

No. _____

IN THE
Supreme Court of the United States

CHARLES DITTO,

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

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 6 2026

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES DITTO,

Defendant - Appellant.

No. 24-7191

D.C. No.

2:23-cr-00376-SB-1

Central District of California,
Los Angeles

ORDER

Before: RAWLINSON and N.R. SMITH, Circuit Judges, and LIBURDI, District Judge.*

The petition for panel rehearing (Dkt. 54) is DENIED.

* The Honorable Michael T. Liburdi, United States District Judge for the District of Arizona, sitting by designation.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 12 2026

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES DITTO,

Defendant - Appellant.

No. 24-7191

D.C. No.

2:23-cr-00376-SB-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Submitted March 10, 2026**
Pasadena, California

Before: RAWLINSON and N.R. SMITH, Circuit Judges, and LIBURDI, District Judge.***

Charles Ditto appeals his conviction following a conditional guilty plea. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court did not clearly err by finding that the evidence from

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

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

*** The Honorable Michael T. Liburdi, United States District Judge for the District of Arizona, sitting by designation.

Ditto's car was admissible under the inevitable discovery doctrine. *See United States v. Holmes*, 121 F.4th 727, 734 (9th Cir. 2024) (inevitable discovery doctrine findings are reviewed for clear error). It is not illogical, implausible, or without support in inferences that may be drawn from the record for the district court to find that there was "a reasonable probability of discovery." *United States v. Lang*, 149 F.3d 1044, 1047 (9th Cir.), *amended*, 157 F.3d 1161 (9th Cir. 1998) (quoting *United States v. Drosten*, 819 F.2d 1067, 1070 (11th Cir. 1987)). Some officers searched Ditto's car before learning of the incriminating evidence in his pockets, so there is a reasonable possibility that other officers would have searched Ditto's car after learning about such evidence.

The district court did not abuse its discretion by failing to hold an evidentiary hearing. *See United States v. Barry*, 140 F.4th 1105, 1108 (9th Cir. 2025) (denials of an evidentiary hearing are reviewed for abuse of discretion). Resolution of the factual disputes would not "alter the outcome of our Fourth Amendment analysis," so no evidentiary hearing was required. *United States v. Quoc Viet Hoang*, 486 F.3d 1156, 1163 (9th Cir. 2007). And "[a] simple desire to cross-examine agents that a movant has accused of being untruthful does not itself create grounds for an evidentiary hearing." *United States v. Keller*, 142 F.4th 645, 655 (9th Cir. 2025) (*per curiam*).

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

v.

CHARLES DITTO,

Defendant.

Case No. 2:23-cr-00376-SB-1

ORDER DENYING MOTION TO
SUPPRESS [DKT. NO. 37]

When Los Angeles Police Department (LAPD) officers searched Defendant Charles Ditto's car without a warrant, they found a taser, a scale, \$3,063 in cash, 260 rounds of ammunition, and 1,091 grams of a substance suspected to be fentanyl. The search immediately followed Ditto's arrest on an outstanding warrant for prohibited possession of ammunition. A contemporaneous search of Ditto's person separately recovered \$1,120 in cash, 5 grams of suspected cocaine, and 17 grams of suspected fentanyl. The government charged Ditto with possession of fentanyl with intent to distribute, unlawful possession of ammunition by a felon, and unlawful possession of a firearm.¹ Ditto moves under the Fourth Amendment to suppress the evidence recovered from the search of his car and all tainted evidence obtained thereafter. Because the evidence would have been lawfully discovered even if the initial search of the car were unlawful, the Court denies the motion.

I.

On the day of the search, Ditto was sitting in his car in a motel parking lot when LAPD officers Gabriel Garcia and Ashley Castillo approached to ask him

¹ The firearm was recovered in a subsequent search of Ditto's home.

about a domestic violence call they had received minutes earlier.² The call described a woman screaming and a man whose physical appearance matched Ditto's. When the officers approached, Ditto was compliant and cooperative, exited his car when asked, and walked with the officers across the parking lot while they spoke with him. Ditto explained that he had been visiting a friend at the motel and that his friend had been screaming because she was worried that someone was going to harm her cat. Shortly thereafter, the officers learned from police dispatch that there was an outstanding, three-week-old warrant for Ditto's arrest for possession of ammunition.³ The officers told Ditto about the warrant and arrested him. At this point, LAPD Officers Sisco Lopez and Bridgette Perez began to search Ditto's person. Before seeing the results of that search, Officers Garcia and Castillo walked to Ditto's car and began to search it.

Both parties agree that the car search proceeded in the following order: Officer Garcia searched the driver's side seat area, where he found a taser and a scale; Officer Castillo searched the passenger seat area, where she found a bag containing \$3,063 in cash;⁴ and Officer Garcia opened the trunk, where the officers found several bags containing a total of 260 rounds of ammunition.⁵ Officers Garcia and Castillo then walked back across the parking lot to the other officers, who had completed their search of Ditto's person.

² The facts in this section are not materially disputed unless otherwise noted. The page numbers in this order refer to CM/ECF pagination.

³ According to the arrest report, there was also an outstanding warrant for possession of methamphetamine, Dkt. No. 37-3 at 4, but the bodycam footage shows that dispatch only informed the officers about the ammunition offense, Dkt. No. 37-4 at 16–19.

