

No.

In The Supreme Court Of The United States

Triston Harris Steinman,
Petitioner,

v.

United States of America,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

Appendix

Appendix A	1a
<i>United States v. Triston Harris Steinman</i> , No. 23-1703, Dkt. No. 88.1 (9th Cir. Jan. 21, 2026) Order denying petition for rehearing	
Appendix B	3a
<i>United States v. Triston Harris Steinman</i> , No. 23-1703, Dkt. No. 75.1 (9th Cir. Nov. 13, 2025) Amended Opinion	
Appendix C	55a
<i>United States v. Triston Harris Steinman</i> , No. 23-1703, Dkt. No. 17.3 (9th Cir. Mar. 4, 2024) Suppression Hearing Transcript	

Appendix A

United States v. Triston Harris Steinman,

No. 23-1703, Dkt. No. 88.1 (9th Cir. Jan. 21, 2026)

Order denying petition for rehearing

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 21 2026

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

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

TRISTON HARRIS STEINMAN,

Defendant-Appellee.

No. 23-1703

D.C. No.

3:22-cr-00068-ART-CLB

ORDER

Before: M. SMITH and BUMATAY, Circuit Judges, and WU, District Judge.*

The panel voted to deny the petition for panel rehearing and rehearing en banc (Dkt. 78). Judge Smith and Judge Bumatay voted to deny the petition, whereas Judge Wu voted to grant the petition for panel rehearing and recommended granting the 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. Fed. R. App. 40(c).

The petition for panel rehearing and rehearing en banc is therefore **DENIED**.

* The Honorable George H. Wu, United States District Judge for the Central District of California, sitting by designation.

Appendix B

United States v. Triston Harris Steinman,

No. 23-1703, Dkt. No. 75.1 (9th Cir. Nov. 13, 2025)

Amended Opinion

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

TRISTON HARRIS STEINMAN,

Defendant - Appellee.

No. 23-1703

D.C. No.
3:22-cr-00068-
ART-CLB-1

ORDER AND
AMENDED
OPINION

Appeal from the United States District Court
for the District of Nevada
Anne R. Traum, District Judge, Presiding

Argued and Submitted December 5, 2024
San Francisco, California

Filed March 5, 2025
Amended November 13, 2025

Before: MILAN D. SMITH, JR. and PATRICK J.
BUMATAY, Circuit Judges, and GEORGE H. WU, Senior
District Judge.*

* The Honorable George H. Wu, United States Senior District Judge for the Central District of California, sitting by designation.

Order;
Amended Opinion by Judge Milan D. Smith, Jr.;
Concurrence by Judge George H. Wu

SUMMARY**

Criminal Law

The panel filed (1) an order withdrawing its opinion filed March 5, 2025, and denying as moot a petition for panel or en banc rehearing; and (2) an amended opinion reversing the district court's order suppressing evidence seized from Triston Harris Steinman's car following a traffic stop in a case in which Steinman is charged with being a felon in possession of ammunition and possession of unregistered firearms.

The panel held that the district court erred in concluding that Nevada State Trooper William Boyer violated Steinman's constitutional rights by unlawfully prolonging the traffic stop. Trooper Boyer had reasonable suspicion of an independent offense after he learned of Steinman's felony conviction, and he did not measurably prolong the traffic stop up to that point.

The panel held that the district court erred in concluding that Trooper Boyer lacked probable cause to seize Steinman's automobile. There was probable cause to believe that Steinman violated Nevada law by possessing

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

firearms as a felon. As to the issue of “cross-enforcement” of the Fourth Amendment, the panel generally agreed with the Government that state officers may consider violations of federal law, as part of the totality of the circumstances, in justifying a search and seizure. Here, Trooper Boyer could seize Steinman’s vehicle pursuant to the automobile exception to the Fourth Amendment’s warrant requirement because he had probable cause to believe that the vehicle contained evidence of a federal crime (felon in possession of ammunition) that was highly related to the state crime under investigation (felon in possession of a firearm).

The panel held that the district court erred in concluding that warrant overbreadth requires suppression. The panel did not disturb the district court’s ruling that the search warrant was unconstitutionally overbroad, but it was nonetheless error for the district court to exclude the fruits of the search because the search of Steinman’s vehicle would have been permissible under the automobile exception to the Fourth Amendment’s warrant requirement. Thus, the district court should not have suppressed the guns and ammunition seized from Steinman’s vehicle.

District Judge Wu concurred with the majority opinion except for Part II.B.2. He wrote that the panel need not—and should not—break new ground by addressing the undeveloped and potentially sweeping “cross-enforcement” issue.

COUNSEL

Peter H. Walkingshaw (argued), Assistant United States Attorney; Office of the United States Attorney, United States Department of Justice, Reno, Nevada; Mina Chang, Assistant United States Attorney; Adam M. Flake and Robert L. Ellman, Appellate Chiefs; Sigal Chattah, Acting United States Attorney; Jason M. Frierson, United States Attorney; Office of the United States Attorney, United States Department of Justice, Las Vegas, Nevada; for Plaintiff-Appellant.

Jeremy C. Baron (argued) and JoNell Thomas, Assistant Federal Public Defenders; Rene L. Valladares, Federal Public Defender; Federal Public Defender's Office, Las Vegas, Nevada; Sean A. McClelland, Assistant Federal Public Defender, Federal Public Defender's Office, Reno, Nevada; for Defendant-Appellee.

Dallas R. Anselmo and Katherine Currie-Diamon Clark County Office of the Public Defender, Las Angeles, California; Christopher M. Peterson, American Civil Liberties Union of Nevada, North Las Vegas, Nevada; for Amici Curiae Nevada Attorneys for Criminal Justice.

Vincent Brunkow, Chief Appellate Attorney; Daniel J. Yadron Jr., Appellate Attorney; Kasha Castillo, Executive Director; Federal Defenders of San Diego Inc., San Diego, California; for Amici Curiae Ninth Circuit Federal Public and Community Defender Offices.

ORDER

The opinion captioned *United States v. Steinman*, 130 F.4th 693 (9th Cir. 2025), filed on March 5, 2025, is hereby withdrawn. An amended opinion will be filed contemporaneously with this order.

Appellee's petition for panel or en banc rehearing (Dkt. 58) is denied as moot. Pursuant to Ninth Circuit General Order 5.3(a), the parties can file new petitions for panel or en banc rehearing.

OPINION

M. SMITH, Circuit Judge:

The district court suppressed evidence seized from Triston Harris Steinman's car on multiple grounds, including that a law enforcement officer violated his Fourth Amendment rights during a traffic stop. The Government appeals the suppression order, contending that Steinman's constitutional rights were not violated and that the evidence should not be suppressed. We agree with the Government. Exercising appellate jurisdiction pursuant to 18 U.S.C. § 3731, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Traffic Stop and Subsequent Search

This case arises out of a traffic stop conducted on August 12, 2022, by Trooper William Boyer of the Nevada State Police. While Trooper Boyer was driving on a highway in Wells, Nevada, he observed a gray BMW driving in the

opposite direction and determined that the BMW was travelling at 89 miles per hour, well above the posted speed limit. Trooper Boyer turned on his emergency lights and, at approximately 3:51pm, pulled over the BMW, which was driven by Defendant Triston Harris Steinman. The events that followed were recorded by Trooper Boyer's body-worn camera and dashcam.

While approaching the BMW, Trooper Boyer observed movement within the vehicle's cab, which he determined to be Steinman moving around within the cab. Arriving at the passenger-side window, Trooper Boyer observed an ammunition box on the front right floor of the vehicle and items covered by a blanket in the back seat. Trooper Boyer requested Steinman's license and registration, and Steinman told Trooper Boyer that he was moving from Washington to Utah, which involved passing through Nevada. Trooper Boyer inquired about the move while inspecting Steinman's documentation. In response to Trooper Boyer's question, Steinman said that there was "stuff" under the blanket in the back seat. When Trooper Boyer inquired further, Steinman denied that there was anything that he wished to hide in the back seat and reiterated that it was only his "stuff." Steinman admitted having ammunition but denied having guns in the car. Trooper Boyer returned to his patrol car to run a driver's license check, which would show if Steinman's license was valid and whether Steinman had any outstanding warrants or protection orders.

Trooper Boyer approached the BMW again to check the VIN number to make sure it matched the registration and so he could request Steinman's insurance information. Steinman did not have his insurance information, and he requested it telephonically from his girlfriend. Trooper Boyer asked Steinman to come sit in his patrol car, but

Steinman demurred, asking if he could just receive the citation instead. Trooper Boyer asked, “Don’t want to talk to me?” and informed Steinman that he had the authority to order Steinman out of the BMW. Following Trooper Boyer’s instructions, Steinman left the BMW and walked to the patrol car. Steinman sat in the right front seat of the patrol car and, shortly thereafter, showed Trooper Boyer the insurance information that he received from his girlfriend.

Trooper Boyer accessed his ticket-writer application. He observed that Steinman appeared to be sweating. The cruiser was air-conditioned but the passenger door was open for the first few minutes of Steinman being inside. Trooper Boyer conversed with Steinman about his travel plans and his history while working on the citation on the computer.

Approximately ten minutes into the stop, Trooper Boyer requested a criminal history check on Steinman from dispatch, and Steinman again asked if he could just get a ticket and leave. Trooper Boyer indicated to Steinman that the ticket-writing process was not yet completed. The two continued conversing while Trooper Boyer worked on the citation. At about 4:05pm, about three minutes after requesting it, Trooper Boyer received Steinman’s criminal history record. Trooper Boyer reviewed the criminal history record for about three-and-a half to four minutes, observing that there was at least one entry listed as “felony with a guilty disposition.” During his review of the records, Trooper Boyer effectively paused the citation-writing process. He continued conversing with Steinman while reviewing the records, including about the parameters of the ticket that he was going to issue.

Trooper Boyer then returned to writing the citation. He signed the citation at about 4:10 pm, approximately nineteen

minutes into the stop. He continued filling out other fields in the ticket-writer application and chatting with Steinman, including asking Steinman how he obtained the money to purchase his BMW. Trooper Boyer asked Steinman whether he had ever been in any trouble, and pressed him after Steinman responded, “a little bit.” Steinman stated that he had an assault charge but that he did not think he had any felonies besides a juvenile one. Trooper Boyer asked Steinman if he still shot guns, and Steinman responded, “not really,” and explained that he just had ammunition because he was bringing it home. Shortly afterwards, Trooper Boyer continued filling out the citation and explained the fine that Steinman would be facing.

At approximately 4:20 pm—just under thirty minutes into the stop—Trooper Boyer informed Steinman that Steinman had some felonies on his background and ammunition in his BMW, which provided “a little” probable cause to search the vehicle. He asked for Steinman’s consent to search the BMW, but Steinman refused and recanted his earlier admission that there was ammunition in the car, saying that the ammunition box was empty. Steinman also accused Trooper Boyer of investigating him and asking him questions instead of just giving him a ticket.

Other officers, including a sergeant, arrived at Trooper Boyer’s request. While Steinman waited on the side of the road talking on his cell phone, Trooper Boyer (1) unsuccessfully reached out to a K-9 unit, (2) reached out to dispatch to confirm that Steinman had felony convictions rather than just felony charges, and (3) did a few other tasks

related to the seizure, including requesting a tow.¹ At 4:38pm, Trooper Boyer explained the citation to Steinman and returned some of his documentation. Trooper Boyer then explained that the BMW was being seized and that Steinman would not have access to it.

At approximately 5:25pm—about ninety minutes after the start of the stop—Steinman received his license back and began to walk towards the nearest town (although he had been offered a ride). The tow company arrived shortly thereafter and took the BMW. The sergeant picked Steinman up and drove him to town.

Trooper Boyer authored a request for a search warrant. A lay justice of the peace approved Trooper Boyer's application for a search warrant, and officers searched the BMW. They recovered a substantial cache of weapons and other incriminating evidence; specifically, they found thirty-eight firearms, silencers, ammunition, marijuana, and drug paraphernalia. That included one loaded firearm located directly beneath the driver's seat, within Steinman's easy reach.

II. Procedural History

Steinman was charged by superseding indictment with (1) being a felon in possession of ammunition, *see* 18 U.S.C.

¹ Trooper Boyer also called a number of his fellow officers and a justice of the peace regarding the existence of probable cause and the procedure for filling out a search warrant. Steinman attaches importance to these events, but, as with the other events occurring during the time frame, these calls are ultimately irrelevant to the ultimate question before us because these calls occurred *after* Trooper Boyer developed reasonable suspicion and probable cause. In any event, any statements by Trooper Boyer suggesting that he had a subjective doubt as to whether there was probable cause do not shed any light on the issues before us.

§ 922(g)(1), and (2) possession of unregistered firearms, 26 U.S.C. §§ 5841, 5861(d), 5871.

Steinman moved to suppress the evidence collected as a result of the traffic stop, contending that his Fourth Amendment rights were violated. Steinman argued, *inter alia*, that (1) even if the stop was justified at its inception, it was unconstitutionally prolonged without the required reasonable suspicion; (2) the warrantless seizure of his BMW was not supported by probable cause; and (3) the search warrant ultimately obtained was facially overbroad and otherwise invalid.² According to Steinman, the fruit of these constitutional violations—namely, the guns and ammunition—should be suppressed.

The Government opposed Steinman’s motion to suppress. The Government first argued that the traffic stop was not unconstitutionally prolonged because criminal history checks during a traffic stop are objectively reasonable and, even if the stop was prolonged, that prolongation was properly supported by reasonable suspicion. It also argued that there was probable cause to seize Steinman’s car because (1) Trooper Boyer had probable cause to believe that there were firearms in the car, the possession of which by Steinman would be a crime under state law and (2) Trooper Boyer had probable cause to suspect that there was ammunition in the car, which violates a federal statute, 18 U.S.C. § 922(g)(1). Finally, the

² Steinman also raised other arguments, including that the stop itself was not supported by reasonable suspicion because there was insufficient evidence that he was speeding and that his statements to Trooper Boyer should be suppressed because he was not given *Miranda* warnings. Steinman does not renew these arguments in his appellate briefing, though, and they are unpersuasive in any event.

Government contended that the search warrant was valid, that officers relied upon the warrant in good faith, and that, even if the warrant were invalid, Steinman's car could have been searched under the automobile exception because of the existence of probable cause.

The district court held an evidentiary hearing on Steinman's motion to suppress. Trooper Boyer testified at the hearing, and a variety of exhibits were admitted, including the search warrant affidavit and warrant itself, Steinman's criminal history records, and the officers' police reports. Among other things, Trooper Boyer testified that he had made thousands of traffic stops during his time in law enforcement, and that, in his experience, the usual length for a traffic stop was around fifteen minutes, although there was considerable variation. Trooper Boyer testified that he did not, as a routine matter, request criminal history when checking documentation during a traffic stop; instead, he did so only when the circumstances made him suspicious. He specifically testified that he ran the criminal history check on Steinman because he had become "suspicious" of Steinman.

Later that same day, the district court issued an oral ruling granting the motion to suppress. The district court first concluded that there was a violation of Steinman's Fourth Amendment rights by the unconstitutional prolongation of the traffic stop. Specifically, it reasoned that "the traffic stop was unreasonably prolonged when Mr. Steinman was removed from his vehicle for the purpose of interrogation," and was further prolonged "by the detailed questioning of Mr. Steinman" as well as the "criminal history checks," which delayed the writing of the speeding citation. The district court concluded that this was not a case where a routine criminal-history check was conducted for

officer safety. And even if the original criminal records check was justified, the citation-writing process was still slowed by Trooper Boyer's investigation and research on the criminal history. The district court further concluded that the prolongation was not supported by reasonable suspicion.

Next, the district court concluded that the seizure, search, and prolongation could not be justified by Trooper Boyer's interest in enforcing the federal prohibition on possession of ammunition by a felon because Trooper Boyer was a state law enforcement officer. Relatedly, it reasoned that there was no probable cause to seize the vehicle based on an alleged violation of either federal or state law.

As to the search warrant, the district court concluded that it was not supported by probable cause and that it was impermissibly overbroad in violation of constitutional safeguards. The district court finished by remarking:

So to be clear, I am suppressing on multiple independent grounds. There was a prolonged detention unsupported by reasonable suspicion that far exceeded the scope of a normal traffic stop and mission. There was no probable cause to seize the vehicle. The warrant is invalid and cannot be saved by severance or good faith.

The Government timely filed an appeal of the suppression order.

JURISDICTION AND STANDARD OF REVIEW

The district court had original jurisdiction over this case pursuant to 18 U.S.C. § 3231. We have jurisdiction over the

Government’s appeal of the suppression order pursuant to 18 U.S.C. § 3731.

“We review de novo the district court’s ruling on a motion to suppress and for clear error any underlying findings of historical fact.” *United States v. Willy*, 40 F.4th 1074, 1079 (9th Cir. 2022). “We must ‘give due weight to inferences drawn from th[e] facts by resident judges and local law enforcement officers.’” *Id.* (alteration in original) (quoting *Ornelas v. United States*, 517 U.S. 690, 699 (1996)).

ANALYSIS

The Government challenges the district court’s order granting Steinman’s motion to suppress on multiple bases. *First*, the Government argues that the district court erred in its conclusion that Trooper Boyer unconstitutionally prolonged the traffic stop without the requisite reasonable suspicion, in part because it improperly considered Trooper Boyer’s subjective motivation. *Second*, the Government contends that the district court erred in concluding that Trooper Boyer lacked probable cause to seize Steinman’s BMW.

Steinman disagrees with the Government on those two points and further insists that because the Government failed to challenge the district court’s ruling that the search warrant was overbroad—an “independent basis for suppression”—we must uphold the suppression order. In response to this additional argument, the Government insists that the overbreadth of the warrant is immaterial because Trooper Boyer had probable cause to believe that the BMW contained evidence of a crime, so it could be searched without a warrant pursuant to the automobile exception to the Fourth Amendment’s warrant requirement.

We agree with the Government on all three points, and we reverse the suppression order.

I. Whether the Traffic Stop was Unconstitutionally Prolonged

The district court concluded that the fruits of the traffic stop could be suppressed because Trooper Boyer unconstitutionally extended the traffic stop without the requisite reasonable suspicion. This was error.

A. Legal Standards

“A seizure for a traffic violation justifies a police investigation of that violation.” *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). “Under the Fourth Amendment, a seizure for a traffic stop is ‘a relatively brief encounter,’ ‘more analogous to a so-called *Terry* stop than to a formal arrest.’” *United States v. Taylor*, 60 F.4th 1233, 1239 (9th Cir. 2023) (quoting *Rodriguez*, 575 U.S. at 354). “To be lawful, a traffic stop must be limited in its scope: an officer may ‘address the traffic violation that warranted the stop,’ make ‘ordinary inquiries incident to the traffic stop,’ and ‘attend to related safety concerns.’” *Id.* (quoting *Rodriguez*, 575 U.S. at 354–55). “The stop may last ‘no longer than is necessary to effectuate’ these purposes and complete the traffic ‘mission’ safely.” *Id.* (quoting *Rodriguez*, 575 U.S. at 354–55); *see also Rodriguez*, 575 U.S. at 354 (“Authority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”).

Lawful inquiries incident to a traffic stop can include checking a driver’s license, determining whether there are outstanding warrants, and inspecting the automobile’s registration and proof of insurance. *See United States v.*

Ramirez, 98 F.4th 1141, 1144 (9th Cir. 2024). Attending to related safety concerns includes “certain negligibly burdensome precautions in order to complete [the traffic] mission safely.” *Id.* (quoting *Rodriguez*, 575 U.S. at 356). “So, for example, an officer may order the driver of a vehicle to exit the vehicle during a traffic stop.” *Id.*; see also *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (per curiam). These safety precautions fall within the mission of the traffic stop because “[t]raffic stops are ‘especially fraught with danger to police officers.’” *Rodriguez*, 575 U.S. at 356 (quoting *Arizona v. Johnson*, 555 U.S. 323, 330 (2009)).

Building on these principles, a traffic stop “can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a’ ticket for the violation.” *United States v. Hylton*, 30 F.4th 842, 847 (9th Cir. 2022) (quoting *Rodriguez*, 575 U.S. at 354); see also *Ramirez*, 98 F.4th at 1144 (“[A] traffic stop ‘exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures.’” (quoting *Rodriguez*, 575 U.S. at 350)). However, “the Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention.” *Rodriguez*, 575 U.S. at 354. But an officer may not make unrelated investigation inquiries “in a way that prolongs the stop.” *United States v. Landeros*, 913 F.3d 862, 866 (9th Cir. 2019) (quoting *Rodriguez*, 575 U.S. at 355). That includes investigations that result in only a “de minimis” prolongation of the stop. See *Rodriguez*, 575 U.S. at 355–56; *United States v. Nault*, 41 F.4th 1073, 1078 n.2 (9th Cir. 2022). That is because “[o]n-scene investigation into other crimes[.] . . . detours” from the traffic-stop mission.

Rodriguez, 575 U.S. at 356. “So too do safety precautions taken in order to facilitate such detours.” *Id.*

That is not to say, of course, that law enforcement officers can never extend a stop to investigate matters other than the original traffic violation without running afoul of the Fourth Amendment. To the contrary, “a stop ‘may be extended to conduct an investigation into matters other than the original traffic violation’ so long as ‘the officers have reasonable suspicion of an independent offense.’” *Taylor*, 60 F.4th at 1239 (quoting *Landeros*, 913 F.3d at 867).

In short, if a traffic stop is constitutionally justified at its inception—which is not seriously disputed in this appeal—our analysis is twofold. Was the stop prolonged, and, if so, was the prolongation justified by reasonable suspicion based on the information available at that juncture? *See Landeros*, 913 F.3d at 867–88; *United States v. Evans*, 786 F.3d 779, 788 (9th Cir. 2015).

B. Discussion

Applying these rules here, we conclude that Steinman’s Fourth Amendment rights were not violated by an unconstitutional prolongation of the traffic stop. Our conclusion flows from two key premises. *First*, nothing up until the point when Trooper Boyer finished reviewing Steinman’s criminal history and learned that he had a felony conviction (approximately 4:08pm according to the body-camera footage) constituted an unconstitutional prolongation of the traffic stop. All of the actions taken by Trooper Boyer up until that point either (1) were within the legitimate mission of the traffic stop, including protecting officer safety or (2) did not prolong the traffic stop. *Second*, after Trooper Boyer reviewed the criminal history and learned that Steinman had a felony conviction, he had

reasonable suspicion to believe that Steinman was engaged in criminal activity—namely, that Steinman possessed firearms in violation of Nevada law. Thus, even if we assume that Trooper Boyer did prolong the stop at some point after he learned that Steinman had a felony conviction, it is of no moment because he was entitled to do so based on his reasonable suspicion of an independent offense.

1. Whether Trooper Boyer Prolonged the Stop Before Learning of Steinman’s Criminal History

We begin by narrowing the relevant timeframe to focus on the period between the start of the traffic stop and the point at which Trooper Boyer learned that Steinman had a felony conviction (the point when, as explained below, *see infra* § I.B, Trooper Boyer developed reasonable suspicion that Steinman had committed a criminal infraction independent of the traffic violation). We agree with the Government’s position that this is the “relevant timeframe” for purposes of determining whether there was prolongation. We conclude that Trooper Boyer did not unconstitutionally prolong the traffic stop in any way during this period.

As detailed above, during this period, Trooper Boyer pulled over Steinman, asked him a number of questions while checking his documentation, ordered Steinman out of his BMW and into the patrol car, and asked him questions while filling out a traffic citation. Trooper Boyer also requested, waited for, and reviewed a criminal history records check. In our assessment, all of these activities were lawful under the Fourth Amendment because they were either geared towards the mission of the traffic stop (including ensuring officer safety) or did not measurably prolong the stop. In reaching a contrary conclusion, the

district court pointed to three specific actions that it said resulted in an unlawful prolongation of the stop: ordering Steinman out of the car, questioning Steinman, and running a criminal history check on Steinman. Because all of these actions were lawful and permissible, the district court erred.

First, it did not prolong the stop for Trooper Boyer to ask Steinman to exit the BMW and come with him to the patrol car. It is black-letter law that a trooper may do so in the interest of officer safety. *See Ramirez*, 98 F.4th at 1144; *Mimms*, 434 U.S. at 110. Given the “inordinate risk confronting an officer as he approaches a person seated in an automobile,” *Mimms*, 434 U.S. at 110, it was objectively reasonable for Trooper Boyer to order Steinman out of the BMW and into his patrol car during the stop—particularly since Trooper Boyer had observed ammunition as well as Steinman’s moving around in the vehicle. The district court’s ruling to the contrary improperly relied on Trooper Boyer’s subjective motivation in wanting to continue the investigation and question Steinman. But Trooper Boyer’s “subjective motivations are irrelevant because ‘the Fourth Amendment’s concern with “reasonableness” allows certain actions to be taken, *whatever* the subjective intent.’” *Taylor*, 60 F.4th at 1240 (quoting *Whren v. United States*, 517 U.S. 806, 814 (1996)). Indeed, our opinion in *Taylor* makes pellucid that even if Trooper Boyer was subjectively motivated by a desire to question Steinman further, that is irrelevant because Trooper Boyer’s “subjective motivations, whatever they may have been, could not change the objective reasonableness of [his] actions.” *Id.*³

³ We observe, parenthetically, that the circumstances of this case illustrate precisely why officers are given the latitude to order drivers out

Second, we also reject the position that Trooper Boyer’s questioning of Steinman while he filled out the citation prolonged the traffic stop. We note that many of the initial questions that Trooper Boyer asked, such as those about Steinman’s documentation and what was in the vehicle, were clearly related to the mission of the traffic stop and the interest in ensuring officer safety. *See Taylor*, 60 F.4th at 1239 (“Once Taylor was stopped on the side of the street, [the officer] was permitted to ask Taylor basic questions, such as whether Taylor knew why he had been pulled over, whether he had identification, whether he had been arrested before, and whether he had any weapons in the vehicle.”). Additionally, much of the questioning focused on Steinman’s travel plans, which generally falls within the purview of the traffic-stop mission. *See United States v. Chavez-Valenzuela*, 268 F.3d 719, 724 n.4 (9th Cir. 2001) (“Questions asked initially during a traffic stop must be reasonably related to the justification for the stop. [The officer’s] inquiries about Chavez-Valenzuela’s starting point, destination and general travel plans were probably justifiable.” (citation omitted)), *abrogated on other grounds by Muehler v. Mena*, 544 U.S. 93 (2005); *accord United States v. Cole*, 21 F.4th 421, 429–31 (7th Cir. 2021); *United States v. Braddy*, 11 F.4th 1298, 1311 (11th Cir. 2021).

But even assuming that Steinman is correct that some of Trooper Boyer’s questioning during the relevant period fell outside the purview of the traffic-stop mission, Trooper Boyer did not violate Steinman’s Fourth Amendment rights. Again, “the Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention.”

of their vehicles. Recall that law enforcement found a loaded firearm under the driver seat, within Steinman’s easy reach.

Rodriguez, 575 U.S. at 354. The key inquiry is whether the questioning “measurably extend[ed] the duration of the stop.” *Johnson*, 555 U.S. at 333.

Here, it did not. Trooper Boyer’s body camera footage shows that the arguably investigatory questioning took place while Trooper Boyer was in the process of filling out the citation or while he was waiting for the results of the criminal history check (which was permissible, as discussed below). Because Trooper Boyer asked these questions while he was filling out the citation and waiting for the results of the criminal history check, he did not measurably extend the duration of the traffic stop. *See United States v. Mendez*, 476 F.3d 1077, 1079–80 (9th Cir. 2007) (“[T]he stop was not unnecessarily prolonged. [One officer’s] questioning occurred while [another officer] was running a check on Mendez’s identification. It could not have expanded the duration of the stop since the stop would, in any event, have lasted until after the check had been completed.”); *accord Cole*, 21 F.4th at 429 (“[N]o one disputes that an officer may ask questions unrelated to the stop[] . . . if doing so does not prolong the traffic stop.”). This is not a case where, for example, completing a traffic citation was suspended for the purpose of questioning or questioning occurred after the traffic stop had been effectively completed. *Cf. Landeros*, 913 F.3d at 866–68; *United States v. Gorman*, 859 F.3d 706, 715 (9th Cir. 2017) (concluding that there was prolongation when, after a decision had been made not to issue a citation, the officer inquired about a number of things, including how the driver afforded the vehicle).

To the extent that Steinman argues that simultaneous questioning or discussion inherently slows down the citation-writing process—and thus extends traffic stops—because it is distracting and reduces the capacity of officers

to work diligently, we are unpersuaded. Police officers are not automatons required to work with the maximum possible efficiency at all costs. Nor are they required to sit in stony silence like schoolchildren taking an exam during the process of filling out a traffic citation.

In opposing this conclusion, Steinman contends that the district court made a factual finding that the questioning added to the time necessary to complete the citation and that Trooper Boyer “slow played” the citation process.⁴ According to Steinman, this factual finding can be reviewed only for clear error, and clear error is not present here.

This argument is flawed, and we are unpersuaded. The district court’s finding that the citation process took longer than it should was based on erroneous legal conclusions, including about the legality of ordering Steinman out of the car and requesting a criminal history check. Moreover, although the district court did find that Trooper Boyer’s questioning resulted in an overall prolongation of the traffic stop, the district court did not focus on the questioning during the period that we are concerned with—namely, between the initial stop and the point when Trooper Boyer reviewed Steinman’s criminal history. Quite the contrary: the district court’s framing of the issue suggests that it was most concerned about the questioning that occurred *after* the first criminal history check. We are thus unpersuaded that

⁴ Steinman also points to the opinion of our sister circuit in *United States v. Peralez*, 526 F.3d 1115, 1121 (8th Cir. 2008), for the proposition that questioning that “blend[s]” permissible inquiries with impermissible ones can be violative of the Fourth Amendment. But besides not being binding, *Peralez* involved an admission that the blending of topics actually prolonged the detention. *See id.* at 1120; *see also id.* at 1121 (“The off-topic questions more than doubled the time Peralez was detained.”).

the district court made a factual finding that the questioning *during the period at issue* prolonged the stop.⁵

In sum, because Trooper Boyer’s arguably investigatory questioning occurred simultaneously with tasks that fell within the mission of the traffic stop—*viz.*, filling out the citation form and requesting and reviewing a criminal history records check—we cannot say that the questioning measurably prolonged the stop. Thus, it does not implicate Steinman’s Fourth Amendment rights.

Third, Trooper Boyer did not prolong the stop by requesting Steinman’s criminal history, waiting for the results, and reviewing the history. Such a precaution falls within the officer-safety aspect of the traffic stop. As we explained in *Hylton*, law enforcement officers may conduct criminal history checks without unconstitutionally prolonging a traffic stop because “a criminal history check is a negligibly burdensome precaution required for officer safety.” *Id.* at 846; *id.* at 848 (“[B]ecause a criminal history check ‘stems from the mission of the stop itself,’ it is a ‘negligibly burdensome precaution[]’ necessary ‘to complete [the stop] safely.’” (alterations in original) (quoting *Rodriguez*, 575 U.S. at 356)). In this way, a

⁵ Even if the district court had made such a factual finding, under the clear-error standard we could reverse that finding if we have a “definite and firm conviction that a mistake has been committed.” *Hylton*, 30 F.4th at 846 (quoting *United States v. Perkins*, 850 F.3d 1109, 1115 (9th Cir. 2017)). Although this standard is deferential, it is not insurmountable, and even if we were to accept Steinman’s view of the district court’s factual findings—which we do not—we would nevertheless reverse. Our review of the body camera footage and the record shows that any finding that Trooper Boyer’s discussion with Steinman during the relevant period extended the duration of the traffic stop would be clearly erroneous.

criminal records check is different from activities that are more investigative in nature, such as the ex-felon registration check that we discussed in *Evans*, which “in no way advanced officer safety.” 786 F.3d at 787.

