

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICK JOSEPH DUNCAN, JR.
Petitioner,

v.

UNITED STATES,
Respondent.

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

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 6 2024

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PATRICK JOSEPH DUNCAN, Jr., AKA
Patrick Joseph Duncan, Jr., AKA Patrick
Duncan, Jr., AKA Joseph Duncan, Jr.,

Defendant - Appellant.

No. 23-2374

D.C. No.

2:22-cr-00553-PA -1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted December 4, 2024**
Pasadena, California

Before: OWENS, LEE, and KOH, Circuit Judges.

Patrick Joseph Duncan, Jr. appeals from the district court's denial of his
motion to suppress evidence resulting from an allegedly unlawful stop of his car

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

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

under the Fourth Amendment. “We review de novo the denial of a motion to suppress.” *United States v. Crawford*, 372 F.3d 1048, 1053 (9th Cir. 2004) (en banc). For investigatory stops, “[w]e review determinations of reasonable suspicion de novo, but factual findings underlying those determinations are reviewed for clear error, giving due weight to inferences drawn from those facts by resident judges and local law enforcement.” *United States v. Bontemps*, 977 F.3d 909, 913-14 (9th Cir. 2020) (citation and internal quotation marks omitted). As the parties are familiar with the facts, we do not recount them here. We affirm.

The district court properly determined that the stop was lawful because police had reasonable suspicion of an ongoing crime. Consistent with the Fourth Amendment, police may, with reasonable suspicion, conduct a brief stop (1) to investigate a past felony; or (2) “to prevent ongoing or imminent crime,” whether a felony or a misdemeanor. *United States v. Grigg*, 498 F.3d 1070, 1075 (9th Cir. 2007). For stops based on past misdemeanors, courts in this circuit “balanc[e] the interest of crime prevention and investigation against the interest in privacy and personal security.” *Id.* at 1077.

Here, police had reasonable suspicion of an ongoing theft under Cal. Penal Code § 484. Police stopped Duncan’s car while responding to 911 calls by a local BevMo! manager who reported that a man was stuffing tequila down his pants and attempting to leave the scene in a gold Cadillac. When police—who arrived in

time to follow Duncan’s car out of the BevMo! lot—stopped the car a few hundred feet away, it was reasonable to suspect the theft was still occurring because Duncan had not reached a place of temporary safety. *See People v. Gomez*, 179 P.3d 917, 921 (Cal. 2008) (“[T]heft continues until the perpetrator has reached a place of temporary safety with the property.”); *People v. Debose*, 326 P.3d 213, 233 (Cal. 2014) (explaining that no “place of temporary safety” has been reached “while an immediate and active pursuit to recover the property is in progress”).

As police had reasonable suspicion of an ongoing crime, no interest balancing was required. The stop was lawful, and evidence obtained as a result was not the “fruit of the poisonous tree.” *United States v. Twilley*, 222 F.3d 1092, 1095 (9th Cir. 2000). Thus, the district court properly denied Duncan’s motion to suppress.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 18 2025

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PATRICK JOSEPH DUNCAN, Jr., AKA
Patrick Joseph Duncan, AKA Patrick
Duncan, AKA Joseph Duncan,

Defendant - Appellant.

No. 23-2374

D.C. No.

2:22-cr-00553-PA -1

Central District of California,
Los Angeles

ORDER

Before: OWENS, LEE, and KOH, Circuit Judges.

The panel has voted to deny Appellant's petition for panel rehearing and petition for rehearing en banc.

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. 40.

Appellant's petition for panel rehearing and petition for rehearing en banc are DENIED.

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. CR 22-553 PADefendant Patrick Joseph Duncan, Jr.Social Security No. 2 5 1 7

Also Known As: Duran, Joseph

(Last 4 digits)

akas: Also Known As: Duncan, Joseph

SENTENCING JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
Sept.	18	2023

COUNSELJake Crammer, DFPD/ Lisa LaBarre, DFPD

(Name of Counsel)

PLEA

☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO** ☐ **NOT**
CONTENDERE **GUILTY**

FINDINGThere being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) (viii) as charged in Count 1 of the Four-Count Indictment;

Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) as charged in Count 3 of the Four-Count Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Patrick Joseph Duncan, Jr. is hereby committed on Counts 1 and 3 of the Indictment to the custody of the Bureau of Prisons for a term of 140 months. This term consists of 140 months on Count 1 and 120 months on Count 3 of the Indictment, to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years. This term consists of five years on Count 1 and three years on Count 3 of the Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
3. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
4. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the U.S. Probation

USA vs. PATRICK JOSEPH DUNCAN, JR.

Docket No.: CR 22-553 PA

and Pretrial Services Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs. The defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.

5. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the Court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.
6. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
7. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name, nor shall the defendant use, any name other than the defendant's true legal name without the prior written approval of the Probation Officer.
8. The defendant shall cooperate in the collection of a DNA sample from the defendant.
9. The defendant shall submit the defendant's person, property, house, residence, vehicle, papers, or other areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.

The Court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

The Court recommends that the defendant be considered for participation in the Bureau of Prison's Residential Drug Abuse Program (RDAP).

It is ordered that the defendant shall pay to the United States a special assessment of \$200, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

USA vs. PATRICK JOSEPH DUNCAN, JR.Docket No.: CR 22-553 PA

The Court has found that the property identified in the preliminary order of forfeiture is subject to forfeiture. The preliminary order is incorporated by reference into this judgment and is final.

The Court further recommends that the defendant be incarcerated in a Federal Correctional Institution in Lompoc, California.

On Government's motion, all remaining counts are ORDERED dismissed.