⁴ The parties dispute whether Officer Garcia found a purple rocklike substance in the center console and whether the scale found in the car had visible residue on it. Because the motion must be denied even if this disputed evidence is disregarded, the Court does not decide the dispute and does not consider the disputed evidence. Accordingly, Ditto's request for an evidentiary hearing is denied.

⁵ Ditto points out that Officer Garcia made statements during the search of the automobile that suggest, at best, a poor understanding of Fourth Amendment law. But his subjective state of mind is irrelevant to whether the search was lawful because the reasonableness of a search turns on an objective inquiry. *See Brigham City v. Stuart*, 547 U.S. 398, 404 (2006).

During the search of Ditto's person, the officers found \$1,120 of cash in one of his pockets and suspected drugs (later identified as 5 grams of suspected cocaine and 17 grams of fentanyl) in the other. Dkt. No. 37-3 at 8–10; Dkt. No. 37-4 at 23–24 (transcript of bodycam footage) (Officer Perez: “So, um, he has narco for sales. . . . And he's got rocks here. I was asking him about these because they look, I don't know, they look off. So I asked him if they're like fleece or fentanyl or something. He says no, but . . . he has this big one. . . . But it looks off. . . . He has like \$800 on him.”). Ditto was then taken to jail, while detectives and officers from LAPD's Narcotics Enforcement Detail arrived and continued to search the vehicle. Dkt. No. 37-3 at 3–5. They later found bags containing 1,091 grams of a substance suspected to be fentanyl in the trunk.

Later that afternoon, officers obtained and executed a warrant to search Ditto's apartment, where they found additional drugs and drug paraphernalia. Fourteen months later, the United States indicted Ditto for prohibited possession of ammunition and possession with intent to distribute fentanyl.⁶ When Ditto was arrested, the agents searched his apartment and recovered a firearm. The government then added a charge of prohibited possession of a firearm by a felon to the First Superseding Indictment (FSI).

Ditto now moves to suppress all evidence found in the search of his car, along with all evidence from the two searches of his apartment. Dkt. No. 37 at 1. The Court heard argument on the motion on March 5, 2024.

II.

The Fourth Amendment protects against “unreasonable searches and seizures.” U.S. Const. amend. IV. “As [its] text makes clear, the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Riley v. California*, 573 U.S. 373, 381 (2014) (citation omitted). “What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.” *United States v. Montoya De Hernandez*, 473 U.S. 531, 537 (1985). “Generally, a search must also be supported by probable cause, and must be backed up by a warrant, or the circumstances must fit an exception to the warrant requirement.” *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998) (citing *Winston v. Lee*, 470 U.S. 753, 759-61 (1985)). A search conducted

⁶ In the original Indictment (Dkt. No. 1), this charge was for possession with intent to distribute fentanyl analogue. The First Superseding Indictment (Dkt. No. 39) amended the charge to possession with intent to distribute fentanyl.

without a warrant is presumed to be unreasonable, and the government bears the burden to demonstrate that an exception to the warrant requirement applies.

United States v. Emens, 649 F.2d 653, 657 & n.6 (9th Cir. 1980) (“The Government bears the burden in cases of warrantless searches, and at no time does it shift to the defendant.”).

The automobile exception allows law enforcement officers to search a vehicle, including its trunk, if they have probable cause to believe the vehicle contains evidence of criminal activity. *United States v. Ross*, 456 U.S. 798, 820–821 (1982); *California v. Acevedo*, 500 U.S. 565, 570–80 (1991). Probable cause is a “practical, common sense decision” based on the “totality of the circumstances” that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 243 (1983). Separately, where a defendant is lawfully arrested and it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle, the government may search the passenger compartment of the vehicle for such evidence as a search incident to a lawful arrest (the *Gant* exception). *Arizona v. Gant*. 556 U.S. 332, 343–44 (2009).

If the government does not meet its burden of demonstrating that an exception applies, evidence recovered as a result of the illegal search is suppressed as “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 485–86 (1963). But where the government establishes by a preponderance of the evidence that the challenged evidence would have ultimately been discovered by lawful means (the “inevitable discovery” exception), then the evidence is admissible even if the search was unlawful. *Nix v. Williams*, 467 U.S. 431, 444 (1984); *United States v. Ruckes*, 586 F.3d 713, 718 (9th Cir. 2009).

III.

Because the initial search of Ditto’s car by Officers Garcia and Castillo was conducted without a search warrant, it was presumptively unreasonable. The government argues that the search was permitted by both the automobile exception and the *Gant* exception. Defendant counterargues that neither exception applies because it was unreasonable to believe that the car (or trunk) contained relevant evidence, especially without the disputed evidence of the purple rocklike object or the residue on the scale. But these disputes are ultimately immaterial because the record is clear that even if the initial search was unlawful, the challenged evidence inevitably would have been discovered following the lawful search of Ditto

incident to his arrest—which, only moments later, revealed drug contraband that gave rise to probable cause to search the car, including the trunk.

