No. 1788-850191

IN THE SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

NICK NADAULD,
Respondent.

ON WRIT OF CERTIORARI
TO THE CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

BRIEF FOR PETITIONER

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STATEMENT OF ISSUES

I. Whether the Fourth Amendment requires law enforcement to obtain a warrant to access, from the government's own Automatic License Plate Recognition database, a vehicle's public driving location data in order to prevent a mass shooting.

II. Whether the officers' warrantless entry into Nadauld's home, based on their reasonable belief that probable cause and exigent circumstances existed, violated the Fourth Amendment.

STATEMENT OF FACTS

I. Factual Background

Respondent Nick Nadauld lent his M16A1 automatic assault rifle to a coworker, Frank McKennery, about one week prior to September 14, 2021. R. at 2. Nadauld inherited his M16 from his father, who had died five years earlier. R. at 2. McKennery, a shooting enthusiast, expressed interest in the weapon and sought to borrow it ostensibly for outdoor target shooting. R. at 2.

Nadauld and McKennery exchanged text messages about the weapon on September 14. R. at 2. In their conversation, McKennery sent an image depicting him with the borrowed M16 in an Arizona desert with a target in the background. R. at 26. The photograph had in fact been taken three days prior. R. at 28.

A. **The Balboa Park Shooting**

The same day Nadauld and McKennery exchanged texts, September 14, McKennery fired an automatic assault weapon from a rooftop on an open crowd in Balboa Park. R. at 2, 33. He extinguished nine lives and injured six others before escaping. R. at 2. Law enforcement responded quickly to the scene, but were unable to identify McKennery as the killer at that time. R. at 33. The only evidence McKennery left behind were 5.56x45mm NATO rounds and a manifesto. R. at 2. The bullet casings would later confirm that McKennery used Nadauld's M16 to commit the massacre. R. at 33. In his manifesto, McKennery described himself as being hated by the world. R. at 36. Without naming a motivation, he wrote that he and his friends would show the world that there is "[n]othing but despair." R. at 36. He went on to warn, "We're going to do this again. . . soon." R. at 36.

B. **Public Pressure and the Investigation**

A survivor of the massacre told the San Diego Times that he found the manifesto after trying to apprehend the shooter. R. at 29-30. He described it as a note that "said something about

hating society." R. at 30. Police, sensing increased pressure to solve the crime, employed numerous investigative methods and techniques to identify and apprehend those culpable. R. at 2, 20-21.

Blurry footage from security cameras in and around Balboa Park captured about forty individuals fleeing on foot and fifty vehicles leaving the scene before police arrived. R. at 2. One of the cars was McKennery's, but the video quality made it impossible to identify any potential suspects. R. at 2-3. Police performed a criminal record check of the car owners, which revealed no evidence of prior violent crimes. R. at 3. Still lacking any leads, police cross-referenced the vehicle owners with a list of registered assault rifle owners in the area. R. at 3. Excluding law enforcement personnel, Nick Nadauld was one of only fifty people in San Diego to own an assault rifle. R. at 3.

Police attempted to hone in even further through use of their Automatic License Plate Recognition database. R. at 3. ALPR technology utilizes special cameras mounted on police vehicles and other fixed locations to automatically capture license plate information and time and location data from passing cars to instantly compare with law enforcement databases. R. at 3, 38-39. ALPR only intermittently records the singular geographical locations of vehicles on public roads and, as a result, does not create a complete record of all an individual's movements or capture beyond what the public can see. R. at 6, 38-39. These records are maintained for up to five years, but contain no identifying information. R. at 38-39.

Law enforcement used location history retrieved from the ALPR database to compare the movements of fleeing vehicles with vehicles owned by individuals on the assault rifle list. R. at 3. The comparison showed, among other pairings, that Nadauld's and McKennery's vehicles had considerable overlap of being at the same locations at similar times. R. at 3-4.

Nearing closer to identifying those responsible for the shooting, police began covertly investigating ten residences, including Nadauld's, whose driving location data overlapped the most to the vehicles fleeing the scene. R. at 4. First, on September 24, law enforcement installed cameras on utility poles facing the residences to monitor any suspicious activity. R. at 4. Second, law enforcement mailed a letter on September 25 to each of the residences, stating that in one month, officers would be arriving at their homes to verify whether their assault rifles had been rendered inoperable pursuant to California Penal Code 30915. R. at 4. Nadauld received the letter on September 27 and, on September 28, the pole-mount camera in front of Nadauld's residence recorded McKennery pulling into the driveway, giving Nadauld a large duffel bag, and then leaving. R. at 4.