Defendant advised of his right to appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

September 18, 2023

Date



U. S. District Judge/Magistrate Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

September 18, 2023

Filed Date

By /s/ Kamilla Sali-Suleyman

Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

USA vs. PATRICK JOSEPH DUNCAN, JR.

Docket No.: CR 22-553 PA

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. PATRICK JOSEPH DUNCAN, JR.

Docket No.: CR 22-553 PA

☐ The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court, Central District of California
Attn: Fiscal Department
255 East Temple Street, Room 1178
Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

USA vs. PATRICK JOSEPH DUNCAN, JR.Docket No.: CR 22-553 PA

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date

Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date

U. S. Probation Officer/Designated Witness

Date

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 22-553 PA

Date March 27, 2023

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Interpreter N/A

Kamilla Sali-Suleyman

Deputy Clerk

Maria Bustillos

Court Reporter

David Williams, AUSA

*Assistant U.S. Attorney*U.S.A. v. Defendant(s):Present Cust. BondAttorneys for Defendants:Present App. Ret.

Patrick Joseph Duncan, Jr.

X X

Lisa LaBarre, DFPD

Jake Crammer, DFPD

X X

X X

Proceedings: MOTION to Suppress Evidence and Statements [27]

Cause called; appearances made. Before the Court is Defendant's Motion to Suppress Evidence and Statements (Docket No. 27). Court hears oral argument. For the reasons statement on the record, the motion is denied. A Status Conference is set for April 19, 2023, at 1:30 p.m.

IT IS SO ORDERED.

_____: 51
Initials of Deputy Clerk kss

lis

cc: USMO, PSA

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 - - -

5 HONORABLE PERCY ANDERSON, DISTRICT JUDGE PRESIDING

6
7 UNITED STATES OF AMERICA,)
8 Plaintiffs,)
9)
10 vs.) No. CR 22-553-PA
11)
12 PATRICK JOSEPH DUNCAN, JR.,)
13 Defendant.)
14 _____)

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 *MOTION TO SUPPRESS EVIDENCE and STATEMENTS*
17 LOS ANGELES, CALIFORNIA
18 MONDAY, MARCH 27, 2023
19

20 _____
21 MARIA R. BUSTILLOS
22 OFFICIAL COURT REPORTER
23 C.S.R. 12254
24 UNITED STATES COURTHOUSE
25 350 WEST 1ST STREET
SUITE 4455
LOS ANGELES, CALIFORNIA 90012
(213) 894-2739

A P P E A R A N C E S

**ON BEHALF OF THE PLAINTIFFS,
UNITED STATES OF AMERICA:**

OFFICE OF THE UNITED STATES
ATTORNEY
BY: DAVID W. WILLIAMS, ESQ.
312 NORTH SPRING STREET
SUITE 1000
LOS ANGELES, CA 90012
(213) 894-0141

**ON BEHALF OF THE DEFENDANT,
PATRICK JOSEPH DUNCAN, JR.:**

OFFICE OF THE FEDERAL PUBLIC
DEFENDER
BY: LISA SHINAR LaBARRE,
ESQ.
321 EAST 2ND STREET
LOS ANGELES, CA 90012
(213) 894-1476

OFFICE OF THE FEDERAL PUBLIC
DEFENDER
BY: JAKE CRAMMER, ESQ.
321 EAST 2ND STREET
LOS ANGELES, CA 90012
(213) 894-2854

ALSO APPEARING: OFFICER BRYCE LOLL

I N D E X

PAGE

MOTION TO SUPPRESS EVIDENCE and STATEMENTS:

4

1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 27, 2023

2 -o0o-

3 (COURT IN SESSION AT 2:04 P.M.)

4 THE COURTROOM DEPUTY: Calling CR 22-553-PA:

5 United States of America v. Patrick Joseph Duncan.
6 Counsel, please state your appearances, starting with
7 the Government.

8 MR.WILLIAMS: Good afternoon, Your Honor.
9 David Williams for the United States. And with me at
10 counsel table is Officer Bryce Loll.

11 MR. CRAMMER: Good afternoon, Your Honor.
12 Jake Crammer from the Federal Public Defender's Office,
13 representing Patrick Duncan, who is present and in
14 custody. With me at counsel table is DFPD Lisa LaBarre
15 and as a preliminary matter, I'd like to request that
16 Mr. Duncan's hands be unshackled for this proceeding.

17 THE COURT: That's up to the marshals.

18 It will just be a couple of minutes before we
19 get started.

20 All right. I have read the papers. I've
21 looked at the footage -- the dash cam footage. I've
22 looked at the officers' footage from the officers'
23 cameras. And I think I have a pretty good sense of what
24 happened here. All.

25 Right. Does the Defense wish to be heard?

1 MR. CRAMMER: Yes, Your Honor.

2 At the outset, Your Honor, if the Court intends
3 to have an evidentiary hearing, we do request --

4 THE COURT: I don't intend to have an
5 evidentiary hearing. There's no disputed issues of
6 fact.

7 MR. CRAMMER: Understood, Your Honor.

8 Your Honor, the Defense requests that the Court
9 suppress all evidence and statements obtained as a
10 result of the unlawful search and seizure of Mr. Duncan
11 on September 22, 2022.

12 Out of respect for the Court's time, I plan to
13 address only the *Grigg* argument and the unlawful
14 prolongation argument. For the rest of the arguments
15 raised in its motion to suppress, the Defense stands on
16 its briefing, unless Your Honor has questions about
17 these arguments that you would like me to address.

18 First, the September 22 stop was
19 unconstitutional from the start under *Grigg*.

20 In *Grigg*, the Ninth Circuit held that a Terry
21 stop to investigate a completed misdemeanor is only
22 justified if the conduct poses a risk to public safety
23 and if the police possess no alternative means to
24 identify the suspect.