While Officers Garcia and Castillo were searching Ditto’s car, Officers Lopez and Perez were searching Ditto’s person, which was valid incident to the lawful arrest of Ditto on the outstanding arrest warrant. Before any search took place, it was known that:

- (1) Ditto matched the description of a male identified on a call concerning a domestic violence incident;
- (2) Ditto was sitting in his car, parked in front of the motel room where the incident reportedly had occurred;
- (3) Ditto had an outstanding arrest warrant;
- (4) Ditto was prohibited from possessing ammunition (likely, it reasonably can be inferred, because he was a convicted felon);
- (5) Ditto unlawfully possessed ammunition a few weeks earlier according to the outstanding arrest warrant; and
- (6) Ditto was visiting a motel located in a high-crime area and known to the officers for its history of drug deals.

Ditto contends that these six facts established neither probable cause (ruling out the automobile exception) nor a reasonable basis to believe evidence of possession of ammunition was located in the passenger compartment of the vehicle (ruling out the *Gant* exception). It is not clear that Ditto is correct (particularly under *Gant*),⁷ but even if he were, moments later, the officers searching his person lawfully discovered that:

⁷ *Gant* accepted the rationale articulated by Justice Scalia in *Thornton v. United States*, 541 U.S. 615, 629 (2004), for allowing a vehicle search incident to a lawful arrest—namely “the general interest in gathering evidence related to the crime of arrest.” *Id.* (Scalia, J., concurring). Justice Scalia explained:

There is nothing irrational about broader police authority to search for evidence when and where the perpetrator of a crime is lawfully arrested. The fact of prior lawful arrest distinguishes the arrestee from society at large, and distinguishes a search for evidence of his crime from general rummaging. Moreover, it is not illogical to assume that

- (7) Ditto had \$1,120 in his front left pocket;
- (8) Ditto had 5.25 grams in plastic bundles of an off-yellow rocklike substance suspected to be cocaine in his front right pocket; and
- (9) Ditto had 17.1 grams in a plastic bundle of a purple, chalklike substance suspected to be fentanyl in his front right pocket.

All nine of these facts (although not the specific quantities) were known by Officers Lopez and Perez before any information about the items found during the vehicle search was conveyed to them. Given the amount of drugs, the multiple types of drugs, and the large amount of cash on Ditto's person, coupled with his presence at a motel known to be a place of drug activity, Officers Lopez and Perez had probable cause to arrest Ditto for possession of drugs for sale upon lawfully searching him. These same facts also gave rise to probable cause to search Ditto's car for illegal drugs or other evidence of drug dealing. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983) (noting that probable cause exists when there is a "fair probability that contraband or evidence of a crime will be found in a particular place"). Thus, the evidence found in the car inevitably would have been lawfully discovered.

At a minimum, the evidence found on Ditto's person would have allowed the officers, under the *Gant* exception, to search the passenger compartment for evidence of drug possession or distribution. *See Gant*, 556 U.S. at 343 (embracing *Thornton*, 541 U.S. at 632 (Scalia, J., concurring) (when search of defendant revealed drugs in his pocket, it was "reasonable . . . to believe that further contraband or similar evidence . . . might be found in the vehicle from which he

evidence of a crime is most likely to be found where the suspect was apprehended.

Id. Here, Ditto was being arrested for having unlawfully possessed ammunition a few weeks earlier, and it was reasonable for the officers to believe that he might have a firearm for the ammunition. In these circumstances, "[i]t is not illogical to assume that evidence" related to the crime of conviction, including a firearm and/or ammunition, might be located in Ditto's car. *Id.* This would allow for a search of the passenger compartment. *See United States v. Vinton*, 594 F.3d 14, 26 (D.C. Cir. 2010) ("[I]t is difficult to imagine a principled basis for distinguishing the possession of narcotics from the possession of an unlawful weapon, where an arrest for the former makes it reasonable to believe additional narcotics remain in the car, but an arrest for the latter does not make it reasonable to believe additional weapons are in the car.").

had just alighted and which was still within his vicinity at the time of arrest.”)). An officer conducting a *Gant* search would have discovered *even more* evidence of drug trafficking in the passenger compartment, including:

- (10) a weapon (i.e., a taser);
- (11) a scale; and
- (12) a bag containing \$3,063 in cash.

A reasonable officer viewing these twelve facts could make a practical, commonsense decision that there was a fair probability that the trunk contained evidence of criminal activity—that is, they would have had probable cause to search it.⁸ *See United States v. Williams*, 846 F.3d 303, 313 (9th Cir. 2016) (officers had probable cause to search car under automobile exception based on information prior to arrest and contraband found on defendant’s person during arrest).

Thus, assuming that the car search was unreasonable at the time it was initiated (i.e., that knowledge of facts 1–6 was insufficient for the *Gant* or automobile exception to apply), it would have been lawful moments later after the lawful search of Ditto’s person (which revealed facts 7–9), and would have ultimately revealed additional facts providing even stronger suspicion of drug trafficking (facts 10–12). Put another way, even if Officers Garcia and Castillo could not have lawfully conducted the search based on the information known to them at the time, Officers Lopez and Perez could have done so—and the car would have been searched even without Officers Garcia and Castillo’s head start.⁹ In fact, bodycam footage shows other officers, including detectives from LAPD’s Narcotics Enforcement Detail, searching the car after Officers Garcia and Castillo. *E.g.*, Def.’s Mot. to Suppress Ex. G at 20:20–20:37 (Officer Duenas, in Ditto’s vehicle, demonstrating the compartments in which drugs are often found); Dkt. No. 37-3 at 4–5 (Detective Jones describing, over an hour after the initial search, how

⁸ This conclusion follows without consideration of the disputed evidence—namely, the purple rocklike object purportedly found in the center console and the white residue purportedly found on the scale.