Under the circumstances of this case,⁶ Trooper Boyer’s actions in requesting Steinman’s criminal history and reviewing it were reasonably justified by a concern for officer safety. After pulling over Steinman, Trooper Boyer observed possible signs of danger, including the ammunition box in the BMW and Steinman’s moving around in the cab of the vehicle. On these facts, a reasonable officer would feel that a criminal-history check was justified. That is true even though Steinman was generally compliant and did not seem to pose an active threat while in the passenger seat of the patrol car.

The district court reached the opposite conclusion by relying on Trooper Boyer’s testimony regarding his subjective intent in conducting the criminal history check, including his testimony that he did not routinely conduct such checks during traffic stops and did so here only because of his suspicions of Steinman. But “what matters, under *Hylton*, is that conducting a criminal records check in connection with a traffic stop is objectively reasonable.”

⁶ The parties disagree as to whether, as some courts have concluded, criminal history checks can in some circumstances be violative of the Fourth Amendment or whether they are always justified as a matter of officer safety. See *United States v. Hunter*, 88 F.4th 221, 226 (3d Cir. 2023) (“[W]e acknowledge that under other circumstances, a criminal record check may be unreasonable if it is more than negligibly burdensome and thus exceeds the stop’s mission.”). But because we conclude that the criminal records check at issue here was reasonably justified by a concern for officer safety, we need not decide whether criminal records checks are *always* reasonable during traffic stops.

Taylor, 60 F.4th at 1241; *see also Ramirez*, 98 F.4th at 1145–46. Hence, regardless of what Trooper Boyer “might have subjectively believed” or intended as a justification for the criminal history check, the check was permissible if a reasonable officer would have believed it to be justified by officer safety. *Taylor*, 60 F.4th at 1241. That standard is met here.

In sum, all of Trooper Boyer’s actions up until the point when he reviewed Steinman’s criminal history (approximately seventeen minutes into the stop) were lawful because they fell within the mission of the traffic stop or otherwise did not measurably prolong the stop. Thus, nothing during this period infringed Steinman’s Fourth Amendment rights.

2. Whether Trooper Boyer Had Reasonable Suspicion of an Independent Offense

Steinman relies heavily on Trooper Boyer’s actions *after* the criminal-history check in arguing that Trooper Boyer unreasonably prolonged the stop by taking investigatory measures. For example, he points to Trooper Boyer’s questioning about whether Steinman had ever been in trouble before and whether he still shot guns. But we need not decide the issue.

Even assuming *arguendo* that Trooper Boyer deviated from the traffic-stop mission to conduct an independent investigation after he finished reviewing the criminal history check, an independent investigation was justified because Trooper Boyer had reasonable suspicion that Steinman was engaged in criminal activity. Put otherwise, “even if,” after the initial criminal history-check, Trooper Boyer “prolonged the encounter beyond the original mission of the traffic stop, [he] had a sufficient basis to do so”—namely, reasonable

suspicion of an independent offense. *See Taylor*, 60 F.4th at 1242; *see also Nault*, 41 F.4th at 1081 (concluding that there was no prolongation of a stop until the point when reasonable suspicion attached and that “continued detention from that point on was supported by independent reasonable suspicion of a DUI”).

“Reasonable suspicion ‘exists when an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion.’” *Evans*, 786 F.3d at 788 (quoting *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc)). “The reasonable suspicion standard ‘is not a particularly high threshold to reach’ and is less than probable cause or a preponderance of the evidence.” *Taylor*, 60 F.4th at 1241 (quoting *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013) (en banc)). But a “mere hunch” is insufficient. *Valdes-Vega*, 738 F.3d at 1078 (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)).

The district court concluded that, based on the totality of the circumstances, Trooper Boyer would not have had reasonable suspicion that Steinman was committing an independent criminal offense. Reviewing the issue of whether there is reasonable suspicion de novo, *United States v. Guerrero*, 47 F.4th 984, 984 (2022) (per curiam), we disagree and conclude that Trooper Boyer had “reasonable suspicion of an independent offense,” namely that Steinman possessed a firearm as a felon in violation of Nevada law. *Taylor*, 60 F.4th at 1242 (quoting *Landeros*, 913 F.3d at 867).

After Trooper Boyer had viewed Steinman’s criminal history report, he had (1) observed an ammunition box in

Steinman’s vehicle; (2) observed a blanket covering a number of items in the back seat; (3) heard Steinman’s arguably evasive answer about what was under the blanket; (4) observed furtive movements by Steinman in the BMW; (5) heard Steinman’s admission that there was ammunition (though not guns) in the vehicle; and (6) learned that Steinman had felony convictions. Considering the totality of the circumstances, this was sufficient to give Trooper Boyer reasonable suspicion to extend the traffic stop to investigate whether Steinman had firearms in the vehicle in violation of Nevada law. *See Taylor*, 60 F.4th at 1242 (concluding that there was reasonable suspicion for a felon being in possession of a firearm when the officers knew that the motorist was on supervision for being a felon in possession of a firearm and could clearly see an unzipped, empty fanny pack); *cf. United States v. Baker*, 850 F.2d 1365, 1369 (9th Cir. 1988) (“[H]aving found rounds of .45 caliber ammunition on the defendant’s person, and two magazines for an Uzi rifle, the officer had probable cause to believe that firearms were in the vehicle.”); *accord United States v. Sample*, 136 F.3d 562, 564 (8th Cir. 1998) (“Considering all of the circumstances—including [the defendant’s] initial failure to stop, and particularly the handgun ammunition and ammunition clips in the car, the currency in the vents, and the configuration of the dashboard, we find that there was a fair probability that guns, or other contraband or evidence of a crime, would be found”); *United States v. Cooper*, 19 F.3d 1154, 1163

(7th Cir. 1994) (“The empty ammunition box raises an inference that its contents had been used in a firearm.”).⁷

Steinman’s arguments to the contrary are unavailing. *First*, Steinman argues that reasonable suspicion could not have attached because of the unreliability of the criminal history search, as demonstrated by the fact that Trooper Boyer later requested confirmation that Steinman had been convicted rather than only charged. Trooper Boyer’s later caution does not indicate that the initial results were unreliable—particularly under the lenient reasonable-suspicion standard. *Second*, Steinman insists that the facts articulated above are simply insufficient to establish reasonable suspicion (or probable cause). Steinman is mistaken; reviewing the issue *de novo*, the totality of the circumstances supported *at least* reasonable suspicion to believe that there were firearms in the vehicle.

3. Conclusion as to Prolongation of the Traffic Stop

In sum, the district court’s decision that there was an unconstitutional prolongation of the traffic stop was erroneous. Trooper Boyer did not prolong the traffic stop in violation of the Fourth Amendment by any of the actions that he took up through the point where he reviewed the criminal-history check, at around 4:08 p.m. And even if there was prolongation after that point, Trooper Boyer had reasonable suspicion that Steinman had committed an independent

⁷ As we explain below, *see infra* § II.B, the totality of the circumstances at this point (or shortly thereafter) sufficed to give Officer Boyer probable cause to search and seize the automobile. It follows that, *a fortiori*, there would also be reasonable suspicion.

criminal offense in violation of Nevada law, so he could deviate from the traffic stop to investigate that offense.

II. Whether Trooper Boyer Had Probable Cause to Seize the BMW

The district court also suppressed the fruits of the search on the ground that there was no probable cause for Trooper Boyer to seize Steinman’s BMW. Reviewing the probable-cause determination de novo, *see Guerrero*, 47 F.4th at 984, we disagree. The information available to Trooper Boyer would have given him probable cause to believe that the BMW contained (1) evidence that Steinman possessed firearms in violation of state law and (2) evidence that Steinman possessed ammunition in violation of federal law. Accordingly, Trooper Boyer could seize the BMW, and suppression was not warranted on this basis.

A. Legal Standard

The warrantless towing of Steinman’s car qualifies as a seizure within the meaning of the Fourth Amendment. *See Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005). “Because warrantless searches and seizures are *per se* unreasonable, the government bears the burden of showing that a warrantless search or seizure falls within an exception to the Fourth Amendment’s warrant requirement.” *United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012).

Here, all parties agree that, in order to seize the BMW, Trooper Boyer must have had probable cause that the BMW contained evidence of a crime. This is derived from the “‘automobile exception’” to the Fourth Amendment’s warrant requirement, “‘under which a warrantless search of a vehicle is permitted ‘if there is probable cause to believe that the vehicle contains evidence of a crime.’” *United States v.*

Faagai, 869 F.3d 1145, 1150 (9th Cir. 2017) (quoting *United States v. Brooks*, 610 F.3d 1186, 1193 (9th Cir. 2010)); see also *California v. Acevedo*, 500 U.S. 565, 580 (1991) (“The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.”). This exception applies to warrantless automobile seizures as well as searches. See *United States v. Bagley*, 772 F.2d 482, 491 (9th Cir. 1985).

“Probable cause exists when, under the totality of the circumstances, “there is a fair probability that contraband or evidence of a crime will be found in a particular place.”” *United States v. Rodgers*, 656 F.3d 1023, 1028 (9th Cir. 2011) (quoting *United States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006)). “The test for probable cause is not reducible to ‘precise definition or quantification.’” *Florida v. Harris*, 568 U.S. 237, 243 (2013) (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). “Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the [probable-cause] decision.” *Id.* at 243–44 (omission and alteration in original) (quoting *Illinois v. Gates*, 462 U.S. 213, 235 (1983)). All that is required is “the kind of ‘fair probability’ on which ‘reasonable and prudent [people,] not legal technicians, act.’” *Id.* at 244 (alteration in original) (quoting *Gates*, 462 U.S. at 238). In determining whether probable cause exists, we “evaluate[] the totality of the circumstances.” *United States v. Scott*, 705 F.3d 410, 417 (9th Cir. 2012).

B. Discussion

We conclude that Trooper Boyer was entitled to seize the BMW because he had probable cause that it contained a

firearm in violation of state law and ammunition in violation of federal law.

1. Probable Cause to Seize Based on Evidence of Possession of Firearm in Violation of State Law

The seizure (and search) of the BMW was constitutional because there was probable cause to believe that Steinman had violated Nevada law by possessing firearms as a felon. *See Nev. Rev. Stat. Ann. § 202.360* (West 2022) (prohibiting the possession of firearms by felons). Specifically, the totality of the circumstances, including the circumstantial evidence of firearm possession, gave Trooper Boyer probable cause to believe that the BMW contained firearms, which is evidence of a violation of Nev. Rev. Stat. Ann. § 202.360. Thus, Trooper Boyer could seize the automobile.

We reach this conclusion without much difficulty. As noted above regarding the issue of reasonable suspicion, by the time the BMW was seized, Trooper Boyer had (1) observed an ammunition box in the vehicle; (2) observed a blanket covering a number of items in the back seat; (3) heard Steinman's arguably evasive answer about what was under the blanket; (4) observed Steinman moving around in the BMW as he approached; (5) heard Steinman's admission that there was ammunition (though not guns) in the vehicle; and (6) learned that Steinman had felony convictions. Additionally, going into the probable-cause calculus is the fact that Trooper Boyer learned that Steinman had been untruthful about his felony convictions. This was sufficient to give Trooper Boyer probable cause to seize the vehicle on the grounds that it could contain a firearm. Trooper Boyer was, of course, permitted to disbelieve Steinman's assertion that there were no firearms in the

vehicle. *See United States v. Malik*, 963 F.3d 1014, 1016 (9th Cir. 2020) (per curiam).

We find it particularly salient that the BMW contained an ammunition box in plain view. Indeed, we have found the presence of ammunition (or other indicia of firearm ownership) on a defendant's person to be highly important in the probable-cause analysis. *See Baker*, 850 F.2d at 1369 (“[H]aving found rounds of .45 caliber ammunition on the defendant's person, and two magazines for an Uzi rifle, the officer had probable cause to believe that firearms were in the vehicle.”); *accord United States v. Childers*, 73 F.4th 960, 965 (8th Cir. 2023) (“Upon lawful discovery and seizure of the bullets from Childers's person, the officers had probable cause to believe that Childers had committed a felony involving a firearm.”). Steinman attempts to distinguish *Baker* on the basis that it involved ammunition being found on a defendant's person rather than in an automobile, but we do not see how that distinction is of any moment. There is also persuasive—though not binding—authority suggesting that the presence of bullets in an automobile can give rise to probable cause that the automobile contains firearms. *See United States v. Young*, 213 F.3d 645, 2000 WL 278430, at *1 (9th Cir. Mar. 14, 2000) (unpublished table disposition) (considering bullets found loose in the trunk of a car); *United States v. Horn*, 234 F. App'x 466, 467 (9th Cir. 2007) (considering the existence of a bag the officer believed to contain bullets); *accord Sample*, 136 F.3d at 564 (discussing bullets found in the passenger compartment of an automobile); *Cooper*, 19 F.3d at 1163 (discussing an empty ammunition box). As a panel of our court cogently articulated, “[b]ullets strongly suggest the presence of a gun.” *Young*, 213 F.3d 645, 2000 WL 278430, at *1. Although that statement was made in an

unpublished—and thus nonprecedential—case, we firmly agree with that common-sense sentiment.

Moreover, the ammunition box does not stand alone. Trooper Boyer also saw arguably furtive movements as he approached the BMW and shortly thereafter found a blanket in the back seat that appeared to cover a number of items. *See United States v. Spencer*, 1 F.3d 742, 746 (9th Cir. 1992) (discussing “concealing movements in the automobile’s front seat”); *Rodgers*, 656 F.3d at 1029 (discussing the relevance of furtive movements). And Steinman’s response to Trooper Boyer’s inquiry about the blanket—that it was just “his stuff” was evasive. Furthermore, Trooper Boyer was aware that Steinman was not telling the complete truth about his felon status. Taken together, the totality of the circumstances was sufficient to establish probable cause that the vehicle contained firearms.

In arguing against this conclusion, Steinman relies heavily on *United States v. Nora*, 765 F.3d 1049, 1058–59 (9th Cir. 2014). But *Nora* is inapposite. There, we addressed whether an officer’s observation that the defendant was holding a handgun when he went into his house gave officers probable cause to search the house for *other* firearms and ammunition. *See id.* at 1058. We concluded that it did not because, although there was probable cause to look for the specific handgun that the officers had seen the defendant with, “the officers’ firsthand observation of [the defendant] with a gun in his hand did not give them reasonable grounds to believe that any additional firearms would be found in the house.” *Id.* at 1059. But the inference at issue in this case—that because a person has bullets, he may have a firearm—is far less of a logical leap than the inference in *Nora* that because a person has a firearm, he may have *more* firearms. And, again, this case

involves indicia that contraband was hidden in the car—such as Steinman’s movements within the BMW, the blanket covering the items, and Steinman’s lies about his felony past—that were utterly absent in *Nora*.

Thus, the district court erred in concluding that there was not probable cause to seize (and search) the BMW on the ground that it contained evidence that Steinman was violating Nevada’s proscription on felons possessing firearms. It follows that Trooper Boyer did not violate Steinman’s Fourth Amendment rights in seizing his BMW, so that is not a basis for suppressing the guns and ammunition.

2. Probable Cause to Seize Based on Evidence of Possession of Ammunition in Violation of Federal Law

The Government raises the further argument that Trooper Boyer had a second basis to seize the BMW because he had probable cause to believe that it contained evidence of a federal crime—namely, that Steinman possessed ammunition as a felon in violation of 18 U.S.C. § 922(g)(1). Steinman does not truly dispute that the totality of the circumstances would be sufficient to give Trooper Boyer probable cause to believe that the BMW contained evidence of possession of ammunition by a felon. Nor could he. After all, Trooper Boyer saw an ammunition box in plain view in the vehicle, Steinman initially admitted that there was ammunition in the vehicle, and Trooper Boyer knew that Steinman had at least one felony conviction.

Instead, Steinman contends that Trooper Boyer, a state law enforcement officer, “had no basis to seize the car for a potential federal law violation.” The parties agree that possession of ammunition is only prohibited by federal law

and is not a crime under Nevada law. Compare 18 U.S.C. § 922(g)(1) (prohibiting possession or transportation of “any firearm or ammunition”), with Nev. Rev. Stat. Ann. § 202.360 (prohibiting ownership or possession of a “firearm”). Analogizing to our opinion in *United States v. \$186,416.00 in U.S. Currency (U.S. Currency)*, 590 F.3d 942 (9th Cir. 2010), Steinman says that the seizure of the BMW cannot be retroactively justified on the grounds that a state law enforcement officer suspected that there was evidence of a federal crime when that same conduct was not unlawful under state law. Steinman also points to district court cases, *United States v. Talley*, 467 F. Supp. 3d 832, 836 (N.D. Cal. 2020), and *United States v. Jones*, 438 F. Supp. 3d 1039, 1053–54 (N.D. Cal. 2020), involving marijuana (which is legal to possess under the laws of certain states but remains unlawful to possess as a matter of federal law) that generally support his position that a state law enforcement officer cannot have probable cause to seize or search based only on a violation of federal law.

The district court agreed with Steinman, reasoning that “[t]he weight of authority supports the defense’s position that . . . state . . . officers cannot justify the search . . . by relying on the proposition that they could have been enforcing an exclusively federal law.” The district court thought it was highly relevant that Trooper Boyer, as a Nevada law enforcement officer, is “only tasked with enforcing Nevada law,” and that “Nevada law does not authorize Trooper Boyer to enforce federal law to seize property for a punitive violation of federal law.”

Whether state officers can rely on suspected violations of federal law in justifying a search or seizure is an issue that

our court has never squarely addressed.⁸ And it is a question that has divided the few courts that have addressed it. See Orin S. Kerr, *Cross-Enforcement of the Fourth Amendment*, 132 HARV. L. REV. 471, 475 (2018). Indeed, academics have commented on the “[s]urprisingly” unsettled state of the law in this area. *Id.* In simple terms, the question at issue is “whether an officer employed by one government can justify a search or seizure based on a violation of a different government’s law.” *Id.* at 474. This has been called the issue of “cross-enforcement” of the Fourth Amendment. *Id.*

After considering the arguments raised by both parties, we generally agree with the Government: state officers may consider violations of federal law, as part of the totality of the circumstances, in justifying a search and seizure. In reaching this outcome, we consider the following:

First, section 922(g)(1), which makes it unlawful for felons to possess ammunition, is a provision of federal law. The Supremacy Clause makes clear that federal law “shall be the supreme Law of the Land.” U.S. Const., art. VI, cl. 2. As Judge Learned Hand remarked in a case involving state enforcement of federal prohibition laws, the Supremacy Clause makes federal law “as valid a command within the borders of [a state] as one of its own statutes.” *Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928). And, at least where there are no indications to the contrary, we may assume that states are “concerned with the apprehension of offenders against laws of the United States, valid within [their] borders, though they cannot be prosecuted in [their]

⁸ See *United States v. Malik*, 963 F.3d 1014, 1015 n.1 (9th Cir. 2020) (per curiam) (declining to decide this issue); *United States v. Martinez*, 811 F. App’x 396, 398 (9th Cir. 2020) (same); *United States v. Gray*, 772 F. App’x 565, 567 & n.2 (9th Cir. 2019) (same).

own courts.” *Id.*; see also Kerr, *supra*, at 503–06, 530 (discussing Judge Learned Hand’s opinion in *Marsh* and its relevance to the cross-enforcement issue). Applying this reasoning here, we can presume that the State of Nevada has an interest in ensuring that federal felon-in-possession-of-ammunition laws are enforced even if Nevada has chosen not to criminalize that same conduct. Relatedly, “[s]ince the time of the Founding, Congress has looked to state and local law enforcement to help enforce federal criminal laws”—particularly given the fact that there are few roving federal law enforcement officers. Kerr, *supra*, at 530. Accepting Steinman’s approach would almost certainly lead to the under-enforcement of federal criminal statutes, and we cannot adopt an approach that fails to acknowledge the reality that, from the Founding onward, many federal prosecutions arise out of encounters with state law enforcement officers. *See id.*

Second, it is important to recognize that although the Fourth Amendment has been incorporated against the states, it remains a quintessentially federal standard whose protections do not vary from jurisdiction to jurisdiction. *See Virginia v. Moore*, 553 U.S. 164, 172 (2008) (“[W]hether or not a search is reasonable within the meaning of the Fourth Amendment’ . . . has never ‘depend[ed] on the law of the particular State in which the search occurs.’” (first and third alterations in original) (quoting *California v. Greenwood*, 486 U.S. 35, 43 (1988))). Thus, “state law [does] not alter the content of the Fourth Amendment.” *Id.* For example, even if state law makes clear that a misdemeanor is not an arrestable offense, “[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the

offender.” *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). Although this principle is not determinative of the cross-enforcement question before us, it does cast some light on the issue. *Moore, Atwater*, and similar cases suggest that the fact that certain conduct is not criminalized under state law is ultimately irrelevant to whether a state law enforcement officer violates the Fourth Amendment by searching and seizing based on evidence of a federal crime. Such an approach makes sense: if conduct (such as seizing a car based on probable cause that it contains evidence of a violation of federal law) is not violative of the Fourth Amendment in one state, it is not violative of the Fourth Amendment in another state.

Third, we have previously observed that “[t]he general rule is that local police are not precluded from enforcing federal statutes.” *Gonzales v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983), *overruled on other grounds by Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc). We see no reason to deviate from this general rule here.

In particular, we disagree with Steinman’s attempts to analogize this case to situations in which state law enforcement officers are affirmatively prohibited by state law from arresting, searching, or seizing based on evidence of a federal offense—a circumstance common in cases relating to the presence of marijuana. Courts that have concluded that state law enforcement officers cannot search or seize based on the suspected presence of marijuana where marijuana is legal under state law have relied upon this factor. *See Talley*, 467 F. Supp. 3d at 837 (concluding that “federal law cannot provide an alternate basis for probable cause” in the context of marijuana that was legal under state law because of a state statute providing that “no conduct

deemed lawful by this section shall constitute the basis for detention, search, or arrest” (quoting Cal. Health & Safety Code § 11362.1(c)); *Commonwealth v. Craan*, 13 N.E.3d 569, 577–78 (Mass. 2014) (discussing the impact of decriminalization of marijuana on the authority of state law enforcement officers to search or seize). *See generally* Kerr, *supra*, at 479–82, 484–86 (discussing how some courts allow cross-enforcement if it is authorized by state law or, at a minimum, if it is not prohibited by state law).

Assuming *arguendo* that it is relevant whether state law prohibits state law enforcement officers from searching or seizing based on evidence of a federal crime,⁹ we still see this case as distinct from the marijuana cases because, here, there is no provision of Nevada law prohibiting state law

⁹ The Government suggests that *Talley* and the other cases holding that state law enforcement officers cannot have probable cause to search or seize based on evidence of marijuana possession are wrongly decided because those decisions fail to grapple with the rule from *Moore* and *Atwater* that whether officers have state statutory authority to investigate a crime is irrelevant to the Fourth Amendment inquiry. Some academics seem to agree, *see* Kerr, *supra*, at 481–82, 518–19 (suggesting that authority that relies on state authorization for cross-enforcement is inconsistent with modern Supreme Court jurisprudence), and other courts have rejected the approach taken in *Talley*, *see, e.g., United States v. Sanders*, 248 F. Supp. 3d 339, 347 (D.R.I. 2017).

However, we need not decide whether it is relevant that state law prohibits arrest, search, or seizure based on the federally illegal conduct because (unlike in the marijuana cases) Steinman has not shown that any Nevada law restricts the authority of state law enforcement officers to search or seize based on the presence of ammunition. Accordingly, there is no need at this juncture to directly opine on the viability of *Talley* and similar cases because even assuming that those cases were correctly decided, they do not help Steinman. So, the effect of a state statute prohibiting or limiting cross-enforcement remains a question for another day and not one that we must decide here.

enforcement officers from enforcing the federal ban on felons possessing ammunition. Quite the contrary: Nevada law appears to affirmatively authorize Trooper Boyer's conduct. After all, it authorizes law enforcement officers to investigate "crimes" generally and not state crimes specifically. See Nev. Rev. Stat. § 171.123.1 (West 2023) ("Any peace officer may detain any person whom the officer encounters under circumstances which would reasonably indicate that the person has committed . . . a crime or civil infraction." (emphasis added)). We thus see this case as different from *Talley* and the other marijuana-based cases on which Steinman relies.

Fourth, we find support in the decisions of our sister circuits that have concluded that evidence of federal crimes may be seized by state officers if that evidence is in plain view. In *United States v. Smith*, 899 F.2d 116, 118 (1st Cir. 1990), the First Circuit (per then-Judge Breyer) rejected an argument by the defendant that evidence of a federal crime (namely, a firearm) could not be seized because "state police lacked 'authority' to seize the weapon." The *Smith* court observed that it was "not aware of any state or federal law that *prohibits* state police from seizing a weapon, in plain view, that they reasonably believe constitutes evidence of a federal crime." *Id.* Thus, there was no unreasonable seizure as would be prohibited by the Fourth Amendment. *Id.* The Tenth Circuit agreed with the approach in *Smith* and concluded that state law enforcement officers could seize evidence of federal crimes if that evidence was in plain view. See *United States v. Le*, 173 F.3d 1258, 1271 (10th Cir. 1999). Although the question before us is somewhat distinct, we find both *Smith* and *Le* instructive. As in those cases, we are aware of no binding authority stating that state law enforcement officers cannot search or seize an

automobile based on evidence that it contains a federal crime.

Finally, it bears remembering that suppression of evidence is an extraordinary remedy that carries a substantial cost to society. *See Davis v. United States*, 564 U.S. 229, 237 (2011). Thus, although the “bitter pill” of suppression must be swallowed when necessary to deter Fourth Amendment violations, it remains a “last resort.” *Id.* (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)).

We thus conclude that Trooper Boyer could seize Steinman’s BMW pursuant to the automobile exception to the Fourth Amendment’s warrant requirement because he had probable cause to believe that the vehicle contained evidence of a federal crime (felon in possession of ammunition) that was highly related to the state crime under investigation (felon in possession of a firearm).

In arguing against the doctrine of cross-enforcement, Steinman relies heavily on our opinion in *U.S. Currency*, 590 F.3d 942. But *U.S. Currency* casts minimal light on the question before us. In that case, the Los Angeles Police Department (LAPD) applied for a search warrant to search a facility based on suspected violations of state marijuana laws. *Id.* at 946–47. The LAPD seized currency pursuant to the warrant, and the federal government subsequently sought forfeiture of that currency. *Id.* at 947. However, it was later determined that the warrant was not supported by probable cause as to the violation of state law. *Id.* We concluded that the currency must be suppressed, reasoning that although there may have been probable cause to seek a warrant based on a violation of federal law, “that was not what the LAPD was doing” because “[n]othing in the documents prepared at the time the warrant was obtained from the state court or in

the procedure followed to obtain that warrant supports the proposition that the LAPD thought it was pursuing a violation of federal law.” *Id.* at 948.

We read *U.S. Currency* as standing only for the proposition that an invalid warrant that was sought for a violation of state law could not be saved because, counterfactually, officers perhaps could have sought the warrant based on a violation of federal law. Whether one of the exceptions to the warrant requirement could justify the seizure was simply not at issue in *U.S. Currency*. That case accordingly casts little light on the question before us today—whether, in the context of a warrantless seizure, probable cause can be based on a suspected violation of federal law. Indeed, *U.S. Currency* arguably cuts against Steinman because we found it notable in *U.S. Currency* that the LAPD had never sought a federal search warrant or “indicated that it was pursuing a violation of federal law”—which implies that the LAPD *could* have taken these actions but did not in that case. *See id.* at 948.

Our view is not changed by the fact that, in this case, Trooper Boyer did eventually seek a search warrant that was based entirely on state law violations. Trooper Boyer did so *after* seizing the car, and the key question here is whether his seizure could be justified by one of the exceptions to the warrant requirement. *U.S. Currency* is thus of no help in resolving this issue.¹⁰

¹⁰ Nor does it matter that the BMW was later searched pursuant to the state-law-focused warrant. As will be discussed below, *see infra* § III, the warrant is invalid and so we must consider whether the search could be justified under the automobile exception to the warrant requirement. That is different from the inquiry at issue in *U.S. Currency*, which was

We are also unpersuaded by the district court’s reliance on *Ker v. California*, 374 U.S. 23 (1963). To be sure, the *Ker* court stated that “the lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution.” *Id.* at 37. But the Supreme Court has moved away from this rule, *see Moore*, 553 U.S. at 172–73, and we find it to be of limited use in resolving the cross-enforcement issue. *See Kerr, supra*, at 481–82, 514–19 (discussing the irrelevance of *Ker* and related cases to the cross-enforcement issue). Moreover, even assuming that the rule from *Ker* is applicable, this is not a situation where state law prohibits Trooper Boyer’s conduct; to the contrary, state law arguably authorizes Trooper Boyer’s conduct here. *See Nev. Rev. Stat. § 171.123.1.*

* * *

In sum, the district court erred in concluding that there was not probable cause to seize (and search) the BMW. There was probable cause to believe that Steinman violated Nevada law by possessing firearms as a felon. And, on the facts before us, the direct evidence that Steinman possessed ammunition in violation of federal law likewise supported that conclusion. After all, prior convictions may support probable cause, “especially where the previous arrest or conviction involves a crime of the same general nature” as the crime being investigated. *Greenstreet v. Cnty. of San Bernardino*, 41 F.3d 1306, 1309 (9th Cir. 1994). Accordingly, evidence of a *current* federal law violation,

concerned only with whether, counterfactually, a seizure conducted pursuant to an invalid state warrant could be saved if probable cause existed under federal law. *Cf.* 590 F.3d at 948. Simply put, *U.S. Currency* cannot sustain the heavy weight that Steinman puts upon it.

especially when that violation is closely related to a state crime, as here, is at a minimum relevant to the probable cause analysis. And, of course, evidence of a federal crime may be seized by state officers if that evidence is in plain view or found during a constitutional search. So, Trooper Boyer was permitted to seize evidence of the federal crime—namely the ammunition—that was in plain view.

In the end, Trooper Boyer did not violate Steinman’s Fourth Amendment rights in seizing his BMW.

III. Whether Warrant Overbreadth Provides a Basis to Affirm the District Court’s Suppression Order

Finally, Steinman also argues that even if the district court did err in concluding that the stop was unconstitutionally prolonged and the seizure was not justified by probable cause, we should still affirm the district court’s suppression order because of warrant overbreadth. According to Steinman, the district court reasoned that warrant overbreadth was an independent ground for suppression, and the Government has failed to challenge this ruling on appeal.

Steinman is partly right and partly wrong. We agree with Steinman that the Government has waived any challenge to overbreadth and that the district court saw warrant overbreadth as an independent basis for exclusion.¹¹ Thus, for purposes of this appeal, we accept the proposition that the search warrant was overbroad and thus could not justify a search of Steinman’s automobile. But we disagree with

¹¹ The Government asserts in passing that the district court never made a formal ruling on warrant overbreadth. This is a surprising and unpersuasive contention in light of the clarity of the district court’s oral ruling and articulation of the bases for suppression.

Steinman that this overbreadth requires suppression of the evidence found in the automobile.

Instead, we agree with the Government that the overbreadth of the warrant is ultimately immaterial because a warrantless search of the BMW was permissible under the automobile exception to the Fourth Amendment’s warrant requirement.¹² In *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971), the Supreme Court clarified that evidence seized pursuant to a defective warrant could possibly still be admitted if the search and seizure that found the evidence was lawful under “some other theory,” including exceptions to the warrant requirement. And even if *Coolidge* did not settle this issue, courts across the nation have declined to suppress the fruits of searches that were conducted pursuant to a defective warrant if an exception to the warrant requirement would otherwise have justified the search. See *United States v. Martinez*, 78 F.3d 399, 401 (8th Cir. 1996) (“Because probable cause existed for the search and the [arguably invalid] warrant was unnecessary, the search was valid.”); *United States v. McCoy*, 977 F.2d 706, 710 (1st Cir. 1992) (“Assuming, without deciding, the search warrant was invalid, we nonetheless conclude that . . . the search was permissible under the ‘automobile exception’ to the Fourth Amendment warrant requirement.”); *United States v. Poole*, 718 F.2d 671, 675 (4th Cir. 1983) (“Since no warrant was required, any defects in the warrant that was obtained cannot serve as a basis on which to suppress”); *United States v. Clark*, 559 F.2d 420, 426 (5th Cir. 1977) (“It is well

¹² To the extent that Steinman suggests that he has not had a fair opportunity to litigate this issue because it is largely discussed in the Government’s reply brief, we are unpersuaded—particularly given the fact that we granted Steinman’s request to file supplemental briefing on this issue.

established that evidence gained by a search conducted under authority of a defective search warrant may still be admissible if an exception to the warrant requirement is present.”); *see also Commonwealth v. Campbell*, 807 S.E.2d 735, 738–39 (Va. 2017) (“We conclude, as have a number of other courts, that the procurement of a defective warrant does not require suppression if the search is nonetheless justified on an alternate ground.”). *See generally* 2 Wayne R. LaFare SEARCH & SEIZURE § 4.1(b) (6th ed.), Westlaw (database updated Mar. 2024). We join these courts and hold that the fruits of a search conducted pursuant to an overbroad or otherwise unlawful warrant need not be suppressed if the search could have been conducted pursuant to an exception to the Fourth Amendment’s warrant requirement.

