

APPENDIX A

*United States v. Villarreal*, 161 F.4th 364 (5th Cir. 2025)

(Dec. 12, 2025)

United States Court of Appeals  
for the Fifth Circuit

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No. 24-40525  
CONSOLIDATED WITH  
No. 24-40527

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 12, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

GERARDO VILLARREAL,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC Nos. 7:12-CR-7-1, 7:23-CR-1250-4

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Before JONES and ENGELHARDT, *Circuit Judges*, and SUMMERHAYS,  
*District Judge*.\*

KURT D. ENGELHARDT, *Circuit Judge*:

During a traffic stop, officers seized a handgun from the vehicle Gerardo Villarreal was driving. Because the handgun would have inevitably

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\* United States District Judge for the Western District of Louisiana, sitting by designation.

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been discovered during an inventory search of the vehicle, we affirm the district court's denial of Villarreal's motion to suppress.

I.

On August 21, 2023, Hildago County Sheriff's Deputy Jaime Garcia pulled Villarreal over for driving with a partially obscured license plate, in violation of Texas Transportation Code § 504.945. Deputy Garcia discovered that Villarreal did not have a driver's license or insurance. Deputy Garcia asked Villarreal questions related and unrelated to the stop and conducted a computer check of Villarreal's information. Approximately fifteen minutes into the stop, Deputy Garcia began writing Villarreal a ticket for driving without a license and insurance. At Deputy Garcia's request, Villarreal consented to an open-air canine sniff of the vehicle. The canine entered the open driver's door and alerted to a baseball cap in the backseat. Officers then searched the vehicle and found a handgun and a bag containing 0.44 grams of cocaine.

A grand jury indicted Villarreal, in relevant part, for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). Villarreal moved to suppress the handgun recovered from the vehicle.

The district court held a hearing on the motion to suppress. Deputy Garcia testified that pursuant to department policy, the vehicle would have been impounded because Villarreal did not have a license or insurance, regardless of whether he was arrested. When a driver does not have a license or insurance, the department usually impounds the vehicle unless there is another licensed driver, a child in the car, it is raining, or the officer determines another circumstance warrants not impounding the vehicle. While Deputy Garcia has never let a person without a license drive away without impounding, other deputies have. Before impounding, an officer would have conducted an inventory search to ensure that the department

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would not be responsible for any items left in the car that are later claimed missing. During an inventory search, officers may search the inside of the car and the trunk, but department policy prohibits officers from searching any locked compartments. Deputy Garcia testified that an officer would have found the handgun during an inventory search. For impeachment purposes, Villarreal introduced a traffic ticket from an incident where Deputy Garcia cited someone else for driving without a license and insurance but did not impound the vehicle. Deputy Garcia did not remember issuing that particular ticket but responded, as he previously stated, that he would not impound a car if there was another licensed driver or other special circumstance making impoundment inappropriate.

The court denied the motion to suppress based on the inevitable-discovery doctrine, finding that an inventory search would have revealed the handgun. Villarreal conditionally pleaded guilty to the felon-in-possession-of-a-firearm charge and preserved his right to appeal the suppression ruling.

## II.

When reviewing a district court’s ruling on a motion to suppress, we review factual findings, including credibility determinations, for clear error and legal conclusions *de novo*. *United States v. Walker*, 49 F.4th 903, 906 (5th Cir. 2022). We review the evidence in the light most favorable to the prevailing party—here, the Government. *Id.* And we “uphold a district court’s denial of a suppression motion if there is any reasonable view of the evidence to support it.” *United States v. Contreras*, 905 F.3d 853, 857 (5th Cir. 2018) (internal quotation marks and citation omitted).

## III.

The Fourth Amendment protects “against unreasonable searches and seizures.” U.S. Const. amend. IV. “Warrantless searches and seizures are ‘per se unreasonable unless they fall within a few narrowly defined

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exceptions.’” *United States v. Kelly*, 302 F.3d 291, 293 (5th Cir. 2002) (quoting *United States v. Roberts*, 274 F.3d 1007, 1011 (5th Cir. 2001)). Evidence obtained in “‘substantial and deliberate’ violation of the Fourth Amendment will be suppressed and excluded from consideration.” *United States v. Massi*, 761 F.3d 512, 520 (5th Cir. 2014) (quoting *Franks v. Delaware*, 438 U.S. 154, 171 (1978)).