C. **Nadauld's Confession and Arrest**

Federal Bureau of Investigation officers Jack Hawkins and Jennifer Maldonado immediately departed for Nadauld's house and arrived thirty minutes after the incident with McKennery. R. at 4. Hawkins and Maldonado began questioning Nadauld about his M16. R. at 4. They explained that California law requires Nadauld to render the weapon inoperable within ninety days of receipt. R. at 23. When Hawkins asked whether Naduald had anything to worry about, Nadauld hesitated, staring at the officers for five seconds before answering in the negative. R. at 23.

The officers asked Nadauld to see the weapon, but he refused. R. at 23. He explained that he had nothing to do with the massacre at Balboa Park and insisted that the officers wait outside while he went to retrieve the weapon. R. at 23-24. Instead, Hawkins entered the house and asked where the weapon was located. R. at 24. When Nadauld refused to answer, Hawkins instructed

Maldonado to begin checking rooms. R. at 24. Nadauld said he did not want the officers in the house and continued to refuse telling the officers where the weapon was. R. at 24.

Maldonado came back holding a seemingly-operable M16 she found in a bedroom. R. at 24. Nadauld proceeded to disclose that he did not possess the weapon at the time of the shooting because he had lent it to McKennery. R. at 24. Nadauld also disclosed that he texted with McKennery and saw the photograph of McKennery in the Arizona desert. R. at 24. Hawkins instructed Nadauld to place his hands on his head as he was placed under arrest. R. at 25.

d. McKennery's Death

After arresting Nadauld, the FBI planned to arrest McKennery on September 29, but found him dead in his home. R. at 33. McKennery left a note behind confessing to his crimes and explaining that he committed the massacre as a pretext for killing a woman and her fiancé. R. at 37. The manifesto, he admitted, was designed to confuse law enforcement. R. at 37. With Nadauld's arrest and McKennery's death, the Balboa Park shooting investigation concluded. R. at 33.

II. Procedural History

A San Diego grand jury indicted Nadauld on nine counts of second-degree murder under California Penal Code Section 187, nine counts of involuntary manslaughter under California Penal Code Section 192, one count of lending an assault weapon under California Penal Code Section 30600, and one count of failing to comply with California Penal Code Section 30915. R. at 5. In the trial court, Nadauld moved to suppress the ALPR and pole-mount camera evidence, and evidence gathered from the warrantless entry into his home. R. at 5.

The trial court denied the motion. R. at 5. The court found that use of the ALPR database required no warrant because retrieval of a car's public location did not constitute a search. R. at 6.

The pole-mount camera evidence also did not violate Nadauld's Fourth Amendment rights because monitoring the front of a publicly-exposed Nadauld's house does not violate a reasonable expectation of privacy. R. at 8. Finally, the warrantless search of Nadauld's house was constitutional because probable cause and exigent circumstances existed. R. at 9.

A jury found Nadauld guilty on charges of involuntary manslaughter, lending of an assault weapon, and failure to render an assault weapon inoperable. R. at 14. He appealed his conviction in the California Court of Appeal contending that the trial court erred in denying his motion to suppress. R. at 14. The Court of Appeal agreed with Nadauld, finding that the government violated his Fourth Amendment rights. R. at 14.

The Court of Appeal remanded for further proceedings. R. at 14. It reasoned that the location history retrieved from the ALPR database was analogous to cell location data, despite conceded differences. R. at 18. The Court of Appeal refused to decide the constitutionality of the pole-mount camera evidence, claiming in a conclusory fashion that such evidence was "derivative of the prior ALPR practice." R. at 18. The court cited no authority for this conclusion. R. at 18. Finally, the court held that the entry and search of Nadauld's house was not supported by probable cause and was not justified by exigent circumstances. R. at 20. As a result, the court claimed, evidence from the search and Nadauld's admission must be suppressed pursuant to the fruit-of-the-poisonous-tree doctrine. R. at 21.

The California Supreme Court denied certiorari. The People sought and, in a September 23, 2022 order, the United States Supreme Court granted certiorari. E-mail from Vice Chair of Tournaments, University of San Diego School of Law Appellate Moot Court Board (Oct. 9, 2022, 23:11 EST).

SUMMARY OF ARGUMENT

This Court should reverse the California Court of Appeal and deny Nadauld's motion to suppress. In its efforts to investigate the Balboa Park shooting and prevent another shooting, law enforcement acted reasonably and complied with the Fourth Amendment at all investigatory stages.

The Fourth Amendment did not require law enforcement to obtain a warrant for its initial investigatory steps in this case because neither its use of the ALPR database nor placement of pole-mount cameras constituted a search. The retrieval of driving location history from the ALPR database was not a search because Nadauld lacks a claim to a reasonable expectation of privacy in his vehicle's license plate information and his history of public movements. Moreover, requiring a warrant to retrieve information in law enforcement's possession would restrict the ability to prevent the threat of violent crimes in the future. In addition, although the court below failed to consider the merits of the practice, using pole-mount cameras is constitutional because Nadauld lacks a claim to a reasonable expectation of privacy in activities performed in full view of the public.