In response, Steinman asserts that law enforcement has a choice—either to get a warrant or to search pursuant to an exception to the warrant requirement—and that because the Government opted to get a warrant here, it cannot rely on any of the exceptions to the warrant requirement to support admissibility of the evidence. But Steinman offers no support for this contention, and we would find his position unpersuasive even leaving aside the consensus of authority on this point. Steinman’s proposed approach would actually *disincentivize* law enforcement from seeking warrants in cases like these. Such an outcome is clearly to be avoided; law enforcement should not be penalized for caution and concern for procedure. In the words of another court that came to the same conclusion as we do, “[p]olice officers should not be punished for trying to comply with Fourth Amendment requirements in those situations where, as here, they could have conducted a warrantless search in the first instance.” *State v. Tomah*, 586 A.2d 1267, 1269 (Me. 1991).

Moreover, as noted above, modern exclusionary-rule jurisprudence recognizes the substantial costs of the exclusionary rule and that exclusion of probative evidence is a “last resort.” *Davis*, 564 U.S. at 237 (quoting *Hudson*, 547 U.S. at 591). We are disinclined to apply such a costly remedy when the evidence sought to be excluded would be admissible under a valid exception to the warrant requirement.

Thus, notwithstanding the overbreadth of the warrant, the fruits of the search of Steinman’s BMW—namely, the guns and ammunition—need not be suppressed if the search could have been justified pursuant to one of the exceptions to the warrant requirement. Such a justification is present in this case. As indicated above, Trooper Boyer had probable cause to search and seize the BMW without a warrant pursuant to the automobile exception to the Fourth Amendment’s warrant requirement because he had probable cause to believe that it contained evidence of violations of state and federal law. *See Acevedo*, 500 U.S. at 569–70; *Faagai*, 869 F.3d at 1150. And the automobile exception may apply even if the automobile has been towed back to the police station or elsewhere. *See Acevedo*, 500 U.S. at 570; *Chambers v. Maroney*, 399 U.S. 42, 51–52 (1970); *Scott*, 705 F.3d at 417. Thus, the fruits of the search need not be suppressed.

CONCLUSION

We are compelled to reverse the district court’s suppression order because it committed multiple errors. *First*, the district court erred in concluding that Trooper Boyer violated Steinman’s constitutional rights by unlawfully prolonging the traffic stop. We conclude that Trooper Boyer had reasonable suspicion of an independent

offense after he learned of Steinman’s felony conviction and that he did not measurably prolong the traffic stop up to that point. *Second*, the district court erred in concluding that Trooper Boyer lacked probable cause to seize Steinman’s automobile. To the contrary, Trooper Boyer had probable cause to believe that the automobile contained evidence of possession of firearms in violation of Nevada law and possession of ammunition in violation of federal law. *Third*, the district court erred in concluding that warrant overbreadth requires suppression. Even though we do not disturb the district court’s ruling that the search warrant is unconstitutionally overbroad, it was nonetheless error for the district court to exclude the fruits of the search because the search of Steinman’s vehicle would have been permissible under the automobile exception to the Fourth Amendment’s warrant requirement. Thus, the district court should not have suppressed the guns and ammunition seized from Steinman’s vehicle.

REVERSED.

Wu, District Judge, concurring:

Because we need not—and should not—break new ground today by addressing the undeveloped and potentially sweeping “cross-enforcement” issue, I concur with the majority opinion except for Part II.B.2.

As a general rule, courts should not decide a constitutional question unless it is necessary to do so. *See Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“It is not the habit of the Court to decide questions of a constitutional nature unless

absolutely necessary to a decision of the case.”) (quoting *Burton v. United States*, 196 U.S. 283, 295 (1905)); *Christopher v. Harbury*, 536 U.S. 403, 417 (2002) (highlighting “the obligation of the Judicial Branch to avoid deciding constitutional issues needlessly”). Several panels of this Court have previously declined to address “cross-enforcement” arguments when it was unnecessary to the disposition of the appeal. *See, e.g., United States v. Malik*, 963 F.3d 1014, 1015 n.1 (9th Cir. 2020) (declining to reach the question of whether a Nevada state officer had probable cause to search based upon federal marijuana laws because the officer had probable cause to search based upon violations of Nevada state law); *United States v. Gray*, 772 F. App’x. 565, 567 n.2 (9th Cir. 2019). So, too, should we. Because we conclude “without much difficulty” that Trooper Boyer had probable cause to seize Steinman’s BMW based upon a violation of Nevada state law, there is no reason for the majority to consider the question of whether the prospect of Steinman’s possession (as a felon) of ammunition (which is not a crime under Nevada law) provides another basis for that seizure.¹

Additionally, I cannot join Part II.B.2 because it rests on doubtful assumptions and thrusts Fourth Amendment jurisprudence into a precarious position with no clear limiting principles. This is especially true in the contexts of immigration and marijuana laws, where federal and state priorities often diverge.

¹ This is especially so where Steinman’s possession of the ammunition was already considered as part of the totality of circumstances which established probable cause to believe that his BMW contained firearms. *See* Part II.B.1, *supra*.

Firstly, I find unconvincing the majority’s conclusion that Nevada has an interest in ensuring the federal felon-in-possession-of-ammunition statute is enforced. Unlike the federal government, Nevada could have—but has chosen not to—criminalize a felon’s possession of ammunition. Compare 18 U.S.C. § 922(g)(1), with Nev. Rev. Stat. § 202.360. The majority opinion initially references the Supremacy Clause. U.S. Const., art. VI, cl. 2. But the Supremacy Clause—which “invalidates state laws that ‘interfere with, or are contrary to,’ federal law,” *Hillsborough Cnty., Fla. v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 712 (1985) (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 22 (1824) (Marshall, C.J.))—is not directly implicated here. Furthermore, it is implicit in the concept of federalism that federal and state governments may have different, if not fully divergent, policy and political priorities. See *Printz v. United States*, 521 U.S. 898, 918–19 (1997) (“Although the States surrendered many of their powers to the new Federal Government, they retained ‘a residuary and inviolable sovereignty.’”) (citing *The Federalist* No. 39, at 245 (James Madison)). That Nevada has not promulgated its disapproval of the federal felon-in-possession-of-ammunition statute does not establish a converse interest in enforcing it, as the majority assumes.

Secondly, despite the majority’s apparent attempt to cabin its ruling to the present case, there is simply nothing preventing today’s new rule from being applied in other cases where the “cross-enforcement” issue is more fraught and more common. As this issue arises with some frequency in the context of immigration and marijuana laws, what if a state does not want its officers assisting in the enforcement of federal law? The majority opinion offers no explanation on how today’s rule would not naturally extend to cases

where a state has gone so far as to codify its opposition to “cross-enforcement” by its police officers as to a particular federal law. *See* footnote 9, *supra*. Indeed, the majority opinion assumes only for the sake of argument that state law is even relevant to the “cross-enforcement” issue. And in *Martinez-Medina v. Holder*, a previous panel of this Court decided in dicta that a state law enforcement officer’s violation of an Oregon law that *explicitly* forbid state officers from enforcing federal immigration laws did not warrant a finding of a Fourth Amendment violation. 673 F.3d 1029, 1037 (9th Cir. 2011) (citing *Virginia v. Moore*, 553 U.S. 164, 173–74 (2008)). Despite its reliance on Orin S. Kerr, *Cross-Enforcement of the Fourth Amendment*, 132 HARV. L. REV. 471 (2018), the majority opinion makes no mention of Kerr’s proposed limitations on “cross-enforcement”—nor does it demarcate a rule of its own.²

The inescapable conundrum with the majority’s unrestricted endorsement of “cross-enforcement” is that Trooper Boyer—a Nevada *state* law enforcement officer entrusted to enforce the laws of Nevada—is determined today to have committed no Fourth Amendment violation for seizing Steinman’s automobile based on conduct that is entirely legal under Nevada law. In other words, the majority’s new rule opens the door, as one district court has prudently observed, “to the paradoxical result of allowing

² For example, Kerr proposes this rule: “Officers can rely on a government’s criminal law to justify a search or seizure only when that government has authorized the officer to search or seize. Authorization of the enacting government, not the officer’s home government, should control.” Kerr, *supra*, at 477. I would not necessarily endorse this approach, but I note Kerr’s proposal here simply to say that the article upon which the majority opinion relies suggests some limitations to “cross-enforcement” that the majority does not mention.

state law enforcement officers to defy the state laws they are entrusted with upholding so that they might enforce federal laws which they cannot be compelled to enforce.” *United States v. Talley*, 467 F. Supp. 3d 832, 837 (N.D. Cal. 2020) (citing *Printz*, 521 U.S. at 918–19).

In the end, the government’s “cross-enforcement” argument is but one of several contentions set forth in this appeal, and the full ramifications of it have not been fully developed in the record before us. Because we find “without much difficulty” that Trooper Boyer was justified in seizing Steinman’s automobile based upon a violation of state law, it is unnecessary to reach the “cross-enforcement” issue today. The majority’s decision to nevertheless break new ground does more than start a conversation on a novel constitutional law doctrine—it sweeps with it a whole host of critical Fourth Amendment issues without announcing a rule or limiting principle to be used in future cases. For these reasons, I respectfully concur in the majority opinion except for Part II.B.2.

Appendix C

United States v. Triston Harris Steinman,

No. 23-1703, Dkt. No. 17.3 (9th Cir. Mar. 4, 2024)

Suppression Hearing Transcript

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Criminal Case No.
) 3:22-cr-00068-ART-CLB
vs.)
)
Triston Harris Steinman,) Friday, July 7, 2023
)
Defendant.)

TRANSCRIPT OF ORAL ARGUMENT AND EVIDENTIARY HEARING
HONORABLE ANNE R. TRAUM PRESIDING
UNITED STATES DISTRICT COURT

A P P E A R A N C E S

For the Plaintiff: Andrew Keenan
U.S. Attorneys Office - Reno
400 S. Virginia Street, Ste 900
Reno, NV 89501

For the Defendant: Sean A. McClelland and
Christopher P. Frey
Federal Public Defenders Office
200 S. Virginia Street, Ste 340
Reno, NV 89401

Official Court Reporter: Donna Prather
410 S. Virginia Street
Reno, NV 89501

Proceedings taken by Certified Stenographic Reporter and
transcribed using Computer-Assisted Translation

1 (Proceedings commenced at 1:37 p.m.)

2 THE CLERK: This is the date and time set for oral
3 argument and an evidentiary hearing in Case
4 No. 3:22-cr-00068-ART-CLB. United States of America versus
5 Triston Harris Steinman.

6 Counsel, please state your appearances for the
7 record.

8 MR. KEENAN: Good afternoon. Andrew Keenan for the
9 government.

10 THE COURT: Good afternoon.

11 MR. MCCLELLAND: Sean McClelland for Mr. Steinman
12 here with Chris Frey at counsel table.

13 THE COURT: Good afternoon to you and to
14 Mr. Steinman.

15 Okay. We have a couple of motions before us. We
16 have an evidentiary hearing on the motion to suppress and what
17 I anticipate will be argument on the motion to dismiss. My
18 intention was to move forward with the motion to suppress
19 first, and then I'll give you a little bit of time to wrap
20 that up, and then we'll move on to the motion to dismiss.

21 So, the government proceeds, I assume.

22 MR. KEENAN: Yes, we're prepared to go forward.

23 THE COURT: Okay. Very good. Go ahead.

24 MR. KEENAN: Well, at this time -- well, as a
25 preliminary matter, I believe the parties have agreed to

1 stipulate to all of each other's exhibits. So as far as the
2 government's concerned, at this time I would move to admit
3 Exhibits 1A, B, and C, and 2 through 8.

4 THE COURT: Okay. And just another small thing, I'm
5 just looking at the exhibits that I saw from the government.
6 I noticed and certainly appreciate and anticipate having those
7 come in as exhibits in support of there being a speeding
8 violation.

9 MR. KEENAN: Yes.

10 THE COURT: But so I welcome that testimony. I
11 doubt it would be difficult for me to find that there's a
12 speeding violation based on the record, so just in terms of
13 tailoring how much time you spend on that.

14 MR. KEENAN: Yeah, I will not be dwelling on that.

15 THE COURT: Okay. Thank you.

16 MR. KEENAN: At this time the government calls
17 Trooper William Boyer.

18 THE CLERK: Good afternoon. May I have you raise
19 your right hand.

20 **WILLIAM BOYER, PLAINTIFF WITNESS, SWORN**

21 THE CLERK: Please state your name for the record.

22 THE WITNESS: William Boyer.

23 THE CLERK: Please spell your first and last name.

24 THE WITNESS: W-i-l-l-i-a-m. Last name B-o-y-e-r.

25 THE CLERK: Thank you.

1 MR. KEENAN: Your Honor, if it's okay, I will sit at
2 counsel table so I can --

3 THE COURT: Yeah, before you proceed, I just want to
4 acknowledge that there was a stipulation as to the exhibits
5 moments ago, so all of those exhibits will be admitted. Thank
6 you.

7 (Plaintiff's Exhibits 1A B C 2 3 4 5 6 7 8 received.)

8 MR. MCCLELLAND: And Your Honor, we'd similarly move
9 for the admission of Defense Exhibits 501 through 510.

10 THE COURT: And is there a stipulation on the
11 defense exhibits?

12 MR. KEENAN: Yes, no objection.

13 THE COURT: Okay. Those will also be admitted.

14 (Defense Exhibits 501 502 503 504 505 506 507 508 509 510
15 received.)

16 THE COURT: You may proceed, and you're welcome to
17 sit at counsel table. Thank you.

18 MR. KEENAN: It appears my computer might shut down
19 in a half an hour, but I will turn it back on when it does.

20 THE COURT: Okay.

21 **DIRECT EXAMINATION**

22 BY MR. KEENAN:

23 Q. Good afternoon. I'm not sure that you did, but can you
24 please state and spell your name.

25 A. William Boyer. First name W-i-l-l-i-a-m. Last name

1 B-o-y-e-r.

2 Q. Where do you work?

3 A. Nevada State Police Highway Patrol Division in Wells.

4 Q. In what capacity?

5 A. I'm a trooper with the Nevada State Police.

6 Q. And how long have you been with, let's say, NHP, Nevada
7 Highway Patrol?

8 A. As of current, just approximately five years.

9 Q. And let's say up until August 2022, approximately how
10 many traffic stops have you made up until that point?

11 A. A few thousand.

12 Q. And approximately how many arrests have you made up to
13 that point?

14 A. Again, varies between 20 and 30 a year.

15 Q. And by that time it was about four years in?

16 A. Yes.

17 Q. And as part of your job as a trooper with NHP, have you
18 received any specialized training?

19 A. Yes.

20 Q. Could you explain what some of that was?

21 A. On top of the P.O.S.T. Certified Academy and the Nevada
22 Highway Patrol Specific Academy, I attended a criminal
23 interdiction training.

24 Q. P.O.S.T. certified, is that basic training?

25 A. Correct. It's Peace Officer Standards and Training.

1 Q. And as a trooper, where are you currently assigned?

2 A. Wells.

3 Q. Is that where you were also assigned in August 2022?

4 A. Yes.

5 Q. And as a trooper out in Wells in that division, what area
6 do you patrol?

7 A. I patrol all around the city of Wells, north, east,
8 south, and west.

9 Q. Some major highways?

10 A. Yeah, a couple of major highways. Interstate Route 80,
11 and U.S. Highway 93.

12 Q. Now I'm going to direct your attention to August 12,
13 2022. Were you working on that date?

14 A. Yes.

15 Q. Approximately what time that day were you working?

16 A. I started my shift between 12:00 and 2:00 p.m.

17 Q. And how long are your shifts?

18 A. About approximately ten hours.

19 Q. And were you working in a patrol car?

20 A. Yes.

21 Q. Do you know what patrol car you were in?

22 A. Yeah, Unit Number 19060.

23 Q. And is that number unique to your patrol car --

24 A. It is.

25 Q. -- that day?

1 A. Yes.

2 Q. And were you working alone that day?

3 A. Yes.

4 Q. Were you in uniform?

5 A. Yes.

6 Q. At approximately 3:51 p.m., did you conduct a traffic
7 stop?

8 A. Yes.

9 Q. What vehicle did you stop?

10 A. A gray BMW 325.

11 Q. And did you come to learn who was driving that vehicle?

12 A. Yes.

13 Q. Who was that?

14 A. Triston Harris Steinman.

15 Q. And was there anyone else in the car?

16 A. No.

17 Q. And do you see the driver of that BMW in the courtroom
18 today?

19 A. Yes.

20 Q. And -- well, since you do, could you point that
21 individual out and identify them by a piece of clothing.

22 A. Mr. Steinman is wearing a white button-up shirt sitting
23 behind the defense desk.

24 MR. KEENAN: Your Honor, let the record reflect the
25 witness has identified the defendant.

1 THE COURT: Yes, it's noted.

2 BY MR. KEENAN:

3 Q. Now, could you briefly describe the circumstances leading
4 up to the stop.

5 A. I was traveling northbound on U.S. Highway 93, which I
6 observed a gray BMW sedan traveling towards my location. I
7 observed the vehicle -- or a vehicle estimated traveling above
8 the posted speed limit, which I activated my front radar or my
9 radar on the front being the opposite direction mode and
10 verified the vehicle to be traveling 89 miles per hour in a
11 75 mile per hour speed zone.

12 Q. And have you been certified to use radar?

13 A. Yes.

14 Q. And like you said, the car you were driving was equipped
15 with radar equipment?

16 A. Yes.

17 Q. And at some point, prior to that day that radar had been
18 calibrated at some point?

19 A. Yes.

20 Q. And you may have mentioned it, but where exactly was the
21 defendant stopped on that date?

22 A. Approximately mile marker 56 Elko and U.S. Highway 93.

23 Q. And on Highway 93, where in relation to other cities or
24 towns is that?

25 A. It's approximately 18 miles south of Wells.

1 Q. Do you patrol that road often?

2 A. Yes.

3 Q. What's the speed limit on that road?

4 A. 70 miles per hour.

5 Q. And are you aware of any speed limits in Nevada that are
6 over 80 miles per hour?

7 A. No.

8 Q. And after you observed the vehicle and activated your
9 radar and observed the radar, what did you do next?

10 A. I activated my emergency lights, made a U-turn and
11 stopped the vehicle to take enforcement action.

12 Q. And I'm going to pull up Exhibit 2 and play it from the
13 beginning.

14 (Video played.)

15 BY MR. KEENAN:

16 Q. Stopping it at the 30 second mark. Trooper Boyer, is
17 that in the middle of the frame, that vehicle, is that the BMW
18 that you stopped?

19 A. Yes.

20 Q. And that was the BMW that your radar indicated was
21 traveling at 89 miles per hour?

22 A. Yes.

23 MR. KEENAN: I'm going to continue to play it
24 briefly.

25 (Video played.)

1 MR. KEENAN: I'm stopping it at 1:04 on the dash cam
2 video.

3 BY MR. KEENAN:

4 Q. Trooper Boyer, what did you observe next?

5 A. I observed movement within the cab of the vehicle.

6 Q. After you had pulled behind it?

7 A. Correct.

8 MR. KEENAN: I'm going to go ahead and continue to
9 play it briefly.

10 (Video played.)

11 MR. KEENAN: And stopping it at 1:32.

12 BY MR. KEENAN:

13 Q. At this time, do you exit your patrol vehicle?

14 A. Yes.

15 Q. And prior to that, after pulling up and behind the BMW
16 and before exiting your vehicle, did you observe the
17 individual in the vehicle moving?

18 A. Yes.

19 Q. And is that shown on your dash cam video?

20 A. Yes.

21 MR. KEENAN: I'm going to pull up Government's
22 Exhibit 3. And beginning it at the -- well, I'll use the
23 timestamp on the -- 15:51:23 timestamp on the video.

24 (Video played.)

25 MR. KEENAN: Just stopping briefly at 15:52:12.

1 BY MR. KEENAN:

2 Q. Trooper Boyer, does this body cam video depict your
3 interaction with the defendant on August 12?

4 A. Yes.

5 MR. KEENAN: I'm going to go ahead and continue
6 playing it from that timestamp.

7 (Video played.)

8 MR. KEENAN: I'm stopping at 15:52:24.

9 BY MR. KEENAN:

10 Q. Trooper Boyer, at this point what, if anything, did you
11 observe inside the vehicle?

12 A. I observed a blanket covering what I thought to be items
13 in the back seat of the vehicle, and I also observed a green
14 ammunition box in the front right floorboard of the vehicle.

15 Q. And you say the blanket, was the blanket on the actual
16 seat or did it appear above the actual seat?

17 A. Above.

18 Q. And could you tell what was underneath it?

19 A. No.

20 Q. And the ammo box, could you describe that.

21 A. From my recollection, I think it was a green -- a
22 general -- just a general ammo box.

23 Q. One you would buy at the store or?

24 A. Yeah, maybe -- yeah, absolutely, correct, one that you
25 would buy at the store.

1 MR. KEENAN: Okay. I'm going to continue playing it
2 from 15:52:24.

3 (Video played.)

4 MR. KEENAN: I'm stopping it at 15:53:23, the body
5 cam.

6 BY MR. KEENAN:

7 Q. What are you doing in your vehicle at this point?

8 A. At this point I'm preparing to run a driver's license
9 check.

10 Q. And is that what you did?

11 A. Yes.

12 (Video played.)

13 MR. KEENAN: Pausing it at 15:53:40.

14 BY MR. KEENAN:

15 Q. When you run a driver's license check, what does that
16 entail? What does the results of that check entail?

17 A. It shows whether the subject's license is clear and
18 valid, if they have any warrants, outstanding warrants or if
19 they have any protection orders.

20 MR. KEENAN: Okay. I'm going to continue to play
21 the body cam from 15:53:40.

22 (Video played.)

23 MR. KEENAN: Just pausing at 15:54:26.

24 BY MR. KEENAN:

25 Q. What's going on here?

1 A. I received a phone call from my supervisor.

2 Q. Was it related at all to this traffic stop?

3 A. No.

4 Q. It was about some other assignment?

5 A. Correct.

6 MR. KEENAN: Okay. I'm going to continue playing
7 the body cam at 15:54:26.

8 (Video played.)

9 MR. KEENAN: I'm stopping at 15:55:16, and I'm going
10 to fast forward to 15:55:56.

11 BY MR. KEENAN:

12 Q. At some point did you return to Mr. Steinman's vehicle?

13 A. Yes.

14 Q. Why was that?

15 A. I was going to check the VIN number on the subject's
16 vehicle and make sure it matched the registration that was
17 provided as well as request the subject's insurance
18 information.

19 MR. KEENAN: I'm going to play from 15:55:56, the
20 body cam.

21 (Video played.)

22 MR. KEENAN: Just pausing at 15:58:24.

23 BY MR. KEENAN:

24 Q. Up until this point, had the defendant shown you any
25 proof of insurance for the car?

1 A. No.

2 MR. KEENAN: I'm going to continue playing at that
3 timestamp.

4 (Video played.)

5 MR. KEENAN: Just pausing at 15:58:46.

6 BY MR. KEENAN:

7 Q. What are you doing on your computer at this point?

8 A. I'm looking at the vehicle registration in the system and
9 seeing if I can verify any insurance information attached to
10 that registration.

11 MR. KEENAN: I'm going to continue playing from that
12 timestamp.

13 (Video played.)

14 BY MR. KEENAN:

15 Q. So at 15:59:15, what's happening here?

16 A. Mr. Steinman is showing me insurance on his cellular
17 device.

18 Q. And did you look at that to verify it?

19 A. Yes.

20 MR. KEENAN: Okay. I'm going to continue playing
21 the body cam.

22 (Video played.)

23 MR. KEENAN: Stopping at 16:00:12.

24 BY MR. KEENAN:

25 Q. What are you doing on your computer now?

1 A. I'm accessing my ticket writer application.

2 Q. How can you tell?

3 A. I see the symbol that is usually there when I log in on
4 the login screen.

5 MR. KEENAN: Okay. I'm going to continue playing
6 from that timestamp on the body cam.

7 (Video played.)

8 MR. KEENAN: Stopping at 16:00:36.

9 BY MR. KEENAN:

10 Q. When you're talking about the vents, are you referring to
11 the air conditioning in your car?

12 A. Yes.

13 MR. KEENAN: Okay. I'm going to continue playing
14 the body cam.

15 (Video played.)

16 MR. KEENAN: Just pausing at 16:01:22.

17 BY MR. KEENAN:

18 Q. What are you doing on the computer at this point?

19 A. I'm attaching Mr. Steinman's driver's license information
20 to the call details.

21 MR. KEENAN: I'm going to continue playing the body
22 cam.

23 (Video played.)

24 MR. KEENAN: Stopping at 16:01:38.

25 ///

1 BY MR. KEENAN:

2 Q. Is there anything you noticed about Mr. Steinman's
3 physical appearance during -- at this point in the stop?

4 A. Mr. Steinman appeared to be sweating, which I noticed
5 prior to that point, but at that point I was also taking note.

6 Q. Do you remember if the air conditioning was on in your
7 car?

8 A. It was.

9 MR. KEENAN: I'm going to continue playing the body
10 cam at 16:01:38.

11 (Video played.)

12 MR. KEENAN: Stopping at 16:02:14.

13 BY MR. KEENAN:

14 Q. What is a T-26 investigation?

15 A. It's referring to a criminal history check.

16 Q. And you're requesting that from your dispatch?

17 A. Correct.

18 MR. KEENAN: I'm going to continue playing at
19 16:02:14.

20 (Video played.)

21 MR. KEENAN: Just pausing briefly at 16:03:50.

22 BY MR. KEENAN:

23 Q. Had you completed the traffic citation by this point?

24 A. No.

25 MR. KEENAN: Okay. I'm going to continue playing.

1 (Video played.)

2 MR. KEENAN: I'm pausing at 16:05:07.

3 BY MR. KEENAN:

4 Q. What's on your computer screen at this point?

5 A. That's my ticket writer application.

6 Q. And on the right side where it's not blackened out, is
7 that a signature line?

8 A. Yes.

9 Q. Is that where you sign the ticket?

10 A. Yes.

11 MR. KEENAN: I'm going to continue playing.

12 (Video played.)

13 MR. KEENAN: I'm pausing at 16:05:23.

14 BY MR. KEENAN:

15 Q. What are you doing on your computer at this point?

16 A. I believe I heard the audible sound that said that
17 something had attached to my CAD, and I believe at that point
18 in time is when I received the -- Mr. Steinman's criminal
19 history and I began to review it.

20 Q. So could you just explain for us how that works with the
21 request for the criminal history check and how it's delivered
22 to you, essentially?

23 A. I request a criminal history through dispatch. We can't
24 run criminal history ourselves. Once they receive the
25 criminal history, they attach it to the CAD. And then when

1 they attach it to the CAD, I hear the audible tone that said
2 that something was attached to the CAD. CAD being the call
3 details.

4 Q. So you receive like a notification-type thing on your
5 computer?

6 A. Yes.

7 MR. KEENAN: I'm going to continue playing from
8 16:05:23.

9 (Video played.)

10 MR. KEENAN: I'm just going to stop it at 16:06:09.

11 BY MR. KEENAN:

12 Q. Are you still looking at the criminal history return?

13 A. Yes.

14 Q. I'm just going to briefly pull up Exhibit 6, which has
15 already been admitted.

16 What are we looking at here?

17 A. These are the returns from the records request that they
18 attached to the call details.

19 Q. So is this a printout of what you were looking at on your
20 screen in your patrol car?

21 A. Yes.

22 MR. KEENAN: I'm going to return to Exhibit 3,
23 16:06:09.

24 (Video played.)

25 MR. KEENAN: I'm pausing at 16:06:18.

1 BY MR. KEENAN:

2 Q. What are you communicating with dispatch about?

3 A. Dispatch advised me that they had attached the criminal
4 history and they were going to basically give me the
5 information over the radio, but I had advised them that I was
6 going to look at that myself.

7 Q. And had you already been reviewing it yourself?

8 A. Yes.

9 MR. KEENAN: I'm going to continue playing the body
10 cam briefly.

11 (Video played.)

12 BY MR. KEENAN:

13 Q. At 16:07:44, are you still scrolling through that
14 criminal history check?

15 A. Yes.

16 Q. I'm going to -- well, did you scroll through the whole
17 thing?

18 A. Yes.

19 Q. And did you see items that were listed "felony with a
20 guilty disposition"?

21 A. Yes.

22 Q. Did you know what any of them were for?

23 A. Not -- there was one of them that was a domestic violence
24 with a dangerous weapon enhancement, I believe. And then
25 there was another one, I think it was for a stolen vehicle --

1 or I can't actually remember that one. But I believe there
2 was a domestic violence one with a deadly weapon enhancement.

3 MR. KEENAN: I'm going to continue playing, briefly.

4 (Video played.)

5 BY MR. KEENAN:

6 Q. At 16:09:03 on the body cam, what are you doing here?

7 A. I return to continue writing the citation.

8 MR. KEENAN: I'm going to continue playing.

9 (Video played.)

10 BY MR. KEENAN:

11 Q. At 16:10:31, what are you doing here?

12 A. I'm signing the block for the citation.

13 MR. KEENAN: Okay. I'm going to continue playing
14 just briefly.

15 (Video played.)

16 MR. KEENAN: Stopping at 16:11:34.

17 BY MR. KEENAN:

18 Q. What did you just do with what appeared to be the
19 driver's license?

20 A. I scanned the bar code of his driver's license for the
21 information for the citation.

22 Q. So does it automatically input into a citation?

23 A. Yes, it auto generates.

24 MR. KEENAN: I'll continue playing at 16:11:34.

25 (Video played.)

1 MR. KEENAN: Stopping at 16:12:04. I'll fast
2 forward a little.

3 Beginning at 16:13:46.

4 (Video played.)

5 THE COURT: Can I ask a question?

6 MR. KEENAN: Yes.

7 THE COURT: Just because it's a little cumbersome to
8 go back over this. I just wanted to ask, there was just a
9 thing that was expired, and then oh, you're good, you're fine.
10 Could we just clarify what that was.

11 BY MR. KEENAN:

12 Q. What did you look at and confirm was okay?

13 A. After I had told him it was expired, and he had already
14 told me before, I just had forgotten to remember. But he had
15 told me that he had his Utah registration, which I verified at
16 that moment in the system and that it was indeed correct, and
17 it was valid.

18 THE COURT: Okay.

19 BY MR. KEENAN:

20 Q. So originally you were provided an older Washington
21 registration, but the car had since been registered in Utah?

22 A. Correct. And during the initial phase of the traffic
23 stop he did say that he had Utah registration.

24 THE COURT: Okay. Thank you for that clarification.

25 MR. KEENAN: You're welcome.

1 I'll continue at 16:14:55.

2 (Video played.)

3 BY MR. KEENAN:

4 Q. By the time you had asked Mr. Steinman if he'd ever been
5 in trouble before, had you reviewed his criminal history?

6 A. Yes.

7 MR. KEENAN: I'll continue playing at 16:15:30.

8 (Video played.)

