'S WHAT THEY WROTE IN THEIR REPORTS.
20 THAT IS WHAT THEY CONCEDED ON THE STAND. THEY ALL THOUGHT IT
21 WAS RELATED TO THE 245, WHICH, YOU KNOW, WEIGHS IN FAVOR OF THE
22 ACTIONS THAT THEY TOOK THAT DAY.

23 AND UNLESS THE COURT HAS OTHER QUESTIONS FOR THE
24 UNITED STATES, WE WOULD CERTAINLY SUBMIT ON WHAT HAS BEEN
25 BRIEFED AND ARGUED THUS FAR.

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1 **THE COURT:** OKAY. WELL, I MEAN THERE ARE SOME
2 EVIDENTIARY ISSUES WITH REGARD TO THE LETTER FROM COUNSEL, BUT
3 I DON'T THINK WE NEED TO ADDRESS THOSE, BECAUSE IN THE TOTALITY
4 OF ALL THE CIRCUMSTANCES I STILL THINK THAT THERE WAS -- WELL,
5 LET ME BREAK IT DOWN THIS WAY.

6 THE PROBLEM OF MY DISPATCHING LARA -- BECAUSE IT WAS
7 THIS ANALYSIS OF THE CELL PHONE. AND CELL PHONES, UNDER RILEY,
8 HAVE TAKEN ON SUCH A GREATER EMPHASIS IN THE FOURTH AMENDMENT
9 JURISPRUDENCE, AND WE DON'T HAVE ANY OF THAT HERE. WE ALSO
10 HAVE THE FACT THAT GOOD FAITH WASN'T PART OF THE OVERALL
11 ANALYSIS, WHICH CLEARLY IS THE ISSUE BEFORE US.

12 BUT EVEN IF WE WENT UP THE LADDER ON SUSPICIONLESS
13 SEARCH AND YOU WEIGH THE SUMMARY PROBATION THAT WAS IMPOSED AND
14 WITH WHAT JUDGE THOMPSON SAID, THE SEARCH WOULD BE VALID
15 BECAUSE YOU HAVE GOT A REDUCED EXPECTATION OF PRIVACY ON BEHALF
16 OF MR. BURTON, INCLUDING HIS RESIDENCE.

17 AND I WON'T REPEAT THE SCENARIO THAT MR. HADEN HAS
18 LAID OUT, BUT IT'S BEEN WHAT WE'VE HEARD THROUGH EVIDENTIARY
19 HEARINGS AND PRIOR ARGUMENTS: A VARIETY OF SMALL VIOLATIONS
20 WHICH WOULD HAVE ALLOWED THE OFFICERS TO SEARCH THE PERSON.
21 AND THEN THEY FIND THE CONTRABAND AND MOVE FROM THERE TO THE
22 HOUSE, WHICH HAPPENS TO BE ADJACENT. IT ISN'T 100 MILES AWAY.
23 MAYBE THAT WOULD MAKE A DIFFERENCE, BUT I'M NOT GOING TO GIVE
24 THAT ADVISORY OPINION. BUT IT MAY BE A
25 WHERE-THERE-IS-SMOKE-THERE-IS-FIRE TYPE OF AN ARGUMENT. HE IS

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1 DRIVING, AND SHOULDN'T BE ON A SUSPENDED LICENSE AND WITH
2 CONTRABAND IN HIS POSSESSION APPROACHING HIS HOUSE. AND
3 OFFICERS KNOW, FROM EXPERIENCE, THE GENTLEMAN'S INVOLVEMENT
4 WITH NARCOTICS.

5 SO THE BALANCE OF INTEREST UNDER A LARA-TYPE ANALYSIS
6 WOULD WEIGH IN FAVOR OF THE SUSPICIONLESS SEARCH. HOWEVER, I
7 THINK THE SAME SET OF FACTS WOULD SUPPORT A SEARCH ON A
8 REASONABLE SUSPICION, HAD THAT BEEN THE ORDER OF JUDGE
9 THOMPSON.

10 JUDGE THOMPSON'S ORDER, HOWEVER, WAS A FULL-ON
11 SEARCH. AND I THINK WHAT MR. BURTON REMEMBERS, WHAT HE WAS
12 TOLD ISN'T GOING TO CHANGE THE OUTCOME. THE OFFICERS IN THE
13 FINAL ANALYSIS, HAD REASON TO RELY UPON THE RECORD BEFORE THEM
14 AS TO THE 245, THE VIOLENT CRIME, THE FULL FOURTH WAIVER, AND
15 ALL THESE INTERVENING FACTS, TO SUPPORT THE ACTION THEY TOOK.

16 I MEAN, IN THE FINAL ANALYSIS, SUPPRESSION FOR A
17 VIOLATION OF FOURTH AMENDMENT RIGHTS IS SOUGHT TO PREVENT
18 POLICE MISCONDUCT. I DON'T FIND ANY POLICE MISCONDUCT HERE.
19 TO THE CONTRARY, I FIND VERY CREDIBLE OFFICERS TO HAVE
20 SUPPORTED THE GOOD-FAITH EXCEPTION AS TO ALL OF THE CONTRABAND
21 FOUND THAT DAY ON PERSON AND RESIDENCE.

22 SO I WILL GRANT THE MOTION FOR RECONSIDERATION
23 BECAUSE I'VE CONSIDERED THIS NEW EVIDENCE, BUT I WILL DENY
24 REVERSAL OF THE SUPPRESSION MOTION.

25 I WILL GRANT THE MOTION TO RECONSIDER IN LIGHT OF

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1 LARA AND CONFIRM MY FURTHER RULING FINDING LARA DOES NOT
2 DISTINGUISH THE LAW OR THE PURPOSES OR BASIS BEHIND THE RULING.

3 SO I THINK THAT TAKES CARE OF MOTIONS 14-1 AND 10-1
4 THAT WERE PENDING. I MEAN, IT'S AN INTERESTING CASE. PROBABLY
5 NOTHING QUITE LIKE IT THAT WE'LL SEE AGAIN ANY TIME SOON, BUT
6 THAT IS WHERE I SEE IT.

7 SO WITH THOSE MOTIONS DONE, WE HAD THE QUESTION OF
8 RECIPROCAL DISCOVERY REMAINING OR ANY FURTHER DISCOVERY ON THE
9 MOTION THAT WAS FILED AS NUMBER 7-1. IS THERE ANYTHING LEFT?

10 **MR. HADEN:** YOUR HONOR, AS A STATUS UPDATE,
11 MR. WARREN CAME TO THE UNITED STATES ATTORNEY'S OFFICE ON
12 FRIDAY. WE PROVIDED HIM HIS COPY OF THE EXHIBIT BINDER WITH
13 ALL THE PHOTOGRAPHIC EXHIBITS AND GAVE HIM AND HIS TEAM AN
14 OPPORTUNITY TO REVIEW AND INSPECT ALL THE PHYSICAL EVIDENCE.
15 SO THEY DID THAT FRIDAY. WE'VE MADE EVERYTHING AVAILABLE TO
16 HIM.

17 I DON'T THINK IN REGARDS TO DISCOVERY ON THE UNITED
18 STATES' END THERE IS ANYTHING LEFT. WE HAVE NOT RECEIVED
19 ANYTHING FROM THE DEFENSE AT THIS POINT.

20 **THE COURT:** OKAY. SO, MR. WARREN, IS THERE ANYTHING
21 TO GIVE AT THIS POINT, OR NOTHING AT THE MOMENT?

22 **MR. WARREN:** NOTHING AT THE MOMENT, AND I DON'T THINK
23 THERE WILL BE ANYTHING. THE GOVERNMENT IS PUTTING IN ALMOST
24 ALL THE PHOTOGRAPHS THAT WERE TAKEN AT THE SCENE BACK AT THE
25 DATE OF INCIDENT. AND WE DON'T, AT THIS POINT, ANTICIPATE ANY

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A P P E N D I X 5

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)
4 PLAINTIFF,) CASE NO. 15CR2443-AJB
5 -V-) JANUARY 20, 2016
6 STEVEN DOYLE BURTON,) 9:14 A.M.
7 DEFENDANT.) SAN DIEGO, CALIFORNIA
8 _____)

9
10 TRANSCRIPT OF EVIDENTIARY HEARING

11 BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
12 UNITED STATES DISTRICT JUDGE
13
14

15 APPEARANCES:

16 FOR THE GOVERNMENT: LAURA E. DUFFY, UNITED STATES ATTORNEY
17 BY: ANDREW RICHARD HADEN, ESQ.
18 ASSISTANT U.S. ATTORNEY
880 FRONT STREET
SAN DIEGO, CALIFORNIA 92101

19 FOR THE DEFENDANT: LAW OFFICE OF JOHN COTSIRILOS
20 BY: JOHN COTSIRILOS, ESQ.
BRITTON DONALDSON, ESQ.
21 2442 4TH AVENUE, #200
SAN DIEGO, CALIFORNIA 92101

22 OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
23 U.S. COURTHOUSE
333 WEST BROADWAY, RM 420
24 SAN DIEGO, CALIFORNIA 92101
(619) 702-3905

25 REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

JANUARY 20, 2016

SAN DIEGO, CALIFORNIA; WEDNESDAY, JANUARY 20, 2016; 9:14 A.M.

THE COURT: GOOD MORNING, FOLKS. LET'S HAVE YOUR APPEARANCES.

MR. COTSIRILOS: GOOD MORNING, YOUR HONOR. JOHN COTSIRILOS ON BEHALF OF STEVEN BURTON, WHO IS PRESENT IN COURT. AND I'M BEING ASSISTED BY BRIT DONALDSON FROM MY OFFICE.

THE COURT: OKAY. VERY GOOD. WELCOME, SIR.

MR. HADEN: AND GOOD MORNING, YOUR HONOR. ANDREW HADEN ON BEHALF OF THE UNITED STATES. AND JOINING ME AT COUNSEL TABLE THIS MORNING IS ATF SPECIAL AGENT RICKY JIMENEZ. HE IS NOT TESTIFYING IN THE CASE. HE IS JUST A CASE AGENT.

THE COURT: OKAY. IS THERE ANY OBJECTION TO THAT, MR. COTSIRILOS?

MR. COTSIRILOS: NO.

THE COURT: SORRY FOR THE DELAY. I GOT TIED UP IN SOMETHING ELSE. BUT NOW THAT WE ARE ON THE RECORD, DO WE HAVE WITNESSES, THEN, TO PRESENT ON THESE ISSUES OF -- I GUESS IT'S SUPPRESSION OF EVIDENCE.

MR. HADEN: WE DO, YOUR HONOR. IF I COULD JUST DO A COUPLE HOUSEKEEPING MATTERS FIRST.

THE COURT: OF COURSE.

MR. HADEN: I JUST WANT TO PUT IT ON THE RECORD, AND I HOPE MR. COTSIRILOS WOULD AGREE, THAT I MET VERY BRIEFLY WITH THE WITNESSES YESTERDAY. AND AFTER MEETING WITH THEM, I CALLED AND INFORMED HIM OF WHAT I BELIEVE WAS POTENTIALLY SOME

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1 ADDITIONAL BRADY MATERIAL SO THAT HE WAS PREPARED.

2 I ALSO DID THE HENTHORN CHECKS WITH ALL THE
3 WITNESSES, AND THAT WAS DONE IN ADVANCE OF TODAY'S HEARING.
4 AND WE ARE READY TO GO. I HAVE A COURT'S BINDER AND A WITNESS
5 BINDER.

6 IF I COULD APPROACH?

7 **THE COURT:** SURE. OF COURSE.

8 **MR. HADEN:** YOUR HONOR, INSIDE THAT BINDER IS
9 EXHIBITS 1 THROUGH 9. EXHIBIT 10 WILL BE A DISK OF THE
10 DISPATCH RECORDING. EXHIBITS 1 THROUGH 9 ARE ALREADY THERE.

11 EXHIBITS 1 AND 2 ARE THE REPORTS OF OFFICERS WILLIAMS
12 AND MEDINA THAT WERE PREVIOUSLY SUBMITTED TO THE COURT,
13 ATTACHED WITH OUR WRITTEN FILINGS.

14 AT THIS TIME, BEFORE THE WITNESSES COME IN, I WOULD
15 LIKE TO OFFER WHAT IS SELF-AUTHENTICATING COURT-CERTIFIED
16 DOCUMENTS, EXHIBITS 3 AND 4. THERE WAS A QUESTION EVEN AT THE
17 TIME THAT THE UNITED STATES FILED THEIR OPPOSITION, ABOUT
18 MR. BURTON'S FOURTH WAIVER.

19 EXHIBIT 3 IS A MINUTE ORDER SHOWING THAT MR. BURTON
20 WAS CONVICTED OF 245, MISDEMEANOR ASSAULT WITH A DEADLY WEAPON.
21 AND ALSO COUNT FOUR, WHICH IS COLLOQUIALLY REFERRED TO AS A WET
22 RECKLESS, SORT OF A DOWNGRADED VERSION OF A DUI.

23 AND AT ABOUT HALFWAY DOWN THE PAGE, YOUR HONOR,
24 YOU'LL SEE THAT THE FOURTH AMENDMENT WAIVER BOX IS CHECKED BY
25 THE COURT. AND THIS IS A DOCUMENT THAT MR. COTSIRILOS ALSO

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1 SUPPLIED IN HIS SUPPLEMENTAL FILING.

2 IF YOU CONNECT THAT, YOUR HONOR, WITH GOVERNMENT'S
3 EXHIBIT 4, WHICH WE ARE OFFERING AND WOULD MOVE INTO EVIDENCE,
4 THIS IS A TRANSCRIPT OF THE SENTENCING HEARING OF JUDGE JOHN
5 THOMPSON IN EL CAJON. AND ON WHAT IS LISTED AS PAGE TWO OF
6 THAT TRANSCRIPT, FROM LINES FOUR TO TEN, IT'S VERY CLEAR THAT
7 JUDGE THOMPSON DID IMPOSE A FOURTH WAIVER AND GAVE THE
8 CONDITIONS.

9 AND I WOULD JUST NOTE FOR THE RECORD, THIS DOCUMENT
10 ALSO SHOWS MR. BURTON WASN'T PRESENT AT THE TIME BECAUSE HIS
11 PRESENCE HAD BEEN WAIVED BECAUSE IT WAS A MISDEMEANOR. BUT
12 THIS IS THE COURT FILING AND THE SENTENCING TRANSCRIPT THAT
13 SHOWS THERE WAS A FOURTH WAIVER THAT APPLIED TO HIS PERSON,
14 PLACE, RESIDENCE, AND VEHICLE. WE WOULD OFFER EXHIBITS 3 AND 4
15 AS SELF-AUTHENTICATING COURT-CERTIFIED DOCUMENTS.

16 **THE COURT:** OKAY. AND, MR. COTSIRILOS?

17 **MR. COTSIRILOS:** YOUR HONOR, I WOULD JOIN IN THE
18 REQUEST. I HAVE NO OBJECTION. AND I'D JUST POINT OUT THAT THE
19 PURPOSE THAT I FILED THE MINUTE ORDER SHOWING MR. BURTON HAD A
20 FOURTH WAIVER WAS THAT THE FOURTH WAIVER IS ATTENDANT TO HIS
21 RECKLESS DRIVING CONVICTION -- MISDEMEANOR RECKLESS DRIVING
22 CONVICTION. AND HE DID NOT GET PROBATION ON THE 245. THAT WAS
23 MY PURPOSE IN FILING IT, BUT I WOULD JOIN IN THE REQUEST THAT
24 THE COURT ACCEPT THE DOCUMENTS.

25 **THE COURT:** OKAY. THEN EXHIBITS 3 AND 4 WILL BE

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1 ADMITTED.

2 (EXHIBIT NOS. 3 AND 4 MARKED FOR IDENTIFICATION)

3 (EXHIBIT NOS. 3 & 4 RECEIVED INTO EVIDENCE)

4 **MR. HADEN:** FOR THE RECORD, WE WOULD JOIN THAT. AND
5 I THINK JUDGE THOMPSON MAKES IT CLEAR THAT HE IS GIVING HIM THE
6 FOURTH WAIVER RELATED TO THAT. BUT THE FACTS AND CIRCUMSTANCES
7 OF THAT CASE WERE KNOWN TO JUDGE THOMPSON AND IT SEEMS TO BE
8 WHAT HE DID.

9 **THE COURT:** OKAY. SO WE HAVE THOSE MATTERS IN PLACE.
10 AND, MR. COTSIRILOS, DID YOU HAVE FURTHER COMMENT ON
11 THAT?

12 **MR. COTSIRILOS:** NO.

13 **THE COURT:** AND THEN ANY OTHER HOUSEKEEPING MATTERS?

14 **MR. HADEN:** MAYBE JUST A ROAD MAP FOR THE COURT. I
15 KNOW WE DON'T NEED TO DO AN OPENING STATEMENT, BUT JUST FOR YOU
16 AND YOUR STAFF. WE PLAN TO CALL OFFICERS MEDINA AND WILLIAMS.
17 THEY WERE THE OFFICERS THAT INITIATED THE TRAFFIC STOP WITH
18 MR. BURTON.

19 AND THEN WE ARE GOING TO CALL SERGEANT ESTRADA.
20 SERGEANT ESTRADA WAS THE SENIOR OFFICER WITH THEM THAT NIGHT.
21 ALL OF THE OFFICERS THAT ARE GOING TO TESTIFY TODAY WERE, AT
22 THE TIME, MEMBERS OF THE CRIME SUPPRESSION TEAM. AND THEY WILL
23 EXPLAIN WHAT THAT IS, OF COURSE, YOUR HONOR, BUT I WANTED TO
24 HIGHLIGHT THAT FOR YOU.

25 BUT SERGEANT ESTRADA WILL EXPLAIN THAT THE CRIME

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A045

1 SUPPRESSION TEAM IS SORT OF A SPECIALIZED UNIT THAT IS DEPLOYED
2 INTO NEIGHBORHOODS SORT OF AS A SURGE FORCE, TO DO SATURATION
3 OPERATIONS TO EITHER DETER OR HUNT OUT AND SEEK SPECIFIC
4 PROBLEMS THAT ARE AILING THAT NEIGHBORHOOD.

5 SO ALL OF THE PEOPLE THAT ARE GOING TO TESTIFY TODAY
6 WERE MEMBERS OF THE CRIME SUPPRESSION TEAM AND WERE ON DUTY
7 THAT NIGHT, WORKING AS A TEAM. AND THEIR COMMUNICATIONS, AS A
8 RESULT, WERE ON A UNIQUE CHANNEL, A TACTICAL FREQUENCY. IT WAS
9 ON TACTICAL FREQUENCY THREE THAT NIGHT. SO ALL OF THEIR
10 COMMUNICATIONS, TO THE BEST OF OUR KNOWLEDGE, ARE CONTAINED IN
11 ONE DISPATCH CALL THAT ALMOST ENTIRELY RELATES TO MR. BURTON.
12 AND WE HAVE THAT. I THINK MR. COTSIRILOS PLANS TO USE THAT, AS
13 WELL.