Law enforcement also lawfully entered and searched Nadauld's home. Officers Hawkins and Maldonado reasonably believed probable cause existed that Nadauld was involved in the Balboa Park shooting. Indeed, exigent circumstances existed and justified the entry and search of his home when there was a continued threat of another mass shooting. As discussed below, this Court's precedents firmly support law enforcement's actions in this case.

STANDARD OF REVIEW

Motions to suppress and applications of the exclusionary rule are reviewed de novo. See United States v. Zapien, 861 F.3d 971, 974 (9th Cir. 2017).

ARGUMENT

I. THE FOURTH AMENDMENT DOES NOT REQUIRE LAW ENFORCEMENT TO OBTAIN A WARRANT BEFORE RETRIEVING INFORMATION FROM ITS ALPR DATABASE OR BEFORE USING A POLE-MOUNT CAMERA IN PUBLIC PLACES

The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "The Founding generation crafted the Fourth Amendment as a 'response to the reviled "general warrants" and "writs of assistance" of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.'" Carpenter v. United States, 138 S.Ct. 2206, 2213 (2018) (quoting Riley v. California, 573 U.S. 373, 403 (2014)).

An individual may claim the Amendment's protection against a "search" if the government violates a subjective expectation of privacy that society recognizes as reasonable. Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).[1] Under this test, law enforcement's retrieval of Nadauld's driving location data from the ALPR database and use of a pole-mount camera do not constitute Fourth Amendment searches.

[1] An individual may also claim that he has been searched if he is subject to a "physical intrusion of a constitutionally protected area," in a manner that would constitute a "common-law trespass." United States v. Jones, 565 U.S. 400, 405 (2012). The courts below did not consider this theory.

A. **Drivers on Public Roads Have No Reasonable Expectation of Privacy in Their License Plates or Driving Location Data**

Law enforcement complied with the Fourth Amendment when it accessed the vehicle's driving location data because retrieving this information in law enforcement's possession does not constitute a search. See New York v. Class, 475 U.S. 106, 111 (1986); United States v. Knotts, 460 U.S. 276, 285 (1983). First, Nadauld lacks any reasonable expectation of privacy in his license plate numbers. Class, 475 U.S. at 111; Knotts, 460 U.S. at 285. Second, Nadauld does not have a reasonable expectation of privacy in his public movements even in light of Carpenter. See 138 S.Ct. at 2217. Third, requiring a warrant to retrieve information already in the government's possession would imperil law enforcement's ability to solve and prevent crime. See id. at 2223 (Kennedy, J., dissenting) (observing that holding will unduly restrict law enforcement's ability to prevent the threat of violent crimes).

1. Nadauld has no reasonable expectation of privacy in his license plate information

This Court has long recognized that an individual traveling in an automobile on public streets, as Nadauld did here, has no reasonable expectation of privacy in his movements from one place to another. See Class, 475 U.S. at 111; Knotts, 460 U.S. at 285. In Knotts, law enforcement placed a location-tracking beeper in a drum of chloroform purchased by a codefendant, which enabled law enforcement to trace the can from its place of purchase in Minnesota to the respondent's secluded cabin in Wisconsin. 460 U.S. at 277. Officers followed the car containing the chloroform, and maintained contact via visual surveillance and a monitor which received the signals sent from the beeper. Id. at 278. Concluding that monitoring the beeper signals did not amount to a search, the Court reasoned that the surveillance amounted to following an automobile on public streets and highways where there is a diminished expectation of privacy. Id. at 281.

The Court has relied on this principle to hold there is no reasonable expectation of privacy in information plainly visible on cars, such as vehicle identification numbers or license plates. See Class, 475 U.S. at 114; see also Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion) ("A car has little capacity for escaping public scrutiny."). In Class, officers pulled a driver over after observing him driving over the speed limit with a cracked windshield. 475 U.S. at 107-08. One officer opened the car door to find the VIN, which is located on the left doorjam in earlier models. Id. at 108. After not finding the VIN, the officer moved papers around on the dashboard where the VIN is located in later models. Id. Concluding that the officer's actions did not amount to a search, the Court reasoned that "[t]he exterior of a car . . . is thrust into the public eye" and that "it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile." Id. at 114, 118. The Court supported this conclusion by noting that a VIN plays an important role in government's pervasive regulation of automobiles. Id. at 113.