Villarreal first argues that the stop, while initially justified by his violation of state law, was unconstitutionally prolonged. *See United States v. Estrada*, 459 F.3d 627, 631 (5th Cir. 2006) (stating that a traffic stop must last no longer than necessary for the officer to verify or dispel the suspicion for which he stopped the driver unless further reasonable suspicion emerges). Because we find that, regardless of the duration of the stop, the evidence would inevitably have been discovered during an inventory search of the vehicle, we decline to address whether the stop was prolonged. *See United States v. Jackson*, 596 F.3d 236, 242 (5th Cir. 2010) (declining to consider the legality of a warrantless search because the inevitable-discovery doctrine applied).<sup>1</sup>

The inevitable-discovery doctrine provides that “otherwise suppressible evidence will be admitted if that evidence would inevitably have been discovered by lawful means.” *Walker*, 49 F.4th at 909 (citation modified). The doctrine “applies if the Government demonstrates by a preponderance of the evidence that (1) there is a reasonable probability that the contested evidence would have been discovered by lawful means in the absence of police misconduct and (2) the Government was actively pursuing a substantial alternate line of investigation at the time of the constitutional

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<sup>1</sup> We also do not address whether the canine’s entry into the vehicle was constitutional because Villarreal did not raise that issue in this court. *See United States v. Reagan*, 596 F.3d 251, 254–55 (5th Cir. 2010).

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violation.” *United States v. Zavala*, 541 F.3d 562, 579 (5th Cir. 2008). Improperly obtained evidence “should not be suppressed if it would have been discovered pursuant [to] normal police practices.” *United States v. Ochoa*, 667 F.3d 643, 650 (5th Cir. 2012).

A.

There is a reasonable probability that the handgun would have been discovered during an inventory search of the vehicle. An inventory search is an exception to the Fourth Amendment’s warrant requirement. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). “[A]n inventory search of a seized vehicle is reasonable and not violative of the Fourth Amendment if it is conducted pursuant to standardized regulations and procedures that are consistent with (1) protecting the property of the vehicle’s owner, (2) protecting the police against claims or disputes over lost or stolen property, and (3) protecting the police from danger.” *United States v. McKinnon*, 681 F.3d 203, 209 (5th Cir. 2012) (quoting *United States v. Lage*, 183 F.3d 374, 380 (5th Cir. 1999)). Such policies must “sufficiently limit the discretion of law enforcement officers to prevent inventory searches from becoming evidentiary searches.” *United States v. Andrews*, 22 F.3d 1328, 1336 (5th Cir. 1994). A department’s policy need not be written, and an officer’s “unrebutted testimony is sufficient to establish that he acted in accordance” with the policy. *United States v. Bullock*, 71 F.3d 171, 177–78 (5th Cir. 1995).

By the time Deputy Garcia began writing Villarreal’s citation, he had determined that, according to department policy, he would impound the vehicle—and therefore it would be inventory searched. While there are some circumstances in which a vehicle is not impounded—another licensed driver, kids in the car, or rain—none of those circumstances were present. Deputy Garcia testified that he would have impounded the vehicle, and the district court found his testimony credible.

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Villarreal argues that the department had no standard impound policy because (1) officers can decide not to impound based on “whatever [he or she] want[s]” and (2) Deputy Garcia did not impound after ticketing another driver for not having a license. Villarreal fails to show the district court clearly erred. First, Deputy Garcia’s testimony established that department policy generally required cars to be impounded when the driver did not have a license, although officers could exercise discretion to not impound cars in some circumstances. Because Deputy Garcia always impounds cars when, as here, no special circumstances are present, and had already decided to impound the vehicle Villarreal was driving, it was reasonably probable that an inventory search would have occurred. Second, the ticket Deputy Garcia issued the other driver did not refute his testimony because, as he explained, a circumstance in which he does not impound might have been present, such as another licensed driver in the vehicle.

Deputy Garcia testified that the department performs inventory searches prior to impounding to avoid liability for valuable items in the car. This is a proper inventory-search purpose. *McKinnon*, 681 F.3d at 209. And because department policy prohibits officers from opening locked compartments, the policy sufficiently limited the officers’ discretion. *See United States v. Gray*, 824 F. App’x 258, 260 (5th Cir. 2020) (“[E]ven a slight constraint on the officer’s discretion”—such as prohibiting an officer from opening locked compartments and damaging property—“is enough to deprive him of the unfettered discretion that the Court . . . found to be constitutionally deficient.” (internal quotation marks and citations omitted)). It was reasonably probable that the handgun would have been discovered in an inventory search, regardless of any alleged misconduct.

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B.