9 MR. KEENAN: Just stopping briefly at 16:16:15.

10 BY MR. KEENAN:

11 Q. Can you tell what you're doing on your computer at this
12 point?

13 A. I'm still writing the citation at that point. I think
14 that screen is for the endorsements restrictions.

15 Q. What does that mean?

16 A. Any endorsements restrictions on his driver's license.

17 Q. Okay.

18 (Video played.)

19 MR. KEENAN: Just pausing at 16:19:07, and I'll fast
20 forward a little.

21 BY MR. KEENAN:

22 Q. At this point are you finishing up the ticket?

23 A. I'm getting pretty close.

24 MR. KEENAN: I'll fast forward to 16:20:16.

25 (Video played.)

1 MR. KEENAN: I'll stop it at 16:20:50.

2 BY MR. KEENAN:

3 Q. What happens next?

4 A. At that point, just for context, I had asked him to
5 search the vehicle, but I had asked him to step out of the
6 vehicle and stand by with another officer.

7 Q. After the fact?

8 A. After the fact.

9 Q. And what did you do with the vehicle?

10 A. Excuse me?

11 Q. What did you do with the vehicle?

12 A. I requested it to be tipped off and seized and towed.

13 Q. And at some point, later did you confirm the conviction
14 you had seen with dispatch?

15 A. I did.

16 Q. Or did you request that they confirm them?

17 A. Yes.

18 Q. I'll pull up quickly Exhibit 4. Is this the call detail?

19 A. Yes.

20 Q. And does it include notes of your communications with
21 dispatch?

22 A. Yes.

23 Q. And do you know when you asked dispatch to verify the
24 convictions?

25 A. Can you give me a second to look at it?

1 I don't see it on that page.

2 Q. Could it have been at 16:26?

3 A. Yeah, that's where it is.

4 Q. And did dispatch call you back with --

5 THE COURT: I'm sorry. Can you just pinpoint where
6 it is so I'm looking at what you're looking at.

7 BY MR. KEENAN:

8 Q. The entry -- are you referring to the entry at 16:26:54?

9 A. Yes, I am.

10 Q. And that says with a typo, "verify those are felony
11 convictions, not just charges"?

12 A. Yes.

13 Q. And is that a notation that dispatch makes after you make
14 that request?

15 A. Yes.

16 THE COURT: Thank you.

17 BY MR. KEENAN:

18 Q. And did dispatch call you back with the results of that?

19 A. Yes.

20 MR. KEENAN: I will pull up Exhibit 7 and play it
21 from the beginning.

22 (Video played.)

23 MR. KEENAN: Stopping it at 1:57.

24 And pulling up briefly Exhibit 6.

25 ///

1 BY MR. KEENAN:

2 Q. On that call you mentioned the domestic violence to
3 dispatch; is that right?

4 A. Yes.

5 Q. And I'm turning to the -- what's Bates stamped 728 and
6 729 on the criminal history printout. What's titled "Cycle
7 Three", is that what you were referring to that you had
8 observed in your vehicle?

9 A. Where is "Cycle Three", I'm sorry?

10 Q. Right at the very top.

11 A. Okay. Yep, Cycle Three. Charge was assault -- if you
12 scroll down a bit further, it says domestic violence
13 enhancement -- or let's see, enhancing factor, domestic
14 violence, class A felony. Disposition guilty.

15 Q. So when you mentioned domestic violence to dispatch
16 before they had told you, that was because you had seen that
17 entry?

18 A. Correct.

19 Q. And you said the car was -- I believe you said the car
20 was sealed and towed. What did you do after that?

21 A. Once it was towed, I went to the highway patrol
22 substation and authored a request for a warrant affidavit.

23 Q. And did you submit that to a justice of the peace?

24 A. Yes.

25 Q. And I'll just pull up briefly Exhibit 8.

1 Do you recognize this?

2 A. Yes.

3 Q. What is it?

4 A. It's the request for a warrant, search warrant.

5 Q. For Mr. Steinman's BMW?

6 A. Correct. It says, "Affidavit in support of application
7 for search warrant."

8 Q. And this is the affidavit that you signed and submitted
9 to the justice of the peace?

10 A. Can you scroll up a little bit? Sorry.

11 Yes, it is.

12 Q. And was the actual warrant signed?

13 A. Yes.

14 Q. And did you search the BMW pursuant to that warrant?

15 A. Yes.

16 Q. Was that BMW search prior to obtaining that warrant at
17 all?

18 A. No.

19 Q. And could you just briefly summarize some of the items
20 that were recovered during the search?

21 A. I believe there were 38 firearms, approximately seven
22 pounds of marijuana, and some drug paraphernalia, and some
23 ammo.

24 Q. Now --

25 A. Ammunition.

1 Q. -- just going back to your interaction with Mr. Steinman.

2 At any point was he handcuffed?

3 A. No.

4 Q. Did you ever pull your gun out on him?

5 A. No.

6 Q. Did you ever even frisk him?

7 A. No.

8 Q. When you asked him to have a seat in your car, where did
9 he sit?

10 A. Front, right, passenger side of my vehicle.

11 Q. And was the passenger -- front passenger door to your
12 vehicle open at first?

13 A. Yes.

14 Q. And at some point, did you tell the defendant he was
15 receiving a speeding ticket?

16 A. Yes.

17 Q. And when you were waiting for the tow truck, where was
18 the defendant?

19 A. He was outside of my vehicle, forward of my vehicle, and
20 I believe he was right next to, pretty close to his vehicle,
21 just forward of it.

22 Q. Was he doing anything?

23 A. He was talking on his cellular phone.

24 Q. Was he standing in one place or walking around?

25 A. He was walking around a little bit.

1 Q. And did he ultimately leave?

2 A. Yes.

3 Q. How?

4 A. On foot.

5 Q. Just down the road?

6 A. Walking northbound alongside the road, yes.

7 MR. KEENAN: In the interest of time, I'm not going
8 to play anymore of the body cam. I know the Court, -- it's
9 available to the Court, unless there's some portion the Court
10 would like me to play.

11 THE COURT: No. It would be helpful just to
12 pinpoint at what point did the tow truck come. How far along
13 are we when the tow truck comes and then how long did the
14 defendant stick around?

15 MR. KEENAN: I will open up Exhibit 3.

16 (Video played.)

17 MR. KEENAN: Actually, go to Exhibit 4.

18 BY MR. KEENAN:

19 Q. Just looking at --

20 A. It's on that page.

21 Q. -- Bates stamp 79 on Exhibit 4, do you know about when
22 the tow truck was requested?

23 A. I don't exactly remember. Let's see, I can -- if you let
24 me look at it for a minute.

25 I believe it was approximately 16:43:30.

1 Q. And do you know when they took the vehicle?

2 A. Let me look at it real quick.

3 Q. Referring to the bottom -- the very bottom of the Bates
4 stamp 79.

5 A. Yeah, 17:46:09 hours is when I advised that they had the
6 vehicle.

7 Q. And when the tow truck ultimately took the vehicle, where
8 was Mr. Steinman?

9 A. I believe that before the tow truck left with the
10 vehicle, Mr. Steinman had already left. He was advised that
11 he was not detained. Once he -- he was advised once I gave
12 him the citation, he was free to leave. But I also advised
13 that we'd be giving -- we could give him a ride, a courtesy
14 ride, to the nearest town.

15 Q. But he declined to ride with anyone?

16 A. I think -- I think ultimately he did ride with another
17 officer, but not initially he did not.

18 THE COURT: I'm sorry, when was he handed -- when on
19 here is he handed back his license and the --

20 THE WITNESS: I'd have to review the video, ma'am.

21 THE COURT: Would you have put it in these notes?

22 THE WITNESS: It probably wouldn't have been in the
23 notes, ma'am. Not in the call details.

24 THE COURT: But the citation is in here? Maybe I
25 missed it. When he got the citation, is that in here?

1 THE WITNESS: It is on body cam. It's not on the
2 call details.

3 THE COURT: Okay. That's not something you would
4 have reported.

5 Okay. Thank you.

6 MR. KEENAN: I have no further questions unless --

7 THE COURT: Very good. Thank you.

8 MR. MCCLELLAND: Starting with the Court, could I
9 proceed from the lectern, Your Honor, I believe the HDMI cable
10 transmits sound in a way the defense table doesn't.

11 THE COURT: Absolutely.

12 MR. MCCLELLAND: Thank you, Your Honor.

13 Thank you, Your Honor.

14 And thank you, Trooper Boyer, for being here.

15 **CROSS-EXAMINATION**

16 BY MR. MCCLELLAND:

17 Q. I'm going to ask a couple background questions for you,
18 Trooper Boyer, and then, of course, ask a couple questions
19 about this stop on August 12. So by way of background, you
20 testified you're a Nevada Highway Patrol officer; correct?

21 A. Correct.

22 Q. You're not a federal law enforcement officer; correct?

23 A. No. Correct.

24 Q. Okay. And your daily duties as a Nevada Highway Patrol
25 officer is to enforce Nevada law; correct?

1 A. Correct.

2 Q. And under Nevada law, as you understand it, having
3 ammunition is not illegal; correct?

4 A. Correct.

5 Q. And you've been in Wells, Nevada, for how long?

6 A. Approximately, at that point, it was just over four
7 years, nearly four and a half. I'm not sure, but I think the
8 warrant said four years, five months. Actually, it was less
9 than that because I transferred to Wells. So it would have
10 been at that point approximately two years.

11 Q. Okay. And in your two years in Wells, summers are hot;
12 right?

13 A. They can be.

14 Q. They can be.

15 And on August 12, 2022, it was about 90 degrees that
16 day; right?

17 A. I don't know.

18 Q. Okay. You previously testified at a preliminary hearing
19 in state court in connection with this matter; correct?

20 A. Yes.

21 Q. If I were to tell you that you testified then, about a
22 month after this stop, that it was 90 degrees out, would you
23 agree with that?

24 A. Yes.

25 Q. Okay. So you would say it's 90 degrees on August 12,

1 2022.

2 A. I would say I don't know. But if he said, if he threw a
3 number of 90 degrees, I would agree.

4 Q. Okay. In your experience, someone can be in possession
5 of ammunition but not firearms as well; correct?

6 A. As far as Nevada Revised Statute is, there is nothing
7 specific that prevents them from owning ammunition that I know
8 of, plus firearms.

9 Q. I'm asking, I think, maybe a slightly different factual
10 question. An individual can have in their possession
11 ammunition but not firearms.

12 A. Yes.

13 Q. Okay. By the same token, someone can have ammunition in
14 their car but not a firearm in the car; correct?

15 A. Not usually in my experience, but, yeah, it's possible.

16 Q. All right. Well, we'll go to the stop on August 12,
17 2022, then and won't try to repeat -- or will try not to
18 repeat Mr. Keenan's direct examination. But just so we
19 understand the context, you're driving northward on U.S. 93
20 when you see a sedan coming in the opposite direction;
21 correct?

22 A. Yes.

23 Q. Okay. You testified you determined the speed of that
24 sedan by radar; correct?

25 A. I performed a visual estimate at first and then verified

1 by radar.

2 Q. Okay. And that's an internal radar that you use;
3 correct?

4 A. The radar is inside the vehicle, yes.

5 Q. Okay. And that's something that you have to activate;
6 right?

7 A. Yes.

8 Q. Okay. And so you activate that and determine that
9 Mr. Steinman is speeding, or the sedan is speeding; correct?

10 A. Yes.

11 Q. And then you immediately perform a U-turn and activate
12 your lights; correct?

13 A. Yes.

14 Q. Okay. What sequence was that? Did you activate your
15 lights and then perform the U-turn?

16 A. I don't recall. I think I activated my lights before I
17 made the U-turn.

18 Q. Okay. And you don't do any sort of pacing or anything
19 after you make the U-turn; correct?

20 A. Correct.

21 Q. Okay. And indeed, quite quickly, the sedan that you're
22 trying to stop pulls over.

23 A. Yes.

24 Q. And you pull up behind the sedan.

25 A. Yes.

1 Q. And as you pull up behind the sedan, you see that the
2 sedan has sort of a tinted rear window; right?

3 A. I mean, yeah, it's darker than usual.

4 Q. Right.

5 A. I couldn't tell you if it was tinted or not.

6 Q. Right. So you basically can see silhouettes on the other
7 side of that window; right?

8 A. I can see through it, yes.

9 Q. I'm asking, you just see silhouettes; correct?

10 A. Yes.

11 Q. Okay. So it's sort of dark figures?

12 A. Yes.

13 Q. Okay. No facial features that you can recognize.

14 A. Yes.

15 Q. Couldn't tell the occupant's hair color, for instance.

16 A. Correct.

17 Q. Couldn't see eyes, anything like that?

18 A. Nope.

19 Q. Okay. So you stop, you get out, you approach the car
20 from the passenger side; correct?

21 A. At the passenger side, yes.

22 Q. Why do you approach from the passenger side?

23 A. Officer safety usually.

24 Q. Okay. And rather promptly, you tell Mr. Steinman that
25 you stopped him because your speedometer read 89; correct?

1 A. That's what I said on camera. I was referring to the
2 actual radar reading.

3 Q. Okay. But the speedometer is different than a radar;
4 right?

5 A. It is.

6 Q. Yeah. And you didn't gauge the speed of the sedan by
7 pacing; right?

8 A. Correct.

9 Q. So your speedometer was sort of irrelevant to the radar
10 determination; is it fair to say?

11 A. Yes.

12 Q. Okay. I think you mentioned that you had your radar
13 calibrated. When was the last time you had it calibrated?

14 A. I believe it was in May of 2021.

15 Q. Okay. So that's over a year prior to the stop here?

16 A. Yes.

17 Q. Okay. Have you ever had your speedometer calibrated?

18 A. Yes.

19 Q. When was the last time you had that calibrated?

20 A. Prior to the incident, it was May 2021; after that, I
21 believe it was January 2023.

22 Q. So similarly, about -- well, over a year before the stop
23 in question here you had your speedometer calibrated?

24 A. Yes.

25 Q. All right. So either way, you tell Mr. Steinman that

1 you're stopping him for speeding; correct?

2 A. Yes.

3 Q. Okay. I guess taking it just one step back. Before you
4 even approach, not only can't you see his face or facial
5 features, but you don't see him open the door or anything;
6 correct?

7 A. Can you repeat that? I'm sorry.

8 Q. Yeah, apologies.

9 Back before you even approach the passenger side
10 door, do you see Mr. Steinman open any doors to the vehicle?

11 A. No.

12 Q. Okay. Do you see him get out of the front seat and move
13 into the passenger seat?

14 A. No.

15 Q. Okay. So, you get to the passenger side window,
16 Mr. Steinman has already rolled down the window for you;
17 correct?

18 A. Yes.

19 Q. Okay. And when you get there, Mr. Steinman hands you his
20 license; correct?

21 A. Yes.

22 Q. And, in fact, he already has it out and ready for you?

23 A. I think so, yeah.

24 Q. Yeah. He also hands you his registration; right?

25 A. I think I requested his registration, and upon after

1 which he handed it to me.

2 Q. And Mr. Steinman tells you he's getting a digital copy of
3 his insurance from his girlfriend; right?

4 A. I don't know how he said that. I think he said, yeah, he
5 was looking for it somehow.

6 Q. Trying to get a digital copy, specifically; right?

7 A. Yeah, I believe so.

8 Q. How is cell service near Wells? Spotty?

9 A. It depends on your carrier.

10 Q. All right. If you're about 18 miles out of Wells,
11 sometimes you don't have great cell service; right?

12 A. Depends on your carrier. I have great service out in
13 Wells.

14 Q. All right. You live in Wells.

15 A. Yes.

16 Q. As you're standing at Mr. Steinman's car's passenger
17 window, you testified that you spotted an ammunition box;
18 correct?

19 A. Yes.

20 Q. Okay. Did you ask Mr. Steinman if he had, for instance,
21 a concealed carry permit or anything like that?

22 A. No.

23 Q. Okay. And I believe in direct testimony in response to
24 Mr. Keenan's questions, you testified that you saw items under
25 the blanket in the back seat at this point?

1 A. I'm not sure if I testified to seeing items. I thought
2 there were items underneath the blanket, yes.

3 Q. Okay. So if you testified that you saw items underneath
4 the blanket, that would be an incorrect statement?

5 A. I'm not understanding your question. I believe what I
6 said in Mr. Keenan's examination was that I believed the
7 blanket was covering items in the back seat.

8 Q. Okay. But you didn't see items under the blanket;
9 correct?

10 A. No. I didn't see actual items, no.

11 Q. All right. And while you were standing on the passenger
12 side there, you also didn't see anything that you perceived to
13 be stolen property; right?

14 A. Not that I could perceive at the time.

15 Q. Right. Nothing you thought was stolen property.

16 A. Correct.

17 Q. Okay. Nothing you thought was a controlled substance.

18 A. Correct.

19 Q. Okay. Nothing you thought was drug paraphernalia.

20 A. I mean, initially, no. Nothing.

21 Q. Nothing you saw standing at the passenger side that
22 looked like drug paraphernalia to you.

23 A. Correct.

24 Q. Nothing that looked like a firearm to you.

25 A. Correct. Nothing.

1 Q. Nothing that looked like rounds of ammunition.

2 A. Correct. Nothing.

3 Q. Okay. So out the passenger side window you get the
4 driver's license and registration from Mr. Steinman, and you
5 take that back to your police SUV; correct?

6 A. Yes.

7 Q. Okay. And you start to run a records check on those
8 documents?

9 A. Yes.

10 Q. Yeah. And as you're doing so, you get the interdiction
11 thing call; yes?

12 A. From my supervisor, yes.

13 Q. Right. Who is your supervisor?

14 A. Sergeant Gulsby.

15 Q. Sergeant Gulsby.

16 All right. And what is this interdiction thing?

17 A. It was a special -- it was like a special event, a
18 special assignment for I believe a week.

19 Q. Okay. Special assignment where?

20 A. Around Wells. In the Wells district.

21 Q. Okay. What sort of special assignment?

22 A. It was an interdiction assignment.

23 Q. Okay. Different from what you usually do in your line of
24 work?

25 A. Not all too different, no.

1 Q. But special in some way?

2 A. Usually, yes. Yeah, they were bringing their canine
3 units down.

4 Q. And you testified that the entirety of that call not
5 related to Mr. Steinman; right?

6 A. Correct.

7 Q. You don't discuss Mr. Steinman's speeding on the call?

8 A. No.

9 Q. Great. You don't mention Mr. Steinman at all on the
10 call; correct?

11 A. Correct.

12 Q. And Sergeant Gulsby, naturally, doesn't mention
13 Mr. Steinman either; correct?

14 A. Correct.

15 Q. All right. After that call is then over, you return to
16 the records check that you were in the middle of performing,
17 safe to say?

18 A. Yes.

19 Q. And the results of those -- the check -- well, sorry let
20 me take a step back.

21 That records check involved checking the license,
22 correct?

23 A. Yes.

24 Q. Okay. Including any potential outstanding warrants
25 associated with the individual with the license?

1 A. I believe, yeah, absolutely.

2 Q. Yeah?

3 A. Any warrants that he may have had, if he had any, would

4 have been on that same history check.

5 Q. On the same license check?

6 A. Correct. Sorry.

7 Q. You're also running a registration check at that time,

8 too; right?

9 A. The registration was already run by dispatch.

10 Q. Okay.

11 A. And I don't think I really viewed it.

12 Q. Okay. And both the license check and the registration

13 check come back as valid?

14 A. Again, I don't remember -- I don't recall the

15 registration very well. I was mainly checking Mr. Steinman's

16 license.

17 Q. Okay. So if -- in your previous testimony at the

18 preliminary hearing you testified that the registration was

19 valid out of Utah?

20 A. Inevitably, that's what I found out, yes.

21 Q. Okay. So the registration was valid on the car?

22 A. Yes.

23 Q. And Mr. Steinman's license was similarly clear and valid?

24 A. Yes.

25 Q. All right. And in connection with the preliminary

1 hearing in state court in this matter, you testified that at
2 this point there was nothing raising your suspicion about
3 Mr. Steinman; is that correct?

4 A. I don't recall that on the preliminary report or
5 transcripts.

6 Q. Okay. There should be a binder there for you. If you
7 wouldn't mind turning to Defendant's Exhibit 510.

8 A. Is it the one down here? Is that the one it is?

9 THE CLERK: It's a black binder.

10 MR. MCCLELLAND: I can also pull it up.

11 THE WITNESS: What page did you want me to turn to?

12 MR. MCCLELLAND: Page 9, please, Deputy Boyer -- or
13 sorry, Trooper Boyer. Lines 5 through 10.

14 THE WITNESS: Is that in a specific tab?

15 MR. MCCLELLAND: Yeah, it should be Tab 510.

16 Defendant's Exhibit 510.

17 This exhibit has already been admitted. But just
18 for the sake of clarity, does this appear to be the transcript
19 of the preliminary hearing in state court in this matter? You
20 can look at page 1 of the document, for instance.

21 A. It appears that's what it is, yes.

22 Q. Okay. If you can flip all the way back to page 91 of the
23 document, that appears to be a court reporter certification --
24 correct? -- that it's a true and accurate recollection -- or
25 true and accurate account of the preliminary hearing?

1 A. Yes.

2 Q. Okay. And in this preliminary hearing you were under
3 oath?

4 A. Yes.

5 Q. Okay. So page 9, starting with line 5 -- well, starting
6 I guess with line 3, you're asked in this case by the state
7 court prosecutor here. "Okay. Now after you advised
8 Mr. Steinman of speed and made these observations, what did
9 you do next?"

10 To which you respond, "I returned to my patrol
11 vehicle and requested dispatch provide a records check for
12 Mr. Steinman."

13 Then you're asked, "Okay. Now without stating
14 specifically, did anything in that records check continue to
15 raise your suspicion of the situation?"

16 To which you respond, "Not at that time."

17 A. Correct. Nothing in his records.

18 Q. Okay. So there's, at this point, nothing raising your
19 suspicion about Mr. Steinman?

20 A. Not at that point in time, it was only his driver's
21 license check.

22 Q. Okay. And nothing else that's raising your suspicions?

23 A. There were other things and indicators inside the
24 vehicle, yes. But they were, I think, talking about
25 specifically the records check itself.

1 Q. But you testified here that nothing was raising your
2 suspicion at the time -- right? -- in the preliminary hearing
3 transcript I just read to you.

4 A. In the context of that request, he specifically stated a
5 records check. And I said, "nothing in the records check." I
6 was referring to anything in the records check.

7 Q. So after you run this records check, that comes back
8 clear and valid, you go back to Mr. Steinman's car; right?

9 A. Correct.

10 Q. And this time you go driver's side; right?

11 A. Yes.

12 Q. Okay. And you previously testified that you go passenger
13 side for officer safety.

14 A. Usually, yes.

15 Q. Okay. This time you approached driver's side.

16 A. Yes.

17 Q. And you confirm that his VIN number, vehicle
18 identification number, checks out with the registration check
19 that you had run; right?

20 A. Yes.

21 Q. Okay. And it does check out?

22 A. I mean, it matched the expired registration, yes.

23 Q. And also, ultimately, matches the valid Utah
24 registration?

25 A. Ultimately, yes. After I had visually verified it was a

1 Utah registration, yes, it checked out.

2 Q. Nothing about the VIN is inconsistent with either of the
3 registration documents?

4 A. No.

5 Q. Okay. And meanwhile, Mr. Steinman is on the phone
6 getting insurance information from his girlfriend; right?

7 A. I'm not sure if he was on the phone. I requested his
8 insurance information when I went to check the VIN, and I
9 believe that's what he was doing. I'm not exactly sure how he
10 was doing it.

11 Q. So you hear Mr. Steinman on the phone?

12 A. I was unconcerned about the noises, per se. I was
13 keeping a visual eye on Mr. Steinman. However, what he was
14 doing, however he was getting his insurance information, I
15 couldn't tell you.

16 Q. So you don't know if he's on the phone or not when you're
17 there inspecting the VIN?

18 A. He said he was getting his insurance information.

19 Q. Okay. Either way, it seems like he's getting his
20 insurance information to you at this point; right?

21 A. Yeah. Yes.

22 Q. Even so, you order him to get out of his car; right?

23 A. After a while, yes, I did ask him to get out of his car.

24 Q. Okay. And in fact, you ordered him to; right?

25 A. Yes.

1 Q. As he did, and in the moments thereafter, he at one point
2 raises his arms; right?

3 A. At one point, yes. I had asked him -- I just asked him
4 if he had anything on him, and he said no. And that's why he
5 raised his hands.

6 Q. And he raises his arms in such a way his shirt hikes up a
7 little bit; right?

8 A. Yes.

9 Q. And you can inspect from there, from your position, if
10 there's anything in his waistband; right?

11 A. Correct.

12 Q. And you don't see anything.

13 A. No.

14 Q. And he's wearing basically just shorts.

15 A. I don't recall. I believe he -- I believe he was wearing
16 shorts.

17 Q. Okay. We can go to the video if you'd like. He was
18 wearing shorts.

19 A. Sure. I mean, I can't recall.

20 Q. Okay. But you don't see anything in his waistband in the
21 shorts or pants that he's wearing?

22 A. No, not in his waistline, I see nothing. No bulges, no
23 knife clips, nothing.

24 Q. So you're confident he doesn't have any weapons on him?

25 A. I felt fairly confident he didn't have any weapons on his

1 waistband, yes.

2 Q. And you do all this visual searching trying to figure out
3 if there's bulging, et cetera, to confirm your own officer
4 safety; right?

5 A. I do it in lieu of a frisk, yes, and I do that for
6 officer safety.

7 Q. If you felt concerned, you could frisk him; right?

8 A. I mean, usually I would request a frisk. And if
9 there's -- if I had any suspicion that he had any weapons on
10 him, then I would frisk.

11 Q. Okay. So the fact that you didn't frisk, safe to say you
12 didn't have any suspicion of weapons on him?

13 A. Right. After I visually saw the waistband, I didn't have
14 any suspicion he had any weapons on him.

15 Q. And at no point at any time in the stop do you pat him
16 down?

17 A. No.

18 Q. And while all this is going on, while you're checking the
19 VIN, while you're checking him visually, et cetera, you don't
20 see anything in the car that you perceive to be stolen
21 property?

22 A. Nothing that I perceived at that moment to be stolen
23 property.

24 Q. Nothing that looked like stolen property to you?

25 A. Nothing.

1 Q. Nothing that looked like a controlled substance?

2 A. Nothing.

3 Q. Nothing that looked like drug paraphernalia?

4 A. No.

5 Q. Nothing that looked like a firearm?

6 A. No.

7 Q. Nothing that looked like rounds of ammunition?

8 A. No.

9 Q. Okay. And you don't really return to Mr. Steinman's car
10 before making the decision to seize it; right?

11 A. Correct. Yeah. Once he was in my vehicle, I didn't
12 return to his vehicle until after, after we began to seize the
13 vehicle.

14 Q. Right. So this is the last time that you're next to the
15 car?

16 A. I believe so, yeah.

17 Q. So at no point have you seen anything that looks like
18 stolen property?

19 A. Nope.

20 Q. Nothing that looks like a controlled substance?

21 A. Nope.

22 Q. Nothing that looks like drug paraphernalia?

23 A. No.

24 Q. Nothing that looks like a firearm?

25 A. No.

1 Q. And nothing that looks like rounds of ammunition?

2 A. No, just the ammo box.

3 Q. But nothing that looks like rounds of ammunition?

4 A. Correct.

5 Q. So you bring Mr. Steinman back to the police SUV and
6 order him to sit in the front seat of your vehicle; right?

7 A. Yeah, I requested.

8 Q. You're ordering him around at this point. You order him
9 into the seat; correct?

10 A. I guess that's a fair statement, yeah. I -- yeah, it was
11 more of a request. I present it as a request to sit in my
12 front seat.

13 Q. And you didn't have to order him into your police
14 vehicle; right?

15 A. No, I didn't have to.

16 Q. Yeah. You ordered him there because you wanted to ask
17 him questions; right?

18 A. Yes.

19 Q. Okay. And rather promptly after getting into the
20 passenger seat of your police SUV, he provides you a digital
21 copy of his insurance information; right?

22 A. At some point yes, he did.

23 Q. About a minute after sitting down; right?

24 A. I don't recall. I don't recall the actual timeframe.

25 Q. Not for longer than a minute?

1 A. I don't recall the timeframe, sir.

2 Q. Okay. We can play the video on that if you'd like. Let
3 me just get a good timestamp for that.

4 So we'll be playing from Defense Exhibit 507, which
5 I understand to be the same as the Government's exhibit of
6 Trooper Boyer's body cam, but we've separately submitted them.
7 I'm just noting for the record it's 507. And this will be
8 from -- I'll go from the timestamps on the video rather than
9 the hour marker.

10 This is going to be from 7:40 to about nine minutes.

11 (Video played.)

12 MR. MCCLELLAND: All right. So stopping at 9:01
13 into the video here.

14 BY MR. MCCLELLAND:

15 Q. This is Mr. Steinman providing you the digital copy of
16 his insurance; right?

17 A. Yes.

18 Q. That's about a minute after he sits in your vehicle?

19 A. Approximately, yes.

20 Q. Okay. At this point do you need any more documents from
21 Mr. Steinman to issue a speeding ticket?

22 A. Nope.

23 Q. Okay. But you didn't give him the ticket now; right?

24 A. Not at this point. He wasn't --

25 What was the question? I'm sorry.

1 Q. You don't give him a speeding ticket at this moment;
2 correct?

3 A. Not in this particular moment, no.

4 Q. Okay. You take another couple of minutes. And as
5 Mr. Keenan asked you, at some point there's a screen with a
6 signature line up; correct?

7 A. Yes.

8 Q. Okay. And at that point could you sign the ticket?

9 A. That's the first tab of the ticket, yes.

10 Q. Okay. How many tabs are there?

11 A. I can't recall. Maybe around nine.

12 Q. Okay. And is that first tab the most involved?

13 Lengthiest?

14 A. No.

15 Q. No.

16 A. Not particularly.

17 Q. Okay. But you could sign that tab and then move on to
18 the next tabs.

19 A. Yes.

20 Q. Okay. Ultimately, you give him a speeding ticket about
21 48 minutes after you stop him; correct?

22 A. I don't recall a timeline on that one, sir.

23 Q. Okay. I'll skip ahead to when that appears to happen at
24 48:10 into Exhibit 507.

25 Starting the play at 48:03.

1 (Video played.)

2 MR. MCCLELLAND: All right. Stopping at 48:45 of
3 Exhibit 507.

4 BY MR. MCCLELLAND:

5 Q. That's you handing him his citation; correct?

6 A. That, yes.

7 Q. All right. Fair to say, then, 48 minutes into the stop
8 you give him the citation?

9 A. Yeah. Yes, 48 -- yeah, from the time of the stop to the
10 time the citation was 48 minutes.

11 Q. Okay. But he still hasn't had all of his paperwork
12 returned to him at this point; right?

13 A. Can you replay that? I may have given it back. Usually
14 I give it back at that point in time I give him the citation.

15 Q. Well, here. How about I play from Exhibit 508, which is
16 Sergeant Marin's body cam returning that information. This
17 has also been previously admitted. This is Exhibit 508.

18 And just for context, Trooper Boyer, Sergeant Marin
19 is your boss; correct?

20 A. He's one of them, yes.

21 Q. Okay. And his full name is Sergeant Cruz Marin?

22 A. Yes.

23 Q. All right. And he arrives on scene about half an hour
24 into the stop?

25 A. I don't recall the timeline.

1 Q. He arrives on scene at some point in this stop. We can
2 pin down exactly when later.

3 A. Yes.

4 Q. And he assists you in various tasks related to this stop;
5 right?

6 A. Yes.

7 Q. Okay. And he interacts quite a bit with Mr. Steinman
8 while you are back in your police SUV?

9 A. I'm sorry, say that again.

10 Q. He interacts with Mr. Steinman at various points while
11 you're back in the police SUV?

12 A. He may have.

13 Q. Okay. So I'm pulling up Exhibit 508, which, again, is
14 Sergeant Marin's body cam, but should show what we need here.

15 And I'm going to 1:03:10 into that exhibit which he
16 arrives on scene about 30 minutes later, so about an hour and
17 a half into this stop.