Lower courts, relying on these principles, have found no reasonable expectation of privacy in license plate information. *See, e.g.*, United States v. Sanchez, 612 F.3d 1, 3 n.1 (1st Cir. 2010) ("[C]heck[ing] a plainly visible license plate number through public records is not itself a search … because there is no reasonable expectation of privacy in such a number."); United States v. Diaz-Castaneda, 494 F.3d 1146, 1151 (9th Cir. 2007) ("No. . . expectation of privacy has been violated when a police officer sees what is readily visible and uses the license plate to verify the status of the car and its registered owner."); United States v. Ellison, 462 F.3d 557, 561 (6th Cir. 2006) ("The very purpose of a license plate number . . . is to provide identifying information to law enforcement and others."). No persuasive justification exists to depart from this commonly held and rational conclusion.

Based on existing precedent, it follows that Nadauld lacks a reasonable expectation of privacy in his license plate information. Class, 475 U.S. at 114; Knotts, 460 U.S. at 285. Just as a VIN appears on the exterior of a car and thus is thrust into the public view, a license plate is similarly situated. See Class, 475 U.S. at 114; Cardwell, 417 U.S. at 592 ("[A] warrantless examination of the exterior of a car is not unreasonable under the Fourth and Fourteenth Amendments."). A license plate also serves a similar function to VINs. *See Class*, 475 U.S. at 114 ("[The VIN is] a part of the web of pervasive regulation that surrounds the automobile."). Here, law enforcement use license plates to identify license plate numbers and letters of vehicles associated with active investigations, such as those related to Amber Alerts or other missing persons, stolen vehicles, or stolen license plates. See Class, 475 U.S. at 114. Thus, the conclusion that retrieval of driving location data is a search cannot based on a reasonable expectation of privacy in a vehicle's license plate information. Class, 475 U.S. at 114; Knotts, 460 U.S. at 285.

2. Law enforcement may access its own lawfully collected ALPR data, even after Carpenter

The longstanding rule that an individual traveling in an automobile on public streets has no reasonable expectation of privacy in his movements from one place to another survives even after Carpenter. See 138 S.Ct. at 2217; Class, 475 U.S. at 111; Knotts, 460 U.S. at 285. Because the ALPR database here only includes limited data on the vehicle's past locations, Nadauld lacks a claim to a legitimate expectation of privacy in the vehicle's driving data. See Carpenter, 138 S.Ct. at 2217. Moreover, ALPR technology does not enable law enforcement to effectively intrude into a constitutionally protected area. See Kyllo v. United States, 533 U.S. 27, 34 (2001).

Carpenter addressed "whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements." 138 S.Ct. at 2211. In holding that accessing more than seven days'

worth of cell-site data amounted to a search, the Court expressed unease with the government's ability to achieve "near perfect surveillance" of a person's location history. Id. at 2218. Collection of this data ran the risk of revealing intimate details of private life and amounted to continuous location information for all 400 million devices in the United States. Id. at 2217-18. Nonetheless, the Court described the decision as "narrow," declining to "call into question conventional surveillance techniques and tools, such as security cameras." Id. at 2220.

ALPR driving location data stands in stark contrast to CSLI, as it does not come close to the "all-encompassing" location information at issue in Carpenter. Id. at 2217. First, ALPR's functionality and purpose limits the risk of providing intimate windows into private life, as it does not contain personal identifying information. See id.; Jones, 565 U.S. at 415 (Sotomayor, J., concurring) (expressing concern that "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations."). To the contrary, ALPR data creates only a sparse collection of datapoints on public roads and, as a result, reveals little about a person's private life. R. at 6. Indeed, ALPR technology is only employed to capture vehicles on public roadways, public property, and within public view. R. at 39; see Knotts, 460 U.S. at 281 (observing that beeper surveillance amounted to following an automobile on public streets and highways). Moreover, ALPR devices are not equipped with illumination devices, lessening the chance that a driver will be identified. R. at 40. Finally, ALPR does not track the individual; the vehicle is the focal point. R. at 38 ("ALPR systems function to automatically capture the image of a *vehicle* and the *vehicle's* license plate." (emphasis added).

Second, the amount of information ALPR collects is sufficiently less than that declared unconstitutional in Carpenter. See 138 S.Ct. at 2218. Driving location data cannot be "all

encompassing" so as to reveal "the whole of [an individual's] movements" because the information that ALPR gathers is limited to a device's physical location. Id. at 2219. In other words, only an individual's public presence can be captured. R. at 39-40; compare Knotts, 460 U.S. at 281 (finding no search in monitoring public movements of an automobile with tracking beeper), with United States v. Karo, 468 U.S. 705, 714 (finding Fourth Amendment violation when monitoring a beeper in a private residence). Not only is the amount of an individual's location history limited, law enforcement in this case had access to only fifty individuals' public location history compared to the potential 400 million in Carpenter. See 138 S.Ct. at 2217-18. Thus, the Court of Appeal's conclusion that ALPR is a "dragnet" type practice finds little support in this Court's Fourth Amendment jurisprudence. See Knotts, 460 U.S. at 283-84 (describing twenty-four hour surveillance of an individual without judicial involvement as potentially subject to different constitutional principles).