⁹ Ditto’s argument to the contrary, which focuses only on whether the police would have conducted an inventory search after impounding the vehicle, “ignores the evidence which emerged as soon as officers conducted a lawful search incident to arrest: the . . . wrapped packages of cocaine [and, in this case, fentanyl] in his pockets.” *Williams*, 846 F.3d at 313.

he “continued to search” Ditto’s vehicle after reviewing Ditto’s arrest history). It is implausible that reasonable officers, under the circumstances of this case, would *not* have searched Ditto’s car after recovering fentanyl, cocaine, and cash on Ditto’s person. Indeed, Ditto does not contend otherwise. Consequently, the officers would have lawfully discovered the evidence Ditto seeks to suppress.

IV.

The inevitable discovery exception to the exclusionary rule is based on the principle that suppression of evidence that inevitably would have been discovered exacts too high a societal cost by “put[ting] the police in a worse position than they would have been in if no unlawful conduct had transpired.” *Nix*, 467 U.S. at 445. Under this exception, “[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received.” *Id.* at 444. Because the challenged evidence in this case would have been discovered by lawful means, the exception applies and suppression is inappropriate. *See Ruckes*, 586 F.3d at 719 (denying suppression of evidence seized during unlawful automobile search incident to arrest because subsequent lawful search would have uncovered same evidence). The Court therefore DENIES the motion to suppress.

Date: March 5, 2024



Stanley Blumenfeld, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

UNITED STATES OF AMERICA,	)	CASE NO: 2:23-cr-00376-SB-1
	)	
Plaintiff,	)	CRIMINAL
	)	
vs.	)	Los Angeles, California
	)	
CHARLES DITTO,	)	Tuesday, March 5, 2024
	)	
Defendant.	)	(9:31 a.m. to 10:01 a.m.)

HEARING ON MOTION TO SUPPRESS [DKT.NO.37]

BEFORE THE HONORABLE STANLEY BLUMENFELD, JR.,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff:	AUSA ALEXANDER H. TRAN United States Attorney's Office 312 North Spring Street Los Angeles, CA 90012
For Defendant:	DFPD JELANI J. LINDSEY Federal Public Defender's Office 321 East 2nd Street Los Angeles, CA 90012
Court Reporter:	Recorded; CourtSmart
Courtroom Deputy:	Jennifer Graciano
Transcribed by:	Exceptional Reporting Services, Inc. P.O. Box 8365 Corpus Christi, TX 78468 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Los Angeles, California; Tuesday, March 5, 2024; 9:31 a.m.

(Call to Order)

THE CLERK: Calling Item 5, Case Number 23-CR-376,
United States of America versus Charles Ditto.

Counsel, your appearance starting with the
Government.

MR. TRAN: Good morning, Your Honor, Alexander Tran
on behalf of the Government.

MR. LINDSEY: Good morning, Your Honor, Deputy Public
Defender Jelani J. Lindsey on behalf of my client Mr. Charles
Ditto who is before the Court and in custody. And may I ask
that the Marshals un-shackle Mr. Ditto, please, Your Honor?

THE COURT: Yes.

(Pause)

THE COURT: And please be seated. This matter is
here for a hearing on the Defendant's motion to suppress. The
Court has reviewed all of the filings in this case and I did
issue a tentative ruling and the tentative is to deny the
motion to suppress. And I will hear from Defense counsel if
you wish to be heard on the motion at the lectern, please.

MR. LINDSEY: Thank you, Your Honor. So in reviewing
the tentative order, the Defense maintains its position that
there wasn't probable cause to search the trunk of Mr. Ditto's
vehicle. The amount of drugs that were found on his person and
the incidents of his arrest by the officers that searched him I

1 don't think objectively would have amounted to probable cause
2 to search the trunk. Even the cash that Mr. Ditto had on his
3 person is not an indicia of criminal activity or engaging in
4 drug trafficking or anything of that sort.

5 I understand the Court's reasoning with regard to the
6 area that -- the area was a high-crime area, a drug-trafficking
7 area but the initial report, the reason why the officers were
8 at the scene in the first place and their encounter with
9 Mr. Ditto began because of a report of domestic violence which
10 there was no indication that Mr. Ditto was involved in any sort
11 of domestic violence or anything of that sort, Your Honor.

12 I think the circumstances were such that but for the
13 arrest warrant, they would have let him go. They had no
14 indication or insight into whether or not Mr. Ditto was
15 involved in any drug trafficking because at that point in time
16 in which the officers approached him, he was sitting in his car
17 basically minding his own business, Your Honor.

18 And so we maintain our position that officers did not
19 have probable cause to search the trunk. There would not have
20 been an ability to discovery with regard to what's found in the
21 truck and that the Court should reverse its tentative order and
22 allow -- or grant Ms. Ditto's request for the evidence that was
23 found in the trunk, the drugs, the ammunition to be suppressed,
24 Your Honor.

