APPENDIX B

United States v. Gaston, No. 17-50130

WARDLAW, Circuit Judge, dissenting:

I respectfully dissent. The district court clearly erred by finding that the officers' search of the car was "reasonably designed to produce an inventory." Most significantly, the officers did not in fact produce an "inventory." There is nothing in the record that even remotely resembles an "inventory," a "caretaking procedure[] . . . to itemize the property to be held by the police." *South Dakota v. Opperman*, 428 U.S. 364, 370–71 (1976) (internal quotation marks and citation omitted).

By contrast, as the officers' incident reports reveal, the search took place as part of an "investigation." Written department inventory policy requires officers to list all "items of value" in the vehicle report. The officers here failed to do so. The vehicle report cross-references the arrest report, which describes the lock box and its contents under the section heading for "investigation." Moreover, the officers neglected to report any of the other items of value they found while searching Gaston's car, including a Wii video game player, a DVD player, a leather jacket, and tools. And under the heading for "related reports," where one would expect officers to account for inventory, the arrest report simply reads: "NONE."

By way of explanation, an officer testified that the omission of other items found in the car from the vehicle report signified that they "didn't have value."

The officer's post hoc rationalization strains credulity. For one, the officer had, seconds earlier, testified that jewelry, cash, and electronics are among the types of valuables officers would have listed on a vehicle report. But a DVD player and Wii video game player are unequivocally "electronics." For another, the same officer also testified that they decided to open the lock box because when asked about its contents, Gaston answered that "there was a whole bag of jewelry inside," and, therefore, the officers wanted to ensure they inventoried the jewelry before impounding the car. Video footage of the incident, however, proves otherwise. It shows that the officers did not inquire further as to the type of jewelry in the lock box. Instead, one officer shook the box and handed it to another officer, who said, "Sounds like there's something heavy like a gun. Come on, Guy, tell me." The officers' "inventory" search was but "a ruse for general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990).

We provide an exception for inventory searches because unlike investigative searches, inventory searches serve to protect the owner's property while in police custody, guard the police from danger, and insure the police against claims of lost, stolen, or vandalized property. *Opperman*, 428 U.S. at 369. Here, the officers knew Gaston was homeless. It was therefore much more probable that the electronics and other valuable items in Gaston's car that the officers declared "didn't have value" were in fact the kind of valuables the officers should have

inventoried to protect them against property claims. By failing to safeguard Gaston's valuables, then, the officers' actions undermined a key purpose for permitting warrantless inventory searches in the first place.

The panel majority misstates the district court's finding. The district court did *not* find dual motives for the search. The district court instead ruled that "the totality of the circumstances show that it was an inventory search." The panel majority's reliance on *United States v. Bowhay*, 992 F.2d 229 (9th Cir. 1993), is thus misplaced. The district court clearly erred in finding that the officers acted here solely to conduct an inventory search. *See United States v. Johnson*, 889 F.3d 1120, 1126–27 (9th Cir. 2018). I would therefore reverse the district court's denial of the motion to suppress.