Third, the nonpublic nature of ALPR technology does not defeat its constitutionality. See Kyllo, 533 U.S. at 34. In Kyllo, the Court considered whether use of thermal-imaging from a public street to detect relative amounts of heat with a private home constitutes a search within the meaning of the Fourth Amendment. Id. at 29. The Court concluded that, where the government uses a device that is not in general public use to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a search and is presumptively unreasonable without a warrant. Id. at 40. Thus, public availability is a relevant consideration in Fourth Amendment analysis, at least where the technology enables law enforcement to gather information otherwise unobtainable without physical intrusion. See id.

The Court of Appeal's thermal-imaging and ALPR technology comparison is incomplete because, while ALPR is not in general public use, it does not enable law enforcement to effectively

intrude into a constitutionally protected area. See id. at 34. Rather, ALPR devices capture license plate information in which, compared to a home, there is no reasonable expectation of privacy. See Class, 475 U.S. at 111; Knotts, 460 U.S. at 285. Moreover, ALPR does not reveal information unknowable without physical intrusion; it merely captures and processes information viewable by anyone in the public. See Kyllo, 533 U.S. at 32 ("[V]isual observation is no 'search' at all.") (citing Dow Chemical Co. v. United States, 476 U.S. 227, 234–235, 239 (1986)). If public availability was a determinative factor in Fourth Amendment analysis, as the Court of Appeal seemed to suggest, law enforcement would be relegated to using out-of-date and inefficient technology. See Knotts, 460 U.S. at 284 ("We have never equated police efficiency with unconstitutionality.").

3. Affirming the court below would hamper effective law enforcement, especially in times of threatened harm to human life

This case arises from another mass shooting. See Daniel Victor & Derrick Bryson Taylor, A Partial List of Mass Shootings in the United States in 2021, N.Y. TIMES (May 17, 2022), https://www.nytimes.com/article/mass-shootings-2021.html (describing the increased prevalence of mass shootings in the United States). And, with the reasonable belief that another was imminent, law enforcement effectively deployed their limited resources to prevent another shooting and apprehend those responsible for grievous harm. Simply put, the Court of Appeal's holding threatens to make the problem worse and undermines other traditional law enforcement resources.

The court's reasoning below unjustifiably extends this Court's precedents so as to potentially sweep in data retrieval from other law enforcement databases, such as those used for DNA and fingerprints. For example, the court claimed without elaboration that the ALPR database comes within the purview of a GPS tracking device, even though ALPR does not act as a continuous location indicator. R. at 16. But without a limitation on this conclusion, any piece of

data that identifies an individual's location at one point in time would fall within the prohibition and therefore require a warrant. Not only is this conclusion unsupported by precedent, it would apparently require law enforcement to obtain a warrant to retrieve information from its own DNA and fingerprint databases. An approach such as this would overly restrict law enforcement in performing its public safety functions and thus should not be the law of the land.

B. Even if Using the ALPR Database Amounts to a Search, the Good Faith Exception Applies

Even if the Court finds that the retrieval of data from the ALPR database amounted to a search, the results of the search should not be suppressed. See Davis v. United States, 564 U.S. 229, 239 (2011); Herring v. United States, 555 U.S. 135, 144 (2009); Illinois v. Krull, 480 U.S. 340, 356-57 (1987). Law enforcement acted in good faith based on available circuit precedent to conclude that retrieval of ALPR location history records is not a search. See Davis, 564 U.S. at 239. Moreover, the high social cost of suppression would not outweigh the minimal, if any, deterrent benefit because suppression would permit any otherwise culpable party escape accountability for a deadly mass shooting. See id. at 238.

The exclusionary rule is a "judicially created sanction. . . designed as a windfall remedy to deter future Fourth Amendment violations." Id. at 248 (internal quotations omitted). With deterrence as the primary justification for the rule, its application does not expand beyond remedying culpable police conduct. See id. at 247; Herring, 555 U.S. at 144 (holding that exclusionary rule does not apply to negligent police conduct); Krull, 480 U.S. at 349-50 (holding that evidence should not be suppressed when police reasonably relied on statute later determined to be unconstitutional). Accordingly, "when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated

negligence, the deterrence rationale loses much of its force and exclusion cannot pay its way." Davis, 564 U.S. at 238.