18 This is an hour and three minutes.

19 A. Excuse me, sir.

20 Q. Yes, of course.

21 A. It wasn't an hour and a half at the stop.

22 Q. He arrives about half an hour after the stop begins.

23 A. Okay. I thought you said hour and a half. I'm sorry.

24 Q. I'm going in the video to about an hour and a half into
25 the stop.

1 A. Okay.

2 Q. And I'm starting it at 1:03:05.

3 (Video played.)

4 MR. MCCLELLAND: So I'll pause just for a second.

5 Pausing at 1:03:48 seconds into Sergeant Marin's body cam.

6 BY MR. MCCLELLAND:

7 Q. Sergeant Marin has opened the passenger side door to your
8 police SUV; correct?

9 A. Yes.

10 Q. Okay. And he picked up something from the police SUV?

11 A. Yes.

12 Q. Could you tell what that was?

13 A. My camera.

14 Q. Okay.

15 MR. MCCLELLAND: I'll continue from here.

16 (Video played.)

17 MR. MCCLELLAND: All right. Pausing at

18 1:04:26 seconds into Sergeant Marin's body cam.

19 BY MR. MCCLELLAND:

20 Q. And the timestamp in the top right corner there, 5:25:26;
21 is that fair to say, Trooper Boyer?

22 A. Yes.

23 Q. Okay. And you stopped Mr. Steinman about an hour and a
24 half before this; right? 3:51 --

25 A. More or less. But yeah, pretty close.

1 Q. You testified, I think, 3:51 is when the stop started.

2 A. Oh, yeah, so it would have been over, yeah, absolutely.

3 Q. So over an hour and a half?

4 A. Yeah.

5 Q. And that was Sergeant Marin handing Mr. Steinman
6 paperwork; correct?

7 A. Yes.

8 Q. Okay. Handing Mr. Steinman his paperwork?

9 A. Yes.

10 Q. All right. I'm going to go back a bit to the
11 conversations and the investigation that you're running in the
12 police SUV earlier in the stop.

13 About three minutes after Mr. Steinman gives you his
14 insurance information, you ask dispatch to run the criminal
15 history check; right?

16 A. What was the time again, sir?

17 Q. About three minutes after Mr. Steinman provides the
18 insurance information?

19 A. I don't recall the actual -- the timeline when I
20 requested the actual criminal history. I think it was
21 maybe -- yeah, I couldn't recall the actual timeline.

22 Q. So Mr. Steinman provided his insurance information, as
23 you acknowledged, about nine minutes into the stop?

24 A. Yes.

25 Q. You asked dispatch to run the criminal history

1 investigation about 12 minutes in?

2 A. I would have to see the call logs, but that's pretty
3 close, I think.

4 Q. I'll go to the -- well, I won't play the exhibit again.
5 The Court has already seen that sequence.

6 But it's after he's provided the insurance
7 information.

8 A. Yes.

9 Q. Okay. And you specifically asked to run the criminal
10 history check because you continued to become more suspicious
11 of Mr. Steinman; right?

12 A. Yes.

13 Q. Okay. And dispatch ultimately took about five minutes to
14 get that criminal history check; is it fair to say?

15 A. I don't recall the time how long it took them.

16 Q. Okay. If they got back to you about 16 minutes into the
17 stop, maybe 17 minutes into the stop, that would be about five
18 minutes after you requested; right?

19 A. So I can't -- I can't opine to that. I don't know
20 exactly when it was. But I know that I got the criminal
21 history before they advised me that I received the criminal
22 history.

23 Q. Okay. I think you testified that there was a ping on
24 your computer that notified you that you got the criminal
25 history.

1 A. Yeah, I think it was like an audible ping, yeah,
2 something like that. It doesn't really sound like a ping, it
3 sounds like an audible, somebody falling into water or
4 something.

5 Q. Something falling into water?

6 A. Yeah, like a drop.

7 Q. Okay. And you start reviewing that criminal history
8 check shortly after you receive it?

9 A. Yes.

10 Q. And when you're reviewing the criminal history check
11 returns, you're not filling out the license -- or the
12 citation; correct?

13 A. Correct.

14 Q. Okay. You're working on investigating the criminal
15 history not writing the citation?

16 A. Not -- yes.

17 Q. Okay. And the criminal history check that you were
18 reviewing came back with what you've described as felon
19 entries; right?

20 A. That's my way of saying, yeah, I observed felonies on his
21 record.

22 Q. Okay. But they come in as entries; right?

23 A. They're on our -- okay. Can I provide you a little bit
24 of context to that?

25 Q. Sure.

1 A. An entry is -- it's something in his criminal history
2 would be an entry. That's how I perceived it or that's how, I
3 guess, tried to show it. It was an entry on his criminal
4 history, a felony entry on his criminal history.

5 Q. Okay. And I'll ask you a little bit more about this in a
6 minute, but you basically later tried to verify these entries;
7 right?

8 A. Yes.

9 Q. And around the same time that you get the criminal
10 history check back, you start asking Mr. Steinman about
11 whether he had felony convictions; right?

12 A. Can you rephrase that question?

13 Q. Around the time that you get the criminal history check
14 back -- after you get the criminal history check back, I guess
15 is a better way to say it, you start asking Mr. Steinman
16 whether he has felony convictions?

17 A. At some point, yes, I did.

18 Q. Okay. And Mr. Steinman ultimately says he doesn't know
19 if there are felonies on his record; correct?

20 A. Yes.

21 Q. And before you could verify the criminal history check
22 entries, you tell Mr. Steinman you're seizing the vehicle.

23 A. Correct. I didn't need to verify, that was just an extra
24 step.

25 Q. But you tell him that before you actually do the

1 verification.

2 A. Say again.

3 Q. You tell him that you're seizing his car before you
4 actually do the verification.

5 A. Correct.

6 Q. And the language you use is that various factors you tell
7 him, quote, "kind of gives me a little PC to search your
8 vehicle."

9 A. That sounds accurate.

10 Q. Okay. And "little PC here" means little probable cause?

11 A. Yes.

12 Q. You then let Mr. Steinman get out of the car; right?

13 A. Yes.

14 Q. Okay. But you tell him to stand by.

15 A. With an officer, yes.

16 Q. Right. And that officer is Sergeant Marin?

17 A. Yes.

18 Q. Okay. While Mr. Steinman was in your SUV, you never tell
19 him that he has the right to an attorney; right?

20 A. Correct.

21 Q. You never tell him that he's free to leave.

22 A. Correct.

23 Q. You never tell him that he can refuse to answer your
24 questions.

25 A. Correct.

1 Q. Now I'm going to ask a little bit about this verification
2 of the criminal history entries investigation.

3 So, after you decide to seize Mr. Steinman's car and
4 let Mr. Steinman out of the vehicle, you ask dispatch to
5 verify that the entries had resulted in convictions; right?

6 A. Yes, that was just my way of double checking.

7 Q. Okay. And it turns out that's a good idea because your
8 dispatch officer tells you that a few of the entries aren't
9 convictions; right?

10 A. Correct.

11 Q. Indeed, some weren't even charges; right?

12 A. Right. There were entries on there that were -- where
13 she said were just severities of the charges.

14 Q. Okay. So she tells you, for instance, that the first
15 entry, taking a vehicle without permission, that wasn't
16 actually a felony. It was a gross misdemeanor; right?

17 A. She said it was reduced to a gross misdemeanor, yes.

18 Q. So it isn't really even a -- well, it's not a felony
19 conviction; right?

20 A. Well, that one, no. Not the specific one she's referring
21 to.

22 Q. And then she told you that another entry about an alleged
23 drive-by shooting hadn't resulted in any kind of disposition;
24 right?

25 A. Correct.

1 Q. I'm just going to ask you a little bit about interactions
2 with Sergeant Marin that we talked about or introduced a
3 little bit earlier.

4 Around the time that you tell Mr. Steinman that
5 you're going to seize his vehicle, Sergeant Marin shows up.

6 A. Yes, about that time, approximately. Just a little bit
7 before, I think, maybe.

8 Q. But you don't talk with Sergeant Marin before deciding to
9 seize Mr. Steinman's vehicle.

10 A. I guess that's fair to say, yeah.

11 Q. Okay. And again, Sergeant Marin is one of your bosses?

12 A. Yes.

13 Q. Okay. You later talk with Sergeant Marin about your
14 decision to seize Mr. Steinman's vehicle; right?

15 A. Yes.

16 Q. And at one point you ask Sergeant Marin whether seeing an
17 ammunition box plus ammunition might be enough for probable
18 cause; right?

19 A. I'm sorry. Can you rephrase? Can you say that again?

20 Q. Yeah, at one point whether he thinks seeing an ammunition
21 box in a car plus felony convictions would be enough to give
22 you probable cause; right?

23 A. I believe I was just bouncing it off of him. I wasn't
24 asking him that specific question. I think I was just
25 bouncing it off of him.

1 Q. Well, so you're musing to him about these facts?

2 A. I don't know what that word means. But I was basically,
3 you know, bouncing it off of him, trying to see what he would
4 maybe say.

5 Q. Okay. Do you often bounce probable cause questions
6 against other officers, see what they think?

7 A. Usually the senior ones, yes.

8 Q. Okay. And Sergeant Marin told you in response to that
9 bouncing off that if Mr. Steinman did not admit to felony
10 convictions, you'd lack probable cause; right?

11 A. I don't recall that. If that's what he said, that's what
12 he said, but I don't recall that.

13 Q. I'm just going to play a little bit from 507. I'm going
14 to play from about 1:10 in, starting at 1:9:58 into
15 Exhibit 507.

16 (Video played.)

17 BY MR. MCCLELLAND:

18 Q. So I'll pause this briefly. This is Sergeant Marin's
19 arm; correct, Trooper Boyer?

20 A. Yes.

21 Q. And you're bouncing the ideas off him at this point?

22 A. Yes.

23 MR. MCCLELLAND: Okay. Playing from here, 1:10.

24 (Video played.)

25 MR. MCCLELLAND: All right. I'm stopping that at

1 1:10:28.

2 (Video played.)

3 BY MR. MCCLELLAND:

4 Q. Sergeant Marin says, "As soon as he says no, you're out."

5 A. He's not referring to the felony convictions, but he did
6 say that specifically.

7 Q. He then follows up that statement by saying, "And he says
8 he doesn't have felony convictions;" correct?

9 A. I don't know. I guess I missed that.

10 Q. Something to that effect. I'll rewind just a couple
11 seconds here. This is 1:10:18.

12 (Video played.)

13 BY MR. MCCLELLAND:

14 Q. He told you no; right? That's what he says?

15 A. Yes.

16 Q. In the course of this stop, you also made a couple of
17 other calls; correct?

18 A. Yes.

19 Q. Okay. You called, for instance, Judge Kenneth Colton of
20 the Wells Justice Court; correct?

21 A. Yes.

22 Q. Okay. That's the same judge you later applied for a
23 warrant from; correct?

24 A. Yes.

25 Q. Okay. And Judge Calton is a lay justice of the peace; is

1 that right?

2 A. He's the Wells Township Justice of the Peace.

3 Q. Okay. Do you have familiarity with justices of the peace
4 in rural Nevada?

5 A. As far as what?

6 Q. Do you know that some of them are lay justices of the
7 peace?

8 A. I just know him as the judge. I just know he's the
9 justice of the peace, and he has jurisdiction over the Wells
10 Justice Court, which is he the only one, minus the pro
11 tempore, but he is the judge.

12 Q. Okay. But you are aware that some judges in rural
13 Nevada, specifically, some justices of the peace in rural
14 Nevada are not legally trained?

15 A. I think I know that, yeah. I would say, yeah, I do know
16 that.

17 Q. Some aren't admitted to the bar.

18 A. Yeah.

19 Q. Some don't have JDs.

20 A. Don't have degrees, correct.

21 Q. If I were to tell you that Judge Calton of the Wells
22 Justice Court were a lay justice of the peace, would you argue
23 with that?

24 A. No.

25 Q. You didn't identify the call to Judge Calton during the

1 stop in your report; right?

2 A. Identify the what?

3 Q. The call to Judge Calton that you made in your report?

4 A. No, I didn't. Well, I believe I did actually. Well, I
5 don't think I said specifically the call, no. I'd have to
6 review the report.

7 Q. Okay. Let's review the report then. That's Exhibit 501.

8 And we'll go to the substance of the report, which
9 starts at USAO Bates stamp 10. This has previously been
10 admitted as well.

11 I'll make it nice and large for us here.

12 Do you identify the call to Judge Calton in that
13 first paragraph of this narrative?

14 A. No.

15 Q. Okay. Second paragraph?

16 A. Nope.

17 Q. Okay. Third paragraph?

18 A. No.

19 Q. Okay. That little tiny chunk of the fourth paragraph at
20 the bottom of USAO 10, any reference to Judge Calton?

21 A. No.

22 Q. Okay. The continuation of that paragraph on the next
23 page.

24 A. No.

25 Q. Okay. Next paragraph, any reference to Judge Calton

1 call?

2 A. No.

3 Q. Remainder of this page, any reference to the Judge Calton
4 call?

5 A. No.

6 Q. This first top bit of this page, any reference to the
7 Judge Calton call?

8 MR. KEENAN: Your Honor, I'm just going to object to
9 relevance at this point.

10 THE COURT: Overruled.

11 BY MR. MCCLELLAND:

12 Q. Any reference to the Judge Calton call in entries 10
13 through 16 here on this page?

14 A. No.

15 Q. All right. Following paragraph, any reference to Judge
16 Calton?

17 A. No.

18 Q. Any reference to Judge Calton in the following paragraph?

19 A. Nope.

20 Q. Any reference to Judge Calton in the next one, the one
21 starting at "approximately 1619 hours?"

22 A. No.

23 Q. Any reference to Judge Calton in the little chunk of the
24 paragraph here at the bottom of the page on USAO Bates stamp
25 12?

1 A. No.

2 Q. Any reference to Judge Calton in the remainder of that
3 paragraph on Bates stamp 13?

4 A. No.

5 Q. How about the next paragraph, any reference to Judge
6 Calton?

7 A. No.

8 Q. Okay. The following paragraph there is a reference to
9 Judge Calton; correct?

10 A. Correct.

11 Q. Okay. And that references Judge Calton that you -- or
12 that references that you received approval from Judge Calton
13 on a search warrant at approximately 7:52 p.m.; correct?

14 A. Correct.

15 Q. Okay. Doesn't note that you called Judge Calton at that
16 point; right?

17 A. Correct.

18 Q. Okay. Just for the sake of completeness, we'll go
19 through the remainder here and see if there's any other
20 references to the call.

21 Any references to the call with Judge Calton?

22 A. No, and I'm confident it won't be in there, sir.

23 Q. Okay. So safe to say you didn't identify the call with
24 Judge Calton in your report?

25 A. Correct.

1 Q. Okay. So on this call with Judge Calton, you talk about
2 probable cause; right?

3 A. I believe I was discussing it with him, yes.

4 Q. Was there anyone from the District Attorney's office on
5 that call with Judge Calton?

6 A. No.

7 Q. Anyone from the U.S. Attorneys Office?

8 A. No.

9 Q. Any court reporter?

10 A. I don't know who's on the other line on Judge Calton's
11 cellular phone, I only know I was speaking to Judge Calton.

12 Q. Okay. So you called him on his cell phone?

13 A. I called the number for Mr. Calton, or Judge Calton.

14 Q. And you understand that to be his cellular phone?

15 A. I don't know. I just called his number.

16 Q. You testified just a second ago you didn't know who was
17 on the cell phone with Judge Calton?

18 A. Excuse me. I'm sorry for saying that, sir. I don't know
19 if it was a cell phone, a land line. I just have a number for
20 Judge Calton, and that's what I called.

21 Q. And you have that saved in your personal phone?

22 A. Yes.

23 Q. Okay. But as far as you could tell, no one else spoke on
24 that call, aside from you and Judge Calton?

25 A. Correct.

1 Q. Okay. So there's no member of the public defender's
2 office on that call?

3 A. Correct, that I know of.

4 Q. No court reporter?

5 A. Nope.

6 Q. Why did you have Judge Calton's number?

7 A. I think I got it from another trooper.

8 Q. Okay. What other trooper?

9 A. I don't know. I don't know how I got the number.

10 Q. Is it common for troopers to have Judge Calton's number?

11 A. Yes.

12 Q. Okay. You weren't calling Judge Calton during the stop
13 to ask for a telephonic search warrant; right?

14 A. Correct.

15 Q. Okay. And, in fact, you couldn't have because there
16 didn't seem to be a court reporter present; correct?

17 A. I'm sorry, I missed that.

18 Q. Yeah. Have you called a judge for a telephonic search
19 warrant before?

20 A. Yes, I believe I have.

21 Q. And are you aware that there are procedures for -- for
22 asking for a telephonic search warrant under Nevada law?

23 A. Yeah. I have not requested a telephonic warrant from
24 Judge Calton. I believe I requested one from a judge when I
25 was working in Ely, Nevada.

1 Q. Thank you, Trooper Boyer. Not quite my question. My
2 question is are you aware that there are procedures for
3 requesting a telephonic search warrant?

4 A. Yes, though I don't really know what they are. I
5 couldn't tell you what they are.

6 Q. Okay. So are you aware that there's maybe a particular
7 Nevada statute on point for asking for telephonic search
8 warrants?

9 A. I honestly don't know.

10 Q. Okay. Would it surprise you to hear that telephonic
11 search warrants require, for instance, a court reporter?

12 A. No, it wouldn't surprise me.

13 Q. Okay. Would it surprise you to hear that you would have
14 to swear an oath to be telling the truth when you're asking
15 for a telephonic search warrant?

16 A. Yes. No, I'm sorry, it wouldn't surprise me.

17 Q. Wouldn't surprise you.

18 But there was no court reporter present on this
19 call?

20 A. No.

21 Q. And you didn't swear an oath?

22 A. No.

23 Q. Okay. But you were talking with Judge Calton about
24 whether you had probable cause; right?

25 A. I don't think I was asking him if I had probable cause at

1 that time. I was asking him if he would entertain a review of
2 the search warrant application.

3 MR. MCCLELLAND: Okay. I'm going to play a little
4 bit of that call. And, unfortunately, we only have your side
5 of the call from the body cam. We don't have Judge Calton's
6 responses. So I'm going to ask you if you can recall some of
7 his responses. But first I'll play from the video.

8 Starting about 41:14 into Exhibit 507.

9 (Video played.)

10 MR. MCCLELLAND: Pausing for a second.

11 BY MR. MCCLELLAND:

12 Q. Just to be clear, this is the phone call with
13 Judge Calton?

14 A. It could be. I would say yes. I called somebody else at
15 some point in time too.

16 MR. MCCLELLAND: Yeah, I'm going to ask you about
17 that call as well, but we'll play through the Judge Calton
18 call first. I'll pause maybe in another 10 seconds to see if
19 you can confirm that this is the Judge Calton call.

20 (Video played.)

21 THE WITNESS: If I said judge, it is.

22 BY MR. MCCLELLAND:

23 Q. Okay.

24 A. I said judge, yeah.

25 MR. MCCLELLAND: I'll back this up again because it

1 seems like the audio is a smidge delayed. But we'll go back
2 to -- this is starting from 41:06.

3 (Video played.)

4 BY MR. MCCLELLAND:

5 Q. So that's your call with Judge Calton; right?

6 A. Yes.

7 Q. Okay. And you ask him a number of questions on that
8 call; right?

9 A. Yes.

10 Q. You ask him for advice on whether you have probable
11 cause; right?

12 A. I don't think I was asking for advice on probable cause.
13 I just told him what I had, and I asked him if he would
14 entertain a review of the search warrant.

15 Q. Okay. And you told him at some point that you don't know
16 if you have actual probable cause per se; correct?

17 A. Correct. Yeah, I said it's unknown if I have actual
18 probable cause per se.

19 Q. What does he say about that?

20 A. I don't recall what he said about that. I don't think he
21 said anything specific about it at all.

22 Q. There's a fairly long pause on your body cam, a series of
23 fairly long pauses, you don't think he says anything in
24 particular about probable cause after you mentioned the
25 probable cause point.

1 A. I honestly can't recall what he said in that moment, if
2 he said anything.

3 Q. Have you had previous calls with Judge Calton?

4 A. Yes.

5 Q. Okay. Does he usually let you bounce ideas off probable
6 cause with him?

7 A. I've never discussed probable cause with Judge Calton,
8 I've just had other conversations.

9 Q. You discussed probable cause with Judge Calton on this
10 call.

11 A. On this call I was discussing what I had, and I was
12 asking if he would entertain a review of the search warrant.

13 Q. Is it your typical practice to have ex parte calls with
14 judges?

15 A. I don't know what ex parte is, but it's --

16 Q. One-on-one calls with judges without attorneys present.

17 A. Is it typical?

18 Q. Yeah.

19 A. It's not typical.

20 Q. Why did you do it now then?

21 A. Nothing told me -- I thought that it was probably a good
22 idea to ask him if that was a good idea.

23 Q. Why is that?

24 A. I felt that from what I had, I was uncomfortable making
25 the decision that I had probable cause to search at that point

1 in time and I felt that it was better for him to make that
2 determination.

3 Q. So you're uncertain if you have probable cause at this
4 point?

5 A. Yeah, I was unsure.

6 Q. You've already seized his vehicle; right?

7 A. Correct.

8 Q. But you're unsure that you have probable cause.

9 A. Correct.

10 Q. And so you call the judge that's ultimately going to
11 issue the warrant to figure out if you have it?

12 A. I -- sir, I called him to see if he'd review the search
13 warrant. That's what I called him for. I called and I told
14 him exactly what I had. And he -- and I asked him if he'd
15 entertain a review of the search warrant. So to me, if he's
16 going to say yes, that means that there's enough for me to
17 continue to seize the vehicle for the search warrant.

18 Q. During the course of this stop you don't call the DA's
19 Office?

20 A. No.

21 Q. You don't call the U.S. Attorneys Office.

22 A. No.

23 Q. You call Judge Calton.

24 A. Yes.

25 Q. Later in the call you asked him to provide an e-mail

1 address for you to send the application; correct?

2 A. I think I had an e-mail address on file for him, so I
3 just wanted to make sure whichever one he said is what I had.

4 Q. So, specifically, you ask him to text you the right
5 e-mail address; right?

6 A. I might have asked him, yeah. I don't recall. But
7 that's not exactly what happened. I actually handed him the
8 warrant in person.

9 Q. Okay. Did he eventually text you about anything?

10 A. No, he didn't text me.

11 Q. Okay. Has he texted you outside of this?

12 A. No, he doesn't text me. We don't -- we're not on a
13 friendly basis per se. We are not -- we don't really text
14 between each other for any reason other than work.

15 Q. And when you called him, you didn't speak first with the
16 judicial assistant or anything; right?

17 A. No, I didn't -- I didn't speak to anybody before I spoke
18 to him.

19 Q. You just got straight through to Judge Calton.

20 A. Yes.

21 Q. All right. No clerk that you chatted with before?

22 A. Correct. Nothing.

23 Q. Just Judge Calton.

24 Have you talked with Judge Calton since about
25 probable cause on stops?

1 A. No.

2 Q. This was a sort of one off?

3 A. I don't know what you mean by that. But, yeah, it was a
4 one-time thing.

5 Q. Okay. You later talk with Sergeant Marin about calling
6 the judge, and we can play the chunk, but it's safe to say he
7 seems sort of unfazed. Is it typical practice among NHP
8 officers to call judges about probable cause?

9 A. I don't know. I don't know if -- I don't really know of
10 any other troopers that discuss probable cause with other
11 judges.

12 Q. Okay. Are you aware of Sergeant Marin ever talking about
13 probable cause with the judge?

14 A. I don't know. No, I don't know.

15 Q. Has Sergeant Marin ever told you I called the judge, and
16 he thinks we're good to go? Anything like that?

17 A. No, he's never told me that.

18 Q. Okay. But you told Sergeant Marin that after you got off
19 the phone with the call.

20 A. Yes.

21 Q. That you had spoken with Judge Calton and that you would
22 then later submit a warrant application.

23 A. Yes.

24 Q. Okay. You also had a couple of calls with an individual,
25 looks like Kelly Barny; is that right?

1 A. Yes.

2 Q. Ultimately, two calls; correct?

3 A. Yes.

4 Q. Okay. Who is Kelly Barney?

5 A. He's another trooper.

6 Q. Okay. Is he more senior to you?

7 A. Yes.

8 Q. Okay. Do you typically call him for advice?

9 A. Yes.

10 Q. Does he have any sort of supervisory power over you?

11 A. No.

12 Q. But you call him for advice because he's more senior?

13 A. Yes.

14 Q. You didn't note any of those calls with Kelly Barney in

15 your report either, did you?

16 A. No.

17 Q. And those calls with Kelly Barney are also on your

18 personal cell phone; right?

19 A. Yes.

20 Q. And so if we were to play the body cam footage, we'd only

21 get your side of those conversations, safe to say?

22 A. Safe to say.

23 Q. You have Kelly Barney's number in your phone; right?

24 A. Yes.

25 Q. Is Kelly calling you from Kelly's personal cell phone?

1 A. I don't know. Maybe -- yeah, yeah, he was.

2 Q. Okay. The first call that you have with Kelly seems to
3 happen about an hour and 15 minutes into the stop. It's not
4 too long, so I think we'll play that as well.

5 THE COURT: Excuse me. Can you just set up to
6 remind us exactly what exhibit this is on so we have a clean
7 record to be able to find this. Thank you.

8 MR. MCCLELLAND: Of course, Your Honor.

9 This is Exhibit 507, again, at about an hour and
10 15 minutes into Exhibit 507.

11 THE COURT: Thank you. And I'm starting it
12 specifically at 1:15 into 507.

13 (Video played.)

14 BY MR. MCCLELLAND:

15 Q. All right. So that's your first call with Kelly Barney;
16 right?

17 A. Yes.

18 Q. Okay. And you describe to Kelly various things that you
19 found suspicious about the stop; right?

20 A. Yes.

21 Q. And at one point you ask -- is it Trooper Barney?

22 A. Yes.

23 Q. You ask Trooper Barney whether you have probable cause;
24 right?

25 A. I don't think I specifically asked him probable cause. I

1 can't remember.

2 Q. All right.

3 A. I guess I was probably referring to, you know, what he
4 thought about all of the suspicion I thought I had.

5 Q. You ask him at some point, "Would that give me probable
6 cause?"

7 A. Oh, I think I said, yeah, I'm not sure if that gives me
8 probable cause, yeah.

9 Q. What did Kelly say to that?

10 A. I can't -- try not to put words in his mouth. But
11 basically what he relayed to me or how I perceived it was that
12 he thought it did but that submitting for the warrant was what
13 he would do.

14 Q. But, again, you didn't write about this conversation with
15 Officer Barny, Trooper Barny rather, in your report; right?

16 A. Right, I didn't write about it.

17 Q. So this is you recollecting 11 months after the fact what
18 he might have said.

19 A. Yes.

20 Q. Towards the end of that call you tell Trooper Barny that
21 you'd have to look that one up. What were you referring to?

22 A. I don't recall. I honestly cannot recall.

23 Q. Trooper Barny then calls you back a couple minutes later;
24 right? We'll play that call too.

25 A. Yeah, sure, go ahead.

1 MR. MCCLELLAND: All right. This is Exhibit 507,
2 starting around 1:23.

3 I'll start at 1:23:48 on Exhibit 507.

4 (Video played.)

5 BY MR. MCCLELLAND:

6 Q. All right. So that's your second call with Trooper
7 Barny; correct?

8 A. Yes.

9 Q. And this time you're asking for help writing the warrant
10 application; is that right?

11 A. I think there was one part of it, yeah.

12 Q. Sounds like a couple questions about what to put in the
13 application, fair to say?

14 A. Generally, yes.

15 Q. Okay. And ultimately, the warrant application you submit
16 is 503, Defendant's Exhibit 503 in this binder; is that right?

17 A. Sorry. What's that?

18 Q. Ultimately, the warrant application that you submit is
19 Exhibit 503 in Defendant's Exhibit binder; correct? This has
20 previously been admitted.

21 A. Yes.

22 Q. That's the warrant application that you type out and
23 submit to Judge Calton.

24 A. Yes.

25 Q. Okay. And in the course of your call with deputy -- or

1 sorry, Trooper Barny, you ask Trooper Barny if you should say
2 firearms in the warrant application; right?

3 A. Yes.

4 Q. Okay. And you ultimately do put on the first page of the
5 warrant application that the evidence sought to be found in
6 constituting evidence that demonstrates a criminal offense is
7 or may be committed for a prohibited person possessing
8 firearms; correct?

9 A. Yes.

10 Q. So you ended up agreeing with Trooper Barny in the
11 recommendation of putting firearms.

12 A. Yes. I was referring to the terminology.

13 Q. Okay. What did Kelly say about this warrant application
14 writing process?

15 A. I don't know. I couldn't even begin to describe what he
16 said.

17 Q. Okay. And that's because it's a long time ago?

18 A. I mean, yeah. I mean, in my perception, basically what
19 we -- what that phone call was all about was basically the
20 process.

21 Q. And this is another call from your personal cell phone to
22 Trooper Barny's personal cell phone.

23 A. Yes.

24 Q. And it's another call that you didn't note in your
25 report.

1 A. Correct.

2 Q. Okay. And you talk with Trooper Barny about whether you
3 should put drugs in the warrant application or not.

4 A. I don't recall. I think I was going to do that anyway.

5 Q. You tell Trooper Barny that you don't think there would
6 be drugs.

7 A. Oh, okay. Yeah. Well, I mean, in my previous experience
8 it's not just one criminal activity, one type of criminal
9 activity that you find evidence of. You find evidence of
10 several.

11 Q. Sure. Thank you, Trooper Boyer. That's slightly
12 different than what I'm asking. You tell Kelly that you don't
13 think there would be drugs.

14 A. Not necessarily.

15 Q. You told Trooper Barny that you did not think that there
16 would be drugs?

17 A. Yes.

18 Q. And, in fact, when you were at Mr. Steinman's vehicle you
19 had not observed anything you thought to be controlled
20 substances; correct?

21 A. Correct.

22 Q. And you had not observed anything that you thought might
23 be drug paraphernalia; correct?

24 A. Correct.

25 Q. And just to round it out, you didn't observe anything

1 that you thought might be stolen property; correct?

2 A. Correct.

3 Q. And nothing that you thought might be rounds of
4 ammunition; correct?

5 A. Correct.

6 Q. But ultimately, the warrant -- the proposed warrant that
7 you attach to the warrant application --

8 A. Mm-hmm.

9 Q. -- it's been marked as Defendant's Exhibit 504,
10 previously admitted by stipulation --

11 A. Mm-hmm.

12 Q. -- ultimately that search warrant requests authorization,
13 and then Judge Calton signs it, but requests authorization to
14 look for evidence of records or documents identifying
15 ownership, control -- ownership/control of the vehicle, stolen
16 property, controlled substances, paraphernalia, or illicit
17 firearms which may be found in Mr. Steinman's car; correct?

18 A. Correct.

19 Q. And you eventually submit this proposed search warrant
20 attached to Defendant's Exhibit 503 which is the application;
21 correct?

22 A. Correct.

23 Q. And you submit that to Judge Calton.

24 A. Correct.

25 Q. That's the same judge you previously had the call with.

1 A. Yes.

2 Q. Okay. And you said that you personally delivered it to
3 Judge Calton?

4 A. Yes.

5 Q. Where did you personally deliver it?

6 A. We were in the Wells Justice -- or we were actually at
7 the NHP substation in Wells that shares the building with
8 Judge Calton's office.

9 Q. And you personally handed it to Judge Calton?

10 A. Yes.

11 Q. Okay. Not to a judicial assistant?

12 A. No.

13 Q. Not to a clerk?

14 A. Nope.

15 Q. Directly to Judge Calton?

16 A. Directly.

17 MR. MCCLELLAND: Pass the witness, Your Honor.

18 THE COURT: Thank you.

19 I just have a few really quick questions and let me
20 interject in that way. The government can address follow up
21 if needed, and then we can do more follow up if needed. One
22 question I had for you, is I think in your experience you said
23 I've been doing this for five years, and you arrest 20 to
24 30 -- make 20 to 30 arrests per year.

25 THE WITNESS: Correct. That's approximate.

1 THE COURT: Okay. And how many tickets do you give
2 in a year?

3 THE WITNESS: It varies. It's not as many as
4 traffic stops, ma'am. I would probably say it's about, you
5 know, maybe half to -- it's about -- if we're talking about a
6 ratio, it's probably about half.

7 THE COURT: How many traffic stops do you do a year?

8 THE WITNESS: It varies. I think I've stopped, my
9 first year was 1400. My second year was approximately a
10 thousand. But usually is more or less a thousand, ma'am.

11 THE COURT: Okay. And then when you say half, a
12 thousand-plus stops, maybe 500 tickets, is that what you're --

13 THE WITNESS: Correct.

14 THE COURT: Okay. When you stop someone for a
15 ticket, how long does it usually take to give a citation?

16 THE WITNESS: Just writing the citation, usually a
17 round figure is 15 minutes.

18 THE COURT: Okay. And when you say 15 minutes,
19 that's like from the time that the driver is stopped until the
20 time that the driver is pulling away?

21 THE WITNESS: I guess that would be an accurate --
22 or yeah, I guess that would be an okay assumption. It's give
23 or take, ma'am. Usually when I stop the vehicle, depending on
24 what documents I get and when I get them, kind of depends on
25 how long the stop takes.

1 THE COURT: Uh-huh. So if someone gives you a valid
2 driver's license and a valid registration, and you run those
3 two things --

4 THE WITNESS: Yes.

5 THE COURT: -- how long does that take once you get
6 back to your car?

7 THE WITNESS: Yeah, also in the course of me asking
8 for their documents, ma'am, and when I receive them, I usually
9 immediately return to my vehicle --

10 THE COURT: Mm-hmm.

11 THE WITNESS: -- with those documents.

12 THE COURT: And you submit the driver's license
13 and -- you -- I think you said, and correct me if I'm wrong, I
14 think you said the driver's license and the registration are
15 sort of, like, two separate checks.

16 THE WITNESS: They are.

17 THE COURT: So you run the driver's license.

18 THE WITNESS: We provide the -- right. We provide
19 the information, the -- sorry, the registration, we provide
20 that information to dispatch first.

21 THE COURT: Mm-hmm.

22 THE WITNESS: They do that, that's usually
23 automatic. Sometimes they don't attach it. So if they don't
24 attach it, then usually I'll run it again and I'll verify it
25 myself. And then after that I will run the driver's license.

1 THE COURT: And the driver's license, that's a call
2 or an electronic thing? You're not calling -- you're not
3 calling dispatch about the driver's license, you're running
4 it.

5 THE WITNESS: There's two different ways to do it.
6 Sometimes we call and sometimes we can do it ourselves.
7 Depending if our loaned out computers have service.

8 THE COURT: Oh, because you sometimes don't have --

9 THE WITNESS: Because sometimes we don't have
10 service.

11 THE COURT: So what information do you get back,
12 again, from the driver's license run? Check?

13 THE WITNESS: So we get, obviously, the driver's
14 license information. We get any wants and warrants --
15 outstanding wants and warrants. We get possible TPO
16 violations. We get information that may pertain to the
17 subject, that may not necessarily pertain to the subject. And
18 then, yeah, sometimes we will get -- what do you call it? --
19 we get like a concealed carry permit hit if it's there.

20 THE COURT: Okay. And then do you -- okay. Then
21 you're waiting for information from -- on the registration.
22 Okay. So do you routinely run a criminal history check when
23 you do the driver's license check and the registration check?

24 THE WITNESS: Not routinely.

25 THE COURT: Okay. When do you do it?

1 THE WITNESS: When I have suspicion. It depends on
2 the indicators that I see. It depends on the responses that I
3 get.

4 THE COURT: Okay.

5 THE WITNESS: If I get certain things that don't
6 necessarily either make sense or are not normal to the public
7 or a normal traffic stop, then I'll run a criminal history.

8 THE COURT: Okay. That's helpful.

9 What -- there was -- so I may be confusing my facts,
10 so forgive me if that's true, did you -- did the -- did
11 Mr. Steinman tell you that he was going to St. George.

12 A. He did. I think what you're referring to is there was a
13 couple times where I did say Arizona, that was my mistake. It
14 was a mix up.

15 THE COURT: Do you recall when you said that?

16 THE WITNESS: I think when I called -- I think when
17 I called the judge and when I called Kelly, the trooper,
18 Trooper Barny, when I was basically establishing the direction
19 of travel.

20 THE COURT: From.

21 THE WITNESS: From Washington state.

22 THE COURT: To Arizona.

23 THE WITNESS: To St. George, Utah.

24 THE COURT: But you said Arizona.

25 THE WITNESS: Yeah, accidentally.

1 THE COURT: Okay. And then you said that a couple
2 times, but it's not in the search warrant application.

3 THE WITNESS: Arizona, I don't believe so.

4 THE COURT: Okay.

5 Okay. That's all. Thank you.

6 MR. KEENAN: Just a few follow ups.

7 **REDIRECT EXAMINATION**

8 BY MR. KEENAN:

9 Q. I'll start if I could play Exhibit 3.

10 Just from 16:57:45 because there was some questions
11 about the conversation with your supervisor.

12 (Video played.)

13 MR. KEENAN: Just stopping at 17:01:10.

14 BY MR. KEENAN:

15 Q. When your supervisor says once he says "no, you're out,"
16 do you think he's referring to the justice of the peace?

17 A. No, he's referring to consent. He says -- he's referring
18 to when I asked for consent and he said no, then you're out.
19 That's what I believe he was referring to.

20 Q. So it means you need to do something else if you want to
21 search that car?

22 A. Correct. I think that's a very accurate assumption.

23 Q. And there was quite a few questions about the
24 conversation you had with Judge Calton as well as Barney. And
25 it's, I think, safe to say now that those conversations

1 weren't documented in your report; right?

2 A. Yeah, they weren't documented.

3 Q. It is documented on your body cam though; right?

4 A. Yes.

5 Q. Would there be any reason for you to indicate those in
6 your report?

7 A. I didn't see a reason to document those in my report. I
8 think they were just less than a technicality. They were
9 trivial phone conversations that didn't -- I mean, did they
10 affect my decision? Yes. But I had pretty much already
11 decided to seize the vehicle.

12 Q. And you had -- you said you made that decision, but you
13 still sought the -- you talked it over with at least three
14 people on this body cam; correct?

15 A. Yes. Well, two people, I'm sorry. Oh, three people
16 you're right. Yep.

17 MR. KEENAN: I have no further questions for the
18 witness.

19 THE COURT: Thank you.

20 Can you just remind me who the three people are? Is
21 that Judge, Kelly, and Marin -- and Sergeant Marin?

22 MR. KEENAN: That's who I was referring to.

23 THE COURT: Somehow I missed who Hernandez is. Is
24 there a reference to a Hernandez in here?

25 MR. MCCLELLAND: I understood the body cam to refer

1 to a Hernandez, Your Honor. I also don't know who Hernandez
2 is.

3 THE COURT: Who is Hernandez?

4 THE WITNESS: Sergeant Hernandez is the sergeant of
5 the investigative division, ma'am. And I didn't call him. He
6 was not spoken to prior to issuing a search warrant.

7 MR. KEENAN: We could just play that portion of the
8 body cam where the name comes up again.

9 Just starting Exhibit 3 at 16:58:50.

10 THE COURT: Thank you.

11 (Video played.)

12 THE WITNESS: Excuse me, sir. In your previous
13 question where your regarding speaking to George Hernandez, I
14 can't exactly recall if I spoke to him prior to submitting for
15 the warrant or after submitting the warrant and searching the
16 vehicle. I'm sorry, that was -- I don't have that
17 recollection.

18 THE COURT: Okay. Just, you spoke to him that day,
19 and you're not sure exactly when you spoke to him.

20 THE WITNESS: Correct.

21 THE COURT: But it was sometime before you had this
22 conversation with your Sergeant Marin who is standing there.

23 THE WITNESS: Sergeant Hernandez was spoken to after
24 Sergeant Marin, after I spoke to Sergeant Marin. I spoke to
25 Judge Calton first, then I spoke to Trooper Kelly Barny

1 second, and then I spoke to -- or at some -- throughout those
2 conversations, I was speaking with Sergeant Cruz Marin.
3 Sergeant Hernandez was spoken to off camera.

4 THE COURT: Okay. In this clip, are you speaking to
5 Marin?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 MR. KEENAN: I'll just play this maybe just to
9 clarify.

10 THE COURT: It's -- very brief, yes. Thanks.

11 (Video played.)

12 MR. KEENAN: Well, I didn't hear it that time.

13 BY MR. KEENAN:

14 Q. But is it safe to say that if you had a conversation
15 during -- at some point during this car stop with Sergeant
16 Hernandez it would be recorded on the body cam?

17 A. Yes.

18 Is that what you're referring to? If there was a
19 conversation with Sergeant Hernandez, it would be on the body
20 cam.

21 Q. If it were in reference to this traffic stop, it would be
22 recorded between the beginning of this body cam video and what
23 we just played up to at 17:01:22?

24 A. I'm not exactly understanding your question. But any
25 conversation with Sergeant Hernandez was not recorded. I did

1 talk to him at some point that night. I can't remember if it
2 was before or after the warrant was approved. But at some
3 point I did talk to him just to let him know that I was going
4 to be searching the vehicle, and that the suspect may still be
5 inside city limits. I think that's the only thing that I
6 talked to him about.

7 MR. KEENAN: Nothing further.

8 THE COURT: Okay. Thank you.

9 Defense, anything?

10 MR. MCCLELLAND: Nothing further, Your Honor.

11 THE COURT: Okay. Let me just see -- can I ask,
12 there's a -- so my notes refer to a conversation with
13 Hernandez that I also didn't hear the second time, but I'm
14 certain I heard it the first time, so I'm not sure what
15 happened there.

16 There was a little -- my notes also refer to
17 something that you said, like, we usually interdict going
18 south. It was something along those lines that you said in
19 that conversation. I just want to get some context about what
20 you're talking about.

21 THE WITNESS: Oh, yes, ma'am, I'll give you some
22 context. When it comes to narcotics and really any
23 interdiction, for the most part a lot of what we get comes
24 from northbound traffic.

25 THE COURT: Okay.

1 THE WITNESS: But in my training and experience, and
2 specifically stated in my training and experience from the
3 class, from specialized advanced training I mean to say, is
4 that we don't interdict just northbound traffic or eastbound
5 traffic, we interdict all traffic because, obviously, criminal
6 activity travels and sometimes the direction doesn't matter.

7 THE COURT: Okay.

8 THE WITNESS: I'm sorry, I guess that wasn't a very
9 good explanation.

10 THE COURT: So, you're usually interdicting
11 northbound traffic. He was traveling south.

12 THE WITNESS: I don't -- I wouldn't say I usually
13 interdict northbound, ma'am.

14 THE COURT: Okay.

15 THE WITNESS: And especially at this point in time
16 because I was fairly new at the whole process in the first
17 place, which is why I was interdicting southbound as well.

18 THE COURT: Okay.

19 THE WITNESS: But yes, he was southbound.

20 THE COURT: Okay. And so the term interdict, what
21 does that refer to?

22 THE WITNESS: It's just looking for criminal
23 activity that's not readily apparent, ma'am.

24 THE COURT: Any criminal activity?

25 THE WITNESS: Any type of criminal activity.

1 THE COURT: Not usually, like, drug activity?

2 THE WITNESS: I mean, a lot of it is drugs is what
3 we get out of it. But it's an all crimes approach to
4 criminal -- to interdiction.

5 THE COURT: Okay.

6 THE WITNESS: So.

7 THE COURT: One other question I failed to ask you
8 earlier, and I'll, of course, allow for follow up. But have
9 you got a search warrant before?

10 THE WITNESS: Yes.

11 THE COURT: About how many?

12 THE WITNESS: At this point in time, I think that
13 was my first search warrant, ma'am.

14 THE COURT: Okay. And have you ever searched a car
15 without a search warrant?

16 THE WITNESS: For PC, yes, ma'am.

17 THE COURT: Mm-hmm. Do you sometimes get consent?

18 THE WITNESS: Sometimes, yes.

19 THE COURT: And sometimes you don't get consent, but
20 you have probable cause and so you search the car there and
21 then without a search warrant.

22 THE WITNESS: Yes.

23 THE COURT: Okay. No further questions. Thank you.

24 MR. MCCLELLAND: No further questions from us
25 either, Your Honor.

1 THE COURT: Okay.

2 MR. KEENAN: Nor the government.

3 THE COURT: All right. So I want to allow argument.

4 It may just be that everyone kind of needs a couple minutes

5 break, like, five minutes. And then I anticipate having

6 argument and then maybe another break. I'm sorry to keep

7 going so long, but we have to keep going. So let's just take

8 like a five-minute break, just a little breather, and then

9 we'll come right back. And then I'll hear argument first on

10 the motion to suppress and then on the motion to dismiss.

11 Okay. Thank you.

12 Oh, and you -- thank you so much for your testimony.

13 And you may step down.

14 THE WITNESS: Thank you, ma'am.

15 (Break taken 4:22 p.m. to 4:38 p.m.)

16 THE CLERK: This is to reflect we're back on record

17 in 3:22-cr-00068-ART-CLB.

18 THE COURT: Okay. So defense, this is your motion,

19 so I'll let you begin with the argument and have the last word

20 after the government. Go ahead.

21 MR. MCCLELLAND: Fantastic. Thank you, Your Honor.

22 Would you like me to present from the lectern or is seated at

23 counsel table all right?

24 THE COURT: I would prefer the lectern.

25 MR. MCCLELLAND: All right. I sort of do too.

1 MR. KEENAN: Your Honor, before Mr. McClelland
2 begins, may I tell the witness that he can go?

3 THE COURT: Oh, please. Yes, that's fine.

4 MR. MCCLELLAND: Well, thank you, Your Honor.

5 So, naturally, there are a number of issues with the
6 traffic stop and follow-on investigation in this case. But
7 I'll start with what I think is the easiest and simplest
8 resolution which is warrant overbreadth. There's no dispute
9 that the majority of the categories identified in the warrant
10 there is no probable cause for. And there's good reason for
11 that, because Trooper Boyer, as he testified today, had never
12 seen stolen property, didn't see anything that he thought
13 might be a controlled substance, didn't see anything he
14 thought might be drug paraphernalia, didn't see anything that
15 he thought might be individual rounds of ammunition, didn't
16 see anything that he thought might be firearms.

17 So the fact that the warrant purports to authorize a
18 search for documentation with respect to the ownership and
19 control of the vehicle, stolen property, controlled
20 substances, paraphernalia, or illicit firearms, necessarily
21 makes the warrant defective.

22 The government, again, concedes as much as that at
23 least three of those five categories there is no probable
24 cause supporting, that the majority of those categories are
25 unsupported in the search warrant tends to suggest that the

1 warrant is overbroad, and we think, then, the warrant
2 overbreadth issue is pretty handily survived *Spilotro*.

3 Now the government in its response briefing raises
4 in a footnote basically an argument about severance and the
5 ability to sever, I take it, the firearms category from the
6 warrant from all the other categories in the warrant.

7 A couple reasons that is an ineffective argument
8 even if considered from the footnote, one, as in *Spilotro*, the
9 illicit firearms category is simply lumped into all of the
10 other categories identified in the warrant and so can't be
11 severed for that reason. And then beyond that, naturally,
12 there's no evidence of firearms presented to Trooper Boyer.
13 Prior to seeking the warrant, he only observed an ammunition
14 box. And as I think we lay out pretty detailed in our
15 briefing, the presence of an ammunition box doesn't imply
16 firearms. And indeed, Trooper Boyer acknowledged you can have
17 ammunition in a car but not firearms.

18 THE COURT: Can I just stop you there to clarify?

19 MR. MCCLELLAND: Yeah.

20 THE COURT: So that argument basically is if you
21 have this list of things and you actually do sever the things
22 that the government would want to sever, what you're left with
23 is just the firearms. And are you saying there's no probable
24 cause for that?

25 MR. MCCLELLAND: Well, so I'm saying I think two

1 things, Your Honor. One is I take that to be the government's
2 severance argument is that, ah, just ignore that there are, in
3 the government's view, at least three of the five categories
4 without probable cause. You can sustain it on the warrant --
5 or on the firearms identification in the warrant alone. And
6 the response to that is, well, the firearms category, even if
7 there is probable cause for it, and we contest that --

8 THE COURT: Mm-hmm.

9 MR. MCCLELLAND: -- but even if there is probable
10 cause for illicit firearms, the warrant simply lumps illicit
11 firearms in together with all of the other categories that the
12 government concedes there's no probable cause for. And under
13 *Spilotro*, the lumping together means that you can't perform
14 the severance analysis. By the same token, it destroys good
15 faith reliance on the warrant, because you can't have good
16 faith reliance on a facially overbroad warrant.

17 THE COURT: Okay.

18 MR. MCCLELLAND: I'll address one other flavor of
19 the good faith reliance argument that the government raises.
20 So naturally, the government raises the good faith reliance
21 argument, but there are exceptions to good faith reliance, one
22 of which, as I just mentioned, is facial overbreadth can't be
23 relied on in good faith. But the second is in absence of a
24 neutral magistrate approving the search warrant. And I think
25 the facts developed during the evidentiary hearing today

1 strongly suggest that there is a neutral magistrate problem
2 that the government needs to surmount as well. I don't think
3 it's any innovation to say that it's highly unusual for a
4 police officer to call ex parte any sort of judicial officer.

5 THE COURT: Can I just stop you on that.

6 MR. MCCLELLAND: Yes, Your Honor.

7 THE COURT: Because I think what you're saying, in a
8 sense, every search warrant application is ex parte --
9 right? -- because it's a one-sided application process where
10 it's just the person who is seeking the warrant or whoever is
11 supporting that person, like, they're on -- you know, law
12 enforcement side or DA or whatever. That's always a one-sided
13 operation where there's no one else involved from a defense
14 perspective; right? So, can you just clarify what you mean by
15 it's off the record is what we heard, but maybe you can just
16 clarify.

17 MR. MCCLELLAND: Yes, Your Honor. And if we were
18 dealing with a situation in which Trooper Boyer just submitted
19 a warrant application, naturally, I don't think we would have
20 a neutral magistrate problem at issue with the good faith
21 reliance argument. We have the facial overbreadth argument,
22 but we wouldn't have the neutral magistrate one.

23 The issue I think with Trooper Boyer's
24 communications here is not that he submitted an application,
25 that's, as the Court identifies, fairly routine. What I don't

1 think is routine is asking the Court effectively for an
2 advisory opinion prior to the application. And there is, I
3 mean, all sorts of, in the federal system, like Article III
4 sort of concerns about issuing advisory opinions period. Full
5 stop. But even in this sort of ad hoc justice of the peace
6 setting, the notion that an officer would go and basically run
7 a theory by the judicial officer, in this case a lay justice
8 of the peace, to see, you know, basically test out the theory
9 of probable cause prior to submitting an on-the-record warrant
10 application, I think raises at the least serious neutral
11 magistrate concerns.

12 And that's, you know, not to question -- of course,
13 you know, Trooper Boyer it sounds like was presented with his
14 first search warrant situation. Doesn't totally know what to
15 do. And so his mind, it sounds like, goes first to, well, I'm
16 going to call the judge who issues the search warrant.

17 But even if that's understandable from Trooper
18 Boyer's internal perspective, it's troubling, I think, from a
19 neutral magistrate perspective because the judge is involving
20 himself in these proceedings in a way that's unusual.

21 But even setting aside the neutral magistrate
22 problem, which, you know, we think the government will have a
23 challenging time grappling with, the facial overbreadth of the
24 warrant dooms the warrant. And that's, in my view, probably
25 the cleanest way to resolve the myriad problems at issue in

1 this motion to suppress that whatever else happened here,
2 there is a facially overbroad warrant that the government
3 concedes is at least 60 percent deficient, and that the
4 remaining categories there can't be severed and therefore
5 can't be relied on in good faith.

6 I'll try and walk through the remaining categories
7 as quickly as I can. I think the briefing on them was quite
8 thorough, and I'm cognizant of time, but I do just want to hit
9 a couple of points that are relevant, and I think were further
10 developed in the course of the evidentiary hearing. So I'll
11 start sequentially with the initial stop and the justification
12 for the initial stop, namely, the speeding radar gun. I think
13 through the course of testimony as compared to the body cam,
14 there's actually a bit of ambiguity there. The trooper
15 testified that he used a radar gun but then immediately tells
16 Mr. Steinman in the moment that he engaged by speedometer.
17 But as the officer testified as well, he never actually gauged
18 speed by using pacing, and so it's unclear I think from the
19 record exactly how Trooper Boyer determines that Mr. Steinman
20 is speeding, an issue --

21 THE COURT: So it would be your position that -- on
22 your client's statements about -- your client's admissions of
23 speeding you would say don't count for some other reason?

24 MR. MCCLELLAND: Yeah, so Mr. Steinman's statements
25 about going whatever speed --

1 THE COURT: Yeah.

2 MR. MCCLELLAND: -- he was going don't count because
3 the stop needs to be justified at its inception --

4 THE COURT: Okay.

5 MR. MCCLELLAND: -- and the government needs to
6 demonstrate that Trooper Boyer had at least reasonable
7 suspicion to perform the traffic stop.

8 Even setting that issue aside whether the initial
9 stop is justified, the prolongation I think became even
10 clearer after the course of this evidentiary hearing that the
11 prolongation is a problem.

12 So a couple of facts that I think came out through
13 Trooper Boyer's testimony that are relevant on that issue. In
14 response to this Court's questioning, for instance, he
15 testified that he doesn't run criminal history checks as a
16 routine part of his stops. Rather, he only runs them when he
17 thinks he has additional suspicion to run the criminal history
18 stop. So I think that takes us firmly out of *Hylton/Taylor*
19 world and squarely into *Gorman, Evans, Rodriguez* world,
20 whereby Trooper Boyer's own testimony, this is a new,
21 unrelated investigation that he thinks he needs to justify
22 with reasonable suspicion. This isn't something that he sits
23 down, runs the driver's license check, runs the registration
24 check, runs the criminal history check. He runs the criminal
25 history check independently.

1 And indeed, a couple of other points about that
2 driver's license check I think bear on this question too. So
3 to the extent that the government argues that you need to run
4 the criminal history check to ensure officer safety, it's
5 clear from Trooper Boyer's testimony that, in fact, the
6 driver's license check reveals basically all you need to know
7 about officer safety, namely, if there's outstanding wants or
8 warrants with respect to this particular driver.

9 Additional factors that similarly shore up officer
10 safety before the criminal history check was run here, Trooper
11 Boyer visually inspected Mr. Steinman, insured that
12 Mr. Steinman had no firearms or weapons of any sort in his
13 waistband, no bulges on his pants, nothing indicating a
14 weapon, and indeed Trooper Boyer was so confident in that
15 assessment that he didn't pat down Mr. Steinman, and, as the
16 video shows, had Mr. Steinman sit in the front passenger seat
17 of his car without taking any, really, any additional
18 precautions.

19 In line with Trooper Boyer's statements with respect
20 to running the criminal history check, the record now, I
21 think, is also quite clear that he runs the criminal history
22 check definitively after he has every single document he needs
23 to finish the speeding ticket. He does that and further
24 reinforces that this is a new, unrelated investigation.

25 So, naturally, I suspect Mr. Keenan will rely

1 heavily on *Hylton* and *Taylor*, but the fact that this is a new
2 criminal history check run, by the trooper's own admission,
3 because he thought he had more suspicious stuff, that takes us
4 firmly out of that world.

5 Moving on to the warrantless seizure argument. Here
6 again, many of the same factors.

7 Oh, sorry, one second. One additional stuff -- a
8 couple additional points on prolongation. So it's clear that
9 this criminal history check is run outside the admission of
10 the initial traffic stop. And just to wrap up the
11 prolongation discussion, it, therefore, needed to be supported
12 by reasonable suspicion, as Trooper Boyer recognized.

13 But really at the point he decides to run the
14 criminal history stop, he doesn't have, well, really anything
15 of the sort. The government's briefing relies on just a
16 subset of factors, I think it's five factors that we address
17 fairly in depth in -- well, both our opening brief and our
18 reply brief. But just to walk through them really quickly,
19 the government cites, for instance, purported excessive
20 movement after the stop began. I think the testimony reveals
21 that it was actually fairly hard to see what Mr. Steinman was
22 doing. It was a tinted window. Trooper Boyer couldn't make
23 out, for instance, facial features, anything other than dark
24 silhouettes. And even if there was some degree of movement in
25 the vehicle, and I think the body cam fairly shows that

1 there's something, but you can't quite tell what, that doesn't
2 suggest that Mr. Steinman is engaged in anything criminal. It
3 suggests that he's just been pulled over and is moving.

4 And indeed, it turns out that when Trooper Boyer
5 shows up at the car, there's a pretty obvious explanation for
6 the potential movement, which was Mr. Steinman had his ID
7 ready and provided that directly to Trooper Boyer.

8 The second point that the government relies on is
9 the presence of the ammunition box. But as I think cases like
10 *United States v. Nora* make fairly clear, the presence of an
11 ammunition box can't daisy chain into an assumption that
12 there's anything more in the vehicle. And indeed, whatever
13 the status of possession of ammunition is under federal law --
14 and I know we'll have a brewing discussion in a minute -- but
15 whatever the legality of possessing ammunition is under
16 federal law, Trooper Boyer was unequivocal, not a crime under
17 state law. And that's a problem for a whole host of reasons,
18 some of which I'll get into in the warrantless seizure
19 context, but the basic point is he's not tasked with enforcing
20 federal law. He needs to premise things that he thinks is
21 suspicious on state law, otherwise cases like *U.S. Currency*
22 and the case out of the Northern District of California that
23 we supplied -- that we cite in our reply briefing, well, those
24 cases wouldn't make any sense; right? The rules in those
25 cases provide that you need to premise any search on purported

1 single violations. So they can't provide reasonable suspicion
2 or, as I'll discuss in a minute, probable cause for the
3 warrantless seizure. Okay. That's the second point with
4 respect to reasonable suspicion that the government relies on.

5 The third point that having a blanket in the back
6 seat, I think there was also some inconsistent testimony from
7 Trooper Boyer on this. In response to Mr. Keenan's questions
8 Trooper Boyer says that he could see items under the blanket.
9 But it's fairly clear from his report and his testimony on
10 cross-examination, as makes sense when you have a blanket, you
11 can't actually see the items that are underneath the blanket.
12 And indeed, the presence of a blanket alone means you have a
13 blanket in a car not that you are hiding things.

14 And indeed, even if there was some sort of hiding
15 problem at issue with the blanket in the car, I think there's
16 also a fairly innocuous explanation to that, which is, as
17 Mr. Steinman repeatedly told Trooper Boyer, he's moving.
18 Makes sense to put a blanket over items in a car that you are
19 moving even if they are not innocuous items, you don't want
20 burglars breaking in and stealing your possessions.

21 The fourth point that the government relies on for
22 both the reasonable suspicion and, I take it, the probable
23 cause analysis is that Trooper Boyer found it suspicious that
24 Mr. Steinman asked why he was being ordered out of his car. I
25 think the body cam and testimony is fairly clear on that.

1 Mr. Steinman asked, as I think it's his right to do, why he's
2 being ordered out of the car and then promptly complied with
3 it. He didn't resist, other than ask the source of authority,
4 which Trooper Boyer ultimately supplied was *Pennsylvania v.*
5 *Mimms*, but told him case law in the moment, and even that sort
6 of vague implication of unspecified case law was enough for
7 Mr. Steinman to say, okay, I accept your authority and step
8 out of the car.

9 And then fifth and finally, the government relies on
10 the purported sweating and purported nervousness of
11 Mr. Steinman in response to being pulled over in August in
12 Wells, Nevada. I mean, a couple of points on that is Trooper
13 Boyer confirmed it's hot in Wells, Nevada. Indeed, the body
14 cam shows Trooper Boyer and Sergeant Marin wearing
15 short-sleeved shirts. Maybe they are acclimated well to the
16 climate of Wells, Nevada. But as someone traveling from
17 Washington state, then it makes pretty clear sense that
18 someone might be sweating in the middle of August in Wells,
19 Nevada.

20 And indeed, it's actually kind of hard from the body
21 cam to tell if there are -- there is sweating. But, you know,
22 we credit the testimony that someone might be sweating in
23 August Nevada -- sorry, in Wells, Nevada, in the middle of
24 August.

25 And then beyond that, I think the body cam is quite

1 clear that Mr. Steinman is quite composed. He doesn't use any
2 profanity, I think as far as the body cam goes, until after
3 being put into the SUV and being asked fairly substantial
4 questions. While he's being ordered about prior to that, he's
5 quite compliant. And indeed, the -- in the preliminary
6 hearing testimony that's been admitted into evidence, Trooper
7 Boyer describes him as very compliant in response to initial
8 questioning.

9 But even if we are to accept the nervousness
10 argument that the government raises and Trooper Boyer
11 purported to identify, nervousness doesn't suggest criminal
12 activity. I think that's pretty squarely resolved by
13 *Chavez-Valenzuela* that we cite in our briefing.

14 All told then, we're sort of in a situation where
15 individually all the factors are zeros, and so, collectively,
16 à la *United States v. Thomas*, a sum of zeroes is zero. So
17 even viewed in their totality, not enough for reasonable
18 suspicion let alone probable cause.

19 So I said that was going to be a brief discussion of
20 the prolongation reasonable suspicion analysis, but I think
21 that feeds very well into the warrantless seizure, because I
22 take the government to argue basically the same factors as if
23 they now provide probable cause. But if they can't provide
24 reasonable suspicion, they also don't provide probable cause.

25 In our briefing, I think we get into a bit of a

1 sparring match with respect to authorization, the search for
2 the federal law stuff. I think that's all fairly squared away
3 today that Trooper Boyer didn't perceive himself to be doing
4 any of that. He didn't apply for a federal search warrant.
5 There's no indication whatsoever that he's looking for federal
6 crimes in the course of this stop. So we're squarely in *U.S.*
7 *Currency* territory, and that's specifically for the purposes
8 of the record, *United States v. \$186,416 of U.S. Currency*.
9 That's the world that we're governed by, and so he can't sort
10 of bootstrap his way back into a proper search even though
11 state law didn't let him perform it.

12 Beyond that, the next issue, of course, is the
13 search warrant itself. Went into some detail earlier on in my
14 presentation here about the warrant and the lack of both
15 probable cause within the warrant and then the warrant's
16 overbreadth and the failure to sever, and the inability to
17 rely on good faith on it, so I won't rehash those arguments
18 again. But at bottom, this case is pretty squarely within
19 *Spilotro* world on the warrant. Just to note again, and I
20 think if the Court's looking for, you know, the easiest way to
21 write a 3-page order on this, I think the warrant requirement
22 issue and the overbreadth issue is probably the simplest,
23 cleanest way to do so.

24 Finally, there's a *Miranda* issue that we also raised
25 in our briefing. I think the testimony today further confirms

1 that Trooper Boyer's interaction with Mr. Steinman was in the
2 form of orders and involved fairly substantial detention. I
3 should note at this point that the government only disputes
4 the custodial prong of the *Miranda* argument. Doesn't dispute
5 that this was an interrogation, for good reason. All of the
6 questions that Trooper Boyer was asking Mr. Steinman in the
7 course of, specifically, the SUV discussion, but, more
8 broadly, were designed to illicit incriminating responses. So
9 this is an interrogation. The question is whether it's
10 custodial. And the bringing into the car, the requiring to
11 sit in the car for a fairly substantial period of time, even
12 if the car door is open, he's still under compulsion by the
13 officer to be in a place that he doesn't want to be.

14 THE COURT: So in your -- just to clarify, when does
15 the custody start, in your opinion, on the timeline? Does it
16 start when he's ordered out? Or, I guess, does it start when
17 the interrogation and custody coincide in the car? What
18 changes? Can you just pinpoint that?

19 MR. MCCLELLAND: Yeah, so, ultimately, I'm not sure
20 it entirely matters, but I think the custody likely starts at
21 the ordering out of the car. And it's certainly at play with
22 the ordering in the front passenger seat.

23 I say it doesn't totally matter because there wasn't
24 a substantial amount of questioning between the ordering out
25 of the car and the ordering to sit in the front passenger

1 seat. Most of that was Mr. Steinman confirming by raising his
2 arms and showing his waistband that he didn't have any weapons
3 on him. And the problematic, from our viewpoint of the
4 interrogation, is all in the SUV about, you know, felony
5 convictions and such. Certainly by the time that he's in the
6 SUV, it's our view that he's in custody. And we think
7 actually that custody extends past any leaving the SUV because
8 he's ordered to stand by in, safe to stay, a fairly
9 inhospitable situation. 18 miles I think Trooper Boyer
10 testified from the metropolis of Wells, Nevada, in the middle
11 of August in the desert while he has his property seized from
12 him. And indeed, he's deprived of his paperwork up until
13 about an hour and a half into the stop.

14 Naturally, if someone has the key documentation that
15 you need to go about your daily life, to get, for instance, a
16 plane flight out of Wells, a reasonable person wouldn't feel
17 free to leave in that sort of situation. So Mr. Steinman
18 isn't free to leave until he, in fact, leaves by walking down
19 the road after he's received his documentation back from the
20 officers.

21 THE COURT: Okay. So on that point, just on that
22 little point --

23 MR. MCCLELLAND: Mm-hmm.

24 THE COURT: -- that -- the case law you're referring
25 to that as sort of like the -- I think it's *Florida v. Royer*,

1 but is there a Ninth Circuit case that sort of is -- you're
2 hanging your hat on for *Miranda* on the custody point? That's
3 one question. And if you want to address that when you come
4 back. And then just the upshot of that would be the exclusion
5 of his statements in the car --

6 MR. MCCLELLAND: That's correct.

7 THE COURT: -- is that your position?

8 MR. MCCLELLAND: That's --

9 THE COURT: If there is a *Miranda* violation, then
10 the consequence of that is that the incriminating answers to
11 questions about criminal history would be excluded.

12 MR. MCCLELLAND: Yeah. So I think a couple of
13 responses to that, Your Honor. One, with respect to custodial
14 analysis in *Miranda*, I mean, I think you're right, *Florida v.*
15 *Royer* is the landmark supreme court case that we're invoking
16 there. *Rhode Island v. Innis*, also we cite in our briefing,
17 and *Stansbury v. California* -- well, *Rhode Island v. Innis* for
18 the interrogation chunk, and then *Stansbury v. California* for
19 the custodial chunk. More broadly, some cases are
20 *United States v. Craighead* and *United States v. Kim* I think
21 are decent examples. They deal with a somewhat different
22 factual scenario of in-home -- custodial in-home
23 interrogation, but I think the same analysis about freedom to
24 leave and the like is probably applicable to this roadside
25 bit.

1 And I'll acknowledge, we didn't brief *Craighead* or
2 *Kim* in our briefing, but we'd be happy to provide a more
3 detailed discussion if the Court's curious.

4 THE COURT: Okay.

5 MR. MCCLELLAND: And then with respect to what would
6 be suppressed with respect to the *Miranda* violation. So the
7 Court's correct, we would be seeking to suppress
8 Mr. Steinman's statements during the custodial interrogation
9 in the SUV. And as a consequence, the decision to seize the
10 vehicle. Because by the time that Trooper Boyer seizes the
11 vehicle, the only possible basis for him to suspect that
12 ammunition or firearms or any sort of contraband in the
13 vehicle would be incriminating is Mr. Steinman's statements
14 with respect to the felony convictions.

15 THE COURT: Mm-hmm.

16 MR. MCCLELLAND: It's only after he decided to seize
17 the vehicle that he's able to confirm them through the
18 dispatch records check that he does. So we think that
19 actually the *Miranda* custodial problem, if the Court resolves
20 this case on that ground, would also render deficient the
21 seizure itself through sort of a, you know, the only reason
22 for the seizure was the felony convictions. The only
23 conceivable one is the felony convictions. He's only able to
24 get elements of that from Mr. Steinman's statements.

25 With that, Your Honor, unless the Court has any

1 additional questions with respect to any of the arguments, we
2 would ask that the Court suppress evidence collected during
3 and as a result of this stop.

4 THE COURT: Okay. Thank you.

5 So I'll come back to you and give you some rebuttal
6 after I hear from the government.

7 Go ahead, Mr. Keenan.

8 MR. KEENAN: I'll start with the reasonable
9 suspicion to stop for speeding. I think it's been briefed. I
10 mean, the facts are laid out and I don't think it's unclear
11 from the record in one bit. The testimony today was that the
12 trooper observed 89 miles per hour on the radar. And as
13 Your Honor asked with regard to the defendant's statements,
14 they're absolutely corroborative of what he saw. I mean, if
15 he sees 89 on the radar gun, goes up and tells someone, I
16 saw -- I had you going 89, and they say, oh, I thought it was
17 85, that certainly corroborates what they observed. He had
18 reasonable suspicion to stop the defendant for speeding.

19 There's nothing to suggest that the radar wasn't
20 working. He's trained to use it. There was no other car
21 around behind the defendant when this radar situation would
22 have happened. There was reasonable suspicion for speeding.

23 As far as the criminal history check, obviously, we
24 have some disagreement here. The suggestion that the driver's
25 license check tells you everything is just not true. It

1 doesn't tell you if someone has been convicted of a crime.
2 For that matter, it will tell you warrants but not criminal
3 history. It's just -- the suggestion that that should dispel
4 any sort of officer safety concern because the person may not
5 have a warrant, I mean, certainly someone may not have a
6 warrant, but they could have recently -- somewhat recently
7 committed a murder. That wouldn't show up on a driver's
8 license check. That would show up on a criminal history
9 check. Or it could show that someone was convicted of
10 resisting arrest the week before. These are things that are
11 relevant to officer safety that wouldn't show up on a driver's
12 license check.

13 And, you know, *Hylton* and *Taylor* are extremely
14 informative. As far as I can tell, this notion that it has to
15 be routine isn't really what at least I get from reading those
16 cases. It's that it's a negligibly burdensome precaution.
17 That's consistent with the mission of the stop, and that
18 mission being to conduct it safely. That sort of safety -- I
19 mean, and it relies on *Rodriguez*. They rely on *Rodriguez* and
20 this notion that these car stops are especially fraught with
21 danger where you can be pulling someone over, you may not
22 know, like in this case, that there's a loaded gun underneath
23 the driver's seat. You may not know that there's 37 other
24 guns in the car. It's something you're walking into and you
25 just don't know.

1 And the courts have found that running this criminal
2 history check is a negligibly burdensome precaution necessary
3 and consistent with the mission of stop being to conduct that
4 stop safely.

5 You know, there's some notion that, you know,
6 because, obviously, there wasn't a safety concern because he
7 didn't frisk the defendant or because he was not in his car,
8 these concerns I don't know that you can say they just -- they
9 start and stop that easily. For instance --

10 THE COURT: I guess just one little, just trying to,
11 like, think about the facts, the things that I heard. He did
12 say that he doesn't usually run a criminal -- it's absolutely
13 true that he has a dangerous job. And it's absolutely true
14 you never know who you're going to be talking to -- right? --
15 or what they have in the car. So I understand that. But
16 here, just factually, he said that he doesn't usually run a
17 criminal history check. Whether it takes one minute or
18 90 minutes, he doesn't usually do it. And he did it based on
19 his suspicion. But it -- but he also said in the preliminary
20 hearing that he wasn't afraid of the person. He didn't
21 feel -- I don't know if he said the word I didn't feel unsafe,
22 he wasn't afraid of this person. He has this conduct that
23 indicates he's not afraid of the person which just gets us
24 into that zone of well, what is the purpose of the check? Is
25 it routine officer safety within the mission of à la

1 *Rodriguez*, or is it some adjunct that's sort of really
2 motivated purely by investigator motive. And he testified
3 that it wasn't investigatory motive.

4 MR. KEENAN: Yeah. And I would agree with that
5 characterization of the facts here. I would say with respect
6 to certainly with probable cause, reasonable suspicion, the
7 subjective intent of the officers never matter. And I don't
8 know that his subjective intent, at least in this case,
9 matters in a *Hylton-Taylor* analysis. What *Hylton* and *Taylor*
10 do are stand for the fact that an officer may do this. It
11 doesn't say they have to do it if they're afraid. Like the
12 subjective motivations of the officers are never addressed in
13 these cases.

14 And, for instance, I believe it's in *Taylor*, the
15 officer had already been told that the person was a felon who
16 was on parole. And then it was still okay for him to
17 reference the computer database to look at that individual's
18 criminal history. So if we think about the motivations,
19 like -- or his subjective intent or knowledge in that
20 situation, he would have already known that this person was
21 potentially dangerous, but he was still permitted to run that
22 check. So I don't know that the rationale for allowing these
23 checks turns on the subjective motivations of the --

24 THE COURT: And I'm not trying to pin this on the
25 subjective. I'm trying to look at what was he factually

1 doing. And there is this distinction in the case law. And
2 *Hylton* and *Taylor* are sort of in one basket, and then we do
3 have the sort of *Gorman/Rodriguez*, which is you can do routine
4 checks that are consistent with what you usually do. And we
5 have an officer saying, I don't usually do this, this is about
6 an investigation. So those are just -- I understand we sort
7 of may have kind of some period of the stop where there's kind
8 of running on parallel tracks and we're seeing if one should
9 end or start.

10 MR. KEENAN: Right.

11 THE COURT: But that was his testimony.

12 MR. KEENAN: Right. And I think the check itself is
13 different from *Evans*, for instance, which just is designed to
14 figure out if someone registered as a felon at a particular
15 address. It's not to actually uncover the history of that
16 individual which would be relevant to officer safety. So
17 it's, it's -- in and of itself the check is pretty much only
18 an investigatory purpose rather than informative as to officer
19 safety which is the entire justification for the check. So I
20 think that's the reason.

21 THE COURT: I think I've lost you there. You're
22 telling me that the check was for investigation.

23 MR. KEENAN: In *Evans*, the check itself.

24 THE COURT: But I have an officer who was on the
25 stand saying that the check was for investigation. It's a

1 non-routine check. The reason he put him in the car was not
2 for officer safety, it was to ask him questions for his
3 investigation because he was --

4 MR. KEENAN: Suspicious.

5 THE COURT: -- suspicious. Right, so I understand
6 maybe the suspicion is good enough to do this all until the
7 suspicion is dispelled; right. I get that. But it
8 distinguishes it sort of from a routine quicky check like is
9 happening in *Hylton* and *Taylor*. And it does -- it's not an
10 *Evans* check, but it's more like an *Evans* check in the sense
11 he's kind of digging around.

12 MR. KEENAN: I guess the distinction I'm making is
13 with the check itself.

14 THE COURT: Like the kind of check.

15 MR. KEENAN: Yes, the type of check. And one has
16 been justified for officer safety reasons, the other has no
17 real purpose that would be relevant to officer safety, which
18 is how the courts are defining the mission of this stop. So I
19 think that's where we land in different buckets.

20 THE COURT: Okay. And the reason this check is
21 relevant to officer safety is what?

22 MR. KEENAN: Because it reveals someone's criminal
23 history. For instance, in this case, it revealed that this
24 individual --

25 THE COURT: Doesn't someone's criminal history

1 always, like -- I mean --

2 MR. KEENAN: So a felon --

3 THE COURT: -- every criminal history check reveals
4 criminal history. And we have cases that are distinguishing
5 between these checks, but they all reveal criminal history.

6 MR. KEENAN: Well, the *Evans* check isn't criminal
7 history. It's a felon registration address database. I don't
8 know that it even tells you what they're convicted of.

9 THE COURT: I see.

10 MR. KEENAN: So it really, it doesn't give
11 background --

12 THE COURT: Right. But *Gorman* is a criminal history
13 case.

14 MR. KEENAN: -- of a different crime.

15 THE COURT: Isn't *Gorman* a criminal history case?

16 MR. KEENAN: I'm sorry.

17 THE COURT: Isn't *Gorman* a criminal history case,
18 like a non-routine criminal history check?

19 MR. KEENAN: I'd have to check.

20 THE COURT: I may be mistaken about that.

21 MR. KEENAN: So in a similar way, *Gorman* is a human
22 trafficking database --

23 THE COURT: Mm-hmm.

24 MR. KEENAN: -- that deals with smuggling, money
25 laundering, and human trafficking. I don't know that that

1 necessarily gives you background. It's more like *Evans* than
2 the check itself, or the information that the check provides
3 is much more like *Evans* than the background information of
4 *Hylton* and *Taylor*. Like a typical, your typical criminal
5 history check. So these are, like -- these two, *Evans* -- or
6 *Gorman* and *Evans* are investigatory-type databases, and another
7 is what's this person's history? So I think that's where they
8 fall into different buckets.

9 THE COURT: But you would agree that what this
10 person's history is part of a criminal investigation and not
11 part of a traffic investigation that's relevant to safe
12 driving?

13 MR. KEENAN: The information itself I think is
14 relevant to -- to -- well, obviously, relevant to both.

15 THE COURT: Mm-hmm.

16 MR. KEENAN: But I think the reason one has been
17 deemed by the Ninth Circuit to be allowable and consistent
18 with the mission of the stop is because of the information
19 that it provides. I don't think it's the subjective
20 motivation of the trooper or the suggestive investigatory
21 purpose, it's the information itself.

22 THE COURT: Okay.

23 MR. KEENAN: Well, that being said, I do believe
24 that at the time that the criminal history check was run that
25 we would submit that there was reasonable suspicion to suspect

1 that firearms were in the vehicle. And I think the briefing
2 touches on this. And, you know, the -- the defense for some
3 reason never mentions the totality of the circumstances, which
4 I think is important here. If you pick apart every
5 potentially innocent behavior and look at them one by one, of
6 course, you'd also say, well, this isn't probable cause, it's
7 a blanket.

8 THE COURT: No, I think I understand. I think it
9 kind of boils down to if you put these things together, you
10 have ammunition, felony status, blanket, and some sweaty
11 nervousness.

12 MR. KEENAN: And some inconsistent answers, we would
13 argue, for probable cause in terms of having ammo and then oh,
14 no, the box is empty, which I think is in the warrant itself
15 as well.

16 THE COURT: Yes. Right. Whether that adds up to
17 reasonable suspicion.

18 MR. KEENAN: And certainly --

19 THE COURT: And then ultimately, whether even if it
20 adds up to reasonable suspicion, it kind of gets us over the
21 fence to probable cause.

22 MR. KEENAN: Right. And I think there is -- I guess
23 the dividing line between what we're looking at is before the
24 criminal history check is run whether there's reasonable
25 suspicion. And the facts before that reasonable suspicion, I

1 think that came out today, were the blanket, answer, the ammo
2 box, the sweating and the nervousness. There's been some
3 suggestion in some of the reports and whatnot there was sort
4 of overcompliance that, you know, just give me my ticket,
5 which does -- I realize does seem slightly unusual in a
6 traffic stop when I think typically people are trying to get
7 out of tickets. I think both of those things happened during
8 this stop. But that being said, we would rely on the --
9 primarily on the blanket, the nervousness, the ammo box, the
10 admission to having ammo in the vehicle I think is
11 particularly relevant.

12 THE COURT: Mm-hmm.

13 MR. KEENAN: And then that's when that criminal
14 history check is run. And then once -- the information
15 provided after that are the felony assault conviction for
16 domestic violence, and then the inconsistent answers about the
17 ammo in the vehicle, and some slightly misleading, vague
18 answers, some untruthful answers about criminal history. I
19 think with respect to that, I would point to at least to the
20 question I believe was, was it a felony assault charge? The
21 answer was no. And it was certainly listed in this criminal
22 history printout, particularly in the indictment in this case.
23 But -- and the trooper believed that to be deceptive.

24 So those facts and the totality of the
25 circumstances, and, again, as I alluded to earlier, I think it

1 was clear from the testimony, this officer, this trooper, did
2 not know if he had probable cause.

3 THE COURT: That's definitely clear.

4 MR. KEENAN: And he was -- and was not afraid to ask
5 multiple people what they thought of it.

6 THE COURT: Everyone.

7 MR. KEENAN: I think that is behavior we should
8 encourage.

9 THE COURT: It is behavior we should encourage, but
10 it is a very odd posture because there's an aspect of
11 laundering probable cause through a warrant. He knows -- I
12 mean, I asked him. He knows that he can go into the car if he
13 has probable cause. I also -- I mean, I taught this, and I
14 would always say, look, if someone gets a warrant, God bless,
15 that's wonderful. But one of the aspects in the way the law
16 works is that once you get the warrant, there's so much
17 deference to the warrant. But he already had sort of this
18 private conversation, which is really unusual, with the judge.
19 But the reason he's getting the warrant is to sort of, I
20 understand, look, you might often have a situation where
21 you're, like, uhh, is it probable cause? Isn't it probable
22 cause? I'll just let the judge decide. This is different
23 than that because it's not like I'll just let the judge
24 decide. He testified that he was asking the judge about
25 process. But, I mean, I heard, at least the half of the

1 conversation I could hear, he's not asking him about process,
2 he's saying what do you think? Is this probable cause? And
3 he keeps asking the same question, is it good enough? So that
4 has a different flavor than just, like, I'll put all this in
5 front of the magistrate judge, and I'll live with what the
6 magistrate judge says.

7 MR. KEENAN: And I think, again, we're sort of
8 getting into subjective motivations, and at least with respect
9 to probable cause, you know -- I don't mean to say no, that's
10 just -- I apologize.

11 THE COURT: That's okay.

12 MR. KEENAN: You know, he presents the facts, and
13 those are viewed from the standpoint of an objectively
14 reasonable police officer. So ultimately, whether he knew he
15 had probable cause or not is irrelevant to the analysis.

16 I think the notion that he is potentially doctoring
17 up probable cause is at least belied by the fact that he had
18 never done this before. He doesn't know what kind of
19 deference a search warrant gets from the testimony. Like, how
20 would he know? And I think the best explanation --

21 THE COURT: Well, he was trained on this, which is
22 why he's so nervous about getting it right. And he was
23 trained on -- he knew there was an exception you don't need a
24 warrant if you actually have probable cause.

25 MR. KEENAN: And I think that's commendable that

1 he -- and I think the easiest explanation for calling, and I
2 think the testimony today was I wanted to see if it was even
3 going to be entertained. Because he doesn't want to tow a
4 car, have the defendant walk along the side of the road if a
5 search warrant is ultimately going to get denied.

6 THE COURT: I understand that --

7 MR. KEENAN: It's practical.

8 THE COURT: I understand that it wasn't all just
9 practical. Practical might be are you there tonight? You
10 know, are you leaving? Can I get this done? That's sort of
11 like a logistical question. Whereas he is getting a little
12 bit of a sneak peak of how that's going to go out.

13 But I do want to ask specifically, do you -- is it
14 your position that that automobile was seized on the side of
15 the road and that that was a warrantless seizure?

16 MR. KEENAN: Well, yeah. It was seized in
17 anticipation of the warrant.

18 THE COURT: Do they need probable cause to get that,
19 to do that?

20 MR. KEENAN: Yeah, I think that's fine.

21 THE COURT: That's consistent with your briefing,
22 I'm just making sure.

23 MR. KEENAN: Yeah. And all the facts that
24 ultimately went into this warrant are already established by
25 the time that car is seized.

1 THE COURT: Yes.

2 MR. KEENAN: So it's not inconsistent with anything,
3 I think, that we've argued factually, legally, or otherwise.
4 The probable cause was established before that vehicle was
5 towed, so I don't know that --

6 THE COURT: Mm-hmm.

7 MR. KEENAN: -- that we've really grappled with that
8 issue for that very reason. If there were additional facts
9 learned later, I think maybe the analysis --

10 THE COURT: But would it be your position that if
11 probable cause exists, then the warrant is irrelevant?

12 MR. KEENAN: No.

13 THE COURT: Why?

14 MR. KEENAN: Well, certainly they wouldn't have
15 searched this car without a warrant.

16 THE COURT: Why? They have probable cause.

17 In the hypothetical -- I'm just giving you a
18 hypothetical; I'm not saying they did. If they have probable
19 cause on the side of the road, is the warrant or the defects
20 in the warrant, you know, because you admit there are defects
21 in the warrant, but is that still relevant if they had
22 probable cause, or does that just all fall away because once
23 you have probable cause you're good?

24 MR. KEENAN: Certainly the exclusionary rule
25 analysis, I think that it's an important question because --

1 so I think the question is do we want to penalize them for
2 having even gotten the warrant when they had all the probable
3 cause before? And just because the warrant, like, lacks some
4 specificity, does it undo the probable cause that they already
5 had? I don't think the probable cause dissipates when they
6 get a warrant. So the facts don't go away. So technically,
7 they could have still searched that vehicle.

8 Again, like I said, I don't know that they would
9 have.

10 THE COURT: The defect -- right, the defects might
11 go away with the warrant. If you admit that there's a
12 defective warrant, I'm trying to figure out if I even need to
13 address the defective warrant because if you have probable
14 cause, I'm done.

15 MR. KEENAN: Understood.

16 THE COURT: Right? Okay.

17 MR. KEENAN: And I think it goes both ways. I mean,
18 if -- and I'm not saying the warrant was defective. Certainly
19 we would concede that it should be excised in terms of the
20 search for drugs, paraphernalia, stolen property, as was
21 mentioned. But it's certainly lawful and valid and includes
22 probable cause to search for firearms.

23 And I'm not sure, and I'm unclear on the law, and it
24 seems to me a somewhat new argument that somehow it can't be
25 severed in any way. And that's news to me. But, again, I

1 haven't heard any law on it, but it's certainly not in any of
2 the law that I've seen that allows warrants to be severed.

3 And so I would -- I would say two ways. So there
4 was probable cause for the warrant. It can be -- for what
5 there wasn't probable cause can be severed from it. And the
6 warrant was executed absolutely, we would argue, in good
7 faith.

8 THE COURT: So what about just -- I'm also a little
9 unclear on how the *Evans* works sequentially and in combination
10 with the good faith. They've made an argument that good faith
11 doesn't apply because there's an overbreadth problem. But is
12 it your position that if the -- and good faith only comes if
13 we -- so we have a defective warrant in some way. And the
14 question is what -- that severance is a remedy. And good
15 faith is also a remedy; right? So, but how do they work
16 together? Just spell that out for me in terms of my -- like,
17 if I have my warrant and I've made my ruling that there's
18 something wrong and I'm using my red pen to say what's left.

19 MR. KEENAN: Right.

20 THE COURT: You tell me.

21 MR. KEENAN: So what's left are all the facts and a
22 judge that says you can search for firearms, and an affidavit
23 that says I want to search for evidence of ex-felon in
24 possession of firearms, I believe. I'm sort of half quoting.
25 But if you take out at least in terms of the warrant itself,

1 references to what there -- we would concede there is not
2 probable cause established by the affidavit, which is
3 essentially everything except firearms or -- I forget, firearm
4 related items. But even if it's just firearms, it's not
5 overbroad. So once those things are excised, and we can
6 pretend they don't exist in the warrant, is that warrant
7 overbroad? And I believe the defense is arguing that just
8 saying firearms is overbroad.

9 THE COURT: I think it's partly that sort of it's
10 not like you have one part of the warrant on one part about
11 one kind of thing and another part of the warrant on another.
12 You know, they're all lumped together with a simple sentence.
13 One of the problems with that simple sentence that I have, and
14 I'm not sure I've found. But it seems to me that on good
15 faith we have, like, a little factor test. But there is
16 something happening here which is I think relevant to some of
17 the case law I've seen on sort of interactions, the interplay
18 between severance and good faith, is just this question of,
19 you know, what was served to the magistrate and approved by
20 the magistrate was a warrant for guns and drugs and stolen
21 stuff.

22 MR. KEENAN: Correct.

23 THE COURT: That's what the magistrate had the
24 opportunity to review. And so there's a question of severance
25 and lumping things together; right? That's the sort of

1 conflict of whether the magistrate would have approved the
2 sort of much thinner warrant that we would be left with after
3 getting rid of what we're not -- what's, you know, after
4 redacting the problem areas of the warrant -- right? -- which
5 is there is nervousness -- I mean, the things we're talking
6 about, nervousness, ammunition, and that's -- that's the whole
7 thing, and no connection to guns -- I mean, no connection to
8 drugs, stolen property, paraphernalia.

9 MR. KEENAN: Well, I think that notion is
10 interesting. Because, I mean, excising of that actually makes
11 it a better warrant not a thinner warrant. It would be
12 limited to searching for a more narrow set of items which
13 would be better and would have been better in this case. I
14 think Your Honor's correct to suggest that I think maybe that
15 gets us into whether it was sort of the other factors, not
16 overbreadth, but maybe, like, whether someone actually read
17 this type thing or just signed off on it.

18 I think that's the analysis that that would sort of
19 interplay with.

20 THE COURT: Mm-hmm.

21 MR. KEENAN: I think once it's severed, though, one,
22 there's probable cause. And that was -- I don't think there's
23 any -- been any suggestion that it was tainted by sort of
24 earlier conversations with the judge.

25 And I guess I just want to mention, while I'm

1 thinking of it, this trooper spoke to, like we said, at least
2 three people. And all those conversations are on body cam,
3 and all of them contain identical, pretty much identical sets
4 of facts that he's relaying to these people. And I believe
5 they're also the same ones that went into the warrant.

6 THE COURT: I agree with that.

7 MR. KEENAN: So this is someone seeking help,
8 relaying the same facts that are true, not misrepresenting to
9 any one of the four people if you include the actual judge --

10 THE COURT: Mm-hmm.

11 MR. KEENAN: -- and trying to do the right thing and
12 submitting that warrant to the judge, albeit his first warrant
13 to the judge. So, and, again, I hate to say it again, but,
14 you know, if we're looking at the justification for the
15 exclusionary rule to deter unlawful police conduct, I guess my
16 question in this case would be, certainly with respect to the
17 warrant and the way this was handled, what are we trying to
18 deter? And I hope it's not trying to ask people for help and
19 going to get a warrant instead of just rummaging through
20 someone's car. Granted they could have because there was
21 probable cause, but that's that.

22 I guess I don't want to get too far afield. There
23 was -- the defense has cited the *Nora* case to suggest some
24 sort of overbreadth. That case involved -- I believe they saw
25 someone with a gun, arrested them, and then they got a warrant

1 for guns at the person's house. It had nothing to do with
2 ammunition. It does stand for the proposition that, you know,
3 if you specifically see someone with a gun and recover that
4 gun, you can't just get a warrant to search their residence
5 for guns. You know, I think it's a completely different
6 analysis from what we've argued with respect to the link
7 between ammunition and firearms. That's just one gun to
8 assume there's more guns. I think ammunition has a different
9 relationship with firearms.

10 THE COURT: But there's these cases, and I'm going
11 to fail to remember the names of them, but there are these
12 cases where you have some particular fact about the
13 ammunition, for example, is the ammunition on the person?
14 Does the person have a fanny pack that's unzipped and it's
15 sort of -- it's like kind of crying out, or a strap crying out
16 like there might be something going on here. We don't have
17 that in this case. This is the absence of facts that kind of
18 point that there's not always -- there may be a dotted line
19 between ammunition and firearms. There's not a straight line,
20 and we haven't filled in the dots between the two here.

21 MR. KEENAN: So -- and what's interesting about
22 those cases is the ammunition and magazines I think that were
23 on the person, they weren't in the vehicle. So actually
24 there's probably less probable cause to suggest that a gun was
25 in the vehicle when those are found on the actual person. So

1 in this case, in our case, we have an admission that there's
2 ammo in the vehicle itself. And in these -- that other case,
3 there was just ammo on this person who got out of a vehicle,
4 but they still had probable cause to go into the car to search
5 for guns.

6 So I think, at least in terms of the link to the
7 vehicle, we're in a much better position here than those
8 cases.

9 With respect to the gun versus firearm, the defense
10 made some suggestion that these were magazines and a holster
11 which more closely relate to, I guess, firearm possession than
12 ammunition. You know, a revolver, you don't have a magazine,
13 you just put ammunition right in the gun, the same way you put
14 a magazine in some -- in a pistol. So I don't see a
15 meaningful distinction that is worthy of distinguishing those.

16 THE COURT: Mm-hmm.

17 MR. KEENAN: And I think this -- if you look at the
18 broad justification for why that link exists, and also in
19 those cases we had some additional sort of levels of suspicion
20 that I think we also have here in terms of the excessive
21 movement.

22 THE COURT: His excessive movement?

23 MR. KEENAN: Excuse me?

24 THE COURT: The excessive movement? Like, before
25 the car stopped?

1 MR. KEENAN: As the -- right as the car was stopped,
2 which I failed to mention in terms of the reasonable suspicion
3 before.

4 THE COURT: Okay.

5 MR. KEENAN: But I think it's -- you know, it's
6 pretty -- that's more than just driving. Watching the video,
7 I think it's clear that's more than just grabbing a driver's
8 license. There's -- having watched it a few times, there's
9 much more than just I'm going to go get my driver's license.

10 And as the defense pointed out, you can't see what's
11 in there. All you see is a person moving around. And I think
12 that raises even more sort of concerns for safety, which is
13 sort of part of this whole analysis that I thought I'd
14 mention.

15 And I guess lastly, so we don't go over and over,
16 there is some suggestion about the misrepresentations in the
17 search warrant. I think it's pretty clear from the body cam
18 that there are no misrepresentations. And to the extent it's
19 relevant when the convictions were verified versus when he
20 read a printout, that there's no reason to distrust that it's
21 a felony guilty disposition.

22 THE COURT: Mm-hmm.

23 MR. KEENAN: Whether that changes sort of the search
24 warrant analysis is certainly immaterial. But it doesn't, to
25 me, seem like any sort of inconsistency or misrepresentation.

1 And I believe it was probably only raised to try and
2 work some sort of good faith argument.

3 I think I've touched on most of this, but I guess
4 just to --

5 THE COURT: There's one argument that I think you
6 haven't touched on and I think it's important. He testified
7 that he was enforcing Nevada law. There's this legal issue
8 about whether he can as sort of in the here and now make this
9 about federal law when he wasn't, A, tasked with doing that.
10 And we have some case law in the Ninth Circuit that addresses
11 that.

12 MR. KEENAN: Yeah. And I think it sort of -- I
13 mean, there's a couple cases that go different ways.
14 Certainly the *U.S. Currency*, I'll call it the *U.S. Currency*
15 case --

16 THE COURT: Yes.

17 MR. KEENAN: -- is the least favorable in terms of
18 state and federal law. What I would say about that case,
19 which I think is a meaningful way to distinguish it, is in
20 that case they searched a dispensary pursuant to a search
21 warrant. That was their only basis for even getting into that
22 dispensary to conduct the search. They were relying solely,
23 solely upon the state search warrant that made no mention of a
24 federal law violation. And because of that, they couldn't
25 then rely on federal law to justify their search.

1 This case is different because of the automobile
2 exception. I think we talked about this, and it's similar to
3 what we were saying before, where that probable cause existed
4 for the federal law violation as soon as he saw a felony
5 conviction on the criminal history printout. And he could
6 have searched that car without a warrant.

7 THE COURT: But could he? I thought that was part
8 of the analytical question. Could he, could he -- he can go
9 into that car based on a federal law violation on the side of
10 the road there?

11 MR. KEENAN: So it -- I think it's ambiguous whether
12 that's permissible under state law, but it doesn't change --
13 the law that we cited, it doesn't change the analysis under
14 the Fourth Amendment as to whether that search would have been
15 reasonable. And because it is a federal crime to have
16 ammunition if you have previously been convicted of a felony,
17 that makes -- that would have made that search reasonable as
18 soon as he heard the admission that there was ammo and then
19 saw that this person had previously been convicted of a
20 felony.