25 Contrary to the Government's assertions, SLO PD

1 pulled over Mr. Duncan's car in order to investigate
2 shoplifting, a misdemeanor offense under California --

3 THE COURT: Excuse me, Counsel --

4 THE COURT REPORTER: Can he slow down? He's
5 going too fast.

6 THE COURT: Yes, he is going a little fast.

7 MR. CRAMMER: I'll slow down, Your Honor.

8 My apologies.

9 Contrary to the Government's assertions, SLO PD
10 pulled over Mr. Duncan's car in order to investigate
11 shoplifting.

12 THE COURT: When -- when -- excuse me -- when
13 does the witness report that the shoplifter is getting
14 into the Cadillac? What time was that?

15 MR. CRAMMER: What time does the witness report
16 that he was getting into the Cadillac?

17 THE COURT: Yes.

18 MR. CRAMMER: Yes, Your Honor, that occurred --

19 THE COURT: Isn't it about 7:58?

20 MR. CRAMMER: That sounds right, Your Honor,
21 yes.

22 THE COURT: Okay. And in your papers you cited
23 that the officers had pulled them over at 8:00.

24 MR. CRAMMER: That's right.

25 THE COURT: And as a matter of fact, when the

1 dispatchers writing down that he's getting into the
2 Cadillac, that's about 7:57. And as a matter of fact,
3 the -- I mean, he's barely -- the Cadillac never gets
4 out of the parking lot; right?

5 MR. CRAMMER: No, Your Honor. It does get out
6 of the --

7 THE COURT: Well, excuse me, that's a bad
8 question.

9 The Cadillac never gets out of the -- the
10 police are actually behind the Cadillac before it's out
11 of the parking lot; isn't that true?

12 MR. CRAMMER: Before it enters
13 Los Osos Valley Road.

14 THE COURT: They're still in the parking lot
15 when the -- when the police are actually behind them.

16 MR. CRAMMER: That is correct, according to the
17 dash cam footage.

18 THE COURT: Okay.

19 MR. CRAMMER: It -- that argument goes to
20 completion, Your Honor. And -- and we also contend that
21 the offense was completed by the time that --

22 THE COURT: Do you have a case that says a
23 crime is completed when somebody gets into the getaway
24 car and they're still in a parking lot from the scene of
25 the crime and less than a minute has gone by? Do you

1 have any cases?

2 MR. CRAMMER: There is, Your Honor. We cite to
3 a case, *United States v. Ramirez* in our briefing. In
4 *Ramirez*, the Court upheld a jury's finding that the
5 driver had reached a place of temporary safety, because
6 the robber basically had robbed someone on a sidewalk
7 and then got into their car right after; backed up
8 toward the person; then got out of their car to rob them
9 again. And the Court found that that was a place of
10 temporary safety.

11 THE COURT: Wait a minute. Weren't they
12 confirming what a jury had found in that case?

13 MR. CRAMMER: Every -- every case that comes up
14 on appeal, that's the situation.

15 THE COURT: But this case is not. This case --
16 your client is in a car, less -- he's still in the
17 parking lot from the scene of the crime and the police
18 have him in sight in less than a minute.

19 MR. CRAMMER: That -- that is true, Your Honor,
20 but when he got into the car in the parking lot, he
21 reached a temporary place of safety.

22 THE COURT: Counsel, that's kind of -- I'm not
23 sure I'm buying that.

24 MR. CRAMMER: Your Honor, I would turn the
25 Court to the factors that are set forth in *Haynes* in

1 which --

2 THE COURT: In what?

3 MR. CRAMMER: In Haines --

4 *United States v. Haynes*. That's -- or *State v. Haynes*,
5 rather that's a California appellate case, cited by
6 both, the Government in their opposition and us in our
7 reply. In that case, the Court looked to four factors:
8 The first was whether the -- whether the defendant's
9 actions put the victim more -- more at risk or less at
10 risk. Here, they were driving away from the -- from the
11 Bevmo where the --

12 THE COURT: I don't think *Haynes* is really
13 talking about the situation we have here.

14 MR. CRAMMER: It's definitely talking about a
15 different factual situation.

16 THE COURT: Yeah, it is.

17 MR. CRAMMER: *Haynes* is very distinct,
18 factually; however, the legal framework it applies is
19 the -- is the framework used by courts to determine
20 whether someone's reached a temporary place of safety
21 and a theft offense has been completed.

22 THE COURT: So your guy had been found a couple
23 of hours later out on the freeway. You'd have a much
24 better argument -- or if he had gotten at home, you'd
25 have a much better argument, but when he's still at the

1 scene of the crime when a witness in less than a minute
2 earlier has described this guy getting into that car and
3 the police have him in sight in less than a minute, it's
4 hard to fathom that the crime has been -- has been
5 completed.

6 MR. CRAMMER: With respect, Your Honor, he was
7 not at the scene of the crime when the police found him.
8 He had gotten into a car and was exiting the parking
9 lot. The scene of the crime was Bevmu. If he had
10 committed a robbery in the --

11 THE COURT: Isn't flight part of the conduct
12 when determining whether not an offense has come to
13 rest?

14 MR. CRAMMER: If there is an immediate pursuit
15 and the driver is driving recklessly, then courts have
16 at times found that someone did not reach a place of
17 temporary safety, such as in a --

18 THE COURT: Isn't flight part of the -- isn't
19 flight part of the -- isn't flight part of the conduct
20 at issue here --

21 Your Honor, they were not fleeing --

22 THE COURT: -- in determining -- in determining
23 whether or not this offense had been completed?

24 MR. CRAMMER: It is relevant, Your Honor. The
25 question is whether they were in flight being actively

1 pursued when they got into the car. When they got into
2 the car, the shoplifting offense was completed, and they
3 drive away very slowly.