Even if retrieving driving location data from the ALPR database in this case was a search, it was objectively reasonable for law enforcement to have believed otherwise. See id. at 239. At the time law enforcement used the ALPR to identify the driving location data, no binding precedent held the practice to be unconstitutional. See id. (holding that exclusionary rule does not apply to objectively reasonable reliance on binding appellate precedent). In fact, Carpenter's "narrow" holding specifically did not "call into question conventional surveillance techniques and tools, such as security cameras." 138 S.Ct. at 2220. Accordingly, as suppression would not deter future Fourth Amendment violations, the location information retrieved from the ALPR database should not be suppressed. See Davis, 564 U.S. at 239.

C. Time-Limited Use of Pole-Mount Cameras to Monitor Nadauld's Publicly Exposed House Does Not Amount to a Search

Law enforcement's limited use of a pole-mount camera is constitutional because Nadauld lacks a claim to a reasonable expectation of privacy in activities performed in full view of the public.[2] See Class, 475 U.S. at 111; Katz, 389 U.S. at 351. The Court has consistently adhered to the principle that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Katz, 389 U.S. at 351. Thus, it follows that mere visual observation does not constitute a search. Kyllo, 533 U.S. at 32. Moreover,

[2] The Court of Appeal premised its erroneous conclusion that it need not address the constitutionality of pole-mount cameras on its earlier conclusion holding ALPR use unconstitutional. Because, as discussed above, retrieving driving location data from the ALPR database is constitutional, the issue of pole-mount cameras is properly before the Court. See Supreme Court Rule 24(1)(a); United States v. Mendenhall, 446 U.S. 544, 551 n.5 (1980).

technology that enhances law enforcement's ability to visually observe public activities does not make a practice by itself unconstitutional. See California v. Ciraolo, 476 U.S. 207, 213 (1986).

These principles extend to the home as well. See Kyllo, 533 U.S. at 34; Ciraolo, 476 U.S. at 213. In Ciraolo, police utilized aerial photography to monitor areas in a backyard. 476 U.S. at 209. Even though a fence shielded the backyard from street level, the Court held that no search took place because law enforcement observed only what the public could see from that airspace. Id. at 213. In Kyllo, the Court held that thermal imaging cameras used to measure heat emitting from a home constituted a search, but only because law enforcement obtained "information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area." 533 U.S. at 34; see also Knotts, 460 U.S. at 281 (holding that use of radio transmitters to assist visual surveillance of a vehicle did not constitute a search). Thus, law enforcement does not require a warrant to use technology to visually observe activities in or around the home that are fully viewable by the public. See Kyllo, 533 U.S. at 34; Ciraolo, 476 U.S. at 213.

Relying on these principles, several lower courts have held that warrantless use of pole-mount cameras is constitutional. See, e.g., United States v. Tuggle, 4 F.4th 505, 529 (7th Cir. 2021) ("With respect to the pole cameras in this case, . . . we find no search in violation of the Fourth Amendment."); United States v. Houston, 813 F.3d 282, 287-88 (6th Cir. 2016) (finding "no reasonable expectation of privacy in video footage recorded by a camera that was located on top of a public utility pole and that captured the same views enjoyed by passersby on public roads."); United States v. Vankesteren, 553 F.3d 286, 288-91 (4th. Cir. 2009) (holding that use of "a hidden, fixed-range, motion-activated video camera placed in the [defendant's] open fields" did not violate the Fourth Amendment); United States v. Jackson, 213 F.3d 1269, 1282 (10th Cir. 2000), *vacated*

on other grounds, 531 U.S. 1033 (2000) (concluding that "evidence obtained from the video cameras installed on the telephone poles . . . [was] not introduced in violation of . . . the Fourth Amendment.").

Given this authority, law enforcement's use of the pole-mount camera here is not a search because it enabled officers only to visually observe Nadauld's publicly visible house. See Ciraolo, 476 U.S. at 213. As in Ciraolo, where the aerial surveillance captured only what the public could see, the pole-mount camera pointed towards Nadauld's public-facing house and recorded Nadauld and McKennery's exchange which occurred in public view. See id. Further, contrary to Kyllo, a pole-mount camera does not enable law enforcement to effectively intrude into a constitutionally protected area. See 533 U.S. at 34. Accordingly, this Court should hold that pole-mount camera use does not amount to a Fourth Amendment search. See Ciraolo, 476 U.S. at 213.