25 **THE COURT:** So is it your position, Counsel, that

1 even upon finding the two types of illegal substances on
2 Mr. Ditto's person along with -- I believe it was over a
3 thousand dollars of cash while he's located in a parking lot in
4 front of a motel that the officers know or have reason to
5 believe based upon past activity is a place where trafficking
6 occurs -- that based upon that information, there wouldn't be
7 probable cause to believe that he has drugs in the vehicle
8 where he was found sitting?

9 **MR. LINDSEY:** Yes, Your Honor, that is our position.
10 Objectively, given the circumstances, given what they came to
11 scene to investigate which, again, is the domestic violence
12 incident, there was nothing that indicated that he was involved
13 in any drug transaction. At most, what was indicated, there
14 was a potential disagreement between him and a female that
15 potentially resided in that motel

16 And so I don't think based on the circumstances that
17 were present at that time that were known to the officers that
18 amounted to probable cause to search the trunk of his car.

19 **THE COURT:** And your focus appears to be, Counsel, on
20 the search of the trunk. So would you acknowledge or do you
21 dispute that based upon the evidence that was recovered from
22 your client's person that there was probable cause to search
23 the passenger compartment of the vehicle?

24 **MR. LINDSEY:** I believe at most there was incidents
25 of his arrest based on the warrant that was in the system

1 regarding ammunition that was at the most, I believe, for the
2 officers to search the passenger compartment, the area within
3 arm's reach of where he was sitting when they approached him.
4 I believe that's at most where the search should have been
5 conducted. It shouldn't have gone beyond that point, Your
6 Honor.

7 **THE COURT:** So in other words, it's the Defense
8 position that there was a sufficient basis under *Arizona versus*
9 *Gant* to search the passenger compartment incident to a lawful
10 arrest but there was no probable cause to search any part of
11 that vehicle based upon what was uncovered on his person?

12 **MR. LINDSEY:** That is our position, Your Honor.

13 **THE COURT:** All right. And so tell me why the
14 quantity and the two different types of drugs found on his
15 person along with the large amount of cash wouldn't be
16 sufficient to suspect that he's engaged in drug trafficking?

17 **MR. LINDSEY:** I believe that the quantity in and of
18 itself the fact that it fit in his pocket indicates that it
19 potentially could have been for personal use. There is nothing
20 that's illegal about possessing cash on your person. A
21 thousand dollars is a significant amount of money but it's not
22 so significant to indicate that he was involved in any drug
23 dealing. I think those two factors alone do not amount to
24 probable cause to search his trunk.

25 Would you agree or disagree that while there could be

1 an innocent explanation for him having cash -- that amount of
2 cash, certainly -- or would you agree that the amount of cash
3 coupled with the two types and the quantity of drugs at least
4 potentially could be indicia of drug sales?

5 **MR. LINDSEY:** I disagree on that point, Your Honor,
6 with regard to even the substances that were found. There was
7 confusion as to what substances they were at that point in
8 time, what exactly they entailed, what they were comprised of.
9 So I think in that sense, objectively, at that point in time,
10 the officers did not have enough information to make the
11 determination that there was drugs in Mr. -- a belief that
12 there were drugs in Mr. Ditto's trunk or anywhere else in his
13 vehicle.

14 **THE COURT:** And if that's the case, then what would
15 be the basis under *Gant* for the officers to search the
16 passenger compartment?

17 **MR. LINDSEY:** Based on the fact that Mr. Ditto did
18 have an arrest warrant incident. He was arrested -- that's
19 where they technically last found him before they determined
20 that he had an arrest warrant. On that basis, we'll concede at
21 that point that they were allowed to, at the most, search the
22 passenger compartment and the areas within arm's length that
23 Mr. Ditto was sitting in.

24 **THE COURT:** Given that, the officers then did uncover
25 a scale; did they not?

1 **MR. LINDSEY:** They found the scale; that is correct,
2 Your Honor.

3 **THE COURT:** And they also uncovered additional
4 information besides the scale; did they not? They found a
5 taser as well as a bag containing over \$3,000 in cash?

6 **MR. LINDSEY:** Yes, Your Honor. So the scale, there
7 was no indication that there was any substance or residue on
8 the scale as we've argued in the position paper that we filed
9 -- well, not the position paper, Your Honor, the motion to
10 suppress and the reply to the Government's opposition as well
11 as cash. Again, someone possessing cash is not an indicator of
12 their involvement in criminal activity.

13 With regard to the taser, it's my understanding that
14 that's not illegal for someone to possess a taser in their own
15 vehicle. I'm not certain about that, Your Honor, but that --
16 in and of itself, those factors combined don't amount to
17 probable cause to search the trunk of Mr. Ditto's vehicle.

18 **THE COURT:** Well, you keep coming back to the
19 standard which I understand --

20 **MR. LINDSEY:** Yes.

21 **THE COURT:** -- that there are certain items in
22 isolation that arguably are susceptible of an innocent
23 explanation but hasn't the Supreme Court time and again
24 explained that that's not the proper focus or standard when it
25 comes to either reasonable suspicion or probable cause?

1 **MR. LINDSEY:** I understand that, Your Honor. I think
2 the factors taking them in totality do not amount to probable
3 cause.

4 And may I have a moment, Your Honor?

5 **THE COURT:** You may.

6 **(Pause)**

7 **THE COURT:** Mr. Lindsey?