4 THE COURT: The shoplifting -- if your
5 client -- by the way, can you aid and abet a
6 misdemeanor?

7 MR. CRAMMER: I do not know, Your Honor, but
8 I'm willing to submit --

9 THE COURT: I'm willing to submit that you
10 probably can.

11 MR. CRAMMER: Yeah.

12 THE COURT: Yeah.

13 MR. CRAMMER: But yeah, the -- the scene of the
14 crime here was Bevmo. It was not the parking lot. So
15 when they got into the car, under the -- under the
16 Haynes factors, again, was the victim more safe or less
17 safe? They were more safe, because they were driving
18 away from the scene of the crime. The robber was more
19 safe because he was going to safety. There was no
20 common purpose. They didn't get in the car to continue
21 the theft. And there was not --

22 THE COURT: Well, they had to get away. You
23 have to get away.

24 MR. CRAMMER: They're driving away, Your Honor,
25 but they're not being actively pursued.

1 THE COURT: They're not --

2 MR. CRAMMER: It's --

3 THE COURT: Part of committing this crime is
4 being able to -- is flight and being able to -- being
5 able to get away.

6 MR. CRAMMER: That -- that may be the case,
7 Your Honor, but they get away the moment they enter a
8 place of temporary safety which in this case --

9 THE COURT: You think -- you think getting into
10 a getaway car is a place of safety?

11 MR. CRAMMER: I think if they had --

12 THE COURT: Is that your position?

13 MR. CRAMMER: My position is that under the
14 *Haynes* factors, the theft had been completed by this
15 time because they did not -- they did not drive away
16 recklessly. In *Thongvilay* --

17 THE COURT: Oh, that makes a difference --

18 Yes, it does, Your --

19 THE COURT: -- to drive away recklessly?

20 MR. CRAMMER: Yes, Your Honor. In -- in
21 *Thongvilay*, the --

22 THE COURT: In determining whether or not
23 you've reached a place of safety?

24 MR. CRAMMER: That is -- that is a fact that
25 the California appellate courts have relied on in case

1 after case. In *Thongvilay* one of the main -- and
2 there's a dispute in that case. The dissent says that
3 they reach a place of temporary --

4 THE COURT: I think you're taking those cases
5 out of context, but go ahead.

6 MR. CRAMMER: They say they reached a place of
7 temporary safety because they got in the car, the
8 dissent does. The majority says they did not, and they
9 look at two factors: One, was that they left the
10 passenger door open as they were driving away, showing
11 that they were trying to get away in a hurried manner,
12 that showed that they were still fleeing, and they also
13 look at the fact that a family member of the robber had
14 basically chased them down and instantly was trying to
15 find them. Here they drove away for some time before
16 the -- before the officers were able to find them --

17 THE COURT: They got out of the parking lot.

18 MR. CRAMMER: Understood, Your Honor, but the
19 parking lot, again, is not where the crime took place.

20 THE COURT: Okay.

21 MR. CRAMMER: Also, Your Honor, the car was
22 actually stopped on Los Osos Valley Road in a different
23 parking lot. They were not --

24 THE COURT: I know that.

25 MR. CRAMMER: They were not stopped in this

1 parking lot --

2 THE COURT: No, he had --

3 MR. CRAMMER: -- just to be clear.

4 THE COURT: He was following them -- if you
5 look at that footage, he's -- he's following them in
6 response to the witness' call before they get out of
7 parking lot.

8 MR. CRAMMER: Understood, Your Honor.

9 While he is responding in the parking lot, the
10 Defense contends that that was a place of temporary
11 safety, and the offense had been completed.

12 THE COURT: But if I don't buy that, doesn't
13 this whole thing kind of fall apart?

14 MR. CRAMMER: Well, Your Honor, it does not
15 because the evidence should also be suppressed due to
16 the unlawful prolongation in this case.

17 THE COURT: Doesn't that only apply in traffic
18 incidents?

19 MR. CRAMMER: It does not only apply in traffic
20 incidents.

21 THE COURT: And by the way, when did they
22 discover the liquor bottles?

23 MR. CRAMMER: The liquor bottles, I believe
24 they discover after they've detained Mr. Duncan and then
25 they go back to the car to investigate the car.

1 THE COURT: There are two pat-downs of
2 Mr. Duncan; right?

3 MR. CRAMMER: There -- sorry, Your Honor?

4 THE COURT: There -- Mr. Duncan is taken to the
5 car first; right?

6 MR. CRAMMER: Uh-huh.

7 THE COURT: Okay. And then the officer is
8 called away; right?

9 MR. CRAMMER: Yes, Your Honor.

10 THE COURT: Okay. And while he is called away,
11 that's when they discover the liquor bottles; right?

12 MR. CRAMMER: That is correct, Your Honor.

13 THE COURT: Okay. Well, when they discover the
14 liquor bottles, doesn't that give him probable cause?

15 MR. CRAMMER: Yes, Your Honor, but at that
16 point, the stop had already been unlawfully prolonged.

17 THE COURT: But, sir, if they -- if they had --
18 if they had -- if the crime has not been completed,
19 okay --

20 MR. CRAMMER: Uh-huh.

21 THE COURT: -- can't they stop it? It's an
22 ongoing crime. It's an ongoing misdemeanor that the
23 officer is observing. Can't they stop the car?