II. THE WARRANTLESS ENTRY AND SEARCH OF NADAULD'S HOME DID NOT VIOLATE THE FOURTH AMENDMENT AS IT WAS SUPPORTED BY PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES

Officer Hawkins and Maldonado's warrantless entry and search of Nadauld's home was constitutional under the Fourth Amendment. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Although warrantless searches and seizures inside a home are presumptively unreasonable, this presumption may be overcome and case-specific exceptions to the warrant requirement apply. See Carpenter, 138 S.Ct. at 2221. The entry and search of Nadauld's home is constitutional under the exigent circumstances exception to the warrant requirement, as probable cause existed and there was a "compelling need for official action and no time to secure a warrant." Michigan v. Tyler, 436 U.S. 499, 509 (1978). As such, the Court should

reverse the California Court of Appeal and hold that the evidence collected on the date of Nadauld's arrest should not be suppressed.

A. Officers Hawkins and Maldonado Had Probable Cause, Under the Totality of the Circumstances, to Reasonably Believe that Nadauld Was Involved in the Balboa Park Shooting

Probable cause "is not a high bar." Kaley v. United States, 571 U.S. 320, 338 (2014). It requires only the "kind of 'fair probability' on which 'reasonable and prudent people, not legal technicians act.'" Id. (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)). The Court has repeatedly rejected attempts to require officers assessing probable cause to apply "rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all things considered approach," looking to the "totality of the circumstances." Florida v. Harris, 568 U.S. 237, 244 (2013).

The totality of the circumstances standard set by Supreme Court precedent both protects citizens from "rash and unreasonable" searches while ensuring "fair leeway for enforcing the law in the community's protection." Brinegar v. United States, 338 U.S. 160, 176 (1949). As the ultimate measure of the constitutionality of a Fourth Amendment search is reasonableness, probable cause is viewed from the "standpoint of an objectively reasonable police officer." Maryland v. Pringle, 540 U.S. 366, 371 (2003). Probable cause depends upon whether the facts and circumstances known to the law enforcement officers are sufficient to warrant a reasonable person to believe the individual in question has committed a crime or that evidence of a crime exists at the location. See Beck v. State of Ohio, 379 U.S. 89, 91 (1964). It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." Gates, 462 U.S. at 243-44, n.13.

The facts known to the officers here certainly establish a reasonable probability that Nadauld had committed a crime and was involved in the Balboa Park shooting. See id. at 230. The data from the ALPR database demonstrated that Nadauld, one of only fifty civilian owners of an automatic rifle, had a close association with McKennery, the owner of one of the fifty vehicles that fled the shooting. R. at 4. As part of the investigation, law enforcement examined the movements of vehicles that fled the scene and those owned by individuals on the assault rifle list and found that Nadauld's vehicle and McKennery's vehicle were often at the same locations at similar times. R. at 3-4. Law enforcement verified the association between the men when McKennery gave Nadauld a black duffle bag large enough to hold a rifle shortly after Nadauld's receipt of the letter notifying him about the upcoming inspection of the M16. R. at 10. Moreover, the two men had worked together at a construction company for about a year prior to the shooting. R. at 2.

Nadauld's responses to Officer Hawkins' questions further supported probable cause. In District of Columbia v. Wesby, the Court found that "vague and implausible" answers to questioning gave officers reason to infer that the suspects were lying and that the lies "suggested a guilty mind." 138 S.Ct. 577, 581 (2018). Cf. Illinois v. Wardlow, 528 U.S. 119, 124-25 (2000) (explaining that the police can take a suspect's "nervous, evasive behavior" into account). Nadauld was demonstrably nervous and particularly evasive while being questioned by Officer Hawkins, and when asked about the operability of the M16, never confirmed whether the gun was rendered inoperable. R. at 23-24. In addition, Nadauld was recalcitrant when Officer Hawkins asked to see the gun, asking the officers to wait, or come back another day, despite prior notice about an upcoming inspection. Nadauld's behavior allowed the officers to make "common-sense conclusions about human behavior," and when considered in conjunction with the available facts and circumstances, there is sufficient evidence to establish probable cause. Gates, 462 U.S. at 231.

B. **Exigent Circumstances Justified the Warrantless Entry and Search in Light of the Ongoing Threat of Another Mass Shooting**

Officer Hawkins and Maldonado's warrantless entry and search of Nadauld's home was reasonable due to the exigent circumstances of the situation. Because of the sanctity of the home, warrantless entry into a home by law enforcement officers is presumed to be unreasonable and consequently violative of the Fourth Amendment. See Payton v. New York, 445 U.S. 573, 586 (1980). Various circumstances, however, can overcome this presumption.

One well-established exception to the warrant requirement applies when the "exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." Mincey v. Arizona, 437 U.S. 385, 394 (1978). The Court has not provided an exhaustive list of exigencies, but has identified several, including pursuing a fleeing suspect, preventing the imminent destruction of evidence, and protecting life or avoiding serious injury. Brigham City v. Stuart, 547 U.S. 398, 403 (2006). Under the exigent circumstances analysis established by the Court, an action is reasonable under the Fourth Amendment, regardless of the individual officer's subjective motivation, when the "circumstances, viewed objectively, justify [the] action." Id. at 404 (quoting Scott v. United States, 436 U.S. 128, 138 (1978). The Court has also noted that this inquiry must also allow for the fact that law enforcement officers are often "forced to make split-second judgments" in tense and unpredictable circumstances. Kentucky v. King, 563 U.S. 452, 466 (2011).