8 **MR. LINDSEY:** Your Honor, based on the circumstances
9 -- based on the objective factors that were presented to the
10 officers at that point in time, there was not enough. That's
11 our position. There wasn't enough for them to extend their
12 search beyond the passenger compartment given the arrest
13 warrant that Mr. -- that was outstanding for Mr. Ditto. And so
14 on that, Your Honor, I will submit.

15 **THE COURT:** Just another question or two and then
16 I'll hear from the Government.

17 So with respect to the clarity of the record, is the
18 record -- and by that, I'm including particularly the bodycam
19 video. Is the record clear as to when the discovery occurred
20 of the items on your client's person relative to when the
21 officers began the search of his vehicle?

22 **MR. LINDSEY:** I believe the record reflects, based on
23 my review and recollection of the body camera footage that it
24 was almost simultaneously, Your Honor. It's essentially that
25 as Mr. Ditto's person was being searched, the car was being

1 searched in the same timeframe.

2 **THE COURT:** All right.

3 **MR. LINDSEY:** May I have a moment again, Your Honor?

4 **THE COURT:** Yes.

5 **(Pause)**

6 **MR. LINDSEY:** Thank you, Your Honor.

7 **THE COURT:** All right. My review, Counsel, of the
8 video or -- suggested that the officers commenced the person
9 search, the search of Mr. Ditto first and then some officers
10 were walking over to his vehicle. And so it was reasonably
11 contemporaneous but it appeared to the Court that the search of
12 his person actually preceded by a bit, not much, but did
13 precede the search of the vehicle. Is your understanding of
14 the record different?

15 **MR. LINDSEY:** I -- my understanding of the record is
16 different, Your Honor. I believe the --

17 **THE COURT:** All right.

18 **MR. LINDSEY:** -- searches were at the very least
19 contemporaneous meaning that the search of the car was
20 happening at the same time as the search of Mr. Ditto's person
21 and that the search of Mr. Ditto's person did not occur before
22 the search of the car.

23 **THE COURT:** And are you able to distinguish between
24 the timing as to when the search of the person revealed the
25 drugs and the cash relative to the search of the trunk of the

1 vehicle?

2 **MR. LINDSEY:** I would have to look at the body camera
3 footage, the exhibits that were filed as -- with the motion to
4 suppress to essentially come up with the exact timing of that
5 but based on my recollection -- based on what I remember, I
6 believe that, again, the search of Mr. Ditto's person at the
7 very most happened simultaneously with the search of the car
8 that extended to the search of the trunk.

9 **THE COURT:** And the last inquiry has to do with the
10 Collective Knowledge Doctrine. So the Court should take into
11 account or should it not the Collective Knowledge Doctrine as I
12 determine what the officer knew at the time of any challenged
13 Fourth Amendment activity. Is that -- should I take that into
14 account or should I not?

15 **MR. LINDSEY:** Yes, Your Honor, but I believe the --
16 what the officers knew at that point in time was not enough to
17 amount to probable cause to search Mr. Ditto's truck. That's
18 the point that I'm going to --

19 **THE COURT:** I understand. And so just to be clear,
20 if an officer searching Mr. Ditto's person was aware of the
21 existence of drugs and cash on his person and another officer
22 is about to open the car door, that other officer would be, in
23 effect, charged with collective knowledge or would have the
24 same knowledge as the officer who searched his person, vis-à-
25 vis the Collective Knowledge Doctrine; is that correct?

1 **MR. LINDSEY:** That is not my understanding, Your
2 Honor, but I will concede -- we concede on the points that we
3 made in our motion to dismiss.

4 **THE COURT:** All right. But just to make sure that I
5 understand your point of disagreement, are you disagreeing with
6 the Court's recitation of the Collective Knowledge Doctrine,
7 i.e., the legal principle or are you disputing the facts that
8 may be applied to that doctrine or both?

9 **MR. LINDSEY:** I'm disputing the facts, especially in
10 terms of how the Court is interpreting the factors with regard
11 to what the Court reasons gives the LAPD officers probable
12 cause to eventually -- inevitably discover the evidence that
13 was found in Mr. Ditto's car.

14 **THE COURT:** All right. And to be clear, the Court
15 was not attempting to ask that question with a statement that
16 those are the facts. It was a hypothetical question, simply
17 trying to understand to the extent, if at all, the Collective
18 Knowledge Doctrine might apply here.

19 Let me hear from Government counsel. Thank you.

20 And, Counsel, for your own benefit for this case and
21 other cases that you may be involved in, in this Court's view,
22 almost every Fourth Amendment case -- that is, whenever there's
23 a Fourth Amendment challenge, requires a very careful analysis
24 of chronology because chronology really matters, as I'm sure
25 you're aware.

1 I couldn't determine from the record what the
2 chronology was with respect to the discovery of the items on
3 Mr. Ditto's person and the search and the discovery of the
4 vehicle other than what I could ascertain from the video
5 footage and the video has certain limitations because I can't
6 see at all times what's happening here -- I'm pointing my left
7 hand towards Mr. Ditto -- and what's happening here -- my right
8 hand pointing to the vehicle because they were not right near
9 each other.