24 MR. CRAMMER: If it is an ongoing crime, the
25 officers are allowed to stop the car, that -- that is

1 true, Your Honor.

2 THE COURT: Okay.

3 MR. CRAMMER: However, when they stop the car,
4 they're limited to taking actions that further the
5 purpose of that stop. And that -- and that's a doctrine
6 that applies outside of the traffic stop context. In
7 *Florida v. Royer*, which the Defense cited in its
8 reply --

9 THE COURT: Well, what are they -- what are
10 they investigating when they stop the car?

11 MR. CRAMMER: They're investigating a
12 shoplifting offense.

13 THE COURT: Okay.

14 MR. CRAMMER: And when they -- when they walk
15 up to the car, Officer Loll has a clear identification
16 of a man in the backseat who perfectly matches --

17 THE COURT: He doesn't have the right to get
18 everybody out of the car?

19 MR. CRAMMER: The description -- he may have a
20 right to get people out of the car, but he doesn't have
21 a right to start investigating other crimes that may
22 have been committed --

23 THE COURT: He's investigating -- he's
24 investigating the theft; correct?

25 MR. CRAMMER: I -- I do not believe that's

1 correct, Your Honor.

2 THE COURT: You just said he was
3 investigating -- you just said he was investigating the
4 shoplifting.

5 MR. CRAMMER: That's the purpose of the stop,
6 but when he pulls Mr. Duncan out, Mr. Duncan does not
7 match the description of the suspect whatsoever.

8 THE COURT: It doesn't matter. As far as he
9 knew, he could have been an aider or abettor. He could
10 be aiding and abetting the theft. He's a getaway
11 driver.

12 MR. CRAMMER: Further supporting that they
13 weren't investigating the shoplifting at that moment,
14 they don't ask Mr. Duncan a single question about
15 shoplifting, about Bevmo, about stealing liquor bottles.
16 None of that is addressed with Mr. Duncan.

17 THE COURT: He doesn't have to ask him anything
18 at that point.

19 MR. CRAMMER: They do ask him things -- they do
20 ask him questions.

21 THE COURT: You're not trying to get those
22 statements: Where are you going, where have you been.
23 Are you trying to suppress that?

24 MR. CRAMMER: No, Your Honor. The questions
25 about whether he's carrying anything illegal on him,

1 whether he's on probation or parole, those are
2 investigations into unrelated crimes, which is not
3 something that officers are supposed to do, pursuant a
4 stop that's not supported by probable cause. When
5 they -- as the Supreme Court said in *Florida v. Royer*,
6 it is the State's burden to demonstrate that the seizure
7 it seeks to justify on the basis of reasonable suspicion
8 was sufficiently limited in scope and duration --

9 THE COURT: Well, when he walks up to the car,
10 he sees the meth pipe; right?

11 MR. CRAMMER: According to Officer Loll's
12 statements that is what he says. We contend that if you
13 look at the body cam footage, a meth pipe is not visible
14 when he --

15 THE COURT: That doesn't mean it didn't exist.
16 And you don't have any facts to suggest that what he
17 said is not true?

18 MR. CRAMMER: The fact we have to suggest it is
19 that it's not visible in the body cam footage in which
20 we see Officer Loll --

21 THE COURT: That's not a fact. It's
22 just not -- there are a lot of things that aren't
23 captured -- that are captured by video.

24 MR. CRAMMER: Understood, Your Honor.

25 THE COURT: And a meth pipe is recovered from

1 the -- is recovered from the car, isn't it?

2 MR. CRAMMER: It is recovered from the car.
3 Officer Loll did state in his FBI interview that he
4 would not have arrested Mr. Duncan for that meth pipe
5 because it did not belong to him.

6 THE COURT: What does that have to do -- what
7 does that have to do with whether or not he saw the
8 pipe -- he saw the meth pipe?

9 MR. CRAMMER: It just shows that there's
10 distance between that meth pipe and Mr. Duncan.

11 Your Honor, when he pulled Mr. Duncan out of
12 the car, even though he did not match the description of
13 the suspect whatsoever, he began investigating whether
14 he was committing other crimes. He asked him if he had
15 anything in his pocket that was illegal. He asked him
16 whether he was on probation and parole. That clearly
17 does not further the purpose of investigating a
18 complete -- a shoplifting offense. That was not a
19 shoplifting investigation. That's just sort of
20 wide-ranging investigation into other -- other crimes
21 that the Supreme Court and -- and various other courts
22 multiple times have said is unconstitutional in the --
23 in the investigatory stop context.

24 Your Honor, two more points that the Defense
25 would like to raise: If this shoplifting offense was

1 completed and -- and it was, in fact, a shoplifting
2 offense, which we contend it was, then this stop simply
3 cannot survive the Ninth Circuit's opinion in *Grigg*.
4 The only public safety risk identified in the
5 Government's opposition is the risk that the suspect
6 would shoplift from Bevmo again. *Grigg* was faced with
7 the same type of claim, and the panel held that past
8 misdemeanor conduct need not spare the police to instant
9 action as might the opportunity to stop to someone who's
10 dangerous. Past misdemeanor conduct was not enough
11 there, and it's not enough here.

12 Furthermore, SLO PD --

13 THE COURT: So let me ask you a question:
14 Assuming for the moment that the crime had not been
15 completed, that investigation that they conduct prior to
16 uncovering the gun and the meth, hadn't that ripened
17 into -- that reasonable suspicion ripened into
18 reasonable cause?