Villarreal argues that the Government failed to prove the second prong—that it was actively pursuing an alternate line of investigation at the time of the alleged misconduct. We disagree.<sup>2</sup>

The inevitable discovery of evidence cannot be speculative; it must be supported by “demonstrated historical facts.” *Nix v. Williams*, 467 U.S. 431, 444 n.5 (1984). “[T]he alternate means of obtaining the evidence must at least be in existence and, at least to some degree, imminent, if yet unrealized.” *United States v. Cherry*, 759 F.2d 1196, 1205 n.10 (5th Cir. 1985).

Prior to any alleged misconduct, Deputy Garcia had already determined to impound the vehicle, so an inventory search was imminent. Before the canine sniff and vehicle search, Deputy Garcia had begun writing a ticket for driving without a license and insurance—a prerequisite to impounding. See *United States v. Seals*, 987 F.2d 1102, 1108 (5th Cir. 1993) (applying the inevitable-discovery doctrine when the officer “had already decided to impound the vehicle[] and had begun the necessary paperwork” prior to the misconduct). While the Government may not “later initiate a lawful avenue of obtaining the evidence and then claim that it should be admitted because its discovery was inevitable,” Deputy Garcia was actively pursuing impoundment. See *Cherry*, 759 F.2d at 1205–06 (citation omitted) (finding no alternate line of investigation because officers had not sought a warrant at the time of the warrantless search). Villarreal argues that Deputy Garcia had not begun impounding the car because he had not checked the

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<sup>2</sup> This court has “suggested that the second element of the inevitable discovery rule may be superfluous.” *United States v. Salinas*, 543 F. App’x 458, 467 (5th Cir. 2013). But we “need not address the continuing vitality of the active-pursuit element” because it is established here. *Jackson*, 596 F.3d at 242; *United States v. Lamas*, 930 F.2d 1099, 1104 (5th Cir. 1991) (declining to address active-pursuit element because it was not dispositive).

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“impound” box on the citation. But we refuse to “mechanically particularize the steps prerequisite to the application of the inevitable-discovery rule.” *Lamas*, 930 F.2d at 1103 (refusing to require an officer to complete certain steps in getting a warrant to apply the inevitable-discovery doctrine). The district court did not clearly err in finding impounding and an inventory search imminent.

#### IV.

Accordingly, we AFFIRM the district court’s judgment.

APPENDIX B

*United States v. Villarreal*, Nos. 24-40525, 24-40527, 2026 U.S. App. LEXIS 1900  
(5th Cir. 2025)

(Jan. 26, 2026)

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

January 26, 2026

Lyle W. Cayce  
Clerk

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No. 24-40525

CONSOLIDATED WITH  
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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

GERARDO VILLARREAL,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:12-CR-7-1

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ON PETITION FOR REHEARING

Before JONES and ENGELHARDT, *Circuit Judges.*

PER QUORUM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX C

*United States v. Villarreal*, No. 7:23-cr-1250-4 (S.D. Tex. 2023)

(Apr. 25, 2024)

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

\* \* \* \* \*

UNITED STATES OF AMERICA	*	NO. M-23-CR-1250-4
	*	McAllen, Texas
VS.	*	
	*	9:33 a.m. - 9:54 a.m.
GERARDO VILLAREAL	*	April 25, 2024

\* \* \* \* \*

**MOTION TO SUPPRESS**

BEFORE THE HONORABLE RANDY CRANE  
UNITED STATES DISTRICT JUDGE

\* \* \* \* \*

Proceedings recorded by electronic sound recording  
Transcript produced by transcription service

1 **APPEARANCES:**

2 For the United States:

3 MS. DEVIN WALKER  
 4 **U.S. Attorney's Office**  
 5 1701 W. Business Hwy. 83  
 Suite 600  
 McAllen, TX 78501

6 For the Defendant:

7 MR. URIEL ALEJANDRO "ALEX" GUAJARDO  
 8 **Statesman Law Firm, PLLC**  
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 9 McAllen, TX 78502

10 MR. SIMRAN W. SINGH  
 11 **Veritum Law Group**  
 3525 W. Freddy Gonzalez Drive  
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 12 Edinburg, TX 78539.