The officers' entry and search here were plainly reasonable under the circumstances. One of the important factors in determining exigency is the "gravity of the underlying offense." Welsh v. Wisconsin, 466 U.S. 740, 753 (1990). Here, the offense involved was a mass shooting that left nine innocent citizens dead and six wounded, and more violence appeared imminent, as the Manifesto left by the shooter at the scene threatened, "[w]e're going to do this again...[s]oon" and

"my friends and I are going to show this world that there's nothing." R. at 36. In addition, the police department had just received an anonymous call from an individual claiming to be the shooter, who said the next attack would be at a school. R. at 4.

The identity of the shooter was unknown, and Nadauld and McKennery were two of the only known leads. The fact that McKennery was also a suspect does not impact the exigency of the situation, as the language in the Manifesto suggested that there was more than one person involved, as the letter included language such as "[w]e're" and "my friends and I." R. at 36. McKennery's arrival at Nadauld's house after the receipt of the letter regarding the gun inspection further supports this reasonable inference, and his suicide note absolving Nadauld was not found until after Nadauld's arrest. R. at 37. See Michigan v. Fisher 558 U.S. 45, 49 (2009) (per curiam) (holding that the exigent circumstances inquiry is not a "hindsight determination that there was no emergency.") Moreover, Nadauld's recalcitrance with the officers was suspicious, given the urgency of the situation and the potential harm to others.

As the District Court found, the officers had a reasonable belief in the existence of exigent circumstances. The information available to the officers, along with the serious and uncertain nature of the situation – and reasonable concerns about the status of the automatic weapon – justified the warrantless search.

C. The Evidence Collected on the Date of the Initial Arrest is Admissible Under the Inevitable Discovery Doctrine, Even if the Court Finds that the Entry and Search Were Violative of the Fourth Amendment

The evidence collected on the date of Nadauld's initial arrest does not fall within the "fruit of the poisonous tree" doctrine articulated in Wong Sun v. United States, and should not be suppressed, as neither the entry nor search were unreasonable under the Fourth Amendment. 371 U.S. 471 (1963). In Wong Sun, the Court extended the exclusionary rule, holding that evidence

derived solely from an illegal search or seizure is excluded unless the evidence has come by means "sufficiently distinguishable to be purged of the primary taint." Id. at 488. The warrantless entry and search of Nadauld's apartment were reasonable, as there was sufficient probable cause and the search fell within one of the "specifically established and well-delineated exceptions" to the warrant requirement, the exigent circumstances exception. Katz v. United States, 389 U.S. 347, 357 (1967). In addition, the M16 was found in plain view, and law enforcement "may seize any evidence that is in plain view during the course of their legitimate emergency activities." Mincey, 473 U.S. at 393.

Even if the Court finds that the warrantless entry and search of Nadauld's apartment were violative of the Fourth Amendment and the evidence falls under the fruits doctrine, the evidence is admissible under the inevitable discovery doctrine articulated in Nix v. Williams. 467 U.S. 431 (1984). In Nix, this Court held that if the state can prove by a preponderance of the evidence that the evidence would have ultimately or inevitably been found, it is admissible despite being a fruit of a constitutional violation. Id. at 444. This decision was based on the Court's recognition that "exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Id. at 446.

The evidence collected on the day of Nadauld's initial arrest, the M16 and the confession, is admissible under the inevitable discovery doctrine. The M16 was already registered in a state database, law enforcement was scheduled to come and inspect the weapon, and bullet casings were left at the scene, which were eventually used to compare ballistics. R. at 33. Furthermore, McKennery was already a suspect and officers went to his house shortly after bringing Nadauld into custody. R. at 4. After discovering McKennery's suicide note and conducting a forensic analysis of his phone, the officers would have ultimately discovered that Nadauld lent McKennery

his M16, as texts between the two men confirm that Nadauld lent the rifle approximately one week before the shooting. R. at 28. As the evidence would have been discovered by lawful means, here the gun inspection and text messages, exclusion would neither serve the deterrence rationale of the exclusionary rule nor the integrity of the criminal trial. See Nix, 467 U.S. at 445.

CONCLUSION

For the foregoing reasons, this Court should reverse the California Court of Appeal and hold that the warrantless retrieval of data from the ALPR database, use of the pole-mount camera, and entry and search of Nadauld's home were constitutional under the Fourth Amendment.