19 MR. CRAMMER: Assuming that the misdemeanor was
20 completed --

21 THE COURT: Assuming that the misdemeanor was
22 completed.

23 MR. CRAMMER: Yes.

24 THE COURT: Because when they recovered those
25 bottles, that gave them probable cause.

1 MR. CRAMMER: If the misdemeanor was completed,
2 Your Honor, then they would not have been able to stop
3 the car in the first place under *Grigg*. *Grigg* does not
4 allow officers to perform --

5 THE COURT: But if it wasn't completed.

6 MR. CRAMMER: Oh, if it was not completed.

7 THE COURT: If it was not completed.

8 MR. CRAMMER: Then the discovery in the bottles
9 give them probable cause.

10 THE COURT: Uh-huh.

11 MR. CRAMMER: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. CRAMMER: That would be probable cause at
14 that point. That's after the evidence we're seeking to
15 suppress most of it has been uncovered. And --

16 THE COURT: Wait a minute. No, it wouldn't,
17 because they've -- before they recovered the meth and
18 the gun, that's during that second phase when he comes
19 back.

20 MR. CRAMMER: They had recovered the meth
21 before in the first phase -- in the first initial
22 pat-down they recovered the meth. They recovered the
23 gun, and then they recover some baggies and a scale
24 afterwards.

25 Now, that -- the stop of Duncan afterwards,

1 even if they had probable cause that a shoplifting had
2 occurred at that point, they had probable cause that had
3 been committed by the suspect of the shoplifting -- the
4 person who matched the description -- the man who was
5 Latino and was wearing a baggy jacket.

6 THE COURT: If you can -- if you can aid and
7 abet -- if you're a getaway driver and you can aid --
8 you can aid and abet a theft.

9 MR. CRAMMER: Your Honor, if it's okay, I would
10 like to discuss the second *Grigg* factor briefly.

11 THE COURT: You'd like to discuss what?

12 MR. CRAMMER: The second *Grigg* factor briefly.

13 THE COURT: Okay.

14 MR. CRAMMER: Under the second *Grigg* factor,
15 SLO PD would not have been permitted to stop the car if
16 they had alternative means to identify the suspect.
17 Here, they had ample alternative means. They had a
18 Bevmo manager who told them that he had seen him on
19 multiple times in the past. They had security camera
20 footage at the Bevmo that they could have reviewed to
21 identify the suspect. And they could have run the
22 plates on the gold car and then spoken to the registered
23 owner.

24 For those reasons, this -- this stop cannot
25 survive the Ninth Circuit's opinion in *Grigg*.

1 At this point, the Defense is willing to rest
2 on its briefs, unless Your Honor has anymore questions.

3 THE COURT: I only have one. Assuming they --
4 the -- assuming when they first do the pat-down, they've
5 recovered the knife and the meth as you say; right?

6 MR. CRAMMER: Yes, Your Honor.

7 THE COURT: Okay. And then the officer is
8 called away; right?

9 MR. CRAMMER: Yes.

10 THE COURT: And they recover the bottles -- the
11 stolen liquor?

12 MR. CRAMMER: That's correct, Your Honor.

13 THE COURT: Okay. And at that point, that gave
14 them probable cause to arrest; right?

15 MR. CRAMMER: It gave them probable cause to
16 arrest the shoplifting suspect, yes.

17 THE COURT: It gave them probable cause to
18 arrest your client too, because he's aiding and
19 abetting. He's a get away driver.

20 MR. CRAMMER: Your Honor, he was never charged
21 as an aider abetter in this case.

22 THE COURT: It doesn't matter whether he's
23 charged on it. We're talking about whether or not there
24 was probable cause to arrest him, as well.

25 MR. CRAMMER: I would also point out,

1 Your Honor, that SLO PD further -- further supporting
2 our argument that this offense was completed, they
3 actually don't even arrest the shoplifting suspect
4 himself. They have the Bevmo manager perform a
5 citizen's arrest, and then they -- and they fill out a
6 citizen's arrest paperwork. It's attached to Officer --

7 THE COURT: Let me just finish.

8 MR. CRAMMER: Yes?

9 THE COURT: So if that ripened into probable
10 cause, then the search of Duncan would have been a
11 search incident to a lawful arrest, and those items that
12 they recovered would have inevitably been discovered;
13 isn't that true?

14 MR. CRAMMER: Your Honor, the items would not
15 have inevitably been discovered because -- first,
16 because of our *Grigg* argument, the stop was
17 unconstitutional from the start. So if that's not
18 justified, then inevitable discovery does not apply.
19 Second, is that if -- if the officers had responded by
20 detaining the suspect, questioning him and finding the
21 liquor bottles, that could have been the end of the
22 investigation. They wouldn't have -- necessarily
23 recovered other contraband. Because of that, inevitable
24 discovery does not apply here.

25 THE COURT: Okay.

1 MR. CRAMMER: Okay. Any further questions,
2 Your Honor?

3 THE COURT: Not right now.

4 MR. CRAMMER: All right. Then at that point,
5 we'll rest on our briefing and request that the evidence
6 be suppressed. Thank you.

7 THE COURT: Okay. Does the Government wish to
8 be heard?

9 MR. WILLIAMS: Very briefly, Your Honor, just
10 on a couple of points.

11 Just I wanted to correct one or two small
12 points, Your Honor.

13 I believe in the police report that Defense
14 counsel attached as Exhibit G to the pending motion, the
15 fourth page notes that the shoplifter was, in fact,
16 arrested, and was arrested for violation of
17 Penal Code Section 459.5 and various warrants. So he
18 was arrested. I also wanted to just point out
19 *People v. Ramirez*, which the defendant cites and relies
20 on in the reply brief do address this notion of reaching
21 the place of temporary safety, I wanted to call the
22 Court's attention to a line, defendant describes it as
23 the fact that he'd begun to drive safely away as
24 sufficient evidence to support the finding that the
25 initial transaction had been completed, i.e., that he

1 had reached a place of temporary safety.

2 The sentence immediately before that quote that
3 defendant provides, says that *Ramirez* "began to drive
4 away without being pursued or at risk his robbery would
5 be imminently afforded." And so that language right
6 there in that *Ramirez* case -- the reason *Ramirez* is safe
7 in that case is because he wasn't being pursued. And
8 I'm not saying that getting into a car can never be a
9 place of safety. As Your Honor noted, if it was
10 sometime later and it was a separate traffic stop,
11 uninvolved in the original investigation, that might be
12 a different question. But here, it's not a place of
13 temporary safety if you have been essentially followed
14 from the moment you stole things until the moment the
15 police found you. That's just not a place of safety.

16 I would also point out just very quickly: I
17 don't believe that defendant is disputing that the meth
18 pipe was, in fact, in plain view. It was in plain view.
19 It was described in the police report from the night of
20 as being in plain view. As Your Honor noted, simply the
21 fact that it does not show up in the video camera
22 footage, does not mean that it wasn't in plain view.

23 And one last point that I think kind of drops
24 out of some of the briefing is, shoplifting was the way
25 the report was written up. Possession of stolen goods

1 is still a misdemeanor offense. All of these other
2 offenses, I think we cite a -- a district of Arizona
3 case -- because there admittedly is not a lot of case
4 law on this -- but talking about this notion that
5 continuing to possess stolen goods while you flee is an
6 ongoing misdemeanor, regardless of the initial theft.
7 So regardless of all of this discussion of Gomez and
8 reaching a place of safety, the stolen goods were still
9 in the car. And I don't know what a police officer
10 should do if not stop a car when they have reasonable
11 suspicion to believe that that car has stolen goods
12 inside of it.

13 I'm happy to answer some of the Court's
14 questions if the Court has questions; but otherwise, I
15 think I would be happy to submit on the papers.

16 THE COURT: Well, let me ask you this: As I
17 understand it, they pulled the car over; right? And the
18 officer has Duncan get out, and he finds the knife;
19 right?

20 MR. WILLIAMS: Yes.

21 THE COURT: And he starts a frisk and finds
22 some drugs; right?

23 MR. WILLIAMS: Yes, Your Honor.

24 THE COURT: And then the other officer, then
25 he -- the other officer -- well, I guess the -- I guess

1 the officer leaves Duncan in the back of the car to
2 respond to another officer; correct?

3 MR. WILLIAMS: Yes, Your Honor. And it's a
4 little bit difficult in watching the video to hear
5 exactly what was said, but watching the video --
6 Officer Loll's video -- body camera footage, you can --
7 you can sort of hear that the other officer is having
8 difficulty at the car, and that that other officer as we
9 know from the rest of the information -- is outnumbered
10 at that point. It is three people in the car, one
11 officer out of the car. And so it sounds like he's
12 calling for help.

13 THE COURT: Okay. And then he puts Duncan in
14 the back of the patrol car; right?

15 MR. WILLIAMS: Yes, Your Honor.

16 THE COURT: And then he returns -- he returns
17 to the Cadillac, at which point they uncover the tequila
18 bottle -- the bottles of the stolen liquor.

19 MR. WILLIAMS: Yes, Your Honor.

20 THE COURT: Is there probable cause to arrest
21 at that point?

22 MR. WILLIAMS: I believe so, Your Honor.
23 And -- and before coming to this job, I spent seven
24 years working for the State and doing State prosecutions
25 just down the street at the Reagan building -- and yes,

1 there is such a thing as aiding and abetting, a
2 misdemeanor. So even if this was solely a misdemeanor
3 investigation, the getaway driver is still aiding and
4 abetting that escape. And I think given location when
5 you see the tequila bottles recovered in the backseat
6 and then they are not -- it's not something like where
7 it's small quantity of things that the driver would have
8 no clue what's going on and wouldn't have aided and
9 abetted, it was enough -- it was enough material to say
10 that the driver would have known about it.

11 THE COURT: And then he returns -- the officer
12 returns to the patrol car and completes the pat-down and
13 that's when he finds the gun, the scale, and the
14 baggies?

15 MR. WILLIAMS: Correct, Your Honor.

16 THE COURT: And if there's probable cause at
17 that point, after discovering -- after discovering the
18 bottles, what role, if any, does inevitable --
19 inevitable discovery play?

20 MR. WILLIAMS: Well, yes, Your Honor, I think
21 that if -- if officer Loll were arresting everybody for
22 the one offense that there would have been inevitable
23 discovery as part of an arrest. I -- the way the briefs
24 argued it, I think it is still a continuation of that
25 initial pat search, and I think that's the most

1 straightforward way to look at it is to say he already
2 found a knife. He couldn't have completed an arrest
3 before finishing that search to make sure there were no
4 further weapons for officer safety. But I do agree,
5 Your Honor, that those other items could have
6 subsequently been discovered.

7 THE COURT: Okay.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MR. WILLIAMS: No, Your Honor.

11 THE COURT: Okay. I believe I'm ready to rule
12 on this motion.

13 Okay. The Court rejects the Defense suggestion
14 that the robber had reached a place of temporary safety.

15 The crime committed by the passenger was still
16 in progress. And because that crime was still in
17 progress, the police had reasonable suspicion, if not
18 probable cause, to arrest the passenger and the driver
19 for aiding and abetting or at a minimum when they find
20 the liquor bottles, they had probable cause to arrest.
21 And any search after that point, it is search incident
22 to a lawful arrest. And this was not a -- this was not
23 a traffic stop. This was a stop to investigate a theft.
24 And the investigation lawfully extended to investigate
25 the methamphetamine and the liquor bottles. And even

1 assuming I don't think prolong -- the prolonging
2 doctrine really applies here, but even assuming it does,
3 the stop here was no longer than reasonably necessary to
4 investigate the theft, the presence of the meth, and to
5 assure officer safety.

6 In this case, the officer was permitted to have
7 everyone exit the car, including the driver, and officer
8 safety permitted the officer to pat down the defendant
9 during that theft investigation and to place the
10 defendant in the back of a police car once the defendant
11 was found in possession of the knife. And they had
12 reasonable suspicion of an ongoing misdemeanor to
13 conduct an investigative stop. And the information they
14 gleaned from that investigation ripened in a -- ripened
15 from reasonable suspicion in the probable cause, and
16 under the circumstances, the officers pat-down was
17 justified by the discovery of the knife. And the
18 patting down of the defendant's outer clothing did not
19 exceed the permissible scope to ensure officer safety.
20 And the officer's background questioning of the
21 defendant while he was in the car did not warrant a
22 Miranda stop -- a Miranda warning.

23 And having found that the earlier stop of
24 September was lawful, neither the ammunition discovered
25 during his federal arrest nor the defendant's statements

1 during the federal arrest are fruit of the poisonous
2 tree. Officers did not unlawfully discover the
3 ammunition or question the defendant at the time of his
4 federal arrest.

5 The Court, therefore, denies the motion to
6 suppress. The admission of the statements during the
7 execution of the arrest and search warrants on
8 November 11th is denied as is the motion to suppress
9 in -- as to the September arrest.

10 All right. Is there anything else?

11 MR. WILLIAMS: I don't think there's anything
12 further from the Government at this time, Your Honor.

13 MR. CRAMMER: Nothing from the Defense,
14 Your Honor.

15 THE COURT: And the only declaration that the
16 Defense submitted -- well, the defendant's declaration I
17 think is two paragraphs?

18 MR. CRAMMER: Let me check briefly, Your Honor.
19 It is three paragraphs, Your Honor.

20 THE COURT: Okay. And that's the only
21 declaration that the defendant submitted?

22 MR. CRAMMER: We also submitted declarations
23 from Alejandra Gomez attached to our reply.

24 THE COURT: That you investigated -- but from
25 the defendant, that's the only --

1 MR. CRAMMER: Yes, from the defendant, yes,
2 Your Honor, that's correct.

3 THE COURT: That's the only declaration that
4 was submitted. Okay. We have a trial date -- let's see
5 if I can find it....

6 I think it's May 23rd.

7 MR. CRAMMER: That's correct, Your Honor.

8 THE COURT: I think we had some discussions
9 earlier, but I think it was different trial counsel for
10 the Defense. Have the parties -- well, has the Defense
11 concluded this case is going to have to be tried?

12 MS. LaBARRE: Your Honor, we have not had that
13 discussion yet with Mr. Duncan. I anticipate having
14 that discussion very soon.

15 THE COURT: Okay. Let me just bring a calendar
16 up here....

17 And what's the Government's estimate as to how
18 long it's going to take to put on its case if this case
19 proceeds to trial?

20 MR. WILLIAMS: Very brief, Your Honor.
21 Obviously, it always depends upon a stipulation, but one
22 to two days.

23 THE COURT: Do you think you'd have an idea by
24 the week of April 17th as to what your position is going
25 to be?

1 MS. LaBARRE: We would certainly be able to
2 inform the Court whether or not the Defense intends to
3 go -- to have a jury trial by April 17th.

4 THE COURT: Okay. How is May 19th for a status
5 conference?

6 MS. LaBARRE: That is fine, Your Honor. I did
7 want to inform the Court that I -- since being assigned
8 to this case -- well, previously, I have leave -- annual
9 leave from May 20th to June 1st -- or June 2nd.

10 THE COURT: Thank God there are two of you.
11 No, I'm just kidding.

12 Then why don't we get together -- let's see if
13 we have a better idea of what we're doing. Why don't we
14 have a status conference on the 19th. How is that for
15 the Government?

16 MR.WILLIAMS: I'm available, Your Honor.

17 MR. CRAMMER: And that's May 19th, Your Honor?

18 THE COURT: April 19.

19 MS. LaBARRE: Oh, April 19, yes, I'm available.

20 MR.WILLIAMS: I'm -- I'm sorry, Your Honor. I
21 don't know why I was looking at May 19th, as well. One
22 second. I'm available on that day, as well, Your Honor.

23 THE COURT: Morning, afternoon?

24 MS. LaBARRE: The Court's pleasure, Your Honor.

25 THE COURT: Why don't we try at 1:30 on the

1 19th.

2 Okay. We'll see everybody on April 19th at
3 1:30.

4 MR. CRAMMER: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. WILLIAMS: Thank you, Your Honor.

7 MR. CRAMMER: Thank you, Your Honor.

8 (Whereupon, proceeding adjourned.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA :
vs. : No. CR 22-553-PA
PATRICK JOSEPH DUNCAN, JR. :

I, MARIA BUSTILLOS, OFFICIAL COURT REPORTER, IN AND FOR THE
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/S/ _____ //

MARIA R. BUSTILLOS DATE
OFFICIAL REPORTER

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CA NO. 23-2374
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PATRICK JOSEPH DUNCAN,
Defendant-Appellant.

D.C. No. 2:22-CR-00553-PA-1
Central District of California,
Los Angeles

NOTICE RE: APPOINTMENT OF COUNSEL

Pursuant to the order at Docket Entry 41, our office has located
the following attorney to represent the defendant-appellant in the case
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