13 Court Interpreter:

14 ELENA MEDRANO

15 Court Clerk:

16 DELIA S. RODRIGUEZ

17 Electronic Recorder:

18 RICK RODRIGUEZ

19

20

21

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## P R O C E E D I N G S

9:33 A.M. - APRIL 25, 2024

1 THE COURT: All right, 23-CR-1250-4, USA vs.  
2 Gerardo Villareal.

3 MS. WALKER: Good morning, Your Honor. Devin  
4 Walker on behalf of the United States, present and  
5 ready.

6 MR. GUAJARDO: Good morning, Your Honor.  
7 Attorney Alex Guajardo and --

8 THE COURT: Good morning.

9 MR. SINGH: Good morning, Your Honor.  
10 Attorney Simran Singh for the defendant, Gerardo  
11 Villareal.

12 MR. GUAJARDO: On behalf of Mr. Villareal, we  
13 are present and ready, Your Honor.

14 THE COURT: All right. So I guess I'm going  
15 to return this to whomever gave it to us, the video of  
16 the whatever -- body cam video. So I did watch the  
17 video. Does the Government have any other -- is there  
18 any other evidence anybody wants to present other  
19 than --

20 MR. GUAJARDO: Yes, Your Honor, we do  
21 appreciate that. And yes, we actually did request an  
22 information request concerning Deputy Garcia's past  
23 record on similar traffic violations.  
24  
25

1 THE COURT: Sure.

2 MR. GUAJARDO: Which we would also like to  
3 tender into evidence.

4 THE COURT: All right. Does the Government  
5 have any further evidence?

6 MS. WALKER: We have the deputy here, Your  
7 Honor. The Government's argument is still outlined in  
8 our response, Your Honor. And as a housekeeping  
9 matter, in speaking with defense, it was brought to my  
10 attention that at the last hearing that we were here --

11 THE COURT: Uh-huh.

12 MS. WALKER: -- I had requested 21 days to  
13 file a response. The Court didn't order me to file a  
14 response within those 21 days. And I exceeded the 21  
15 days, so I would put forward a request, a Motion for  
16 Leave, for the Court to consider the response.

17 THE COURT: I consider it. You didn't even  
18 have to respond. We do our own research anyway.

19 So he's already pled to the alien -- the  
20 1324 charge.

21 MS. WALKER: Yes, Your Honor.

22 THE COURT: I looked at his Guideline range.  
23 He pretty much comes close to the max on that 10 years,  
24 his Guideline range.

25 MS. WALKER: Yes, Your Honor.

1 THE COURT: It's like why are we fighting over  
2 this?

3 MS. WALKER: The co-defendants were subject to  
4 a 20-year maximum.

5 THE COURT: Uh-huh.

6 MS. WALKER: Which he would have guided  
7 above the 10 years. But that was something that was in  
8 consideration when we originally offered the plea to  
9 the lesser 1324 count charged, as well as the firearm  
10 charge. The firearm is a different event that is, to  
11 me, why we charged it.

12 THE COURT: I mean, I saw the stop, yeah.

13 MS. WALKER: He also does have that probation  
14 case as well.

15 THE COURT: Right, he has an SRT violation.

16 MS. WALKER: Yes, Your Honor.

17 THE COURT: Have I sentenced some of -- I  
18 sentenced some of the 1250 defendants, haven't I?

19 MS. WALKER: One so far.

20 THE COURT: Okay, but none of them were north  
21 of 10 years.

22 MS. WALKER: Yes, he did.

23 THE COURT: He was north of 10 years?

24 MS. WALKER: Yes.

25 THE COURT: This was one of the ringleaders

1 who was putting them in those boxes or cages or  
2 whatever that you call those things. Was it one of  
3 those individuals or was it -- there are so many  
4 defendants in this case, lots of different roles.

5 MS. WALKER: Yes, Your Honor, he did get an  
6 enhancement for the role.

7 THE COURT: Okay. All right. So the  
8 Government doesn't have any additional evidence?

9 MS. WALKER: We can hear from the deputy if  
10 the Court would like, Your Honor. Our argument is what  
11 is outlined in our response, that the officer did not  
12 instruct the dog into the car, it was classified as --

13 THE COURT: I know.

14 MS. WALKER: And in the alternative, the  
15 defendant did not have a license, did not have  
16 insurance, the car was not registered to him. So he  
17 would not have been permitted to leave with the car.

18 THE COURT: Right, I understand, but we saw no  
19 evidence of any policy that there would have been an  
20 inventory search of the vehicle.

21 I see two different types -- what happens  
22 sometimes, they just call a tow company that has a  
23 contract with the municipality or the city. The tow  
24 company comes, loads up the vehicle, takes them to the  
25 tow company's yard, and some whatever loved one has got

1 to go pay the \$300 per day, whatever the ridiculous  
2 charges they usually impose for that towing, and  
3 there's never an inventory search done.

4           Now, I've seen the other cases where,  
5 whatever, they find a few kilos of drugs in the trunk,  
6 they take it to the police station and there's an  
7 inventory search done, a probing of the vehicle.

8           But there's a policy usually that I get  
9 that says that was -- the policy was to do an inventory  
10 search from the PD. And I never got any evidence of  
11 any such thing in this case that there would have been  
12 a search otherwise.

13           MS. WALKER: We'll call the deputy to testify.

14           THE COURT: That there would have been?

15           MS. WALKER: Yes.

16           THE COURT: Okay. Well, then that would be  
17 helpful because otherwise, if it's a close enough call,  
18 I'd probably -- you know, tie goes to the runner and  
19 I'd probably rule in favor of the defendants on the --  
20 on the dog, whether the dog was enticed to enter the  
21 vehicle at the open door. So let's put that evidence  
22 on then.

23           MS. WALKER: Yes, Your Honor. We'll call  
24 Deputy Garcia.

25           THE COURT: Great.

1                   Good morning, Deputy, and thank you for  
2 taking time off your schedule out in the field to be  
3 here to testify.

4                   If you will raise your right hand to be  
5 administered the oath.

6                   COURT CLERK: Do you solemnly swear the  
7 testimony you are about to give in the case now before  
8 this Court shall be the truth, the whole truth, and  
9 nothing but the truth, so help you God?

10                  THE WITNESS: Yes.

11                  THE COURT: All right. If you could just grab  
12 a seat, try to squeeze in with all your utilities.  
13 There we go.

14                  All right. Ms. Walker, you may proceed.

15                  **DEPUTY JAIME GARCIA, Called by the Government**

16                                 **DIRECT EXAMINATION**

17 **BY MS. WALKER:**

18 Q. Good morning. Could you please state your name and  
19 occupation?

20 A. Jaime Garcia. I've worked for the Hidalgo County  
21 Sheriff's Office for 19 years.

22 Q. Do you have any specialty assignments?

23 A. For working in the Sheriff's office, I've been in  
24 McAllen for 16 years.

25 Q. Okay. And on August 21st of 2023 were you working

1 on that day?

2 A. Yes.

3 Q. Did you conduct a traffic stop on a white Honda  
4 Civic on that date?

5 A. Yes, I did.

6 Q. Where at?

7 A. There on Six-Mile and Conway.

8 Q. Is that in the Southern District of Texas?

9 A. Yes.

10 Q. Who was the driver of that vehicle?

11 A. Mr. Villareal.

12 Q. Do you see him here today?

13 A. Yes, I do.

14 Q. Can you please state something he's wearing?

15 A. He's wearing all grey.

16 MS. WALKER: May the record reflect he's  
17 identified the defendant?

18 THE COURT: The record will so reflect.

19 Now, you don't have to stand through the  
20 whole hearing. Do you want to take a seat or do you  
21 want to stand, whatever? You can sit next to your  
22 lawyer over there.

23 Yeah, let him sit next to his lawyer.

24 BY MS. WALKER:

25 Q. Did you ask him about his license and insurance?

1 A. Yes.

2 Q. And what did he say?

3 A. He had no driver's license or insurance.

4 Q. Is that in violation of Texas law?

5 A. Yes. Every car has to have driver's license and  
6 insurance.

7 Q. Can you drive a vehicle without the driver's  
8 license and insurance?

9 A. No.

10 Q. Did you ask about the registered owner of the  
11 vehicle?

12 A. Yes, I did. He did not know who it belonged to.

13 Q. But it didn't belong to him?

14 A. No.

15 Q. Based on that, would Villareal have been permitted  
16 to drive away from the scene?

17 A. No.

18 Q. Why not?

19 A. For licensing reasons, if I would have let him go,  
20 he gets in an accident, it will fall back on me for  
21 allowing him to drive with no driver's license.

22 Q. Or insurance?

23 A. Insurance.

24 Q. And what would have happened to the vehicle?

25 A. It would be inventoried and impounded.

1 Q. Inventory, that would have been an inventory  
2 search?

3 A. Well, inventory is for belongings, anybody with  
4 belongings. The reason we do inventory is let's say he  
5 has Rolex watch inside the vehicle and we find it, we  
6 put it in inventory so that it won't come back at us if  
7 it turns up missing. That's the reason we do the  
8 inventory.

9 Q. And that would occur prior to the car being towed?

10 A. Yes.

11 Q. And impounded?

12 A. Impounded.

13 Q. And a deputy would have conducted that inventory  
14 search?

15 A. Yes, any deputy would have done it.

16 Q. Is that in line with your department policy?

17 A. Yes.

18 Q. And subject to the inventory search -- well, did  
19 you recover a firearm in the vehicle?

20 A. Underneath the driver's seat.

21 Q. And did you have to cut the seat open?

22 A. No, it was in plain view underneath the seat.

23 Q. In plain view underneath the seat?

24 A. Yes.

25 Q. And so had an inventory search occurred, because

1 the car was being towed, would that firearm have been  
2 recovered?

3 A. Yes.

4 Q. And again, you didn't cut apart any seats or there  
5 was nothing --

6 A. They had already informed me that there was  
7 something underneath the seat.

8 THE COURT: Yeah, that's good enough.

9 Any cross-examination?

10 MR. SINGH: Yes, Your Honor.

11 **CROSS-EXAMINATION**

12 **BY MR. SINGH:**

13 Q. Good morning, Attorney Simran Singh for  
14 Mr. Villareal.

15 A. Yes.

16 Q. You stated that pursuant to your department's  
17 policies, regardless of whether my client would have  
18 been arrested, you would have towed his vehicle anyway?

19 A. Yes.

20 Q. And that's according to your departmental policy?

21 A. Yes.

22 Q. For every single time that you pull someone over  
23 and you discover that they don't have a driver's  
24 license and no insurance, you tow their vehicle?

25 A. We usually do impound it unless we have somebody

1 else to pick it up.

2 Q. Usually?

3 A. Yes.

4 Q. But not always?

5 A. No.

6 Q. So what other situations --

7 A. An example would be if they have kids inside the  
8 vehicle, we won't impound it.

9 Q. Is that part of your policy?

10 A. No.

11 Q. No, okay. Let's see -- so again, there have been  
12 situations where --

13 A. Yes, if the driver has kids inside, then we  
14 wouldn't -- if it's raining, depending on whatever we  
15 want.

16 Q. What other situations?

17 A. What?

18 Q. Any other situations that you might not choose to  
19 tow?

20 A. No, I can't --

21 THE COURT: Well, I guess if there was another  
22 licensed driver in the vehicle, like a --

23 THE WITNESS: Like if they have a licensed  
24 driver, then we'll let it go.

25 THE COURT: Like a --

1 BY MR. SINGH:

2 Q. Have you ever let the vehicle go with someone who  
3 didn't have a driver's license?

4 A. No, we probably wouldn't have let them go.

5 Q. Usually?

6 A. Yes.

7 Q. So it's not always?

8 A. Most of the time.

9 Q. So not always?

10 A. No.

11 Q. So you have let people go?

12 A. Me, no. But other deputies, yes.

13 Q. Did you fill out the inventory?

14 A. The voucher?

15 Q. Yes.

16 A. Yes.

17 Q. This policy, can you explain the policy again for  
18 your department on impounding and inventory?

19 A. The procedure that we do is, like I mentioned  
20 before, the reason we impound or inventory is, if a  
21 person has money inside the vehicle, we note it on the  
22 impound sheet.

23 Q. Let me go over a few things here.

24 MR. SINGH: I'd like to tender this to the  
25 Court.

1                   May I approach the witness, Your Honor?

2                   THE COURT:    You may.

3 BY MR. SINGH:

4 Q.    Deputy, can you --

5                   MS. WALKER:   Your Honor, I'm going to object.  
6 I'm not sure how this is relevant at this point.  This  
7 is not for this case here.

8                   THE COURT:    I'm having trouble even reading  
9 it.  So this looks like a traffic ticket for someone  
10 else.  I'm trying to look at the date here back in '22.

11                   MR. SINGH:    It's for impeachment, Your Honor,  
12 just to show that he doesn't always tow the vehicle when  
13 they issue a citation.

14                   THE COURT:    Okay.  I'm sure I'll -- go  
15 forward.  He said he's never had an exception.

16 BY MR. SINGH:

17 Q.    So, Deputy, so can you look at the exhibit that was  
18 just tendered to you?

19 A.    Yes.

20 Q.    Can you explain to us what it is?

21 A.    It's a ticket for a motor violation.

22 Q.    Okay.  Do you recall issuing that citation?

23 A.    No, I don't.

24 Q.    If you turn to the page where it shows a citation,  
25 somewhere in the middle does it show a check box for

1 you to pick if you're going to impound the vehicle?

2 A. Yes.

3 Q. Did you pick it?

4 A. No.

5 THE COURT: Where is that, by the way?

6 MR. SINGH: It should be on a copy of the  
7 citation, Your Honor.

8 THE COURT: Near the top or near the bottom?  
9 I'm trying -- oh, impound, okay, I see that.

10 THE WITNESS: The location is on top.

11 THE COURT: Impound, day, night, wet, dry,  
12 rain, fog, those boxes?

13 MR. SINGH: The very first one.

14 THE COURT: Okay, got it.

15 BY MR. SINGH:

16 Q. If you're going to impound a vehicle, do you  
17 generally pick that box?

18 A. Yes, I do.

19 Q. Okay. And you didn't pick it in this situation?

20 A. No.

21 Q. But you did issue this person a citation --

22 A. Yes, I did.

23 Q. -- for both these offenses and didn't tow the  
24 vehicle?

25 A. No, like I said, if there was a licensed driver or

1 somebody else picked it up.

2 Q. Okay.

3 A. Or he had a child.

4 Q. All right. Let's go back to your policies. In  
5 your policies, Deputy, do these policies limit your  
6 discretion of what you can search during the inventory?

7 A. No. It's just for any items in the vehicle.

8 Q. So you can choose to search anything?

9 A. Inside the vehicle.

10 Q. Inside the vehicle?

11 A. Inside the vehicle.

12 Q. Nothing says --

13 A. The trunk.

14 Q. Nothing says, hey, there's a locked compartment,  
15 can I search that?

16 A. We wouldn't open it.

17 Q. So you can basically choose, again, what you want  
18 to search?

19 A. If it's secured, no.

20 THE COURT: Well, he said he wouldn't open a  
21 locked compartment.

22 MR. SINGH: Okay.

23 BY MR. SINGH:

24 Q. Also, during the time that the K-9 entered my  
25 client's vehicle, was there any of your team

1 investigating my client for anything else?

2 MS. WALKER: Your Honor, I'm going to object.  
3 This is not relevant and this is beyond the scope --

4 THE COURT: Yeah, it doesn't really go towards  
5 this issue. I'm not going to -- the dog sniff, I'm not  
6 going to use that as a basis for my ruling.

7 MR. SINGH: Then I'll go ahead and pass the  
8 witness, Your Honor.

9 THE COURT: All right, thank you very much,  
10 Deputy, for being here. You are excused at this time.  
11 Get you back on the road.

12 All right. Any other evidence on this  
13 issue?

14 MS. WALKER: No, Your Honor.

15 MR. SINGH: Nothing further, Your Honor.

16 THE COURT: Okay. So I'm going to -- yeah, I  
17 did have -- this is totally anecdotal. In the video it  
18 looked like y'all are finding like some crack cocaine  
19 or some drug in the floorboard of the driver's side.  
20 Did y'all ever find any drugs in there?

21 THE WITNESS: A bag of cocaine.

22 THE COURT: There was cocaine, okay.

23 MR. GUAJARDO: Your Honor, if I may. It was  
24 .44 grams of cocaine --

25 THE COURT: Okay.

1 MR. GUAJARDO: -- residue.

2 THE COURT: That was the stuff you were kind  
3 of picking up in the video?

4 THE WITNESS: Yeah.

5 THE COURT: Okay.

6 THE WITNESS: The cocaine was in the back.

7 THE COURT: So where was that?

8 THE WITNESS: In the passenger back seat.

9 THE COURT: Okay. Got it, okay.

10 All right, thank you. I was just curious.  
11 All right, thanks.

12 MS. WALKER: Your Honor, I believe there is a  
13 pending state charge.

14 THE COURT: For that, okay.

15 MS. WALKER: Yes.

16 THE COURT: No worries.

17 All right. So I don't feel I need to  
18 reach the issue with the dog. Probably, if I were  
19 required to, I would have probably ruled in favor of  
20 the defendant on whether there was a facilitation of  
21 the dog. Also, the dog seemed to not be well-trained,  
22 didn't really think he alerted to where the drugs  
23 really were in the car. And anyway, I couldn't even  
24 tell that he alerted to the floorboard where the gun  
25 was, or in that cap. I mean, maybe the -- anyway, I

1 just couldn't see it. But it still it looked like the  
2 dog was taken directly to the open door rather than  
3 doing a free air sniff around the vehicle.

4           But I do find, based on the testimony,  
5 that the vehicle would have had an inventory search  
6 done, and in that inventory search the officer would  
7 have seen the gun under the driver's seat, which was  
8 in plain view, just laying there on the floorboard  
9 underneath the driver's seat.

10           So I'll deny the Motion to Suppress on  
11 those grounds, that would have been discovered anyway.

12           MR. GUAJARDO: Your Honor, we're asking for a  
13 reconsideration because there was no actual evidence  
14 that was tendered on an inventory search. And even if  
15 that is that's the case, based on that policy, it  
16 doesn't sufficiently limit -- and it turns now into an  
17 evidentiary search versus an inventory search. And  
18 that, quite frankly, would be unconstitutional.

19           THE COURT: So what they did at the scene was  
20 an evidentiary search. The dog alerted to that  
21 location, so they opened the door and looked under the  
22 seats, and pulled out the gun. The had not yet  
23 impounded the vehicle and done an inventory search.

24           However, if the dog had not alerted, the  
25 officer testified there would have been an impounding

1 of the vehicle because this person was alone, driving  
2 on a dry day, with no driver's license or proof of  
3 insurance; and that any time the county impounds a  
4 vehicle, they do an inventory search to make sure that  
5 there isn't valuables in there that the owner is going  
6 to allege were stolen out of the vehicle or taken by  
7 county officials or county officers. So they do it for  
8 the protection of the county, but also the protection  
9 of the person being arrested.

10 So it's that -- it inevitably would have  
11 been found.

12 MR. GUAJARDO: If I may be heard?

13 THE COURT: Sure.

14 MR. GUAJARDO: We heard testimony from the  
15 officer that he -- that other officers don't do it, but  
16 he always does it. He always impounds. But we just  
17 presented evidence where he actually did the complete  
18 opposite. He just gave a warning and didn't actually  
19 impound.

20 THE COURT: Well, but he said he doesn't know  
21 the facts of that case, but he thought likely there was  
22 probably a licensed driver in the other seat.

23 MR. GUAJARDO: Well, it's premised on always  
24 impounding, and that's not the case here.

25 THE COURT: Sure. So there was some

1 impeachment, but I still found the policy -- his  
2 testimony about the policy credible and that his  
3 actions on this occasion would have been in conformance  
4 therewith.

5 All right, so I've ruled on that. It's  
6 set for Final Pretrial, I guess on this one. I mean,  
7 do y'all want out a conditional plea or something, or  
8 you can preserve your right to challenge the  
9 suppression. Or do you just want to go to trial on it?  
10 You can do a bench trial on it or a jury trial on it.  
11 I mean, now the evidence is going to come in. So do  
12 y'all want some time to figure out what you're going to  
13 do on that count?

14 MR. GUAJARDO: Yes, Your Honor, we'd  
15 appreciate that.

16 THE COURT: Let me see when he's set. He's  
17 set for sentencing, I think, on --

18 MR. GUAJARDO: May 23rd.

19 THE COURT: Okay. So let's just -- that's a  
20 month from now. Y'all want to let me know in a couple  
21 of -- is he also set for a Final Pretrial on the --

22 MR. GUAJARDO: He is for May 3rd as to Count  
23 Three.

24 THE COURT: Okay. So why don't y'all just --  
25 that gives you a week and a half to try to talk

1 something out on that one.

2 MR. GUAJARDO: Your Honor, if I may, there are  
3 other three co-defendants that are scheduled for June  
4 27th. We would ask the same date, if that is possible.

5 THE COURT: June 27th for?

6 MR. GUAJARDO: Sentencing.

7 THE COURT: Okay.

8 MR. GUAJARDO: Oh, you're talking just as to  
9 Final Pretrial, gotcha.

10 THE COURT: Yeah, on the gun. We need to work  
11 out the gun because I've got to sentence him on both.  
12 And you know, that way, they get grouped or whatever,  
13 one sentence for both counts.

14 So on May 3rd when you come back, you  
15 know, let us know at that point if it's going to be a  
16 conditional plea or if you want a bench trial on it,  
17 because we want to preserve our appellate rights on the  
18 seizure issue.

19 MR. GUAJARDO: Yes, Your Honor.

20 THE COURT: So y'all talk amongst yourselves  
21 and just be ready to announce that on May 3rd.

22 MR. GUAJARDO: If the Court would also allow,  
23 we could submit a post-hearing brief. Again, I mean,  
24 we are certain about a reconsideration.

25 THE COURT: Yeah, I'm not --

1 MR. GUAJARDO: As to that, if Your Honor would  
2 agree that the search was illegal.

3 THE COURT: Yeah, I don't need a post -- I  
4 mean, I made my ruling, never been wrong on one in 22  
5 years. Maybe this is my first, but -- so again, I  
6 would have ruled in your favor on the dog, but not on  
7 the inevitable -- the inventory search would have  
8 inevitably discovered the gun.

9 All right. So see you back here on May  
10 3rd. You're excused at this time.

11 ***[9:54 a.m. - Proceedings adjourned]***

12

13 C E R T I F I C A T I O N

14

15 I certify that the foregoing is a correct  
16 transcript of the electronic sound recording of the  
17 proceedings in the above-entitled matter.

18

19

20 /s/ Gwen Reed

21 5-17-24

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23

24

25