14 SO ALL OF THE OFFICERS ARE FROM THAT TEAM. AND THOSE
15 ARE THE FIRST THREE WITNESSES THAT WE PLAN TO CALL. WE HAVE
16 ALL THE OTHER WITNESSES REQUESTED BY THE DEFENSE, AS WELL AS
17 OTHERS, IF NECESSARY. BUT IT'S OUR UNDERSTANDING THAT THE FACT
18 THAT THE HOME WAS MR. BURTON'S RESIDENCE OR THAT THE
19 FOURTH WAIVER WOULD APPLY TO THAT HOME ISN'T IN PLAY TODAY.
20 IT'S REALLY THE VALIDITY OF THE TRAFFIC STOP.

21 **THE COURT:** OKAY. MR. COTSIRILOS, IS THAT A FAIR
22 STATEMENT?

23 **MR. COTSIRILOS:** THAT'S AN ACCURATE STATEMENT. YOUR
24 HONOR, JUST FOR THE COURT'S PLANNING PURPOSES, I ONLY PLAN ON
25 CALLING ONE WITNESS AT THIS POINT. THAT WOULD BE APOLINAR

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1 ECHEVERRIA, WHO IS REFERENCED IN THE DECLARATION THAT I FILED
2 WITH THE COURT.

3 **THE COURT:** OKAY.

4 **MR. COTSIRILOS:** AND I WOULD NEED ABOUT, I THINK, 10,
5 15 MINUTES TO GET HIM HERE TO THE COURT.

6 **THE COURT:** ALL RIGHT. WE'LL KEEP TRACK OF THAT.

7 AND I THINK I REFERRED TO YOUR COLLEAGUE AS
8 MR. DONALDSON, BUT NOW I HAVE MY GLASSES ON. IT'S
9 MS. DONALDSON. SORRY ABOUT THAT. I HAVE TO KEEP MY GLASSES
10 ON; OTHERWISE, IT'S ALL A BLUR.

11 GO AHEAD, MR. HADEN.

12 **MR. HADEN:** AND WITH THAT, YOUR HONOR, WE WOULD CALL
13 OUR FIRST WITNESS. THE UNITED STATES WOULD CALL SAN DIEGO
14 POLICE DEPARTMENT OFFICER ROY MEDINA, M-E-D-I-N-A.

15 **(ROGELIO MEDINA, GOVERNMENT WITNESS, TESTIFIED AS FOLLOWS:)**

16 **DEPUTY CLERK:** PLEASE RAISE YOUR HAND.

17 YOU DO SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL
18 GIVE IN THE CAUSE NOW BEFORE THE COURT SHALL BE THE TRUTH, THE
19 WHOLE TRUTH AND NOTHING BUT THE TRUTH?

20 **THE WITNESS:** YES.

21 **DEPUTY CLERK:** PLEASE HAVE A SEAT.

22 **THE WITNESS:** GOOD MORNING, YOUR HONOR.

23 **THE COURT:** GOOD MORNING, SIR.

24 **DEPUTY CLERK:** SIR, CAN YOU PLEASE STATE YOUR NAME
25 FOR THE RECORD, AND SPELL YOUR FIRST AND LAST NAME.

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1 **THE WITNESS:** ROGELIO MEDINA, R-O-G-E-L-I-O. THE
2 LAST NAME IS M-E-D-I-N-A.

3 **THE COURT:** THANK YOU, SIR.

4 GO AHEAD, MR. HADEN.

5 **MR. HADEN:** THANK YOU, YOUR HONOR.

6 **DIRECT EXAMINATION**

7 **BY MR. HADEN:**

8 **Q.** GOOD MORNING, OFFICER MEDINA.

9 **A.** GOOD MORNING.

10 **Q.** I HAVE A BINDER IN FRONT OF YOU THERE THAT I WILL BE
11 REFERENCING. I JUST WANTED TO POINT THAT OUT FOR YOU.

12 CAN YOU PLEASE TELL THE COURT WHAT YOU DO FOR A
13 LIVING?

14 **A.** I AM EMPLOYED FOR THE CITY OF SAN DIEGO AS A POLICE
15 OFFICER.

16 **Q.** HOW LONG HAVE YOU BEEN A POLICE OFFICER FOR THE CITY OF
17 SAN DIEGO?

18 **A.** APPROXIMATELY EIGHT YEARS.

19 **Q.** AND COULD YOU VERY BRIEFLY JUST TELL THE COURT THE
20 DIFFERENT ASSIGNMENTS THAT YOU HAVE HAD AS A SAN DIEGO POLICE
21 DEPARTMENT OFFICER?

22 **A.** I WORKED PATROL IN THE SOUTHEASTERN DIVISION, AND AT ONE
23 POINT WAS TASKED -- PUT ON THE CRIME SUPPRESSION TEAM AT
24 SOUTHEASTERN DIVISION, AS WELL.

25 **Q.** WHAT IS THE CRIME SUPPRESSION TEAM?

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1 **A.** IT'S A PROACTIVE UNIT PUT TOGETHER TO TACKLE THE GANG AND
2 NARCOTIC COMPLIANCE IN THE SOUTHEASTERN NEIGHBORHOODS.

3 **Q.** WHEN WERE YOU ASSIGNED TO THE CRIME SUPPRESSION TEAM?

4 **A.** THREE YEARS AGO.

5 **Q.** WERE YOU ON THE CRIME SUPPRESSION TEAM ON NOVEMBER 7TH OF
6 2014?

7 **A.** YES.

8 **Q.** WERE YOU ON DUTY ON NOVEMBER 7TH OF 2014?

9 **A.** YES.

10 **Q.** DID AN INCIDENT OCCUR IN WHICH YOU WROTE A REPORT?

11 **A.** YES.

12 **Q.** COULD YOU LOOK IN THE BINDER IN FRONT OF YOU, PLEASE, TO
13 WHAT HAS BEEN PREVIOUSLY MARKED FOR IDENTIFICATION AS
14 GOVERNMENT EXHIBIT 2? DO YOU SEE THAT?

15 **A.** YES.

16 (EXHIBIT NO. 2 MARKED FOR IDENTIFICATION)

17 **Q.** **(BY MR. HADEN):** COULD YOU REVIEW THAT VERY BRIEFLY?

18 **A.** IT IS MY REPORT.

19 **Q.** OFFICER MEDINA, DOES THAT APPEAR TO BE A FAIR AND ACCURATE
20 PHOTOCOPY OF THE REPORT THAT YOU WROTE IN RELATION TO AN
21 INCIDENT THAT HAPPENED ON NOVEMBER 7?

22 **A.** YES, SIR.

23 **MR. HADEN:** THE UNITED STATES WOULD OFFER GOVERNMENT
24 EXHIBIT 2. JUST TO COMPLETE THE RECORD, IT HAS PREVIOUSLY BEEN
25 SUBMITTED TO THE COURT.

JANUARY 20, 2016

1 **THE COURT:** ANY OBJECTION?

2 **MR. COTSIRILOS:** NO OBJECTION.

3 **THE COURT:** IT'S RECEIVED.

4 (EXHIBIT NO. 2 RECEIVED INTO EVIDENCE)

5 **MR. HADEN:** THANK YOU, YOUR HONOR.

6 **Q. (BY MR. HADEN):** OFFICER MEDINA, WERE YOU ON DUTY
7 NOVEMBER 7, 2014, AT APPROXIMATELY 7:20 P.M.?

8 **A.** YES.

9 **Q.** AND WHERE WERE YOU?

10 **A.** I WAS ON SKYLINE DRIVE, APPROACHING MEADOWBROOK.

11 **Q.** AND WHO WERE YOU WITH?

12 **A.** MY PARTNER, OFFICER BLAKE WILLIAMS.

13 **Q.** WHAT WERE YOU WEARING?

14 **A.** A SAN DIEGO POLICE UNIFORM.

15 **Q.** WOULD THAT LOOK LIKE WHAT WE WOULD PERCEIVE A POLICE
16 OFFICER UNIFORM TO LOOK LIKE?

17 **A.** YEAH. UNIFORM, PATCHES, BADGE.

18 **Q.** GUN?

19 **A.** GUN. IN A MARKED POLICE VEHICLE.

20 **Q.** AND BY "MARKED POLICE VEHICLE," YOU MEAN A BLACK AND WHITE
21 PATROL CRUISER WITH LIGHTS ON TOP?

22 **A.** YES. LIGHTS IN THE WINDSHIELD.

23 **Q.** IN THE WINDSHIELD. BUT MARKINGS ON THE SIDE, INDICATING
24 THAT IT WAS A POLICE VEHICLE?

25 **A.** YES.

JANUARY 20, 2016

A050

1 **Q.** IF YOU COULD LOOK AT WHAT HAS BEEN PREVIOUSLY MARKED FOR
2 IDENTIFICATION.

3 YOUR HONOR, AT THIS TIME THE UNITED STATES WOULD
4 OFFER, WE BELIEVE OVER NO OBJECTION, GOVERNMENT'S EXHIBITS 5, 6
5 AND 7.

6 **THE COURT:** ALL RIGHT.

7 **MR. COTSIRILOS,** ANY OBJECTION?

8 **MR. COTSIRILOS:** NO OBJECTION.

9 **THE COURT:** THEY ARE AERIAL PHOTOS OF PART OF THE
10 CITY OR NEIGHBORHOOD OR SOMETHING. WE'LL FIND OUT, I GUESS.

11 **MR. HADEN:** THANK YOU, YOUR HONOR. MAY I PUBLISH?

12 **THE COURT:** YOU MAY.

13 (EXHIBIT NOS. 5, 6 & 7 MARKED FOR IDENTIFICATION)

14 (EXHIBIT NOS. 5, 6 & 7 RECEIVED INTO EVIDENCE)

15 **Q. (BY MR. HADEN):** OFFICER MEDINA, ON THE OVERHEAD DISPLAY
16 IS WHAT HAS NOW BEEN ADMITTED AS GOVERNMENT EXHIBIT 5. DO YOU
17 SEE THAT?

18 **A.** YES.

19 **Q.** DO YOU RECOGNIZE THAT OVERHEAD MAP?

20 **A.** YES.

21 **Q.** DOES IT APPEAR TO BE SAN DIEGO?

22 **A.** YES.

23 **Q.** AND ON THE RIGHT-HAND PORTION THERE IS A YELLOW PIN, AND
24 NEXT TO IT THERE IS A WRITING. IT'S HARD TO SEE ON THE SCREEN,
25 BUT I BELIEVE IT SAYS 7800 SKYLINE DRIVE. DO YOU SEE THAT?

JANUARY 20, 2016

1 **A.** YES.

2 **Q.** DOES THAT APPEAR TO BE IN THE RIGHT LOCATION, AS YOU
3 UNDERSTAND IT FROM YOUR BACKGROUND AND EXPERIENCE IN THE
4 SOUTHEASTERN DIVISION?

5 **A.** YES.

6 **Q.** THAT IS THE LOCATION OF 7800 SKYLINE DRIVE?

7 **A.** YES. IT'S AN APPROXIMATION, BUT YEAH, PRETTY CLOSE.

8 **MR. HADEN:** YOUR HONOR, AT THIS TIME THE UNITED
9 STATES WOULD ASK THE COURT TO TAKE JUDICIAL NOTICE THAT 7800
10 SKYLINE DRIVE IS WITHIN THE SOUTHERN DISTRICT OF CALIFORNIA.

11 **THE COURT:** ANY OBJECTION, MR. COTSIRILOS?

12 **MR. COTSIRILOS:** NO, YOUR HONOR.

13 **THE COURT:** THE COURT WILL TAKE JUDICIAL NOTICE OF
14 THAT FACT.

15 **Q.** **(BY MR. HADEN):** OFFICER MEDINA, I'M NOW SHOWING YOU WHAT
16 HAS BEEN ADMITTED AS GOVERNMENT EXHIBIT 6. CAN YOU SEE THAT ON
17 THE SCREEN?

18 **A.** YES.

19 **Q.** AND ON THE LEFT-HAND PORTION, IN THE MIDDLE OF WHAT
20 APPEARS TO BE A ROAD, THERE IS AN ANNOTATION THAT SAYS 7800.
21 DO YOU RECOGNIZE WHAT ROAD THAT IS?

22 **A.** IT'S SKYLINE DRIVE.

23 **Q.** AND IS THAT THE GENERAL LOCATION THAT YOU WERE WORKING AT
24 APPROXIMATELY 7:20 P.M. ON NOVEMBER 7TH?

25 **A.** YES.

JANUARY 20, 2016

1 Q. AND WHICH DIRECTION WERE YOU DRIVING?

2 A. I WAS DRIVING EASTBOUND ON SKYLINE, TOWARDS THE CROSS
3 STREET.

4 Q. SO IF WE'RE LOOKING AT GOVERNMENT'S EXHIBIT 6, IF WE SAY
5 EASTBOUND, WOULD IT BE CORRECT TO SAY FROM LEFT TO RIGHT?

6 A. YES.

7 Q. AND DO YOU RECOGNIZE THIS STREET THAT RUNS NORTH AND
8 SOUTH?

9 A. THAT'S MEADOWBROOK DRIVE.

10 Q. AND AS YOU APPROACHED MEADOWBROOK DRIVE, WHAT, IF
11 ANYTHING, HAPPENED?

12 A. WELL, AS WE APPROACHED THE INTERSECTION, I GOT TO THE
13 INTERSECTION. AS WE GOT CLOSER TO THE INTERSECTION, WE SAW THE
14 HEADLIGHTS OF A VEHICLE COMING AROUND. IF YOU GO FURTHER EAST,
15 AROUND THE BEND THERE ON SKYLINE, PAST MEADOWBROOK, YOU COULD
16 HEAR LOUD MUSIC COMING FROM A STEREO SYSTEM.

17 Q. AND YOU SAID AROUND THE BEND. AND I JUST WANT TO MAKE
18 SURE THE RECORD IS CLEAR THAT YOU WERE TRAVELING EASTBOUND,
19 CORRECT?

20 A. CORRECT. I WAS FACING EASTBOUND AT THE INTERSECTION.

21 Q. YOU WERE FACING EASTBOUND. SO IF MY PEN IS YOUR VEHICLE,
22 YOU WERE FACING FROM LEFT TO RIGHT; IS THAT CORRECT?

23 A. YES.

24 Q. AND YOU SAID A CAR WAS COMING AROUND THE BEND. DO YOU
25 MEAN A CAR WAS TRAVELING WESTBOUND ON SKYLINE DRIVE?

JANUARY 20, 2016

A053

1 **A.** WESTBOUND ON SKYLINE, JUST AS YOU ILLUSTRATED THERE. AS
2 IT CAME INTO VIEW, YOU COULD HEAR THE MUSIC FROM ABOUT
3 200 FEET, WAS MY APPROXIMATION AT THE TIME.

4 **Q.** AND I'M GOING TO USE WHAT HAS BEEN PREVIOUSLY ADMITTED AS
5 GOVERNMENT EXHIBIT 7. OFFICER MEDINA, DO YOU SEE THAT UP ON
6 THE SCREEN BEFORE YOU?

7 **A.** YES.

8 **Q.** AND IF YOU WERE STOPPED AT THE LIGHT AT SKYLINE DRIVE AND
9 MEADOWBROOK, ARE YOU APPROXIMATELY IN THE LEFT-HAND PORTION OF
10 GOVERNMENT EXHIBIT 7, FACING EASTBOUND?

11 **A.** YES.

12 **Q.** AND IF I UNDERSTAND YOUR TESTIMONY, AS THE CAR APPROACHED
13 THE LIGHT, TRAVELING IN THE OTHER DIRECTION, YOU COULD HEAR
14 LOUD MUSIC?

15 **A.** YES.

16 **Q.** AND IS THAT SIGNIFICANT TO YOU?

17 **A.** YES.

18 **Q.** WHY?

19 **A.** IT'S A VEHICLE CODE VIOLATION.

20 **Q.** WHAT IS YOUR UNDERSTANDING OF WHAT VEHICLE CODE VIOLATION
21 IT WAS, AND WHAT ARE THE RESTRICTIONS?

22 **A.** LOUD MUSIC HEARD OVER FIFTY FEET AT THE TIME WHEN WE SAW
23 THE CAR, THE DISTANCE, I APPROXIMATED ABOUT 200 FEET FROM WHEN
24 I COULD HEAR THE MUSIC.

25 **Q.** WHAT VEHICLE CODE IS THAT, IF YOU REMEMBER THE ACTUAL

JANUARY 20, 2016

A054

1 NUMBER?

2 **A.** I WOULD HAVE TO REFER BACK TO MY REPORT.

3 **Q.** WOULD IT HELP YOU TO LOOK AT IT?

4 **A.** YES, IT WOULD.

5 **Q.** GO AHEAD AND LOOK AT GOVERNMENT EXHIBIT 2. AND WHEN YOU
6 HAVE HAD A CHANCE TO LOOK AT THAT, IF IT HELPS TO REFRESH YOUR
7 MEMORY, PLEASE LOOK UP.

8 **A.** (WITNESS COMPLYING)

9 IT IS VEHICLE CODE SECTION 27007.

10 **Q.** OFFICER MEDINA, WHAT DID THE VEHICLE THAT WAS TRAVELING
11 WESTBOUND -- LET ME BACK UP.

12 IT WAS 7:20 P.M. IN NOVEMBER. WAS IT LIGHT OUTSIDE
13 OR WAS IT DARK?

14 **A.** IT WAS DARK ALREADY.

15 **Q.** IT WAS NIGHTTIME?

16 **A.** YES.

17 **Q.** AND WHEN A CAR IS APPROACHING WESTBOUND, COULD YOU SEE THE
18 ACTUAL VEHICLE OR DID YOU JUST SEE HEADLIGHTS AT THAT POINT?

19 **A.** AT THAT TIME WE SAW HEADLIGHTS. WE HEARD THE MUSIC
20 APPROACHING.

21 **Q.** AND WHAT LANE WAS THAT VEHICLE IN AS IT APPROACHED
22 MEADOWBROOK?

23 **A.** AS IT APPROACHED MEADOWBROOK, IT TURNED -- IT WENT INTO
24 THE TURN LANE.

25 **Q.** IS THE TURN LANE ON GOVERNMENT EXHIBIT 7 HERE --

JANUARY 20, 2016

A055

1 APPROXIMATELY WHERE I'M POINTING -- THE VERY CENTER ON THIS
2 EXHIBIT?

3 **A.** YES.

4 **Q.** AND THAT WOULD BE THE LEFT-HAND TURN LANE, CORRECT?