21 So the difference between this and the *U.S. Currency*
22 case is that that -- the automobile exception that would have
23 allowed them to search pursuant to a federal law violation
24 existed. Whereas, in the *U.S. Currency* they were only
25 operating on a state search warrant that never mentioned a

1 federal law.

2 THE COURT: I'm just -- okay. I'm kind of missing.
3 My -- I may be missing something, but my understanding of
4 probable cause is that probable cause is probable cause no
5 matter where it shows up. It can show up in the automobile
6 exception, and that's like full-on regular probable cause.
7 And it can show up in a warrant. And it is the same, actual
8 same probable cause. So I'm just not sure why it being on a
9 piece of paper versus being on the side of the road. The only
10 way that the person could go into the dispensary would have
11 been if they said this violates federal law, and that's
12 exactly what -- the only way that this trooper can get into
13 that car is to say, look -- is to say -- maybe he has probable
14 cause to think that there's a firearm. Okay. But he -- if
15 the only basis is that he -- I mean, has -- he does have
16 probable cause to believe that there's ammunition in the car.
17 Like, if that's a crime --

18 MR. KEENAN: Right.

19 THE COURT: -- that's clear. But the only basis for
20 him to say that that's enough probable cause is federal law,
21 so I'm a little bit lost on the paper distinction between
22 those two cases.

23 MR. KEENAN: Well, the distinction I'm making is the
24 only way for them to have conducted that state search warrant
25 in *U.S. Currency* is by getting a warrant, and that's not the

1 case here.

2 THE COURT: Okay.

3 MR. KEENAN: I think it's a meaningful distinction
4 simply because the reasonableness of that search was then
5 evaluated by whether a warrant was valid, and for that reason
6 only. Because otherwise they wouldn't have ever been able to
7 get in there.

8 THE COURT: Okay. I'm going to ask defense about
9 this question, so I want to ask you first. You cited to
10 *Virginia v. Moore*, which goes to whether -- not whether
11 something's a crime, but whether you can seize or must cite in
12 lieu of seizing. Do you think that that's relevant here?

13 MR. KEENAN: I have *Virginia v. Moore* over here, if
14 I can just grab it.

15 THE COURT: Okay.

16 MR. KEENAN: So we submit that the -- that *Moore*
17 stands for the proposition that a violation of state law -- in
18 that case it was making an arrest that wasn't permissible
19 under state law affected the Fourth Amendment analysis.

20 THE COURT: Right. But in *Moore* there was no debate
21 that what they were talking about was a crime. The only
22 debate was what you do about the crime. Here we're talking
23 about whether it's a crime, if we're just talking -- I'm just
24 for a moment, of course, we're focusing just on the
25 ammunition. Here the question is whether it's a crime.

1 MR. KEENAN: Right. And I see that as a distinction
2 sort of without a difference, because I think this stands more
3 for the proposition of how we analyze the Fourth Amendment
4 sort of with an eye towards a potential state law violation.
5 Less so than for sort of what it explicitly, factually is
6 talking about.

7 THE COURT: Okay.

8 MR. KEENAN: And then, I guess briefly, I'll touch
9 on the *Miranda* issue.

10 THE COURT: Sure.

11 MR. KEENAN: And I would note the defense never
12 argues that the answer -- I don't think the answers couldn't
13 be considered for probable cause. They did allege the *Miranda*
14 violation, but I don't know that it was ever specifically tied
15 to a determination of probable cause.

16 That being said, defense also failed to mention the
17 *Berkemer v.* -- I don't know that. I'll spell it though.
18 *B-e-r-k-e-m-e-r v. McCarty.*

19 THE COURT: Right. Stands for *Miranda* for a typical
20 traffic stop.

21 MR. KEENAN: Right. And I think what's sort of --
22 when I was listening to your argument, what's sort of being
23 conflated is the notion that just because you're not free to
24 leave means you're in custody for *Miranda* purposes. And
25 that's not necessarily true because in a *Terry* stop, you

1 actually are not free to leave. And that's why it's certainly
2 more nuance than that, and it has to be sort of this
3 functional equivalent of being under arrest.

4 THE COURT: Mm-hmm.

5 MR. KEENAN: And the factors I think that came up
6 today that would suggest there was no functional equivalent of
7 an arrest are that Mr. Steinman was never cuffed, searched,
8 placed in the back of a patrol car. He sat in the front of
9 the patrol car with the door open until an air conditioning
10 issue came up I think. While they waited for the tow truck,
11 he was wandering around, talking on the phone, I think sitting
12 on the hood of his car for a little bit. These are absolutely
13 not things that I think we think of when we think of someone
14 who is under arrest. In fact, they're the complete opposite.

15 This is a *Terry* stop. He was not free to leave, but
16 he was not in custody.

17 And I assume the defense would argue this isn't an
18 ordinary traffic stop. I would agree. At some point this
19 definitely did not -- this became not an ordinary traffic
20 stop --

21 THE COURT: Mm-hmm.

22 MR. KEENAN: -- I think at the point where they're
23 seizing his vehicle. And -- but nonetheless he was still not
24 in custody. He was told he was free to leave. He was asked,
25 do you want a ride somewhere? Do you want to walk? I think,

1 even though his subjective sort of view on it is not relevant,
2 but even Mr. Steinman seemed to believe for almost the entire
3 time that he was just getting a ticket. And he was told he
4 was getting a ticket multiple times. And these are things we
5 associate with traffic stops, not arrests.

6 THE COURT: Okay.

7 MR. KEENAN: I guess lastly, just some sort of
8 miscellaneous things with the blanket. There was not
9 inconsistent testimony. I believe I asked if he could see
10 what was under the blanket. And the answer was no, but he
11 believed that there were things under the blanket. Not that
12 he could see it.

13 THE COURT: Mm-hmm.

14 MR. KEENAN: But it wasn't on the seat of the car,
15 but it was raised up, which led him to believe there were
16 things under it, but he couldn't see what they were. There's
17 not an inconsistency there.

18 I think that's it. Let me just check.

19 Okay. Nothing further on this.

20 THE COURT: Okay.

21 MR. KEENAN: Thank you.

22 THE COURT: Thank you very much.

23 All right. Do you want to wrap up?

24 MR. MCCLELLAND: Yes, Your Honor.

25 So I'll start with the Court's question about

1 *Virginia v. Moore*, and it's thankfully, I think, a pretty
2 short answer. It doesn't apply. Where in *U.S. Currency* world
3 deals with an entirely different sort of fact pattern. I
4 think in many ways the *United States v. Talley* case that we
5 cite out of the Northern District of California in our reply
6 briefing, I mean, in many ways you could search and replace
7 the word "marijuana" with "ammunition" in that case --

8 THE COURT: Mm-hmm.

9 MR. MCCLELLAND: -- and resolve this one. It
10 applies, I mean, the *United States Currency* rule to an
11 automobile search very squarely on fours with the general fact
12 pattern that we have here.

13 THE COURT: Mm-hmm.

14 MR. MCCLELLAND: Notwithstanding the fact that the
15 car here was seized roadside, not searched roadside, but basic
16 contours analysis still apply.

17 A couple of additional thoughts, and I'll be as
18 brief as I can. With respect to the warrant and the validity
19 of the warrant and how that interplays with probable cause to
20 seize the vehicle, a couple of thoughts. One, the warrant
21 analysis and excising categories I think is really more of a
22 *Franks* issue. So we do raise a *Franks* argument in our
23 briefing with respect to the warrant application. And when
24 there's a *Franks* problem with misrepresentations or admissions
25 in a warrant application, you know, you basically Frankenstein

1 the right application back together, and sometimes that
2 involves excising stuff from the application. But the
3 overbreadth analysis, à la *United States v. Spilotro* -- I'm
4 probably mispronouncing that, *Spilotro*, maybe -- the
5 overbreadth analysis doesn't excise categories out of the
6 warrant. Instead, you're looking at, as I think Mr. Keenan
7 pretty nicely keyed in on, you're not excising categories out
8 of the warrant, because in many ways that would fix the
9 overbreadth problem. If there's an overbreadth problem,
10 there's an overbreadth problem. And so the question is not
11 excision, it's severance. And I'm sorry to hear that
12 Mr. Keenan hadn't heard of the simply lumping rule from
13 *Spilotro*, but we cite *Spilotro* at pages 18 through 19 of our
14 reply briefing, and I think pretty clearly lays out how in a
15 warrant like this one, which I think it's worth emphasizing is
16 two paragraphs long, that's Defense Exhibit 504, when the
17 warrant lumped categories with clearly no probable cause with
18 other categories in the same sentence and doesn't
19 differentiate them, then *Spilotro* says you can't do severance.
20 And by the seam token, you can't do good faith reliance on
21 such a facially overbroad warrant.

22 I think there's an interesting question about how
23 much difference there is between the statement you can't do
24 severance and you can't do good faith reliance, but *Spilotro*
25 says doesn't matter, you can't do either.

1 So that's -- I mean, I think that's the relevant
2 discussion with respect to the warrant overbreadth issue.

3 And I think the way that it ties in with the
4 roadside seizure issue, so assuming, and this is assuming a
5 whole host of things, assuming that the roadside seizure was
6 supported by probable cause, the warrant overbreadth issue is
7 still material because the roadside seizure being supported by
8 probable cause, by the government's own concession, would not
9 have allowed an invasive search for multiple different
10 categories. So to the extent that the officers could have
11 done a roadside search, it would have been substantially
12 narrower than the search that they ultimately performed on the
13 vehicle.

14 So the fact that the warrant that at issue here is
15 unsupported by probable cause, and in many ways I take the
16 government to be conceding that it is at least in some way
17 deficient, even if there is severance arguments or what have
18 you, that's material to the ultimate search of the vehicle.

19 And the fact that there was a search that was
20 authorized for more than there was probable cause for is its
21 own Fourth Amendment violation that warrants suppression.

22 Couple of thoughts also on the prolongation front.
23 I mean, at the end of the day, *Hylton* and *Taylor* and *Evans* and
24 *Gorman* and *Rodriguez*, they are what they are. But I think the
25 Court's questioning to Mr. Keenan keyed in on a couple of key

1 points, which is I think given their, to my mind, fairly
2 obvious tension, this is *Hylton* and *Taylor's* obvious tension
3 with *Gorman* and *Rodriguez*, one should read them fairly
4 narrowly. But, of course, you know, we can't we do much about
5 the tension between those cases in this room. We have to
6 somehow find a way to thread the needle. And I think that the
7 easiest way to thread the needle with *Hylton* and *Taylor* are
8 basically that *Hylton* and *Taylor* say you can run criminal
9 history checks when those criminal history checks are routine
10 in basically two ways. One, they're routine in the sense that
11 they are run as part of a routine, as in something that you
12 commonly do, à la a driver's license check or a registration
13 check. If you're doing it as a routine, I think that's one
14 category of one sort of checkmark that you need to get into
15 *Hylton* and *Taylor*. And then the second form of routine is
16 that it has to be non-particularized. So you can't run it
17 because you're doing an investigation into this person in
18 particular.

19 And, of course, as the testimony here I think made
20 fairly clear, fails on both of these checkboxes. Trooper
21 Boyer was quite explicit in response to the Court's
22 questioning that he does not run this as part of routine.
23 It's not his practice to do it. Doesn't run criminal history
24 checks every time he performs a stop.

25 And then, two, that he ran the criminal history

1 check for a particularized reason, that is, to investigate
2 Mr. Steinman.

3 Naturally, I mean, there may be other ways to thread
4 the *Hylton* and *Taylor* analysis, but given the facts of *Hylton*
5 and *Taylor* and the sorts of checks at issue in *Evans* and
6 *Gorman*, which I think the Court keyed in on --

7 THE COURT: Isn't there also an aspect how
8 burdensome of a criminal history check we're talking about?
9 Because at least factually in *Hylton* and *Taylor* this is a,
10 like, a two-minute thing.

11 MR. MCCLELLAND: I think that's correct. Yeah, I
12 think there is a negligently burdensome element to this. And
13 in *Hylton* and *Taylor* we have, as the Court said, very, very
14 brief criminal history checks. And I think the government
15 highlighted *Taylor* involving sort of a follow-on check later
16 in the stop. But I think it's worth noting that the facts in
17 *Taylor* involve what I think is best described as a routine
18 criminal history check as part of the other sort of routine
19 checks at the outset. Wherein, if I'm remembering the facts
20 of *Taylor* correctly, the officer asks Mr. Taylor whether he
21 has a criminal history very early on in the stop.

22 I think in many ways the points with respect to
23 *Gorman* and *Evans* and the sorts of checks that are run there, I
24 mean, it's really hard to differentiate the sorts of checks
25 and the information that those checks would provide with the

1 sort of detailed criminal history investigation that Mr. -- or
2 that Trooper Boyer spends a substantial amount of time on;
3 namely, the checks at issue in *Gorman* and *Evans*, right, they
4 might not be garden variety criminal history checks, but they
5 still reveal stuff about officer safety, presumably. And the
6 Ninth Circuit still says, nope, that's outside the mission of
7 a traffic stop.

8 Going to another series of points that the
9 government identified. I think the government took issue with
10 the citation to *Nora*, which is the, you know, one gun does not
11 imply multiple guns case. Naturally we're dealing with
12 different sorts of implication drawing here. We're dealing
13 with, at bottom, an implication of ammunition implying guns.
14 That's somewhat different, I guess, than gun implies guns.
15 But in many ways, I think that difference inures to our
16 benefit in the sense that if you have one gun, it's
17 conceivable that there's multiple. But *Nora* forecloses that
18 kind of reasoning. If you have ammunition, you have
19 ammunition. Doesn't necessarily mean that you have a gun in
20 the car. And Trooper Boyer testified to that too.

21 If the Court doesn't have any additional questions,
22 we would ask that the Court suppress evidence collected in and
23 during and as a result of this stop.

24 THE COURT: Okay. I have no further questions on
25 the motion to suppress.

1 Do you want to have argument on the motion to
2 dismiss?

3 MR. MCCLELLAND: Mindful that we are quite late on
4 Friday, I do have thoughts on the motion to dismiss, but --

5 THE COURT: I mean, I can tell you that one of the
6 first things that the government cited on the motion to
7 dismiss was my earlier opinion in *Mosz*. I'm not sure -- I
8 understand this is an evolving legal issue, and I take it
9 seriously, but I'm also not inclined at this point to divert
10 from what I said in *Mosz*. So I don't know that an argument is
11 fruitful on this. I'm inclined to deny.

12 MR. MCCLELLAND: Understood, Your Honor. In that
13 case, we'll let everyone get on with their Fridays.

14 THE COURT: So, I guess I'm wondering should we take
15 a break? Let's take a break.

16 If you could stick around for a little bit, and it
17 might be a little bit, like 20 minutes plus or so, while I
18 change my travel reservations, and then deliberate a little
19 bit, I would appreciate that. So we'll be in recess. Thank
20 you so much for sticking around.

21 (Break taken 6:01 p.m. to 7:14 p.m.)

22 THE CLERK: This is to reflect that we're back on
23 record in Case No. 3:22-cr-00068-ART-CLB.

24 THE COURT: Okay. So just going back to where we
25 left off, I'm going to deny the motion to dismiss. I had said

1 that, but just to be clear.

2 And then I'm going to grant the motion to suppress
3 and suppress the evidence found in the vehicle. I'm going to
4 make an oral ruling.

5 So, a traffic stop is permissible if the police have
6 reasonable suspicion that the traffic stop violation occurred.
7 *United States v. Willis*, 431 F.3d 709, Ninth Circuit 2005.

8 There is sufficient basis here of speeding based on
9 Mr. Steinman's admissions alone, but also based on Officer
10 Boyer's testimony and the evidence submitted on that point. I
11 understand the defense's position that there may have been
12 inconsistencies in his testimony and what he represented when
13 he approached and spoke to Mr. Steinman, but I do find that it
14 does appear that Mr. Steinman was speeding, he admitted as
15 much, and that there was a lawful stop of the car.

16 Whether the duration of a traffic stop is reasonable
17 is determined by the seizure's mission to address the traffic
18 violation that warranted the stop and attend to related safety
19 concerns. That comes from *Rodriguez v. United States*, 575
20 U.S. 348 at 354 from 2015. And authority for the seizure ends
21 when the tasks tied to the traffic infraction are reasonably
22 should have been completed.

23 Here, the traffic stop was unreasonably prolonged
24 when Mr. Steinman was removed from his vehicle for the purpose
25 of interrogation. As Officer Boyer testified, he didn't frisk

1 Steinman. And officers, of course, can remove individuals
2 from their cars during stops. And here we have an officer who
3 admittedly did so not for the purpose of officer safety, but
4 as he testified, in order to conduct an investigation and to
5 question Mr. Steinman in his car. And so there was nothing
6 objectively reasonable about that decision, and it also
7 interfered with the completion of the traffic citation or
8 traffic mission.

9 The seizure was further unreasonably prolonged by
10 the detailed questioning of Mr. Steinman, which, again,
11 distracted from Trooper Boyer's ability to actually verify his
12 information and complete and then issue the citation.

13 I understand that subjective motivations of the
14 officer are irrelevant, but not only was Officer Boyer not
15 motivated by his personal safety concerns, it would have been
16 unreasonable and somewhat odd to put someone who's, for -- if
17 you were fearful for your own safety, to put them unrestrained
18 in the front seat of a police car and then to question them
19 extensively about their criminal history for purposes of
20 officer safety.

21 He -- Officer Boyer admitted that he put
22 Mr. Steinman in the car because he wanted to question him, and
23 that was the reason, and to engage in this unrelated
24 investigation based on the fact that he had seen the
25 ammunition in the car.

1 The process of issuing the citation was slowed down
2 significantly by the questioning and by the criminal history
3 checks which together took a long time.

4 Let me just get into a little bit more detail on the
5 criminal history checks because there is an initial question
6 is whether some criminal history check is allowed as part of a
7 traffic stop. If the first criminal history check -- so --
8 and the government cites to two cases, *Hylton* and *Taylor*,
9 suggesting that at least that initial criminal history check
10 was a routine or allowable portion of a traffic stop in the
11 name of officer safety. I don't agree with that. On the
12 facts of this case, I don't believe that that was the basis
13 for the criminal history check on the factual basis that we
14 have here. But I still find -- what I find unreasonable is
15 the slow playing of the citation process, and that slow
16 playing started earlier and then it lasted really, you know,
17 90 minutes.

18 That first criminal history check was not routine.
19 Officer -- I mean, Trooper, excuse me, Trooper Boyer testified
20 that it was not routine. And in light of that, it does appear
21 that this case is controlled not by *Hylton* but by *Rodriguez*
22 and *Gorman*.

23 Even if that initial criminal history check was
24 permissible, I'm still left with the fact that Trooper Boyer
25 is prolonging the whole process of the traffic mission through

1 his interrogation and research on his criminal history. And
2 so -- and it was after the first criminal history check,
3 assuming that that was permissible, it was after that initial
4 criminal history check that Mr. Steinman was interrogated
5 about his -- whether he was a felon and about the box of
6 ammunition. So even if the criminal history check stays, the
7 prolongation immediately after is a problem.

8 There's no blanket prohibition on looking for
9 evidence of other crimes during a traffic stop, but such
10 inquiries may not measurably extend the duration of a stop
11 unless the officer has a reasonable suspicion ordinarily
12 demanded to justify detaining an individual. The Ninth
13 Circuit has specified that non-routine record checks and dog
14 sniffs are paradigm examples of unrelated investigations that
15 may not be performed if they prolong a roadside detention
16 absent independent reasonable suspicion. That's from *United*
17 *States v. Gorman*, 859 F.3d 715.

18 The concept of reasonable suspicion, and as I said
19 earlier, we know that Trooper Boyer is suspicious from the
20 very beginning, so I need to examine whether there was
21 reasonable suspicion here. The concept of reasonable
22 suspicion like probable cause is not readily or even usefully
23 reduced to a neat set of legal rules. The standard is lower
24 than probable cause but nonetheless requires an objective
25 articulable justification and it must be more than a hunch.

1 Reasonable suspicion exists when an officer is aware of
2 specific articulable facts that when considered with objective
3 and reasonable inferences form a basis for a particularized
4 suspicion.

5 Particularized suspicion has two elements. The
6 assessment must be based on the totality of the circumstances.
7 And two, the assessment must arouse a reasonable suspicion
8 that the particular person being stopped has committed or is
9 about to commit a crime. Based on the totality of the
10 circumstances, I do not see reasonable suspicion here.

11 There's not reasonable suspicion for a firearm, and
12 there's certainly not reasonable suspicion for any of the
13 other items in the warrant. Mr. Steinman is stopped in Wells,
14 Nevada, in August. There's earlier testimony from Trooper
15 Boyer that it was 90 degrees that day, and he -- Mr. Steinman
16 reported that he'd been driving since -- all day. And there
17 is nothing outside the norm of his behavior. There's some
18 degree of nervousness or discomfort which is normal in the
19 context of being pulled over by a police officer and ordered
20 out of a police car. And I think we're left -- what we're
21 left with here is that there was a box of ammunition which is
22 legal to possess in Nevada, even for a felon. And I find that
23 a box of ammunition in the vehicle of an individual who's
24 clearly moving is not sufficient to support reasonable
25 suspicion of a firearm being in the vehicle.

1 The cases the government cites are distinguishable
2 with respect to ammunition because in those cases the
3 ammunition was on the body of a person suggesting a much
4 greater likelihood of the firearm having recently been used or
5 possibly being -- and thus possibly being in close proximity.

6 It is hard to say exactly where the mission of the
7 traffic stop should have been completed because there was this
8 long prolongation during the course of issuing the citation.
9 And Trooper Boyer testified, it normally takes 15 minutes. We
10 are, even with some irregularities regarding information
11 provided by the driver, it seems that that was exceeded --
12 well-exceeded here early on when Trooper Boyer got all of the
13 information. And it's clear that he slow played the time it
14 took to safely investigate the traffic citation and asked
15 questions and conducted an investigation that added time to
16 the stop.

17 When he had all of the information that he needed to
18 issue a citation, which was not that many minutes into the
19 stop, and maybe around the 15-minute mark or just a minute or
20 so after, he didn't issue the citation. And so then the sort
21 of waiting for the ticket to fall is sort of happens over a
22 long period of the remaining time until 90 minutes when the
23 paperwork is ultimately returned.

24 After Officer Boyer signed off on the citation and
25 scanned the barcode of the driver's license, confirmed the

1 registration was valid, finished the tasks associated with the
2 citation, the remainder of the detention was even more
3 untethered to the original possible traffic mission and the
4 tasks associated with that, including an officer safety
5 justification.

6 The interrogation following that first criminal
7 history check regarding whether Mr. Steinman had been in
8 trouble, by then Officer Boyer was already aware of his
9 criminal history and it was that interrogation or questioning
10 was clearly untethered to the mission of the traffic stop.

11 Also, the second more in depth criminal history
12 investigation and questioning confirming the dispositions of
13 criminal history entries was clearly unrelated to the mission
14 of the stop and was non routine and was not justified by
15 reasonable suspicion.

16 The Court cannot find that reasonable suspicion
17 justified any prolongation of the stop. And reluctance to sit
18 in a police vehicle and some degree of nervousness alone carry
19 little weight because encounters with police officers are
20 necessarily stressful for all individuals whether --
21 regardless of their criminal history.

22 The weight of authority supports the defense's
23 position that the state court officers cannot justify the
24 search or the prolongation by relying on the proposition that
25 they could have been enforcing an exclusively federal law.

1 Officer Boyer's own testimony makes that point very clear
2 about what he understood the law to be, while his own personal
3 perspective is -- that's not a subjective perspective, it is a
4 reflection of how well this fact is known in Nevada that they
5 understand their mission and the bounds of their job because
6 he is only tasked with enforcing Nevada law.

7 The two district courts that have considered the
8 issue have found that state officers' post hoc justification
9 that federal law supported probable cause are insufficient
10 when the conduct at issue is lawful under state law.

11 The Ninth Circuit has previously held that local
12 police officers did not have probable cause based on alleged
13 violations of federal law when the officers were at the time
14 investigating a violation of state law. And that comes from
15 United States versus -- what we call currency -- \$186,416 in
16 U.S. Currency, 590 F.3d 942, Ninth Circuit 2010.

17 Two district courts have considered similar issues
18 and found that post hoc justifications that federal law
19 supported probable cause are insufficient when the conduct is
20 lawful under state law. Those cases, which we've discussed
21 today, are *Tally* and *Jones*. *Tally* is at 467 F. Supp 3d at
22 836, and that's out of the Northern District of California
23 2020. And in *Tally*, the Court held that the officers could
24 not rely on a container of marijuana to believe that the
25 vehicle contained contraband when marijuana is legal under

1 state law but not federal law.

2 And in *Jones, U.S. v. Jones*, which is 438 F. Supp 3d
3 1038, Northern District of California 2020, the officers could
4 not rely on the smell of marijuana to provide reasonable
5 suspicion of probable cause when marijuana is legal under
6 state law but illegal under federal law.

7 Nevada law does not authorize Trooper Boyer to
8 enforce federal law to seize property for a punitive violation
9 of federal law. State officers must be authorized to do so by
10 state law. And that's under *Kerr v. California*, 374 U.S. 23,
11 1963, stating, "The lawfulness of arrest for federal offenses
12 is to be determined by reference to state law."

13 There was no probable cause to seize the vehicle.
14 Even assuming there was no unlawful prolongation, nothing in
15 the testimony or evidence that I heard or reviewed gave
16 Officer Boyer sufficient information to rise to the level of
17 probable cause. So that is to say, even assuming that he had
18 the reasonable suspicion at the beginning or at some point he
19 eventually got reasonable suspicion, he never sort of turned
20 the corner to have enough for probable cause.

21 The seizure of his vehicle was based on his hunch
22 that because he had ammunition and was nervous and a felon, he
23 would also have a gun.

24 The warrant is also problematic for a couple of
25 reasons. The exclusionary rule has traditionally barred from

1 trial physical, tangible materials obtained either during or
2 as a direct result of a constitutional violation, and the
3 exclusionary rules applies to warrants obtained through
4 reliance on illegally acquired facts. Steinman's felony
5 status is only disclosed during the first records check. If
6 that was unlawful, there was no probable cause because the
7 criminal history was necessary to get to the probable cause.
8 Even if that initial records check was lawful and the
9 prolongation only started after that, then there is still a
10 problem because of the further questioning about his criminal
11 history and what Trooper Boyer perceived as incorrect or
12 misleading answers. So that particularly goes to paragraphs
13 12 and 13 of the search warrant because those paragraphs
14 describe Steinman's responses that Trooper Boyer perceived as
15 deceptive and suspicious. And those representations in the
16 search warrant bolstered his statement of probable cause.

17 The Court further agrees that defendant -- with the
18 defendant that the search warrant was impermissibly overbroad
19 in violation of constitutional safeguards.

20 In determining whether a description is sufficiently
21 precise, the Ninth Circuit has concentrated on several
22 factors. One, whether probable cause existed to seize all
23 items of a category described in the warrant; whether the
24 warrant provided objective standards by which executing
25 officers could differentiate items subject to seizure from

1 those which were not subject to seizure; and three, whether
2 the government could have described the items more
3 particularly. And that's coming from *United States v.*
4 *Spilotro*, 800 F.2d 959, Ninth Circuit, 1986.

5 The government concedes that there was no probable
6 cause to seize controlled substances, paraphernalia, and
7 stolen items. Particularly with respect to the stolen items,
8 there was no objective standard by which executing officers
9 could differentiate which items were stolen and which were not
10 stolen. And courts have expressed particular concern with
11 respect to the category of stolen items because it's hard for
12 officers to know because, unlike contraband, their illicit
13 nature is not apparent but must be indicated by other ways to
14 show that it's stolen or because it matches a description of
15 something that is stolen. And none of that exists here,
16 obviously.

17 The government also could have described items with
18 more particularity. For example, if there are drugs at issue,
19 what drugs are suspected to be at issue. They could have been
20 named.

21 I do not find that the warrant established probable
22 cause for the seizure of firearms. But even assuming it did,
23 most categories of the warrant were overbroad. And the normal
24 remedy for an overbroad warrant is to sever, but severance
25 does not apply here because the severance or partial

1 suppression -- because when the valid portion of the warrant
2 is a relatively insignificant part of an otherwise invalid
3 search. And that's said in *United States v. SDI Future*
4 *Health*, 568 F.3d 707, Ninth Circuit, 2009.

5 Because the warrant in this case was facially
6 invalid, no reasonable agent could have relied on it.

7 This case has some complications, when we combined
8 in terms of a remedy, when we combined the overbreadth issue
9 with the unconstitutionally obtained information based on the
10 prolonged interview, we have sort of a situation where some
11 portions of the warrant are -- should be excised based on
12 severance, other portions of the warrant -- of what remains
13 should be redacted or excised based on the constitutional --
14 based on the prolongation violation. And it's -- as a result,
15 there's really not enough to save a warrant. And it would be
16 also extremely difficult, perhaps impossible, to know what's
17 left of the warrant if you were actually tasked with executing
18 this warrant, either hypothetically or, you know, in real
19 life.

20 So to be clear, I am suppressing on multiple
21 independent grounds. There was a prolonged detention
22 unsupported by reasonable suspicion that far exceeded the
23 scope of a normal traffic stop and mission. There was no
24 probable cause to seize the vehicle. The warrant is invalid
25 and cannot be saved by severance or good faith. I'm not going

1 to -- based on those rulings, I find it unnecessary to reach
2 the *Miranda* issue.

3 So, with that, I am very, very grateful for
4 everyone's courtesy and patience in working very late on a
5 Friday night. And so, with that, if there's anything else for
6 me to address, let me know. Otherwise, we'll be in recess.

7 MR. MCCLELLAND: Thank you.

8 MR. KEENAN: Thank you, Your Honor.

9 MR. MCCLELLAND: Nothing further from us.

10 (Proceedings concluded at 7:35 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

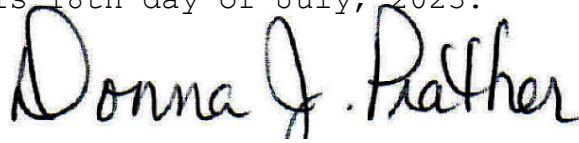
<u>INDEX</u>	
<u>PLAINTIFF'S WITNESSES:</u>	<u>PAGE</u>
WILLIAM BOYER	
DIRECT EXAMINATION BY MR. KEENAN	4
CROSS-EXAMINATION BY MR. MCCLELLAND	30
REDIRECT EXAMINATION BY MR. KEENAN	89
<u>EXHIBITS</u>	<u>MARKED</u> <u>RECEIVED</u>
ON BEHALF OF THE PLAINTIFF:	
1A - Basic Radar Certification (USAO 000844)	4
1B - Radar Test and Measurement Certification (USAO 000845)	4
1C - Radar Certification Worksheet (USAO 000846)	4
2 - Trooper Boyer's Dashcam Video (USAO 000520)	4
3 - Trooper Boyer's Bodycam Video (USAO 000524)	4
4 - Call Detail Report (USAO 000074-000083)	4
5 - Radio Recording (USAO 000519)	4
6 - Criminal History Printout (USAO 000721-000731)	4
7 - Phone Recording (USAO 000018-000025)	4
8 - Search Warrant Materials (USAO 000018-000025)	4
ON BEHALF OF THE DEFENSE:	
501 - Boyer Report (USAO 1-15)	4
502 - Declaration of Probable Cause (USAO 16-17)	4
503 - Affidavit in Support of and Application for Search Warrant (USAO 18-23)	4
504 - Search Warrant (USAO 24-25)	4
505 - Supplemental Reports (USAO 26-31)	4
506 - Boyer Dashcam (USAO 520)	4
507 - Boyer Bodycam (USAO 524)	4
508 - Marin Bodycam (USAO 525)	4
509 - Dispatch Phone Recording (USAO 518)	4
510 - Preliminary Hearing Transcript, September 14, 2022	4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, DONNA J. PRATHER, do hereby certify that the above and foregoing, consisting of the preceding 164 pages, constitutes a true and accurate transcript of my stenographic notes and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated this 18th day of July, 2023.



DONNA J. PRATHER, RMR, CRR, CCP, CBC
Federal Official Court Reporter