10 So perhaps you can tell me, first of all, does the
11 record give me the answer to that question?

12 **MR. TRAN:** Is Your Honor asking --

13 **THE COURT:** Same questions I just asked of
14 Mr. Lindsey. Do -- it may matter. Don't you think if the
15 officers found the drugs on his person as well as the cash
16 before they opened the car door? For Fourth Amendment
17 purposes, it may not be dispositive because there are
18 exceptions to the exclusionary rule but that's of some fairly
19 substantial significance; isn't it?

20 **MR. TRAN:** Certainly, Your Honor, there is adequate
21 and sufficient case law indicating that if an officer in a
22 hypothetical situation discovers drugs in someone's pocket that
23 they could then develop reasonable suspicion probable cause to
24 then proceed to search the vehicle. There are certainly cases
25 and hypotheticals that I've dealt with that situation.

1 **THE COURT:** And, Mr. Tran, do I know from this record
2 whether the drugs on his person and the cash were found before
3 the officers actually opened the door of the vehicle? Do I
4 know that?

5 **MR. TRAN:** Based on the videos submitted to the
6 Court, I cannot decisively tell the Court whether one happened
7 before the other.

8 **THE COURT:** But you do have access to the witnesses.
9 They could tell potentially or maybe they could tell you they
10 don't know. They weren't paying attention but there is another
11 source, not just video.

12 **MR. TRAN:** That is true, Your Honor, yes.

13 **THE COURT:** And there's nothing in the record at all
14 that gives me any clue to the sequence. And if I miss
15 something, that's the purpose of the very pointed questions.
16 I'd like to find out if I missed something.

17 **MR. TRAN:** No, understandable. And these are
18 questions that the Government considered as well. In the
19 Government's opposition, the Government doesn't focus on this
20 precise sequence of whether the drugs were found first on the
21 person of the Defendant before the car door was opened.

22 And my apologies, Your Honor, for not clarifying that
23 in the Government's opposition but that was not the focus of
24 the points within the Government's opposition.

25 **THE COURT:** And what is the Government's best

1 argument as to why there was no Fourth Amendment violation
2 here? The Court has gone the route in its tentative of
3 inevitable discovery because that seems like the path most
4 obvious and of least resistance. But what's the Government's
5 best argument as to why there wasn't a Fourth Amendment
6 violation in the first instance?

7 **MR. TRAN:** Without first relying on the Inevitable
8 Discovery Doctrine?

9 **THE COURT:** Correct. So the Inevitable Discovery
10 Doctrine presupposes a violation. So I'm asking you, what's
11 your best argument as to why there wasn't a violation?

12 **MR. TRAN:** Understood. Your Honor, I think as has
13 been demonstrated through the briefing and the development of
14 the arguments in this case, there are a number of undisputed
15 facts and undisputed arguments at this time.

16 Specifically, in turning to the Defendant's motion,
17 at first there was a dispute as to whether there was any legal
18 justification to search the car at all. And since then, since
19 the opposition and since the reply, those arguments have
20 crystalized in that there have been certain significant
21 concessions here.

22 First, that the Defendant was justifiably detained
23 based on his appearance matching the description of the call,
24 his placement in a vehicle in front of Room Number 2, the room
25 at issue. In addition, the Defense has conceded that the

1 officers justifiably detained him, ran his background and then
2 discovered that there was an outstanding arrest warrant and
3 then arrested him.

4 **THE COURT:** Forgive me, Mr. Tran, because I do want
5 to kind --

6 **MR. TRAN:** Yeah.

7 **THE COURT:** -- of cut to the chase a little bit here.
8 Is -- the Defense reasonably acknowledges what's hard to deny
9 but they're also pointing out more serious potential issues
10 with regard to whether an exception to the search warrant rule
11 applied with respect to the search of the vehicle. What's your
12 best argument?

13 **MR. TRAN:** I think there's at least three, Your
14 Honor. I think there is a search incident to arrest under the
15 *Gant* exception under two of the scenarios that the Court laid
16 out in your tentative decision. First, the arrest warrant
17 based on possession of ammunition which the Court has
18 reasonably found that there would give an officer reason to
19 believe there's additional contraband within the vehicle.
20 That's the first reason for arrest.

21 **THE COURT:** And that gets you the passenger
22 compartment at best, correct?

23 **MR. TRAN:** Correct, Your Honor. And that would get
24 you the taser, the scale as well as the cash. And we're not --
25 we're setting aside the disputed facts of the rock-like

1 substance and the residue on the taser. But as Your Honor
2 stylizes in the tentative, the facts can be broken into
3 sequences when these items would be discovered. So I
4 apologize.

5 Turning back to your question at hand, first, that
6 *Gant* exception based on the arrest of the possession of ammo.
7 Second, the same *Gant* exception based on the discovery of items
8 on the Defendant's body that may give the officers reason to
9 believe there are additional contraband or narcotics within the
10 vehicle.

11 **THE COURT:** Does timing matter with respect to the
12 second potential *Gant* issue, the timing as between the
13 discovery of the items and the search of the passenger
14 compartment?

15 **MR. TRAN:** Certainly, Your Honor, and I think the
16 Court's tentative decision is careful in distinguishing that it
17 would be Officer Perez that would conduct the search of the
18 vehicle following the discovery of the drugs on the Defendant's
19 body.

20 **THE COURT:** Well, the Court's tentative is from the
21 perspective of inevitable discovery. So inevitable discovery
22 is not, in this Court's view, burdened by the questions that
23 I'm asking you which is whether there's a violation in the
24 first instance.