5 **A.** CORRECT.

6 **Q.** IF SOMEONE MADE A LEFT-HAND TURN, THEY WOULD BE GOING
7 SOUTH ON MEADOWBROOK; IS THAT CORRECT?

8 **A.** CORRECT.

9 **Q.** WHEN THAT VEHICLE GOT IN THE LEFT-HAND TURN LANE, WHAT, IF
10 ANYTHING, DID IT DO?

11 **A.** AS WE WERE WATCHING IT, IT MADE A U-TURN AND CONTINUED
12 EASTBOUND ON SKYLINE.

13 **Q.** AS IT MADE THE TURN, WHAT, IF ANYTHING, DID YOU NOTICE
14 ABOUT THE ACTUAL VEHICLE?

15 **A.** WELL, THE WINDOWS WERE DOWN. I COULD HEAR THE MUSIC STILL
16 LOUD. IT CONTINUED THROUGH THE INTERSECTION. SO I WAS GOING
17 TO PULL BEHIND IT TO MAKE THE STOP.

18 **Q.** COULD YOU TELL WHAT KIND OF CAR IT WAS?

19 **A.** YES. IT WAS A CAMARO.

20 **Q.** WHAT COLOR WAS IT?

21 **A.** IT WAS WHITE.

22 **Q.** HAD YOU EVER SEEN THAT WHITE CAMARO BEFORE?

23 **A.** I HAVE.

24 **Q.** WHERE HAVE YOU SEEN IT?

25 **A.** A PREVIOUS TRAFFIC STOP.

JANUARY 20, 2016

A056

1 Q. AND APPROXIMATELY HOW LONG BEFORE THIS NIGHT WAS THAT
2 OTHER TRAFFIC STOP?

3 A. BEST OF MY RECOLLECTION, IT WAS A COUPLE MONTHS PRIOR TO.

4 Q. AND WHO HAD BEEN THE DRIVER OF THE VEHICLE AT THAT TIME?

5 A. MR. STEVEN BURTON.

6 Q. AND WHAT HAPPENED DURING THAT TRAFFIC STOP?

7 A. DURING THAT TRAFFIC STOP -- IT WAS FOR HAVING A TAILLIGHT
8 OUT. WHEN I ENGAGED HIM AT THE WINDOW, HE DID NOT WANT TO ROLL
9 DOWN HIS WINDOW. I EXPLAINED TO HIM WHY I STOPPED HIM. VERY
10 UNCOOPERATIVE. HE EVENTUALLY GAVE ME I.D. WE ASKED THE
11 PASSENGER FOR THEIR IDENTIFICATION, AND HE TOLD THE PASSENGER
12 NOT TO GIVE THE I.D. BECAUSE SHE HAD NOTHING TO DO WITH THE
13 STOP.

14 Q. YOU SAID "SHE." WAS THE PASSENGER A MALE OR FEMALE?

15 A. AS I RECALL, IT WAS A FEMALE.

16 Q. AND YOU DESCRIBED MR. BURTON'S BEHAVIOR AS UNCOOPERATIVE?

17 A. YES.

18 Q. DID YOU ULTIMATELY GIVE HIM A CITATION?

19 A. I DID NOT CITE HIM THAT NIGHT.

20 Q. WHAT DID YOU DO?

21 A. I DID A RECORDS CHECK FOR DRIVER'S LICENSE, MAKE SURE IT
22 WAS VALID. ONCE WE DID OUR CHECKS, WE RELEASED MR. BURTON WITH
23 A VERBAL WARNING.

24 Q. AND WHAT, IF ANYTHING, DID YOU SEE MR. BURTON DO WITH THE
25 VERBAL WARNING?

JANUARY 20, 2016

A057

1 **A.** HE WAS UPSET AND SAID THAT WE HAD STOPPED HIM FOR -- NOT
2 FOR THE VIOLATION, BUT FOR OTHER REASONS, INDICATING THAT WE
3 WERE RACIALLY PROFILING HIM. HE WANTED TO GET OUT OF THE
4 VEHICLE AND CHECK HIS TAILLIGHT. I TOLD HIM HE COULD DO THAT
5 ONCE WE FINISHED OUR CONTACT AND LEFT THE STOP.

6 **Q.** DID YOU SEE MR. BURTON EVER GO CHECK HIS TAILLIGHT?

7 **A.** YES. AS WE TOLD HIM HE WAS FREE TO GO, WE WALKED TO OUR
8 CAR. SHE GOT OUT AND CHECKED HIS LIGHTS.

9 **Q.** WAS HIS TAILLIGHT OUT?

10 **A.** YES.

11 **Q.** AS THE WHITE CAMARO THAT YOU RECOGNIZED TO BE MR. BURTON'S
12 IN A PREVIOUS CITATION WAS MAKING ITS U-TURN, WHAT, IF
13 ANYTHING, DID YOU DO IN YOUR VEHICLE?

14 **A.** I PULLED UP BEHIND IT. AND AT THAT POINT I WAS TRYING TO
15 GET THE LICENSE PLATE AND RUN THE PLATE ON MY COMPUTER.

16 **Q.** I WANT TO BREAK THAT DOWN A LITTLE BIT, OFFICER MEDINA.
17 WHEN YOU SAY THAT YOU PULLED UP BEHIND HIM, WERE YOU TRAVELING
18 SLOWLY OR FAST?

19 **A.** RIGHT AS HE WAS MAKING THE U-TURN -- I DON'T KNOW IF HIS
20 LIGHT WAS TURNING YELLOW OR CLOSE TO RED, BUT AS HE WAS
21 COMPLETING THE U-TURN, MY LIGHT, THE GREEN LIGHT TO CONTINUE
22 EASTBOUND, CAME ON. AND I HAD THEN ACCELERATED THROUGH THE
23 INTERSECTION TO CATCH UP TO HIM AT A NORMAL SPEED, I GUESS,
24 JUST TO CATCH UP TO THE BACK OF IT.

25 **Q.** YOU TESTIFIED PREVIOUSLY THAT YOUR INTENTION WAS TO GET

JANUARY 20, 2016

A058

1 CLOSE ENOUGH SO YOU COULD READ THE LICENSE PLATE; IS THAT
2 CORRECT?

3 **A.** CORRECT.

4 **Q.** WERE YOU ABLE TO GET CLOSE ENOUGH TO READ THE LICENSE
5 PLATE?

6 **A.** YES.

7 **Q.** THEN WHAT HAPPENED?

8 **A.** AT THAT POINT, BEFORE WE COULD PUT THE INFORMATION IN THE
9 COMPUTER, THE VEHICLE MADE AN ABRUPT RIGHT TURN, PULLED ALONG
10 THE CURB THERE AS IT TURNED ITS TURN SIGNAL ON ALMOST
11 IMMEDIATELY AT THE SAME TIME, AND PULLED TO THE CURB IN THE
12 7900 BLOCK OF SKYLINE.

13 **Q.** AND TO ORIENT THE COURT AND EVERYONE ON THE RECORD, THIS
14 GOVERNMENT EXHIBIT 7, TO YOUR UNDERSTANDING, THIS IS A GOOGLE
15 IMAGE, CORRECT? THIS IS NOT AN IMAGE OF THE ACTUAL
16 NOVEMBER 7TH INCIDENT?

17 **A.** CORRECT.

18 **Q.** BUT IF THE VEHICLE MADE THE U-TURN AND THEN WAS PULLING
19 OVER -- AND TO LET THE COURT KNOW, OFFICER MEDINA, ON THE
20 RIGHT-HAND PORTION THERE SEEMS TO BE A YELLOW TAB THAT SAYS
21 7955 SKYLINE DRIVE. DO YOU SEE THAT?

22 **A.** YES.

23 **Q.** AND IT'S THE THIRD RESIDENCE ON SKYLINE DRIVE; IS THAT
24 CORRECT?

25 **A.** YES.

JANUARY 20, 2016

1 Q. IS THAT THE HOME THAT WAS EVENTUALLY KNOWN TO BE
2 MR. BURTON'S ACTUAL RESIDENCE?

3 A. YES.

4 Q. AND IS THAT THE HOME THAT WAS SEARCHED LATER THAT EVENING?

5 A. YES.

6 Q. BUT BACKING UP, WHEN MR. BURTON EXECUTED HIS QUICK
7 RIGHT-HAND TURN TO THE CURB, APPROXIMATELY -- USING GOVERNMENT
8 EXHIBIT 7 -- APPROXIMATELY WHERE WAS MR. BURTON'S VEHICLE WHEN
9 IT PULLED OVER?

10 A. APPROXIMATELY VERY SIMILAR TO THE CAR AS DEPICTED IN THE
11 GOOGLE MAP IMAGE THERE. MAYBE JUST A LITTLE FURTHER WEST,
12 TOWARDS THE DRIVEWAY OF THAT HOUSE THAT IT'S PARKED IN FRONT
13 OF.

14 Q. AND TO CLARIFY FOR THE RECORD, THERE ARE TWO VEHICLES
15 PARKED ON THE RIGHT-HAND SOUTH-SIDE CURB OF SKYLINE DRIVE,
16 CORRECT?

17 A. YES.

18 Q. ONE IS BLUE AND ONE IS A LIGHTER COLOR?

19 A. YES.

20 Q. AND YOU'RE INDICATING THAT MR. BURTON PULLED OVER MAYBE
21 SLIGHTLY TO THE WEST OF THAT, IN FRONT OF THIS HOME HERE?

22 A. YES. AS I RECALL IT, YES. OUR VEHICLE WAS ACTUALLY
23 BLOCKING THE DRIVEWAY TO THE HOUSE.

24 Q. FOR THE RECORD -- AND CORRECT ME IF I'M WRONG -- THAT
25 WOULD BE THE FIRST HOUSE ON SKYLINE DRIVE WITH A DARK ROOF?

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A060

1 **A.** CORRECT.

2 **Q.** AND HE PARKED THERE, APPROXIMATELY?

3 **A.** APPROXIMATELY.

4 **Q.** APPROXIMATELY WHERE THAT WHITE CAR IS?

5 **A.** APPROXIMATELY. A LITTLE FURTHER BACK, MAYBE.

6 **Q.** WHAT, IF ANYTHING, DID YOU HAVE TO DO IN RESPONSE TO
7 MR. BURTON'S MOVEMENT WITH HIS VEHICLE?

8 **A.** AS I CAME THROUGH THE INTERSECTION, I DIDN'T ANTICIPATE HE
9 WAS GOING TO PULL OVER THERE. I ASSUMED HE WAS GOING TO
10 CONTINUE EASTBOUND. SO AS I'M ACCELERATING, CATCHING UP TO THE
11 VEHICLE, IT SUDDENLY APPLIED ITS BRAKES, ALONG WITH THE TURN
12 SIGNAL, AND MADE AN ABRUPT MOVEMENT TO THE RIGHT. IT KIND OF
13 CAUGHT ME OFFGUARD SO I HAD TO SLAM ON MY BRAKES TO AVOID
14 COLLIDING WITH IT.

15 **Q.** OFFICER MEDINA, HAD YOU INITIATED YOUR OVERHEAD LIGHTS AT
16 THAT TIME?

17 **A.** NO. WELL, ONCE I APPLIED THE BRAKES, AT THAT POINT I DID
18 ACTIVATE THE OVERHEAD LIGHTS AS WE BOTH PULLED OVER TO THE
19 SIDE.

20 **Q.** BUT AT THE TIME THAT THE VEHICLE -- THE WHITE CAMARO IN
21 FRONT OF YOU -- ABRUPTLY HIT ITS BRAKES AND PULLED TO THE
22 RIGHT, WERE YOUR LIGHTS ON AT THAT FIRST MOMENT?

23 **A.** NO.

24 **Q.** WHAT DID YOU HAVE TO DO AT THAT POINT? YOU SAID YOU
25 INITIATED YOUR LIGHTS?

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1 **A.** YEAH. AS I HIT THE BRAKES, I SLOWED DOWN. AS I -- ONCE
2 HE PULLED TO THE RIGHT, I FOLLOWED BEHIND HIM AND ACTIVATED MY
3 LIGHTS.

4 **Q.** WHY DID YOU ACTIVATE YOUR LIGHTS?

5 **A.** TO INITIATE THE TRAFFIC STOP.

6 **Q.** DID IT APPEAR THAT THE DRIVER OF THE CAMARO WAS THEN AWARE
7 OF YOUR PRESENCE?

8 **A.** NO. HE STAYED IN THE CAR.

9 **Q.** DID YOU GET OUT OF THE VEHICLE?

10 **A.** I DID.

11 **Q.** DID YOU CONTACT THE DRIVER?

12 **A.** YES.

13 **Q.** DO YOU RECOGNIZE THE DRIVER IN THE COURTROOM TODAY? AND
14 IF YOU DO, COULD YOU IDENTIFY WHERE HE IS SITTING AND WHAT HE
15 IS WEARING?

16 **A.** SITTING RIGHT HERE WITH THE BROWN TOP, BROWN SHIRT.

17 **MR. HADEN:** YOUR HONOR, BASED ON THE WITNESS'
18 POINTING AND HIS DESCRIPTION, THE UNITED STATES WOULD ASK THE
19 RECORD TO REFLECT THAT OFFICER MEDINA HAS IDENTIFIED THE
20 DEFENDANT.

21 **THE COURT:** IT WILL SO REFLECT.

22 **Q.** **(BY MR. HADEN):** DID YOU ASK MR. BURTON FOR HIS DRIVER'S
23 LICENSE?

24 **A.** I ASKED FOR HIS IDENTIFICATION AND PROOF OF INSURANCE AND
25 STUFF LIKE THAT.

JANUARY 20, 2016

1 Q. AND TO YOUR KNOWLEDGE, WERE RECORD CHECKS CONDUCTED ON
2 THAT LICENSE?

3 A. YES. MY PARTNER CONDUCTED THE RECORDS CHECK.

4 Q. WHO IS YOUR PARTNER?

5 A. BLAKE WILLIAMS.

6 Q. WAS HIS LICENSE VALID?

7 A. I DON'T RECALL. I DIDN'T RUN IT. I DON'T RECALL WHAT WAS
8 TOLD TO ME.

9 Q. WHAT, IF ANYTHING, DO YOU RECALL ABOUT THE RECORDS CHECK?

10 A. I WAS TOLD THAT THE RECORD REVEALED HE HAD AN ACTIVE
11 FOURTH WAIVER STATUS.

12 Q. WHAT DOES THAT MEAN TO YOU?

13 A. HE WAIVED HIS FOURTH AMENDMENT RIGHT FOR A LEGAL SEARCH
14 AND SEIZURE TO SOME PRIOR EVENT WHERE HE WAS IN CUSTODY.

15 Q. WHEN SOMEONE WAIVES THEIR FOURTH AMENDMENT RIGHTS, AS YOU
16 UNDERSTAND IT, WHAT ARE YOU ALLOWED TO DO AS A LAW ENFORCEMENT
17 OFFICER IN RESPONSE TO THAT?

18 A. SEARCH THEIR VEHICLE, SEARCH THEIR PERSON, AND ANYTHING
19 THEREOF, FOR ANY CONTRABAND.

20 Q. HOW ABOUT THEIR RESIDENCE?

21 A. THE RESIDENCE, AS WELL.

22 Q. DO YOU HAVE TO HAVE SUSPICION?

23 A. REASONABLE SUSPICION, YES.

24 Q. DO YOU HAVE TO HAVE A WARRANT?

25 A. NO.

JANUARY 20, 2016

A063

1 **MR. COTSIRILOS:** YOUR HONOR, NO OBJECTION AS TO THE
2 OFFICER'S LAST FEW STATEMENTS AS TO HIS UNDERSTANDING OF THE
3 LAW.

4 **THE COURT:** UNDERSTOOD. THAT IS THE CONTEXT.

5 **Q. (BY MR. HADEN):** OFFICER MEDINA, AFTER IT WAS DETERMINED
6 THAT MR. BURTON HAD A FOURTH WAIVER, WHAT, IF ANYTHING, DID YOU
7 AND OFFICER WILLIAMS DECIDE TO DO?

8 **A.** WE SEARCHED HIM AND HIS VEHICLE.

9 **Q.** AND LET'S START WITH MR. BURTON HIMSELF. HOW DID YOU
10 SEARCH MR. BURTON? WHAT STEPS DID YOU TAKE TO DO THAT?

11 **A.** WHEN WE SEARCHED HIM, WE PUT HIM IN HANDCUFFS AND DETAINED
12 HIM.

13 **Q.** DID YOU ASK HIM TO GET OUT OF THE VEHICLE?

14 **A.** WE DID.

15 **Q.** DID YOU PLACE HIM IN HANDCUFFS?

16 **A.** YES, I DID.

17 **Q.** DID YOU EXPLAIN TO HIM WHAT WAS GOING ON?

18 **A.** YES.

19 **Q.** AND THEN WHAT HAPPENED?

20 **A.** I PROCEEDED TO SEARCH HIS POCKETS. I PATTED HIM DOWN,
21 SEARCHED EVERY SINGLE ONE OF HIS POCKETS, EMPTIED OUT HIS
22 POCKETS ON THE HOOD OF MY VEHICLE, AND SAT HIM THERE ON THE
23 FRONT BUMPER WHILE WE SEARCHED THE VEHICLE.

24 **Q.** WHAT, IF ANYTHING, DID YOU FIND ON MR. BURTON'S PERSON?

25 **A.** I DON'T RECALL FINDING ANY CONTRABAND ON HIM.

JANUARY 20, 2016

1 Q. DID YOU SEARCH MR. BURTON'S VEHICLE?

2 A. OFFICER WILLIAMS DID, YES.

3 Q. WHEN YOU DO A RECORDS CHECK ON SOMEONE WHO HAS A
4 FOURTH WAIVER, ARE YOU ABLE TO DETERMINE WHERE THEIR PRIMARY
5 RESIDENCE IS?

6 A. IT USUALLY TELLS YOU WHERE THE ADDRESS IS ON IT.

7 Q. IN THIS CASE, DO YOU RECALL WHAT THE RECORDS CHECK TOLD
8 YOU ABOUT MR. BURTON'S PRIMARY RESIDENCE?

9 A. I DID NOT. I DID NOT DO THE CHECK.

10 Q. ULTIMATELY, DO YOU RECALL SEARCHING A HOME THAT NIGHT?

11 A. YES.

12 Q. WHERE WAS THAT HOME?

13 A. IF I COULD REFER TO MY REPORT TO REFRESH MY MEMORY.

14 Q. PLEASE.

15 MR. HADEN: AND, FOR THE RECORD, OFFICER MEDINA HAS
16 ASKED TO LOOK AT WHAT HAS PREVIOUSLY BEEN ADMITTED AS
17 GOVERNMENT EXHIBIT 2.

18 THE COURT: VERY WELL.

19 Q. (BY MR. HADEN): OFFICER MEDINA, DO YOU WANT TO LOOK AT
20 SOMETHING ELSE?

21 A. I DON'T RECALL THE ADDRESS EXACTLY.

22 Q. LET'S DO THIS. CAN YOU LOOK AT WHAT HAS BEEN PREVIOUSLY
23 MARKED FOR IDENTIFICATION AS GOVERNMENT EXHIBITS 8 AND 9? DO
24 YOU RECOGNIZE THOSE PHOTOGRAPHS?

25 A. YES.

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(EXHIBIT NOS. 8 & 9 MARKED FOR IDENTIFICATION)

Q. (BY MR. HADEN): WHAT ARE THEY?

A. IT'S PICTURES OF THE HOUSE WE SEARCHED.

Q. AND BY THE HOUSE YOU SEARCHED, YOU MEAN MR. BURTON'S RESIDENCE, AS YOU UNDERSTOOD IT?

A. YES, AS I UNDERSTOOD IT.

MR. HADEN: THE GOVERNMENT WOULD OFFER 8 AND 9.

THE COURT: ANY OBJECTION?

MR. COTSIRILOS: NO OBJECTION.

THE COURT: THEY ARE RECEIVED.

(EXHIBIT NOS. 8 & 9 RECEIVED INTO EVIDENCE)

Q. (BY MR. HADEN): LOOKING NOW AT WHAT HAS BEEN ADMITTED AS GOVERNMENT EXHIBIT 8, OFFICER MEDINA, THIS IS THE HOME?

A. YES.

Q. AND IS THIS A DIRECT VIEW OF THAT SAME HOME THAT IS NOW GOVERNMENT EXHIBIT 9?

A. YES.

Q. APPROXIMATELY HOW FAR WAS THIS HOME FROM WHERE YOU STOPPED MR. BURTON?

A. A HOUSE LENGTH AWAY.

Q. IF WE LOOK BACK AT GOVERNMENT EXHIBIT 7, THE PORTION THAT WE ARE LOOKING AT IS APPROXIMATELY WHERE YOU SAY MR. BURTON STOPPED HIS VEHICLE?

A. CORRECT.

Q. IS THE HOME THAT WE JUST SAW IN GOVERNMENT'S EXHIBITS 8

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A066

1 AND 9 DEPICTED APPROXIMATELY A HOUSE AND A HALF AWAY, WITH THIS
2 YELLOW PIN ABOVE IT?

3 **A.** YES.

4 **Q.** OFFICER MEDINA, DID YOU ASSIST WITH THE FOURTH WAIVER
5 SEARCH OF MR. BURTON'S RESIDENCE?

6 **A.** I DID.

7 **Q.** OFFICER MEDINA, DO YOU UNDERSTAND WHAT I MEAN WHEN I SAY
8 I-TAC?

9 **A.** YES.

10 **Q.** WHAT DO I MEAN BY THAT?

11 **A.** IT'S THE INVESTIGATIVE TAC FREQUENCY WE WERE ON THAT NIGHT
12 WHILE WORKING ON CST.

13 **Q.** AND BY INVESTIGATIVE TACTICAL FREQUENCY, IS THAT A SPECIAL
14 RADIO FREQUENCY THAT THE CRIME SUPPRESSION TEAM WAS USING THAT
15 NIGHT?

16 **A.** YES.

17 **Q.** IS THAT STANDARD OPERATING PROCEDURE, THAT THE CST USES
18 ITS OWN FREQUENCY WHEN IT'S BEING DEPLOYED?

19 **A.** YES.

20 **Q.** WERE YOU COMMUNICATING THAT NIGHT ON TACTICAL FREQUENCY
21 NUMBER THREE?

22 **A.** YES.

23 **Q.** WERE OTHER MEMBERS OF THE CST, AS WELL?

24 **A.** YES.

25 **Q.** WHO WAS THE SENIOR OFFICER PRESENT DURING THIS EVENT?

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A067

1 **A.** OUR SERGEANT.

2 **Q.** WHAT IS HIS NAME?

3 **A.** ELIAS ESTRADA.

4 **MR. HADEN:** COULD I HAVE ONE MOMENT, YOUR HONOR?

5 **THE COURT:** SURE.

6 **MR. HADEN:** NOTHING FURTHER FOR THIS WITNESS AT THIS
7 TIME.

8 **THE COURT:** LET ME JUST ASK, THE TACTICAL FREQUENCY,
9 IS IT I-TAC, T-A-C-K, OR I-T-A-F?

10 **MR. HADEN:** AS I UNDERSTAND IT, YOUR HONOR -- AND,
11 OFFICER MEDINA, CORRECT ME IF I'M WRONG -- I, HYPHEN, T-A-C.
12 SHORT FOR TACTICAL.

13 **THE COURT:** IT WAS AN OPTION I DIDN'T THINK ABOUT.
14 IS THAT CORRECT, SIR, I, DASH, T-A-C?

15 **THE WITNESS:** YES.

16 **THE COURT:** THAT JUST HELPS COMPLETE THE RECORD.
17 ALL RIGHT. MR. COTSIRILOS, ANY QUESTIONS OF THIS
18 WITNESS?

19 **MR. COTSIRILOS:** YES. THANK YOU.

20 **CROSS-EXAMINATION**

21 **BY MR. COTSIRILOS:**

22 **Q.** GOOD MORNING, OFFICER.

23 **A.** GOOD MORNING.

24 **Q.** SO YOU GO BY THE NAME OF ROY; IS THAT CORRECT?

25 **A.** YES.

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A068

1 Q. ROY IS THE SHORTENED VERSION OF ROGELIO?

2 A. YES.

3 Q. AND ON NOVEMBER 7TH, 2014, IS IT CORRECT THE TIME THAT YOU
4 DETAINED MR. BURTON WAS APPROXIMATELY 7:18 OR 1918 ON THAT
5 EVENING?

6 A. APPROXIMATELY, YES.

7 Q. AND WHEN YOU DETAINED MR. BURTON, IS IT CORRECT THAT HE
8 WAS KNOWN TO YOU PREVIOUSLY?

9 A. YES.

10 Q. AND YOU HAD HAD A PRIOR CONTACT, YOU DESCRIBED TO US,
11 WHERE YOU DETAINED HIM. THAT WAS AN UNPLEASANT CONTACT, IN
12 YOUR VIEW; IS THAT CORRECT?

13 A. YES.

14 Q. AND YOU KNEW MR. BURTON TO BE, FROM YOUR INFORMATION, A
15 GANG MEMBER?

16 A. CORRECT.

17 Q. AND YOU, IN FACT, FILED A REQUEST FOR AN INCREASE IN BAIL
18 AFTER HIS ARREST IN THIS CASE, BASED ON THE FACT THAT HE WAS
19 KNOWN TO THE SAN DIEGO POLICE DEPARTMENT AS A GANG MEMBER?

20 A. YES. THAT WAS PUT IN THE REQUEST.

21 Q. AND IN GAINING YOUR KNOWLEDGE OF MR. BURTON, NOT ONLY FROM
22 YOUR CONTACT WITH HIM, HAD YOU BEEN BRIEFED ABOUT HIM DURING
23 YOUR CRIME SUPPRESSION TEAM MEETINGS OR TEAM BRIEFINGS?

24 A. I DON'T UNDERSTAND. CAN YOU REPEAT THE QUESTION?

25 Q. HAD YOU RECEIVED INFORMATION FROM YOUR FELLOW OFFICERS

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1 ABOUT MR. BURTON PRIOR TO NOVEMBER 7TH, 2014?

2 **A.** YES. WE TALKED ABOUT -- SOMEBODY HAD BROUGHT HIM UP
3 BEFORE.

4 **Q.** DO YOU REMEMBER WHICH OFFICERS YOU HAD DISCUSSED
5 MR. BURTON WITH PRIOR TO NOVEMBER 7TH, 2014?

6 **A.** MY PARTNER, BLAKE WILLIAMS.

7 **Q.** HAD YOU ALSO DISCUSSED HIM WITH OFFICER ROBERT SCHMIDT?

8 **A.** I DON'T RECALL.

9 **Q.** SIR, YOU INDICATED FOR US IN YOUR TESTIMONY THAT YOU HAD
10 PREVIOUSLY STOPPED MR. BURTON, ABOUT TWO MONTHS PRIOR TO
11 NOVEMBER 7TH; IS THAT CORRECT?

12 **A.** I DON'T RECALL THE EXACT TIME, BUT I KNOW IT WAS BEFORE
13 THE CONTACT.

14 **Q.** AND AT THAT TIME, TO THE BEST OF YOUR MEMORY, HE HAD A
15 VALID DRIVER'S LICENSE; IS THAT CORRECT?

16 **A.** YEAH. MY PARTNER AT THE TIME ALSO RAN A LICENSE PLATE AND
17 RECORDS CHECK ON HIM. AND AS I WAS TOLD FROM MY PARTNER, HE
18 WAS VALID.

19 **Q.** AND EITHER YOU OR YOUR PARTNER DID A RECORDS CHECK ON HIM
20 DURING THAT PRIOR STOP?

21 **A.** CORRECT.

22 **Q.** AND YOU STOPPED HIM FOR HAVING A TAILLIGHT OUT; IS THAT
23 CORRECT?

24 **A.** I BELIEVE SO, YES. BRAKE LIGHT/TAILLIGHT.

25 **Q.** AND AFTER YOUR CONTACT WITH HIM, EVEN THOUGH IT WAS

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A070

1 UNPLEASANT, EVEN AFTER THE RECORDS CHECK, YOU RELEASED HIM; IS
2 THAT CORRECT?

3 **A.** CORRECT.

4 **Q.** AND ALLOWED HIM TO DRIVE FROM THE SCENE?

5 **A.** CORRECT.

6 **Q.** NOW, SIR, WE HAVE BEEN PROVIDED -- YOU'RE PROBABLY AWARE
7 OF THIS -- WE HAVE BEEN PROVIDED, IN THE COURSE OF DISCOVERY,
8 WITH A DISPATCH TAPE THAT I THINK YOU'VE DESCRIBED AS THE
9 DISPATCH TAPE THAT THE ENTIRE EASTERN DIVISION CRIME
10 SUPPRESSION TEAM WAS UTILIZING THAT NIGHT; IS THAT CORRECT?

11 **A.** I BELIEVE SO, YES.

12 **Q.** WERE THERE ANY OTHER FREQUENCIES THAT YOU AND YOUR PARTNER
13 WERE UTILIZING THAT EVENING, OTHER THAN THE FREQUENCY THAT WE
14 HAVE BEEN PROVIDED FOR THE CRIME SUPPRESSION UNIT?

15 **A.** I DON'T RECALL.

16 **Q.** YOU STOPPED MR. BURTON ON NOVEMBER 7TH, 2014, AT
17 APPROXIMATELY 7:18 IN THE EVENING. AND IS IT CORRECT THAT YOU
18 PUT OUT A BROADCAST OVER THE DISPATCH UNIT THAT YOU WILL BE
19 WITH THE CAR AT SKYLINE AND MEADOWBROOK?

20 **A.** I BELIEVE SO.

21 **Q.** OKAY. AND TO BE EXACT, YOU STATE "HEY, WE'LL BE OUT WITH
22 THE CAR, SKYLINE AND MEADOWBROOK;" IS THAT CORRECT?

23 **A.** IF THAT IS WHAT IT SAYS, YES.

24 **Q.** AND THAT WENT OUT TO THE ENTIRE CRIME SUPPRESSION TEAM
25 THAT EVENING?

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A071

1 **A.** YES, IT SHOULD HAVE.

2 **Q.** AND WHAT CAR WERE YOU REFERRING TO?

3 **A.** MR. BURTON'S CAR.

4 **Q.** HOW WOULD THE REST OF THE TEAM KNOW THAT WAS THE CAR YOU
5 WERE REFERRING TO?

6 **A.** WE ARE NOT SPECIFIC AS TO WHOSE CAR OR WHAT CAR IT IS. WE
7 JUST LET THE PEOPLE KNOW THAT WE ARE ON A STOP WITH THE
8 VEHICLE. OR IF WE ARE CONTACTING TWO PEDESTRIANS, WE PUT OUT
9 WITH TWO AT A CERTAIN LOCATION.

10 **Q.** I UNDERSTAND, SIR. YOU USE THE TERM "WE'LL BE OUT WITH
11 THE CAR" AT THE TIME YOU PUT OUT THE BROADCAST; IS THAT
12 CORRECT?

13 **MR. HADEN:** YOUR HONOR, I WOULD OBJECT AS TO
14 SPECULATION. I DON'T THINK OFFICER MEDINA HAS HEARD THE TAPES
15 IN A LONG TIME. I THINK HE IS SAYING TO THE BEST OF HIS
16 MEMORY, SO THE SPECIFIC LANGUAGE I DON'T THINK HE IS ABLE TO
17 ADDRESS.

18 **THE COURT:** I WAS GOING TO SAY TO YOUR MEMORY, DID
19 YOU SAY "THE CAR" OR "A CAR," OR DO YOU RECALL?

20 **THE WITNESS:** I DON'T RECALL.

21 **THE COURT:** PERHAPS YOU COULD REFRESH HIS
22 RECOLLECTION OR SOMETHING ELSE, MR. COTSIRILOS.

23 **MR. COTSIRILOS:** WITH COUNSEL'S PERMISSION, WE HAVE
24 BOTH THE COPY OF THE DISPATCH TAPE AND I PREPARED TRANSCRIPTS
25 OF EACH ENTRY. SO, COUNSEL, WE CAN EITHER PLAY THAT FIRST

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A072

1 ENTRY FOR OFFICER MEDINA OR I CAN SHOW HIM THE TRANSCRIPT.

2 **THE COURT:** MR. HADEN?

3 **MR. HADEN:** YOUR HONOR, MY PREFERENCE -- AND I DON'T
4 WANT TO MAKE IT HARDER THAN IT SHOULD BE -- BUT I GUESS AT THIS
5 TIME WE WOULD OFFER GOVERNMENT'S EXHIBIT 10, WHICH IS THE
6 RECORDING THAT WAS PROVIDED IN DISCOVERY, OF I-TAC THREE FROM
7 THAT EVENING.

8 AND I THINK THAT I WOULD LIKE TO ASSIST
9 MR. COTSIRILOS IN ACTUALLY PLAYING IT SO THAT OFFICER MEDINA
10 CAN HEAR WHAT HE DID OR DIDN'T SAY SO HE IS NOT TRYING TO
11 CONFIRM FROM A TRANSCRIPT THAT HE WASN'T A PART OF CREATING.

12 **MR. COTSIRILOS:** THAT WOULD BE FINE. MAYBE WITH
13 COUNSEL'S PERMISSION, HE CAN PLAY THE TAPE AND I WILL PUT THE
14 TRANSCRIPT ON THE ELMO AND WE CAN COMPARE THEM.

15 **THE COURT:** AND THAT WILL HELP FOR PURPOSES OF
16 CREATING A RECORD, TOO, IN CASE THE TAPE IS GARBLED.

17 SO EXHIBIT 10 IS ADMITTED, AND WE'RE TALKING NOW
18 ABOUT PLAYING THE INITIAL DISPATCH CALL -- OR CALL TO DISPATCH
19 BY OFFICER MEDINA.

20 (EXHIBIT NO. 10 MARKED FOR IDENTIFICATION)

21 (EXHIBIT NO. 10 RECEIVED INTO EVIDENCE)

22 **MR. COTSIRILOS:** AND I PUT A TRANSCRIPT OF THE FIRST
23 ENTRY ON THE ELMO, YOUR HONOR, SO THAT THE COURT CAN FOLLOW AS
24 COUNSEL PLAYS THAT ENTRY.

25 **MR. HADEN:** AND, YOUR HONOR, FOR THE RECORD, THIS IS

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A073

1 FILE PD15-0388, WHICH IS THE FIRST FILE ON GOVERNMENT
2 EXHIBIT 10.

3 AND I'M GOING TO PRESS PLAY NOW. AND I BELIEVE THAT
4 THE CALL THAT MR. COTSIRILOS IS REFERRING TO HAPPENS ABOUT 13
5 SECONDS IN.

6 **THE COURT:** OKAY.

7 (PLAYING DISPATCH CALL)

8 **THE COURT:** WERE YOU ABLE TO HEAR THAT, SIR?

9 **THE WITNESS:** YES.

10 **THE COURT:** WHY DON'T WE MARK THE TRANSCRIPT, FOR
11 IDENTIFICATION PURPOSES, AS DEFENDANT'S A.

12 **MR. COTSIRILOS:** CAN I MARK IT AS DEFENDANT'S C? WE
13 ALREADY PREVIOUSLY MARKED TWO PHOTOGRAPHS.

14 **THE COURT:** HOWEVER YOU WISH. JUST SO IT HAS A
15 LETTER FOR LATER IDENTIFICATION.

16 **MR. COTSIRILOS:** SHALL I DO THAT AT THIS TIME?

17 **THE COURT:** YES. GO AHEAD AND MAKE IT C FOR
18 IDENTIFICATION.

19 **MR. HADEN:** YOUR HONOR, WAS THE VOLUME OKAY?

20 **THE COURT:** IT WAS FOR ME.

21 WAS IT OKAY FOR YOU, SIR?

22 **THE WITNESS:** YES.

23 (EXHIBIT NO. C MARKED FOR IDENTIFICATION)

24 **Q. (BY MR. COTSIRILOS):** NOW, OFFICER MEDINA, THIS IS THE
25 FIRST COMMUNICATION ON THE DISPATCH TAPE WE WERE PROVIDED. AND

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A074

1 THE WORDS, I BELIEVE, WERE "HEY, WE'LL BE OUT WITH THE CAR,
2 SKYLINE AND MEADOWBROOK."

3 IN REFERENCING "THE CAR," HAD THERE BEEN A PREVIOUS
4 COMMUNICATION TO ANY MEMBERS OF THE TEAM ABOUT THIS CAR, TO THE
5 BEST OF YOUR KNOWLEDGE?

6 **A.** TO THE BEST OF MY KNOWLEDGE, I DON'T RECALL. AND THAT
7 WASN'T MY PHRASE.

8 **Q.** WAS THAT OFFICER WILLIAM'S VOICE?

9 **A.** YES.

10 **Q.** AND HAD YOU HEARD OFFICER WILLIAMS MAKE A PRIOR
11 COMMUNICATION ABOUT THE CAR?

12 **A.** I DON'T RECALL.

13 **Q.** OKAY. AND YOU NOTE THAT HE DOESN'T SAY WE'LL BE OUT WITH
14 "A CAR" OR DESCRIBE A CAR. HE SAYS THAT WE'LL BE OUT WITH "THE
15 CAR"?

16 **A.** FROM THE AUDIO I CAN'T TELL IF IT'S "A CAR" OR "THE CAR."
17 IT SOUNDS LIKE HE'S OUT WITH THE CAR.

18 **Q.** AND YOU HAVE NO INDEPENDENT MEMORY OF WHETHER THERE HAD
19 BEEN A PREVIOUS COMMUNICATION ABOUT WHICH CAR WAS BEING
20 REFERENCED, SO THAT THE REST OF THE TEAM WOULD UNDERSTAND WHAT
21 CAR WAS BEING REFERRED TO?

22 **A.** I DON'T RECALL.

23 **Q.** SIR, THE NEXT COMMUNICATION THAT IS ON THE DISPATCH TAPE,
24 I BELIEVE, IS FROM OFFICER WILLIAMS TO YOU, ROY. AND THAT'S
25 ABOUT 2 MINUTES AND 42 SECONDS LATER INTO THE TAPE. AND THE

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A075

1 QUESTION FOR OFFICER WILLIAMS IS "HEY, ROY, ARE YOU ON THE
2 AIR?" DO YOU RECALL THAT COMMUNICATION?

3 **A.** I DON'T RECALL.

4 **Q.** AND IS IT CORRECT THAT EITHER YOU OR OFFICER WILLIAMS HAD
5 GONE TO DO A RECORDS CHECK ON MR. BURTON AFTER YOU INITIALLY
6 STOPPED HIM?

7 **A.** YES.

8 **Q.** WHICH ONE OF YOU DID THE RECORDS CHECK, SIR?

9 **A.** OFFICER WILLIAMS, TO MY RECOLLECTION.

10 **Q.** OKAY. AND DO YOU RECALL THAT THE RESULTS OF THE RECORDS
11 CHECK ARE THEN COMMUNICATED OVER THE DISPATCH TAPE?

12 **A.** I DON'T RECALL.

13 **Q.** MAYBE WE CAN PLAY THAT NEXT ENTRY. AND I WILL MARK AS
14 DEFENDANT'S NEXT IN ORDER --

15 **THE COURT:** THAT WOULD BE D, AS IN DOG.

16 DO YOU WANT TO COORDINATE THAT TO A NUMBER ON THE
17 DISK, MR. HADEN?

18 **MR. HADEN:** YES, YOUR HONOR. I'M READY.

19 YOUR HONOR, FOR THE RECORD, I AM STARTING THE SAME
20 AUDIO FILE AT 2 MINUTES AND 38 SECONDS SO THAT WE HAVE A COUPLE
21 SECONDS BEFORE THE AUDIO COMMUNICATION STARTS.

22 **THE COURT:** OKAY.

23 (PLAYING DISPATCH CALL)

24 **MR. HADEN:** YOUR HONOR, FOR THE RECORD, THE UNITED
25 STATES WOULD JUST OBJECT AND MAKE ONE CORRECTION TO THE

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A076

1 TRANSCRIPT. THE SECOND-TO-THE-LAST ENTRY BY BOBBY. I BELIEVE
2 HE SAYS "WE'LL COME OVER AND COVER, JUST IN CASE THE FAMILY
3 COMES OUT." I THINK HE WAS INDICATING HE WAS GOING TO PROVIDE
4 PROTECTIVE COVER.

5 **THE COURT:** MR. COTSIRILOS, IS THAT A FAIR AMENDMENT
6 TO THE TRANSCRIPT, EXHIBIT D FOR IDENTIFICATION?

7 **MR. COTSIRILOS:** YES, YOUR HONOR.

8 **THE COURT:** OKAY. SO THAT WILL BE MADE AND THE
9 RECORD WILL SO REFLECT.

10 **MR. HADEN:** THANK YOU, YOUR HONOR.

11 **MR. COTSIRILOS:** AND I HAVE WRITTEN "AND COVER" --
12 "WE'LL COME OVER AND COVER, JUST IN CASE THE FAMILY COMES OUT,"
13 SO THE TRANSCRIPT REFLECTS THAT.

14 **THE COURT:** VERY GOOD.

15 **Q. (BY MR. COTSIRILOS):** OFFICER MEDINA, YOU ARE THE PERSON,
16 ROY, THAT IS REFERRED TO AND ASKED WHETHER YOU ARE ON THE AIR;
17 IS THAT CORRECT?

18 **A.** CORRECT.

19 **Q.** AND YOU RECOGNIZE OFFICER WILLIAMS' VOICE AS BEING THE
20 VOICE RECORDING THE RESULTS OF THE RECORDS SEARCH ON
21 MR. BURTON?

22 **A.** YES.

23 **Q.** THAT HE HAS A FOURTH WAIVER, HIS PRIORS -- HE HAS A BUNCH
24 OF PRIORS, AND THAT HE HAS A SUSPENDED DEAL (SIC). I ASSUME
25 REFERRING TO A SUSPENDED LICENSE?

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A077

1 **A.** NO, IT'S D-L. DRIVER'S LICENSE.

2 **Q.** I'M SORRY. WE COULDN'T UNDERSTAND THAT. AND THEN THE
3 10-4, IS THAT FROM YOU?

4 **A.** YES.

5 **Q.** AND THEN IS THAT OFFICER WILLIAMS WHO SAYS "HEY, BOBBY,
6 WE'VE GOT MR. STEVEN BURTON STOPPED OVER HERE OFF SKYLINE,
7 RIGHT IN FRONT OF HIS HOUSE"?

8 **A.** YES.

9 **Q.** WHO IS BOBBY?

10 **A.** OFFICER ROBERT SCHMIDT.

11 **Q.** AND IS IT CORRECT THAT APPARENTLY AT THAT POINT IN TIME
12 YOU KNEW MR. BURTON WAS STOPPED RIGHT IN FRONT OF HIS
13 RESIDENCE, WHERE HE LIVED?

14 **A.** YES.

15 **Q.** AND DID YOU KNOW BEFORE NOVEMBER 7, 2014 THAT HE LIVED AT
16 THAT ADDRESS ON SKYLINE DRIVE?

17 **A.** I DIDN'T KNOW THE SPECIFIC ADDRESS, BUT I KNEW HE LIVED
18 SOMEWHERE ON SKYLINE.

19 **Q.** RIGHT NEAR THAT AREA?

20 **A.** WELL, I WAS TOLD, ONCE WE WERE THERE, THAT HIS HOUSE WAS
21 JUST UP THE STREET.

22 **Q.** OKAY. WELL, HIS HOUSE WAS, IN FACT, ALMOST NEXT TO WHERE
23 HE STOPPED; WASN'T THAT CORRECT?

24 **A.** ABOUT A HOUSE AND A HALF OVER.

25 **Q.** ONE HOUSE AWAY FROM WHERE HE STOPPED?

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A078

1 **A.** AND A HALF.

2 **Q.** AND THERE IS A FIRE HYDRANT IN FRONT OF HIS HOUSE; IS THAT
3 CORRECT?

4 **A.** YES.

5 **Q.** AND THE FIRST LEGAL PARKING SPACE ON HIS SIDE OF THE
6 STREET WHERE HE STOPPED IS ACTUALLY WHERE HE PULLED OVER; IS
7 THAT CORRECT?

8 **A.** I'M SORRY. CAN YOU REPEAT THAT?

9 **Q.** PARDON ME?

10 **A.** CAN YOU REPEAT IT?

11 **Q.** SURE. THE FIRST LEGAL PARKING SPACE ON THE SIDE OF
12 SKYLINE DRIVE THAT MR. BURTON LIVES ON IS ACTUALLY WHERE HE
13 PULLED HIS VEHICLE OVER THAT NIGHT ON NOVEMBER 7, 2014?

14 **A.** I CAN'T -- I DON'T KNOW IF I CAN TESTIFY TO THAT. I'M NOT
15 SURE.

16 **Q.** I'M SHOWING YOU WHAT'S BEEN PREVIOUSLY MARKED AS
17 DEFENDANT'S B, FOR IDENTIFICATION. DO YOU RECOGNIZE THIS AS
18 THE AREA WHERE MR. BURTON WAS STOPPED ON NOVEMBER 7TH, 2014?

19 **A.** YES.

20 (EXHIBIT NO. B MARKED FOR IDENTIFICATION)

21 **Q.** **(BY MR. COTSIRILOS):** AND DO YOU RECOGNIZE WHERE THE
22 NUMBERS 2931 ARE WRITTEN BEING THE LOCATION YOU PREVIOUSLY
23 DESCRIBED AS THE LOCATION THAT HE PULLED OVER AND YOU STOPPED
24 HIM?

25 **A.** I BELIEVE SO.

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A079

1 Q. AND DO YOU RECOGNIZE THE SPEED LIMIT IN THAT AREA TO BE
2 25 MILES AN HOUR?

3 A. YES.

4 Q. AND DO YOU RECOGNIZE ON THAT STREET, WHERE I'M POINTING
5 WITH MY PEN, IS A RED CURB, INDICATING NO PARKING PERMITTED
6 THERE?

7 A. I CAN'T TELL FROM THE PICTURE, BUT --

8 Q. DO YOU HAVE A MEMORY OF THAT AREA FROM YOUR EXPERIENCE ON
9 SKYLINE DRIVE?

10 A. I DON'T RECALL IF THE CURB IS RED OR NOT.

11 Q. AND DO YOU RECALL THAT THERE ARE -- I'M POINTING TO TWO
12 CIRCLED ITEMS IN FRONT OF MR. BURTON'S HOUSE. I THINK THERE IS
13 A BETTER PICTURE OF THIS IN ONE OF THE GOVERNMENT EXHIBITS --
14 AS BEING A FIRE HYDRANT AND ANOTHER HYDRANT, DIRECTLY IN FRONT
15 OF 7955 SKYLINE DRIVE, WHERE MR. BURTON LIVED?

16 A. FROM WHAT I CAN TELL IN THE PICTURE ON EXHIBIT 8, YES.

17 Q. NOW, DO YOU HAVE KNOWLEDGE AS TO WHY OFFICER SCHMIDT WAS
18 TOLD THAT MR. BURTON WAS STOPPED RIGHT IN FRONT OF HIS HOUSE?

19 A. I DON'T KNOW.

20 Q. OKAY. IS THAT OFFICER SCHMIDT RESPONDING HEY, WE'LL COME
21 OVER JUST IN CASE THE FAMILY COMES OUT?

22 A. YES.

23 Q. THAT'S HIS VOICE, OFFICER SCHMIDT'S VOICE?

24 THE COURT: "WE'LL COME OVER AND COVER."

25 Q. (BY MR. COTSIRILOS): AND COVER IN CASE THE FAMILY COMES

1 OUT.

2 DID YOU HAVE PREVIOUS KNOWLEDGE THAT MR. BURTON'S
3 FAMILY ALSO LIVED ON THAT BLOCK?

4 **A.** PRIOR TO THE STOP, NO, BUT MY PARTNERS AND SOME OF THE
5 OTHER OFFICERS ON THE TEAM DID.

6 **Q.** OKAY. AND HAD YOU HEARD OF ANY PREVIOUS CONTACT BETWEEN
7 THE OFFICERS OF THE CRIME SUPPRESSION UNIT AND MR. BURTON'S
8 FAMILY PRIOR TO NOVEMBER 7, 2014?

9 **A.** OTHER THAN THE STOP I MADE A FEW MONTHS PRIOR, I DON'T
10 RECALL WHO MADE CONTACT WITH HIM PRIOR TO THAT.

11 **Q.** AND DO YOU HAVE ANY PERSONAL KNOWLEDGE WHY OFFICER
12 WILLIAMS LAUGHS AFTER OFFICER SCHMIDT INDICATES THAT HE'LL COME
13 OVER AND COVER JUST IN CASE MR. BURTON'S FAMILY COMES OUT?

14 **A.** IT SEEMS LIKE ON THE TRANSMISSION, AS OFFICER SCHMIDT GOT
15 ON THE AIR, THERE WAS A LOUD WAILING OR IT SOUNDED LIKE
16 SOMEBODY YELLED IN THE BACKGROUND. AND THEN OFFICER WILLIAMS
17 RESPONDED, KIND OF WITH A GIGGLE, SAYING HEY, IS YOUR PARTNER
18 OKAY, ASSUMING THAT WAS HIS PARTNER THAT MADE THE NOISE.

19 **THE COURT:** LET ME STOP YOU. THE QUESTION IS DO YOU
20 HAVE ANY PERSONAL KNOWLEDGE AS TO WHY HE WAS LAUGHING. HE IS
21 NOT ASKING YOU TO RECONSTRUCT OR SPECULATE. DO YOU KNOW. AND
22 IF YOU KNOW, THEN GO AHEAD AND GIVE YOUR ANSWER. DO YOU KNOW?

23 **THE WITNESS:** NO.

24 **THE COURT:** GO AHEAD, MR. COTSIRILOS.

25 **MR. COTSIRILOS:** THANK YOU, YOUR HONOR.

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1 **Q. (BY MR. COTSIRILOS):** NOW, SIR, HAD YOU ANY PERSONAL
2 KNOWLEDGE OF A CONTACT BETWEEN MR. BURTON AND THE CRIME
3 SUPPRESSION UNIT ON APRIL 25TH OF 2014?

4 **A.** DO I HAVE PRIOR KNOWLEDGE OF IT?

5 **Q.** DID YOU HAVE PRIOR KNOWLEDGE OF THAT WHEN YOU STOPPED
6 MR. BURTON IN NOVEMBER OF 2014?

7 **A.** NO.

8 **Q.** OKAY. NOW, YOU STOPPED MR. BURTON, YOU INDICATED, AT
9 APPROXIMATELY 7:18 ON NOVEMBER 7TH. IS IT CORRECT THAT OFFICER
10 BARTON AND OFFICER BERG FROM THE CRIME SUPPRESSION UNIT
11 RESPONDED TO THAT LOCATION ABOUT SEVEN MINUTES LATER, AT
12 7:30 THAT EVENING?

13 **A.** I DON'T RECALL THE EXACT TIME THEY ARRIVED, BUT, YEAH,
14 THEY RESPONDED TO COVER.

15 **Q.** AND WOULD REVIEWING THEIR REPORT AND THE TIME THEY LIST IN
16 THE REPORT REFRESH YOUR MEMORY AS TO THE TIME THEY ARRIVED?

17 **A.** SURE.

18 **Q.** OKAY.

19 **MR. COTSIRILOS:** MAY I APPROACH, YOUR HONOR?

20 **THE COURT:** YOU MAY.

21 **Q. (BY MR. COTSIRILOS):** OFFICER, I'M SHOWING YOU WHAT'S BEEN
22 IDENTIFIED AS A SAN DIEGO REGIONAL OFFICER'S REPORT FROM
23 OFFICERS BERG AND BARTON. AND IF YOU WOULD READ TO YOURSELF
24 THE TIME THAT THEY INDICATE THEY RESPONDED TO THE SCENE, IF
25 THAT REFRESHES YOUR MEMORY.

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1 **A.** YES. IT'S 1930 HOURS.

2 **Q.** SO THEY WERE THE FIRST OFFICERS TO RESPOND TO THE SCENE
3 AFTER YOU DETAINED --

4 **MR. HADEN:** OBJECTION, YOUR HONOR. I GUESS THE
5 QUESTION WAS NOT ANSWERED. DOES HE REMEMBER, OR DID THAT
6 REFRESH HIS RECOLLECTION, OR IS HE TESTIFYING FROM THE REPORT
7 OF ANOTHER OFFICER?

8 **THE COURT:** IT'S A FAIR OBJECTION. SUSTAINED.
9 IF YOU CAN REASK THE QUESTION, MR. COTSIRILOS.

10 **MR. COTSIRILOS:** THANK YOU.

11 **Q.** **(BY MR. COTSIRILOS):** DOES THAT REFRESH YOUR MEMORY AS
12 TO -- WELL, FIRST, DOES THAT REFRESH YOUR MEMORY AS TO THE TIME
13 THAT OFFICER BURTON AND OFFICER BERG ARRIVED AT THE SCENE?

14 **A.** I MEAN, IF THAT IS WHAT IT SAYS IN THE REPORT, I CAN'T --
15 I DIDN'T KEEP TRACK OF WHICHEVER -- OR WHAT TIME.

16 **THE COURT:** SO YOU HAVE NO MEMORY, STILL?

17 **THE WITNESS:** NO.

18 **THE COURT:** OKAY. GO AHEAD, MR. COTSIRILOS.

19 **Q.** **(BY MR. COTSIRILOS):** DO YOU REMEMBER WHETHER OFFICERS
20 BARTON AND BERG WERE THE FIRST OFFICERS TO RESPOND TO THE
21 SCENE?

22 **A.** I DON'T RECALL IF THEY WERE THE FIRST ONES.

23 **Q.** OKAY. NOW, IS IT CORRECT -- OR DO YOU REMEMBER THAT
24 OFFICER BARTON AND OFFICER BERG WERE WEARING BODY CAMERAS WHEN
25 THEY RESPONDED TO THE SCENE?

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A083

1 **A.** I BELIEVE SO.

2 **Q.** AND DO YOU RECALL AT WHAT POINT IN THE EVENING THOSE
3 CAMERAS WERE ACTIVATED, IF THEY WERE ACTIVATED THAT EVENING?

4 **A.** I DO NOT.

5 **Q.** HAVE YOU INDEPENDENTLY REVIEWED ANY IMAGES TAKEN WITH
6 THOSE BODY CAMERAS, PRIOR TO TESTIFYING HERE TODAY?

7 **A.** I HAVE NOT.

8 **Q.** DID YOU HAVE A BODY CAMERA ON YOU THAT EVENING?

9 **A.** I DON'T RECALL.

10 **Q.** AND DO YOU REMEMBER ANY DISCUSSIONS WITH EITHER OFFICER
11 BARTON, OFFICER BERG, OR ANY OTHER OFFICERS, ABOUT WHEN A BODY
12 CAMERA SHOULD BE ACTIVATED THAT EVENING?

13 **A.** OFFICERS WITH BODY CAMERAS ACTIVATE THEM AS THEY FEEL
14 NECESSARY.

15 **Q.** AND THAT IS AN INDIVIDUAL DECISION BY EACH OFFICER?

16 **A.** YES.

17 **Q.** NOW, SIR, IS IT CORRECT THAT AS OF JULY 8, 2014 THERE HAD
18 BEEN A POLICY ESTABLISHED WITH THE SAN DIEGO POLICE DEPARTMENT
19 THAT BODY CAMERAS WERE ENCOURAGED TO BE UTILIZED DURING TRAFFIC
20 STOPS?

21 **A.** THAT'S CORRECT.

22 **Q.** AND THAT BODY CAMERAS WERE ENCOURAGED TO BE UTILIZED
23 DURING THE COURSE OF ARRESTS?

24 **A.** THAT'S CORRECT.

25 **Q.** AND ALSO IN THE COURSE OF EXERCISING FOURTH SEARCH

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1 WAIVERS?

2 **A.** THAT'S WHAT IT SAYS. I DON'T RECALL THE EXACT DETAILS OF
3 THE POLICY.

4 **Q.** AND I MAY HAVE ASKED YOU THIS ALREADY. DID YOU HAVE A
5 BODY CAMERA WITH YOU THAT EVENING, OR DID OFFICER WILLIAMS HAVE
6 A BODY CAMERA WITH HIM THAT EVENING?

7 **A.** I DON'T RECALL.

8 **Q.** AND AT LEAST FOR YOUR PART YOU MADE AN INDEPENDENT
9 DECISION NOT TO FILM YOUR CONTACTS WITH MR. BURTON; IS THAT
10 CORRECT?

11 **A.** I DON'T RECALL IF I HAD ONE ON ME AT THE TIME.

12 **Q.** ALL RIGHT. BUT IF YOU DID HAVE ONE WITH YOU PURSUANT TO
13 THE POLICY, YOU STATED YOU WOULD HAVE MADE AN INDEPENDENT
14 DECISION WHETHER TO ACTIVATE OR NOT ACTIVATE THAT CAMERA?

15 **A.** CORRECT.

16 **Q.** OKAY. NOW, SIR, PRIOR TO NOVEMBER 7TH, 2014, DID YOU KNOW
17 THAT MR. BURTON HAD A SISTER?

18 **A.** I DID NOT.

19 **Q.** DO YOU REMEMBER BEING ASKED TO SEE WHETHER A CAR DRIVING
20 BY THE SCENE WAS OCCUPIED BY MR. BURTON'S SISTER, ON
21 NOVEMBER 7, 2014?

22 **A.** CAN YOU REPEAT THE QUESTION?

23 **Q.** SURE. DO YOU RECALL BEING ASKED TO SEE WHETHER A CAR
24 DRIVING BY THE SCENE ON SKYLINE DRIVE WAS BEING DRIVEN BY
25 MR. BURTON'S SISTER?

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A085

1 **A.** I DON'T RECALL.

2 **Q.** NOW, SIR, YOUR SERGEANT THAT EVENING THAT YOU WERE WORKING
3 WITH WAS SERGEANT ESTRADA; IS THAT CORRECT?

4 **A.** YES.

5 **Q.** AND DO YOU RECALL BEING ASKED DIRECTLY BY SERGEANT ESTRADA
6 WHY YOU STOPPED MR. BURTON THAT EVENING?

7 **A.** I DON'T RECALL WHAT HE ASKED ME.

8 **Q.** FOR THE PURPOSES OF REFRESHING YOUR MEMORY, I'M GOING TO
9 ASK THAT COUNSEL PLAY -- THIS WILL BE ON THE SECOND CD.

10 (DISCUSSION BETWEEN COUNSEL)

11 **MR. HADEN:** SORRY, YOUR HONOR. WE ARE DOING SOME
12 AUDIO COORDINATION.

13 **THE COURT:** NO NEED TO APOLOGIZE. GO AHEAD AND DO IT
14 AND FIRE WHEN READY.

15 **MR. HADEN:** YOUR HONOR, FOR THE RECORD, I BELIEVE I
16 HAVE THE PORTION THAT MR. COTSIRILOS DESIRES TO PLAY. AND IT'S
17 AT 1:17:35 IN. SO I'M GOING TO START AS CLOSE TO THAT AS I
18 CAN. I'M GOING TO START AT 1:17:20.

19 (PLAYING DISPATCH CALL)

20 **THE COURT:** SO WE'LL MARK THAT AS THE NEXT IN ORDER,
21 AS DEFENDANT'S E FOR IDENTIFICATION.

22 **MR. COTSIRILOS:** YES.

23 (EXHIBIT NO. E MARKED FOR IDENTIFICATION)

24 **MR. HADEN:** THE UNITED STATES ONLY HAD ONE REQUESTED
25 CORRECTION. AT THE CENTER OF THE PAGE IT'S INDICATED AS ROY

JANUARY 20, 2016

A086

1 SAYING "YES, SIR." I BELIEVE HE ACTUALLY SAID "AFFIRM," WHICH
2 THE UNITED STATES WOULD PROFFER IS SHORT FOR AFFIRMATIVE. IT'S
3 NOT REALLY A SUBSTANTIVE CHANGE, BUT JUST TO MAKE IT ACCURATE.

4 **THE COURT:** MR. COTSIRILOS, IS THAT ACCEPTABLE?

5 **MR. COTSIRILOS:** YES, YOUR HONOR. I'M WRITING IT IN
6 AT THIS TIME: AFFIRM.

7 **THE COURT:** SO IT WILL BE ACCEPTED AS REQUESTED.

8 **Q. (BY MR. COTSIRILOS):** NOW, OFFICER, REFERENCING WHAT IS
9 MARKED AS DEFENDANT'S E FOR IDENTIFICATION, YOU'RE
10 COMMUNICATING WITH SERGEANT ESTRADA AT THE POINT IN TIME ON
11 THIS DISPATCH TAPE; IS THAT CORRECT?

12 **A.** CORRECT.

13 **Q.** AND SERGEANT ESTRADA WAS YOUR SUPERIOR?

14 **A.** YES.

15 **Q.** AND HE IS ASKING YOU POINT BLANK WHY YOU DETAINED OR
16 STOPPED MR. BURTON; IS THAT CORRECT?

17 **A.** YES.

18 **Q.** WHAT THE INITIAL TRAFFIC STOP WAS FOR?

19 **A.** CORRECT.

20 **Q.** AND YOU'RE INDICATING THAT IT WAS FOR AN ILLEGAL TURN
21 SIGNAL; IS THAT CORRECT?

22 **A.** CORRECT.

23 **Q.** AND THAT WOULD BE A REFERENCE TO VEHICLE CODE SECTION
24 22108 THAT YOU CITE IN YOUR REPORT?

25 **A.** CORRECT.

JANUARY 20, 2016

A087

1 Q. AND THAT VEHICLE CODE SECTION IS NOT SIGNALING FROM
2 100 FEET PRIOR TO A TURN; IS THAT CORRECT -- OR PULLING OVER TO
3 A CURB?

4 A. YEAH, TO THAT EFFECT.

5 Q. AND SOMEONE SAYS "SARGE, YOU COPY THAT?" DID YOU
6 RECOGNIZE THAT TO BE OFFICER BLAKE WILLIAMS' VOICE?

7 A. I DON'T RECALL.

8 Q. AND THE SERGEANT THEN REPEATS THAT HE WAS DRIVING ON
9 SKYLINE, AND ASKS WHETHER HE DIDN'T USE HIS TURN SIGNAL, OR WAS
10 HE ON MEADOWBROOK AND DIDN'T USE HIS TURN SIGNAL TO COME ONTO
11 SKYLINE. AND THE OTHER OFFICER, WHO I BELIEVE WAS BLAKE
12 WILLIAMS, STATES: NO, HE MADE A U-TURN FROM SKYLINE AT
13 MEADOWBROOK, BACK ONTO SKYLINE EASTBOUND, AND HE FAILED TO USE
14 A TURN SIGNAL WHEN HE PULLED OVER TO THE SIDE OF THE ROAD
15 THERE.

16 A. I BELIEVE THAT WAS ME.

17 Q. YOU BELIEVE THAT IS YOU STATING THAT?

18 A. YEAH.

19 Q. AND THAT IS KIND OF THE EVENTS THAT YOU DESCRIBED HERE
20 TODAY IN COURT; IS THAT CORRECT?

21 A. CORRECT.

22 Q. AND IT WAS A LEGAL U-TURN THAT MR. BURTON MADE?

23 A. YES, IT WAS LEGAL.

24 Q. THERE WAS NOTHING ILLEGAL ABOUT THE WAY HE TURNED HIS
25 VEHICLE?

JANUARY 20, 2016

A088

1 **A.** NO.

2 **Q.** AND YOU DO KNOW FROM YOUR COMMON EXPERIENCE, WHEN SOMEONE
3 TURNS A VEHICLE TO THE LEFT AND STRAIGHTENS THE VEHICLE BACK
4 OUT, THAT YOU CAN'T TURN THE RIGHT SIGNAL ON UNTIL THE CAR HAS
5 STRAIGHTENED OUT; IS THAT CORRECT?

6 **A.** I DIDN'T CONFIRM OR DENY THAT.

7 **Q.** DO YOU KNOW, FROM YOUR OWN EXPERIENCE DRIVING A VEHICLE,
8 WHETHER YOU CAN TURN A RIGHT SIGNAL ON WHILE YOU ARE TURNING
9 LEFT ON THE CAR?

10 **A.** IF YOU HOLD IT UP, YOU CAN.

11 **Q.** THAT'S YOUR EXPERIENCE?

12 **A.** WITH MY VEHICLES, YES.

13 **Q.** OKAY. NOW, SIR, THERE HAS BEEN A DISCUSSION ABOUT --
14 YOU'RE NOTED TO STILL BE ON THE AIR. "HEY, ROY, ARE YOU ON THE
15 AIR?" AND THEN THERE IS A DISCUSSION ABOUT THE MONEY FOUND
16 INSIDE MR. BURTON'S RESIDENCE, AND THE GUN THAT IS ALSO FOUND;
17 IS THAT CORRECT?

18 **A.** CORRECT.

19 **Q.** AND WHERE THOSE ITEMS ARE FOUND; IS THAT CORRECT?

20 **A.** CORRECT.

21 **Q.** AND THEN THE SERGEANT CONGRATULATES EVERYONE FOR A GREAT
22 JOB, AND THEN SOMEONE ASKS WHETHER YOU, HE AND ROY WILL WIN
23 SOMETHING. DO YOU RECOGNIZE WHOSE VOICE THAT WAS?

24 **A.** THAT WAS OFFICER WILLIAMS.

25 **Q.** AND THEN THE SERGEANT SAYS "HEY, I'M A MAN OF MY WORD.

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1 BEST BUY, OR YOU NAME IT." HAD THERE BEEN A PRIOR AGREEMENT
2 THAT IF CERTAIN ITEMS WERE FOUND IN THE COURSE OF THE SEARCH,
3 THAT THERE WOULD BE AN AWARD GIVEN?

4 **A.** NO. THIS WAS ANOTHER EVENT. THE SERGEANT HAD OFFERED
5 GIFT CARDS TO THE FIRST OFFICERS TO SEIZE A FIREARM FROM THE
6 STREETS IN SOUTHEAST.

7 **Q.** SO THAT IS WHAT THE SERGEANT IS REFERRING TO, TO THE BEST
8 OF YOUR KNOWLEDGE?

9 **A.** YES.

10 **Q.** NOW, SIR, AT A LATER POINT IN TIME -- STRIKE THAT.

11 YOU INDICATED, ON YOUR DIRECT TESTIMONY WITH
12 MR. HADEN, THAT MR. BURTON WAS HANDCUFFED WHEN HE WAS TAKEN OUT
13 OF THE VEHICLE; IS THAT CORRECT?

14 **A.** AS I RECALL, YES.

15 **Q.** AND DO YOU RECALL AT WHAT POINT IN TIME MR. BURTON WAS
16 PLACED UNDER ARREST?

17 **A.** I DON'T RECALL THE EXACT TIME.

18 **Q.** DID YOU VIEW MR. BURTON TO BE ARRESTED AT THE TIME THAT HE
19 WAS HANDCUFFED?

20 **A.** NO. HE IS BEING DETAINED.

21 **Q.** AND YOU DON'T HAVE AN INDEPENDENT RECOLLECTION AS TO WHAT
22 POINT IN TIME IT WAS REPORTED MR. BURTON WAS FORMALLY ARRESTED?

23 **A.** I DON'T RECALL.

24 **Q.** WOULD REVIEWING A REPORT BY OFFICER WILLIAMS ASSIST YOU
25 IN -- OR HELP TO REFRESH YOUR MEMORY AS TO WHAT POINT IN TIME

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A090

1 HE WAS FORMALLY ARRESTED?

2 **A.** SURE, IF I LOOK AT THE REPORT.

3 **Q.** OKAY. THANK YOU.

4 **MR. COTSIRILOS:** MAY I APPROACH, YOUR HONOR?

5 **THE COURT:** YOU MAY.

6 **MR. HADEN:** IT'S EXHIBIT 1.

7 **Q. (BY MR. COTSIRILOS):** IF YOU LOOK ON EXHIBIT NUMBER 1 IN
8 THE UPPER LEFT-HAND CORNER, I BELIEVE THERE IS A NOTATION:
9 ARREST, DATE AND TIME. DO YOU SEE THAT, SIR?

10 **A.** ON THE TOP PORTION OF THE REPORT?

11 **Q.** YES.

12 **A.** YES.

13 **Q.** AND DOES THAT REFRESH YOUR MEMORY AS TO WHAT POINT IN TIME
14 MR. BURTON WAS PLACED UNDER ARREST?

15 **A.** IT SAYS 8:10.

16 **MR. HADEN:** SAME OBJECTION.

17 **THE COURT:** DOES THAT REFRESH YOUR MEMORY, OR ARE YOU
18 JUST READING FROM THE REPORT?

19 **THE WITNESS:** I AM JUST READING FROM THE REPORT.

20 **THE COURT:** YOU DON'T RECALL THE TIME, EVEN AFTER
21 READING THE REPORT, OF YOUR OWN ACCORD?

22 **THE WITNESS:** CORRECT. I DON'T RECALL.

23 **Q. (BY MR. COTSIRILOS):** DID YOU FORM AN INDEPENDENT OPINION
24 AS TO WHAT POINT IN TIME MR. BURTON WAS PLACED UNDER ARREST?

25 **A.** I DID NOT.

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A091

1 Q. AT WHAT POINT IN TIME DID YOU PREPARE YOUR REPORT IN THIS
2 CASE?

3 A. AFTER WE BOOKED HIM INTO JAIL AND WE WENT TO THE STATION.

4 Q. DO YOU REMEMBER WHAT TIME THAT WAS, EITHER ON
5 NOVEMBER 7TH OR NOVEMBER 8TH?

6 A. I DON'T RECALL.

7 Q. NOW, SIR, WE'VE PREVIOUSLY MARKED ON DEFENDANT'S EXHIBIT B
8 THE LOCATION THAT MR. BURTON WAS PULLED OVER; IS THAT CORRECT?

9 A. YES.

10 Q. AND AT THE TIME THAT MR. BURTON MADE THE U-TURN ONTO
11 SKYLINE DRIVE GOING EAST, YOU WERE AT THE TRAFFIC LIGHT. THIS
12 IS MARKED DEFENDANT'S EXHIBIT A. YOU WERE AT THE TRAFFIC LIGHT
13 AT THE CORNER OF SKYLINE AND MEADOWBROOK; IS THAT CORRECT?

14 A. CORRECT.

15 (EXHIBIT NO. A MARKED FOR IDENTIFICATION)

16 Q. (BY MR. COTSIRILOS): AND THIS IS A VIEW OF SKYLINE AND
17 MEADOWBROOK -- A VIEW OF SKYLINE ROUGHLY FROM THE POINT THAT
18 YOU AND OFFICER WILLIAMS WERE STOPPED AT THE STOPLIGHT; IS THAT
19 CORRECT?

20 A. ROUGHLY, YES.

21 Q. AND THE SPEED LIMIT ON THAT STREET IS 25 MILES AN HOUR; IS
22 THAT CORRECT?

23 A. YES.

24 MR. HADEN: YOUR HONOR, IF OFFICER MENDOZA IS
25 INDICATING THAT THIS IS A CORRECT AND ACCURATE REPRESENTATION

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1 OF THIS AREA, THE UNITED STATES WOULD NOT OBJECT TO ITS
2 ADMISSION.

3 **THE COURT:** IS IT A FAIR AND ACCURATE REPRESENTATION
4 OF THE AREA?

5 **THE WITNESS:** YES.

6 **THE COURT:** SO WE'LL ADMIT A. AND B WASN'T ADMITTED.
7 BUT UNLESS THERE IS AN OBJECTION, WE'LL ADMIT THAT, GIVEN THE
8 TESTIMONY ALREADY ABOUT IT.

9 **MR. HADEN:** THAT'S FINE.

10 **THE COURT:** SO A AND B ARE IN.

11 **MR. COTSIRILOS:** THANK YOU.

12 (EXHIBIT NOS. A & B RECEIVED INTO EVIDENCE)

13 **Q. (BY MR. COTSIRILOS):** AND AT A LATER POINT THAT EVENING,
14 YOU WENT BACK TO THE SCENE AND MEASURED THE DISTANCE FROM THE
15 INTERSECTION TO WHERE MR. BURTON WAS STOPPED; IS THAT CORRECT?

16 **A.** CORRECT.

17 **Q.** AND WHEN YOU MEASURED FROM THE INTERSECTION, WAS THAT FROM
18 THE POINT THAT YOU AND OFFICER WILLIAMS WERE STOPPED IN YOUR
19 VEHICLE, OR FROM SOME OTHER POINT IN THE INTERSECTION?

20 **A.** THE LOUD MUSIC WAS MEASURED FROM -- WE WERE STOPPED AT
21 THIS POINT IN THE INTERSECTION.

22 **Q.** WHERE THE POINT OF VIEW IS THAT IS REFLECTED IN
23 DEFENDANT'S EXHIBIT B?

24 **A.** YEAH. APPROXIMATELY IN THAT SAME GENERAL AREA.

25 **Q.** OKAY. AND THE DISTANCE FROM WHERE YOU WERE STOPPED WITH

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A093

1 OFFICER WILLIAMS AND MR. BURTON WAS STOPPED IN THE VEHICLE WAS
2 APPROXIMATELY HOW FAR? DO YOU RECALL?

3 **A.** FROM ONCE WE HAD ALREADY BOTH STOPPED?

4 **Q.** YES.

5 **A.** TO WHAT PART OF THE INTERSECTION?

6 **Q.** WELL, YOU WENT BACK AND MEASURED FROM A POINT IN THE
7 INTERSECTION TO WHERE HE WAS STOPPED. DO YOU RECALL THAT FROM
8 YOUR REPORT?

9 **A.** YES.

10 **Q.** AND IT WAS ABOUT 164 FEET; IS THAT CORRECT?

11 **A.** CORRECT.

12 **Q.** AND IS IT CORRECT THAT YOU ACTIVATED YOUR SIGNAL -- STRIKE
13 THAT.

14 MR. BURTON MADE A LEGAL U-TURN AND BEGAN TRAVELING
15 EASTBOUND ON SKYLINE AFTER THE LEGAL U-TURN; IS THAT CORRECT?

16 **A.** CORRECT.

17 **Q.** AND YOU ACTIVATED YOUR SIGNAL, YOU'VE TOLD US, WHILE HE
18 WAS TURNING TOWARDS THE WEST CURB TO STOP HIS VEHICLE; IS THAT
19 CORRECT?

20 **A.** AS HE WAS PULLING TO THE CURB IS WHEN HIS TURN SIGNAL
21 LIGHT CAME ON.

22 **Q.** NOW, SIR, THE DISTANCE FROM WHICH MR. BURTON TURNED ON HIS
23 SIGNAL AND THAT HE CAME TO A STOP WAS APPROXIMATELY 36 FEET; IS
24 THAT CORRECT?

25 **A.** APPROXIMATELY.

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1 Q. OKAY. IN THE COURSE OF YOUR DUTIES WITH THE CRIME
2 SUPPRESSION UNIT ON NOVEMBER 7TH, WERE YOU GENERALLY ENFORCING
3 TRAFFIC LAWS, OR WHAT WAS THE PURPOSE OF YOUR DUTIES THAT
4 EVENING?

5 A. WE JUST SATURATED NEIGHBORHOODS AND LOOKED FOR TRAFFIC
6 VIOLATIONS, STOPS, GANG MEMBERS -- KNOWN GANG MEMBERS -- AND
7 HIGH NARCOTIC AREAS.

8 Q. OKAY. AND IN GENERAL, THEN, THE PURPOSE OF THE CRIME
9 SUPPRESSION UNIT IS NOT PRIMARILY TO ENFORCE TRAFFIC VIOLATIONS
10 BUT IT'S TO GO INTO HIGH CRIME AREAS WHERE THERE IS POTENTIALLY
11 HIGH NARCOTIC ACTIVITY OR HIGH GANG ACTIVITY AND TRY AND
12 SATURATE THAT AREA FOR THE PURPOSE OF SUPPRESSING THE GANG AND
13 DRUG ACTIVITY; IS THAT CORRECT?

14 A. YES. USING VEHICLE CODE SECTIONS TO MAKE STOPS ON CARS.

15 Q. OKAY. AND, HYPOTHETICALLY, IN THE COURSE OF YOUR
16 EXPERTISE AS AN OFFICER, LET'S SAY SOMEONE IS PARKED ON A
17 STREET AND YOU SEE THEM PULL OUT LEGALLY AND DRIVE THIRTY FEET,
18 MAKE A RIGHT-HAND SIGNAL AND TURN INTO A DRIVEWAY. WOULD YOU
19 CITE THEM FOR A VIOLATION OF 22108, NOT SIGNALING A TURN
20 100 FEET PRIOR TO MAKING THAT TURN?

21 A. I USE DISCRETION, SO I CAN'T SAY THAT I WOULD OR WOULDN'T
22 HAVE CITED HIM.

23 Q. IF SOMEONE ACTUALLY PULLED OUT FROM A CURB, DROVE
24 THIRTY FEET, PUT ON THEIR SIGNAL AND TURNED INTO A DRIVEWAY,
25 THEY WOULD NOT HAVE 100 FEET TO SIGNAL PRIOR TO THE TURN; IS

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A095

1 THAT CORRECT?

2 **A.** CORRECT.

3 **Q.** AND IN YOUR EXPERTISE WOULD YOU, AGAIN, ENFORCE THE LAW OF
4 TICKETING THEM FOR NOT SIGNALING 100 FEET PRIOR TO A TURN IF
5 THEY DIDN'T PHYSICALLY HAVE 100 FEET TO MAKE THAT SIGNAL?

6 **A.** I CAN'T SAY THAT I WOULD.

7 **Q.** WHY WOULD YOU NOT CITE SOMEONE IN THAT SITUATION?

8 **A.** I WOULD HAVE TO MAKE THE STOP AND FIND OUT -- AND SEE WHAT
9 THE INTENT WAS, AND USE MY DISCRETION AT THAT POINT. I CAN'T
10 SAY THAT I WOULD CITE SOMEBODY, BUT I DON'T KNOW, BECAUSE EVERY
11 CONTACT IS DIFFERENT FOR ME.

12 **Q.** SO YOUR TESTIMONY, SIR, IS THAT IF SOMEONE DOES NOT IMPEDE
13 TRAFFIC, HAS THIRTY FEET TO DRIVE BEFORE THEY CAN SIGNAL AND
14 TURN, YOU WOULD STILL STOP AND QUESTION THAT PERSON AS TO
15 WHETHER THEY HAD VIOLATED 22108, HAVING SIGNED 100 FEET
16 BEFORE THAT TURN?

17 **A.** I DON'T BELIEVE I MIGHT HAVE, NO.

18 **Q.** YOU DON'T THINK YOU WOULD STOP THAT PERSON?

19 **A.** I DON'T KNOW. I CAN'T ANSWER THAT.

20 **Q.** BECAUSE IT WOULD BE PHYSICALLY IMPOSSIBLE FOR THEM TO
21 COMPLY WITH THAT LAW UNDER THOSE CIRCUMSTANCES; IS THAT
22 CORRECT?

23 **A.** IF I KNEW THAT IS WHAT IT WAS, THEN, YES.

24 **Q.** NOW, WHEN YOU STOPPED MR. BURTON HE HAD A DRIVER'S LICENSE
25 ON HIM; IS THAT CORRECT?

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A096

1 **A.** I BELIEVE SO.

2 **Q.** AND IT LISTED 7955 AS HIS RESIDENCE; IS THAT CORRECT?

3 **A.** I BELIEVE SO.

4 **Q.** AND HIS REGISTRATION TO HIS CAR LISTED 7955 AS HIS
5 RESIDENCE, ALSO; IS THAT CORRECT?

6 **A.** I BELIEVE SO.

7 **Q.** AND HE WAS STOPPED RIGHT NEXT TO THAT ADDRESS?

8 **A.** CLOSE TO IT.

9 **Q.** AND THERE WAS NOTHING ILLEGAL FOUND ON MR. BURTON'S PERSON
10 WHEN HE WAS SEARCHED?

11 **A.** NO.

12 **Q.** NOTHING ILLEGAL FOUND IN HIS VEHICLE?

13 **A.** I DON'T RECALL.

14 **Q.** YOU RETURNED TO THE SCENE, YOU TOLD US -- AFTER YOU, I
15 BELIEVE, BOOKED MR. BURTON -- AND MADE SOME MEASUREMENTS IN
16 THIS CASE ABOUT THE DISTANCE FROM WHERE YOU SAW MR. BURTON FROM
17 THE INTERSECTION AND WHERE HE STOPPED AND, ALSO, I BELIEVE, THE
18 DISTANCE FROM WHERE YOU WERE AT THE INTERSECTION WHEN YOU FIRST
19 HEARD THE MUSIC; IS THAT CORRECT?

20 **A.** CORRECT.

21 **Q.** AND HAVE YOU OFTEN RETURNED TO SCENES TO MAKE
22 MEASUREMENTS, OTHER THAN IN TRAFFIC ACCIDENT RECONSTRUCTIONS,
23 TO EXPLAIN THE REASONS YOU DETAINED SOMEONE?

24 **A.** I HAVE DONE IT ONCE BEFORE, BUT NOT OFTEN.

25 **Q.** JUST ONCE BEFORE IN YOUR EXPERIENCE?

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A097

1 **A.** YES.

2 **Q.** AND HOW MANY YEARS HAVE YOU BEEN AN OFFICER?

3 **A.** ALMOST EIGHT YEARS.

4 **Q.** WHEN YOU LEFT THE INTERSECTION AT THE CORNER OF SKYLINE
5 AND MEADOWBROOK, WERE YOU TRAVELING AT THE SPEED LIMIT, 25
6 MILES AN HOUR, OR DID YOU SPEED UP TO TRAVEL FASTER THAN THE
7 SPEED LIMIT?

8 **A.** I DON'T RECALL LOOKING AT MY SPEEDOMETER BEFORE MAKING THE
9 STOP.

10 **Q.** YOU DON'T HAVE AN INDEPENDENT MEMORY?

11 **A.** NO.

12 **Q.** NOW, ASSUMING MR. BURTON MADE A LEGAL U-TURN AND WAS
13 TRAVELING 25 MILES AN HOUR AFTER THAT, IF YOU THEN COMMENCED
14 FROM THE INTERSECTION AT SKYLINE AND MEADOWBROOK AT 25 MILES AN
15 HOUR, IT WOULD BE DIFFICULT FOR YOU TO CLOSE THE DISTANCE ON
16 HIM UNLESS YOU HAD SPEEDED UP. DO YOU AGREE?

17 **A.** POSSIBLY, YES.

18 **Q.** SO TO ACTUALLY CLOSE THE DISTANCE AND GET CLOSE TO HIS
19 VEHICLE, YOU WOULD HAVE HAD TO TRAVEL FASTER THAN HE WAS
20 TRAVELING. DO YOU AGREE, IN YOUR COMMON EXPERIENCE?

21 **A.** IF THAT WAS THE CASE, YEAH.

22 **Q.** DO YOU HAVE ANY INDEPENDENT RECOLLECTION, AGAIN, WHETHER
23 YOU SPEEDED UP YOUR VEHICLE TO CATCH UP TO MR. BURTON?

24 **A.** I DO NOT.

25 **Q.** NOW, DO YOU RECALL THAT OFFICER SCHMIDT, THE PERSON

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A098

1 REFERRED TO AS BOBBY IN THE TRANSCRIPT -- DO YOU RECALL WHAT
2 TIME HE ARRIVED AT THE SCENE ON SKYLINE DRIVE THAT EVENING?

3 **A.** I DO NOT RECALL.

4 **Q.** WOULD REVIEWING HIS REPORT REFRESH YOUR MEMORY IN THAT
5 REGARD?

6 **A.** YES. IT WOULD TELL ME FROM THE REPORT.

7 **THE COURT:** BUT WOULD IT REFRESH YOUR RECOLLECTION,
8 OR YOU WOULD JUST RELY ON WHAT THE REPORT SAYS?

9 **THE WITNESS:** YES.

10 **THE COURT:** SO TRYING TO REFRESH IT PROBABLY IS NOT
11 GOING TO BE PRODUCTIVE.

12 **Q. (BY MR. COTSIRILOS):** DO YOU RECALL HOW MUCH AFTER
13 MR. BURTON WAS INITIALLY DETAINED OFFICER SCHMIDT ARRIVED AT
14 THE SCENE?

15 **A.** CAN YOU REPEAT THAT?

16 **Q.** SURE. DO YOU INDEPENDENTLY RECALL HOW MUCH AFTER
17 MR. BURTON WAS DETAINED OFFICER SCHMIDT ARRIVED AT THE SCENE?

18 **A.** I DO NOT RECALL.

19 **Q.** DO YOU RECALL WHETHER MR. BURTON WAS STILL DETAINED IN THE
20 BACK OF YOUR VEHICLE WHEN OFFICER SCHMIDT ARRIVED AT THE SCENE?

21 **A.** I DON'T RECALL.

22 **Q.** DO YOU HAVE AN INDEPENDENT MEMORY AS TO WHAT TIME IT WAS
23 THAT THE RESIDENCE AT 7955 SKYLINE WAS FIRST ENTERED SO THAT
24 THE FOURTH SEARCH WAIVER COULD BE EFFECTUATED?

25 **A.** I DON'T RECALL.

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1 **THE COURT:** LET'S TAKE A MOMENT HERE FOR THE
2 REPORTER.

3 **MR. COTSIRILOS:** SURE.
4 (REPORTER COUGHING)

5 **THE COURT:** LET'S TAKE A BREAK AND RETURN AT 10:40
6 AND CONTINUE WITH THE QUESTIONING.

7 WE'LL BE IN RECESS FOR TEN MINUTES. YOU CAN STEP
8 DOWN IN THE MEANTIME, SIR.
9 (RECESS FROM 10:30 A.M. TO 10:41 A.M.)

10 **THE COURT:** WE ARE BACK WITH THE PARTIES AND COUNSEL,
11 THE WITNESS IS ON THE STAND.

12 AND, MR. COTSIRILOS, YOU HAVE OTHER QUESTIONS HERE?

13 **MR. COTSIRILOS:** JUST A FEW, YOUR HONOR.

14 **Q. (BY MR. COTSIRILOS):** GOOD MORNING, AGAIN, OFFICER MEDINA.

15 **A.** GOOD MORNING.

16 **Q.** SIR, YOU TESTIFIED PREVIOUSLY THAT IT WAS ABOUT 36 FEET
17 FROM THE POINT IN TIME THAT MR. BURTON TURNED ON HIS SIGNAL
18 UNTIL THE POINT IN TIME THAT HE STOPPED ON SKYLINE DRIVE; IS
19 THAT CORRECT?

20 **A.** APPROXIMATELY, YES.

21 **Q.** AND YOU MEASURED THAT AFTER YOU WENT BACK TO THE SCENE; IS
22 THAT CORRECT?

23 **A.** CORRECT.

24 **Q.** AND IS IT CORRECT THAT THAT 36 FEET WOULD HAVE BEEN FROM
25 APPROXIMATELY WHERE HE COMPLETED HIS U-TURN AND THEN STARTED

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1 PULLING OVER TO THE SIDE OF THE ROAD?

2 **A.** IT WAS FROM WHERE I RECALL HIM TURNING HIS SIGNAL ON TO
3 WHERE HE STOPPED.

4 **Q.** OKAY. DO YOU RECALL HOW MUCH AFTER HE COMPLETED HIS
5 U-TURN HE TURNED HIS SIGNAL ON?

6 **A.** A COUPLE CAR LENGTHS AWAY.

7 **Q.** ALMOST IMMEDIATELY; IS THAT CORRECT?

8 **A.** IT WOULD BE A COUPLE CAR LENGTHS.

9 **Q.** SIR, LOOKING AT DEFENDANT'S A FOR IDENTIFICATION, THIS IS
10 A VIEW OF SKYLINE GOING EASTWARD; IS THAT CORRECT?

11 **A.** CORRECT.

12 **Q.** AND YOU SEE THAT THE VEHICLE -- POINTING TO WHERE A
13 VEHICLE WOULD HAVE TO MAKE A U-TURN -- IS APPROXIMATELY WHERE
14 MY FINGER IS, IS THAT CORRECT, WHERE A VEHICLE WOULD END UP
15 AFTER A U-TURN?

16 **A.** APPROXIMATELY.

17 **Q.** AND WHERE MR. BURTON WAS STOPPED IS ALMOST DIAGONALLY FROM
18 THAT LOCATION -- ALMOST DIRECTLY OPPOSITE THAT LOCATION; IS
19 THAT CORRECT?

20 **A.** DIRECTLY OPPOSITE FROM WHERE?

21 **Q.** FROM WHERE ONE WOULD COMPLETE A U-TURN?

22 **A.** A FEW HOUSES UP IS WHERE HIS HOUSE WAS.

23 **Q.** PARDON ME?

24 **A.** HIS HOUSE IS A FEW HOUSES UP.

25 **Q.** TWO HOUSES UP; IS THAT CORRECT?

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1 **A.** ABOUT THREE.

2 **Q.** SO YOU WOULD HAVE TO ALMOST IMMEDIATELY START TURNING TO
3 GET OVER TO THE SIDE OF THE ROAD TO GET TO HIS HOUSE AFTER YOU
4 COMPLETED THE U-TURN; IS THAT CORRECT?

5 **A.** POSSIBLY, YES.

6 **Q.** IN FACT, YOU WOULD HAVE TO ALMOST IMMEDIATELY START
7 TURNING YOUR VEHICLE TO THE WEST CURB TO --

8 **A.** YOU WOULD START MAKING YOUR WAY THAT WAY, YES.

9 **Q.** ALMOST IMMEDIATELY AFTER A U-TURN; IS THAT CORRECT?

10 **A.** I CAN'T ANSWER THAT. I MEAN --

11 **Q.** WELL, FROM YOUR COMMON EXPERIENCE, CAN YOU ANSWER THAT
12 FROM DRIVING ON ROADS, THAT AFTER MAKING A U-TURN YOU COULD GET
13 OVER TO THE WEST SIDE OF THE ROAD TO AN ADDRESS?

14 **A.** YES. YOU WOULD START MAKING YOUR WAY DOWN. I DON'T KNOW
15 HOW SOON AFTER, DEPENDING ON HOW MUCH TIME YOU HAVE SPACE-WISE,
16 TO MAKE THE TURN.

17 **Q.** VERY QUICKLY AFTER YOU COMPLETE THE U-TURN YOU WOULD HAVE
18 TO START PULLING TO THE WEST; IS THAT CORRECT?

19 **A.** YEAH. DEPENDING ON HOW FAR YOU'RE GOING TO GO.

20 **Q.** NOW, SIR, DID YOU CITE MR. BURTON FOR 22108 OF THE VEHICLE
21 CODE? DID YOU GIVE HIM A CITATION FOR VIOLATING THAT VEHICLE
22 CODE SECTION, WHICH WOULD BE NOT SIGNALING WITHIN 100 FEET OF A
23 TURN?

24 **A.** I DID NOT.

25 **Q.** DID YOU CITE HIM FOR DRIVING ON A SUSPENDED LICENSE?

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1 **A.** I DID NOT.

2 **Q.** AND DID YOU CITE HIM AT ANY TIME FOR 27007, WHICH WOULD BE
3 PLAYING MUSIC LOUD ENOUGH SO IT CAN BE HEARD BEYOND FIFTY FEET
4 FROM YOUR VEHICLE?

5 **A.** I DID NOT.

6 **Q.** WAS IT YOUR POLICY, AS OF NOVEMBER 7, 2014, TO TAKE PEOPLE
7 INTO CUSTODY FOR TRAFFIC VIOLATIONS, SUCH AS NOT SIGNALING
8 WITHIN 100 FEET OF A TURN OR PLAYING MUSIC SO LOUD THAT IT
9 COULD BE HEARD BEYOND FIFTY FEET FROM YOUR VEHICLE?

10 **A.** AM I ALLOWED TO TAKE PEOPLE INTO CUSTODY FOR THESE THINGS?

11 **Q.** YES. IN YOUR NORMAL PRACTICE WOULD YOU TAKE SOMEONE INTO
12 CUSTODY FOR A TRAFFIC VIOLATION SUCH AS THAT?

13 **A.** NO.

14 **Q.** YOU WOULD CITE AND RELEASE THEM?

15 **A.** YES, POSSIBLY.

16 **Q.** FOR DRIVING ON A SUSPENDED LICENSE, IF YOU STOPPED SOMEONE
17 WHO HAD A SUSPENDED LICENSE AND NO OTHER VIOLATIONS OF THE LAW
18 WERE DISCOVERED, WOULD YOU RELEASE THAT PERSON OR TAKE THEM
19 INTO CUSTODY?

20 **A.** IT DEPENDS. I MEAN, THE DRIVING WITH A SUSPENDED LICENSE
21 IS AN ARRESTABLE OFFENSE, BUT YOU USE DISCRETION ON THAT, AS
22 YOU USE DISCRETION ON THE CITATION.

23 **Q.** IN YOUR EXPERIENCE, IF YOU TAKE SOMEONE TO THE COUNTY JAIL
24 FOR A VIOLATION OF DRIVING ON A SUSPENDED LICENSE, ARE THEY
25 ACCEPTED INTO CUSTODY THERE?

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1 **A.** YES.

2 **Q.** OKAY. SO IN YOUR DISCRETION YOU CAN EITHER RELEASE
3 SOMEONE OR TAKE THEM INTO CUSTODY FOR DRIVING ON A SUSPENDED
4 LICENSE?

5 **A.** CORRECT.

6 **MR. COTSIRILOS:** THANK YOU, YOUR HONOR. I HAVE
7 NOTHING FURTHER AT THIS TIME.

8 **THE COURT:** ANY REDIRECT?

9 **MR. HADEN:** YES, YOUR HONOR.

10 **REDIRECT EXAMINATION**

11 **BY MR. HADEN:**

12 **Q.** OFFICER MEDINA, YOU JUST TESTIFIED THAT MAKING AN ARREST
13 WITH A SUSPENDED LICENSE IS AT YOUR DISCRETION. WHAT TYPE OF
14 FACTORS WOULD BE IMPORTANT TO YOU IN MAKING THAT DECISION?

15 **A.** HOW MANY CONVICTIONS THEY HAVE, WHETHER THEY ARE REPEAT
16 OFFENDERS OF THE VIOLATION.

17 **Q.** IF THEY ARE ON PROBATION?

18 **A.** IF THEY ARE ON PROBATION. JUST DEPENDING ON THE
19 INDIVIDUAL'S HISTORY.

20 **Q.** OFFICER MEDINA, YOU TESTIFIED THAT AFTER MR. BURTON WAS
21 PUT INTO CUSTODY YOU RETURNED TO THE SCENE TO TAKE
22 MEASUREMENTS; IS THAT CORRECT?

23 **A.** CORRECT.

24 **Q.** AND YOU ONLY HAD DONE THAN ON ONE PRIOR OCCASION?

25 **A.** CORRECT.

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1 Q. WHY DID YOU DO IT IN THIS CASE?

2 A. IN THIS CASE, DUE TO THE AMOUNT OF CONTRABAND SEIZED, THE
3 FIREARMS AND EVERYTHING ELSE.

4 Q. WHAT IS YOUR RECOLLECTION OF WHAT CONTRABAND WAS
5 ULTIMATELY FOUND IN MR. BURTON'S HOUSE?

6 A. CONTROLLED SUBSTANCE.

7 Q. WHAT CONTROLLED SUBSTANCE?

8 A. I BELIEVE ROCK COCAINE.

9 Q. WHAT ELSE?

10 A. ABOUT \$36,000, APPROXIMATELY, IN CASH.

11 Q. \$36,000 IN CASH?

12 A. CORRECT.

13 Q. IS THAT CORRECT?

14 A. YES.

15 Q. WHAT ELSE?

16 A. TWO FIREARMS.

17 Q. AND DO THEY HAVE ANY ASSOCIATED AMMUNITION?

18 A. YES. LOADED MAGAZINES. AND DUE TO THE AMOUNT OF
19 EVERYTHING ALTOGETHER, I WANTED TO MEASURE OUT THE VIOLATIONS
20 TO SECURE MY PROBABLE CAUSE FOR THE STOP.

21 Q. HOW LONG HAD YOU BEEN ON THE CRIME SUPPRESSION TEAM ON
22 NOVEMBER 7TH, 2014?

23 A. APPROXIMATELY TWO YEARS.

24 Q. HOW MANY NIGHTS WORKING ON THE CRIME SUPPRESSION TEAM HAVE
25 YOU EVER EXECUTED A FOURTH WAIVER WHERE YOU FOUND SOMETHING

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1 EQUIVALENT TO \$36,000 CASH, ROCK COCAINE, ROCK COCAINE BEING
2 MANUFACTURED IN THE FRONT YARD, MULTIPLE LOADED HANDGUNS, AND
3 ASSOCIATED AMMUNITION?

4 **A.** NOT TOO MANY.

5 **Q.** OFFICER MEDINA, IS IT POSSIBLE THAT YOU HAD YOUR
6 POLICE-ISSUED BODY CAMERA PHYSICALLY ON YOU ON NOVEMBER 7,
7 2014?

8 **A.** YES.

9 **Q.** IS IT FAIR TO SAY THAT BODY CAMERAS ARE RELATIVELY NEW FOR
10 THE SAN DIEGO POLICE DEPARTMENT?

11 **A.** YES.

12 **Q.** IS IT ALSO FAIR TO SAY THAT OVER THE LAST FEW YEARS THE
13 POLICY IN REGARDS TO BODY CAMERAS HAS BEEN EVOLVING AND
14 CHANGING?

15 **MR. COTSIRILOS:** OBJECTION. LEADING, YOUR HONOR.

16 **THE COURT:** SUSTAINED.

17 **Q. (BY MR. HADEN):** OFFICER MEDINA, ARE YOU GIVEN
18 INSTRUCTIONS ABOUT BODY CAMERA POLICIES?

19 **A.** YES.

20 **Q.** HAVE THEY BEEN THE SAME SINCE YOUR CAMERA WAS ISSUED TO
21 YOU?

22 **A.** NO.

23 **Q.** HAVE THEY CHANGED?

24 **A.** YES.

25 **Q.** WHAT IS YOUR UNDERSTANDING OF THE POLICY ON NOVEMBER 7TH

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1 OF 2014, AS IT APPLIED TO SPECIALIZED UNITS LIKE THE CST?

2 **A.** WE WERE TO OPERATE THEM WHENEVER FEASIBLE, WHENEVER --
3 WITHIN A REASONABLE AMOUNT OF TIME, DEPENDING ON THE CONTACT,
4 HOW IT WENT DOWN.

5 **Q.** WAS IT AN ABSOLUTE REQUIREMENT THAT THEY BE TURNED ON?

6 **A.** DEPENDING ON THE TYPE OF -- THEY WERE REQUIRED THAT THEY
7 BE ON DEPENDING ON A CERTAIN CONTACT, TYPE OF ARREST, OR GUN
8 TIME.

9 **Q.** TO THE BEST OF YOUR RECOLLECTION, DID YOU TURN YOUR CAMERA
10 ON WITH MR. BURTON?

11 **A.** I DON'T RECALL.

12 **Q.** IF YOU HAD TURNED YOUR CAMERA ON WOULD THAT FOOTAGE HAVE
13 BEEN DOWNLOAD AND RETAINED?

14 **A.** YES.

15 **Q.** OFFICER MEDINA, I'M USING NOW WHAT HAS BEEN PREVIOUSLY
16 ADMITTED AS GOVERNMENT EXHIBIT 7. DO YOU SEE THAT UP THERE?

17 **A.** YEAH.

18 **Q.** IN YOUR REPORT AND ON CROSS-EXAMINATION YOU WERE ASKED
19 ABOUT SOME SPECIFIC DISTANCES. DO YOU RECALL THAT TESTIMONY?

20 **A.** YES.

21 **Q.** ONE OF THE DISTANCES THAT YOU HAD MEASURED WAS 240 FEET.
22 USING GOVERNMENT EXHIBIT 7, CAN YOU HELP THE COURT UNDERSTAND
23 WHAT 240 FEET WE'RE TALKING ABOUT?

24 AND IF YOU NEED TO LOOK AT YOUR REPORT TO REFRESH
25 YOUR RECOLLECTION, PLEASE LET ME KNOW.

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1 **A.** THE 240 FEET I MEASURED WAS FROM THE INTERSECTION WHERE ME
2 AND MY PARTNER WERE STOPPED AT THE RED LIGHT.

3 **Q.** WOULD THAT BE APPROXIMATELY WHERE MY PEN IS ON THE
4 LEFT-HAND SIDE?

5 **A.** CORRECT.

6 **Q.** AND APPROXIMATELY AT THE LIMIT LINE, IF YOU'RE GOING
7 EASTBOUND ON SKYLINE DRIVE?

8 **A.** CORRECT.

9 **Q.** AND 240 FEET WAS FROM WHERE TO WHERE?

10 **A.** FROM THERE, EAST ACROSS THE INTERSECTION TO WHERE WE FIRST
11 SAW AND HEARD THE MUSIC. SAW THE VEHICLE AND SAW (SIC) MUSIC
12 AS IT TURNED AROUND THE BEND AND CAME INTO SIGHT.

13 **Q.** I AM GOING TO MOVE MY PEN ACROSS GOVERNMENT EXHIBIT 7,
14 OFFICER MEDINA. AND IF YOU COULD TELL ME APPROXIMATELY WHERE
15 THE 240 FEET WAS, APPROXIMATELY.

16 **A.** APPROXIMATELY RIGHT THERE.

17 **Q.** APPROXIMATELY IN THIS NEIGHBORHOOD HERE?

18 **A.** MAYBE JUST A LITTLE BIT OVER TO THE EAST.

19 **Q.** TO THE EAST?

20 **A.** RIGHT AROUND THERE.

21 **Q.** AND FOR THE RECORD, SLIGHTLY TO THE RIGHT AND BEFORE A
22 THIRD LANE, WHERE THE LEFT-HAND TURN LANE IS CREATED. WOULD
23 THAT BE FAIR?

24 **A.** YES.

25 **Q.** AND THAT IS THE DISTANCE WHERE YOU SAY YOU FIRST HEARD

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1 MR. BURTON'S MUSIC?

2 **A.** AND SAW THE HEADLIGHTS OF THE VEHICLE, YES.

3 **THE COURT:** AND THE AREA APPEARS TO BE HIGHLIGHTED BY
4 ASPHALT OR SOMETHING, IN TERMS OF A LINE THAT RUNS TOP TO
5 BOTTOM, RELATIVELY, RIGHT?

6 **THE WITNESS:** ROUGHLY, YOUR HONOR, YES.

7 **THE COURT:** SHORT LINE.

8 **MR. HADEN:** FOR THE RECORD, CONCURRENT WITH THE
9 COURT, THERE IS A SHADOW OR DEMARCATION LINE AND THAT IS
10 APPROXIMATELY THE AREA WHERE OFFICER MEDINA IS REFERRING TO.

11 **Q. (BY MR. HADEN):** OFFICER MEDINA, WE HEARD A PORTION OF A
12 TRANSCRIPT WHERE SERGEANT ESTRADA ASKED FOR THE REASONS FOR THE
13 STOP. DO YOU RECALL LISTENING TO THAT?

14 **A.** YES.

15 **Q.** AND IN YOUR BACKGROUND, TRAINING, AND EXPERIENCE, DO YOU
16 TYPICALLY MENTION ALL OF THE REASONS FOR A STOP WHEN THAT
17 REQUEST IS MADE OF YOU?

18 **A.** I'M SORRY. CAN YOU REPEAT THAT?

19 **Q.** IN THAT AUDIO TRANSCRIPT WE HEARD SOMEONE TELL SERGEANT
20 ESTRADA THAT THE REASON FOR THE STOP WAS FOR THE TURN SIGNAL,
21 CORRECT?

22 **A.** CORRECT.

23 **Q.** WHOEVER ANSWERED THAT QUESTION, IS IT REQUIRED THAT THEY
24 MENTION ALL OF THE DIFFERENT REASONS THAT YOU HAVE PROBABLE
25 CAUSE TO MAKE A STOP?

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1 **A.** NO.

2 **MR. COTSIRILOS:** OBJECTION. VAGUE. REQUIRED BY
3 WHOM?

4 **THE COURT:** OVERRULED. DO YOU UNDERSTAND THE
5 QUESTION?

6 **THE WITNESS:** YES.

7 **THE COURT:** YOU MAY ANSWER.

8 **THE WITNESS:** NO.

9 **MR. HADEN:** YOUR HONOR, THE UNITED STATES IS GOING TO
10 DISPLAY NOW WHAT WAS PREVIOUSLY ADMITTED AS DEFENDANT"S
11 EXHIBIT -- I THINK IT'S C.

12 **MR. COTSIRILOS:** C. E. I'M SORRY.

13 **THE COURT:** IT'S ACTUALLY MARKED FOR IDENTIFICATION,
14 NOT IN EVIDENCE. EXHIBIT 10, THE RECORDING, IS THE EVIDENCE.
15 THIS IS JUST HELPFUL.

16 **MR. HADEN:** AND, YOUR HONOR, IF I COULD, I WANT TO
17 ACTUALLY PLAY THIS FOR OFFICER MEDINA QUICKLY, IF I MAY.

18 **THE COURT:** YOU MAY.

19 **Q.** **(BY MR. HADEN):** OFFICER MEDINA, PLEASE FOLLOW ALONG.
20 (PLAYING DISPATCH CALL)

21 OFFICER MEDINA, WE JUST HEARD A VOICE SAY "TURN
22 SIGNAL AND;" IS THAT CORRECT?

23 **A.** CORRECT.

24 **Q.** WHOSE VOICE IS THAT?

25 **A.** I BELIEVE IT WAS OFFICER BERG.

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1 Q. SHE IS FEMALE?

2 A. YES.

3 (PLAYING DISPATCH CALL)

4 Q. WE JUST HEARD A VOICE SAY "SERGEANT, DID YOU COPY THAT?"
5 DO YOU RECOGNIZE WHOSE VOICE THAT IS?

6 A. I BELIEVE THAT WAS ME.

7 Q. OFFICER MEDINA, IN YOUR TRAINING AND EXPERIENCE, WHAT IS
8 THE DIFFERENCE BETWEEN A DETENTION AND AN ARREST?

9 A. AN ARREST IS SOMEBODY THAT YOU KNOW IS GOING TO JAIL AND
10 YOU ARE GOING TO TAKE THEM TO CUSTODY AND PROCESS THEM INTO THE
11 BOOKING PROCESS.

12 Q. AND WHAT IS A DETENTION?

13 A. A DETENTION IS WHEN WE CONDUCT OUR SEARCHES AND DO OUR
14 STUFF. WE TEMPORARILY DETAIN THEM. THEY ARE NOT FREE TO
15 LEAVE.

16 Q. IN YOUR BACKGROUND, TRAINING, AND EXPERIENCE,
17 APPROXIMATELY HOW MANY FOURTH WAIVER SEARCHES OF PRIMARY
18 RESIDENCES HAVE YOU CONDUCTED?

19 A. I HAVE DONE NUMEROUS ONES. I MEAN, I CAN'T KEEP TRACK OF
20 HOW MANY.

21 Q. AND IS IT YOUR POLICY TO DETAIN AN INDIVIDUAL WHO HAS THE
22 FOURTH WAIVER UNTIL YOU KNOW THE RESULTS OF THE SEARCH?

23 A. YES.

24 MR. HADEN: NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: AND, MR. COTSIRILOS.

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1 **MR. COTSIRILOS:** JUST ONE QUESTION FOR CLARITY'S
2 SAKE.

3 **RECROSS-EXAMINATION**

4 **BY MR. COTSIRILOS:**

5 **Q.** OFFICER, YOU INDICATED THAT YOU WENT BACK TO THE SCENE AND
6 MEASURED FROM THE POINT IN TIME THAT YOU WERE STOPPED AT THE
7 INTERSECTION WITH OFFICER WILLIAMS TO WHERE YOU HEARD THE
8 MUSIC. AND I THINK YOU INDICATED ON REDIRECT THAT LOCATION,
9 ABOUT 240 FEET; IS THAT CORRECT?

10 **A.** CORRECT.

11 **Q.** AND THE 164 FEET FROM THE POINT YOU WERE STOPPED AT THE
12 INTERSECTION, WAS FROM THE POINT THAT I'M POINTING WITH MY PEN
13 AT THIS POINT IN TIME ON GOVERNMENT EXHIBIT 7 TO THE LOCATION
14 THAT MR. BURTON CAME TO A STOP. WAS THAT THE 164 FEET YOU WERE
15 REFERRING TO?

16 **A.** I DON'T RECALL. I WOULD HAVE TO REFRESH MY MEMORY.

17 **Q.** WOULD YOU LOOK AT YOUR REPORT AND REFRESH YOUR MEMORY, IF
18 THAT IS HELPFUL TO YOU? I THINK IT'S ABOUT FOUR LINES UP FROM
19 THE BOTTOM OF THE PAGE.

20 **A.** YES, I SEE IT.

21 **Q.** DOES THAT REFRESH YOUR MEMORY, SIR?

22 **A.** I AM STILL READING IT. GIVE ME A SECOND.

23 (PAUSE)

24 IT DOESN'T SPECIFY IN MY REPORT FROM WHAT POINT IN
25 THE INTERSECTION TO WHERE IT WAS MEASURED TO ON THE SECOND

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1 VIOLATION.

2 **Q.** WELL, SIR, YOUR REPORT READS -- THE AREA YOU ARE REFERRING
3 TO TO REFRESH YOUR MEMORY READS "I MEASURED THE DISTANCE FROM
4 THE INTERSECTION TO THE LOCATION WHERE MR. BURTON'S CAR CAME TO
5 A STOP WHEN I PERFORMED THE TRAFFIC STOP. IT WAS APPROXIMATELY
6 164 FEET;" IS THAT CORRECT?

7 **A.** CORRECT.

8 **Q.** SO THAT WAS FROM WHAT LOCATION IN THE INTERSECTION TO
9 WHERE HE PULLED HIS VEHICLE OVER?

10 **A.** TO MY RECOLLECTION, IT WAS FROM THE POINT WHERE HE MADE
11 THE U-TURN.

12 **Q.** IT WAS 164 FEET FROM WHERE HE COMPLETED THE U-TURN TO
13 WHERE HE CAME TO A STOP?

14 **A.** I BELIEVE SO.

15 **Q.** OKAY.

16 **MR. COTSIRILOS:** THANK YOU. I HAVE NOTHING FURTHER.

17 **THE COURT:** MR. HADEN?

18 **MR. HADEN:** NOTHING FURTHER, YOUR HONOR.

19 **THE COURT:** YOU MAY STEP DOWN, SIR. THANK YOU.

20 AND IS THE NEXT WITNESS READY?

21 **MR. HADEN:** THE UNITED STATES CALLS SAN DIEGO POLICE
22 DEPARTMENT DETECTIVE SERGEANT ELIAS ESTRADA.

23
24
25
JANUARY 20, 2016

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN DOYLE BURTON, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

CERTIFICATE OF SERVICE

I, Carlton F. Gunn, hereby certify that on this 25th day of September, 2018, a copy of the Petitioner's Joint Appendix, Volume 1 of 3, was mailed postage prepaid, to the Solicitor General of the United States, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, counsel for the Respondent.

Respectfully submitted,

September 25, 2018

s/ Carlton F. Gunn
CARLTON F. GUNN
Attorney at Law