25 And so it would matter, would it not, when the drugs

1 were found on his person such that it now became a drug arrest,
2 a drug-trafficking potentially arrest or at least a possession
3 arrest that would then allow for a *Gant* search because there
4 would be reasonable cause to believe that there was evidence of
5 the crime of the arrest in the passenger compartment?

6 **MR. TRAN:** Yes. Yes, Your Honor, that is correct.

7 **THE COURT:** So -- but here we don't really know the
8 timing. I think you've acknowledged that, correct?

9 **MR. TRAN:** I have, Your Honor.

10 **THE COURT:** All right. And so what about probable
11 cause? Mr. Lindsey argues that there is no probable cause to
12 search at least the trunk even upon the discovery of the items
13 on Mr. Ditto. Is he correct?

14 **MR. TRAN:** The Government would disagree with that,
15 Your Honor. I think as the Court laid out in the tentative,
16 there are a number of facts that occur both before the search
17 even occurred which the Court labels as Facts 1 through 6. And
18 then there were additional facts that came forward after the
19 search of just the passenger compartment, Your Honor. I'm not
20 referring to the items that were seized from the Defendant's
21 person.

22 And those facts, Your Honor, the issues about the
23 Defendant being lawfully detained, having an outstanding arrest
24 warrant, having items such as a scale, a taser, cash indicative
25 of drug distribution -- probable cause is a practical common-

1 sense decision that an officer can make viewing the objective
2 facts in their totality.

3 The single innocent explanation for each item one at
4 a time is in endorsing the divide-and-conquer analysis that the
5 Courts have routinely rejected when viewing Fourth Amendment
6 violations as here.

7 **THE COURT:** All right. Thank you, Counsel.

8 Let me -- Mr. Lindsey, if you do wish to be heard
9 further, I'll give you the last word.

10 **MR. LINDSEY:** May I have moment, Your Honor?

11 **THE COURT:** Yes.

12 **(Pause)**

13 **MR. LINDSEY:** Thank you, Your Honor. So just
14 briefly, essentially the searches were disjointed. The search
15 of Mr. Ditto's person and the search of the vehicle were
16 happening, as the Court indicates, at essentially two different
17 locations and there was no cross-communication between either
18 officers. There was not a meeting of those officers until
19 after the searches were completed which I believe happens at --
20 in the Defense Exhibit B to the motion to suppress. I don't --
21 the lettering of the exhibits I don't quite recall at this
22 point in time.

23 Your Honor, but that in and of itself is significant.
24 There was nothing about what Mr. Ditto had on his person that,
25 in Defense's position, would indicate that he was involved in

1 drug trafficking. Objectively, the quantity, the cash was at
2 the very most, in our opinion, indicating that he -- they had
3 been using for personal use, the possessing of the drugs that
4 were found in his pocket were potentially for personal use and
5 not for selling.

6 As I indicated earlier in the argument that I raised,
7 there was nothing about the circumstances surrounding the
8 officers' arrival on the scene in the first place that
9 indicated there was any type of drug trafficking, any
10 indication of drug trafficking involved. At most, there was a
11 domestic dispute.

12 I think it's telling that when the officers, in their
13 own body camera footage, in their own words, are searching the
14 passenger compartment of Mr. Ditto's car, there's no mention of
15 any substances that they found. The scale was mentioned.
16 There's no mentioning of anything on the scale that reflected
17 residue or anything of that sort, Your Honor.

18 Again, cash, a taser and a small quantity of drugs on
19 this person did not even with all the other factors regarding
20 what was happening or what had happened in the past at the
21 motel doesn't amount to probable cause to search Mr. Ditto's
22 trunk.

23 And so on that, I will submit, Your Honor.

24 **THE COURT:** All right. I will take the matter under
25 submission. You'll receive the Court's final determination

1 fairly shortly and all remaining dates will be in place.

2 Let me actually hear from the parties. Did you file
3 a motion to continue the trial date? Let me hear from you,
4 Mr. Lindsey.

5 **MR. LINDSEY:** Yes, I believe the Court granted that
6 motion last Friday and the trial date is now April 23rd, if I'm
7 not mistaken, Your Honor.

8 **THE COURT:** All right. And the parties anticipate
9 being ready? The Government, of course, will be ready?

10 **MR. TRAN:** Yes, Your Honor.

11 **THE COURT:** All right. Mr. Lindsey?

12 **MR. LINDSEY:** Yes, Your Honor. I anticipate that
13 regardless of how the motion resolves that we're either going
14 to resolve this case with a plea or some type of stipulated
15 testimony at trial, Your Honor. That's how I imagine this case
16 resolving.

17 **THE COURT:** Understood. All right. Then with that,
18 this matter is concluded and as indicated, you'll receive a
19 copy of the Court's ruling shortly. We're in recess.

20 **THE CLERK:** All rise.

21 **(This proceeding adjourned at 10:01 a.m.)**

22

23

24

25

CERTIFICATION

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

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

January 5, 2025

Dated

TONI HUDSON, TRANSCRIBER

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 10 2026

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES DITTO,

Defendant - Appellant.

No. 24-7191

D.C. No.

2:23-cr-00376-SB-1

Central District of California,
Los Angeles

MANDATE

The judgment of this Court, entered March 12, 2026, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to
Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT