Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

NICK NADAULD,

Respondent.

No.1788-850191

Brief of Respondent

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2. Did law enforcement have probable cause and exigent circumstances to enter, search, and seize evidence from Naduald's home without a search warrant?

STATEMENT OF FACTS

On September 14, 2021, a masked shooter fired an M16A1 ("M16") automatic assault rifle on an open crowd from a rooftop in Balboa Park, killing nine people and injuring six others. After a two-week long investigation, law enforcement identified 33-year-old San Diego resident Frank McKennery ("McKennery") as the "Balboa Park shooter." At the end of its investigation, law enforcement discovered McKennery deceased in his home. Police determined McKennery likely committed suicide. (R. at 2).

After opening fire from a rooftop in Balboa Park on a large plaza below, McKennery escaped the scene without being identified. The rounds used in the shooting were identified as 5.56x45mm NATO cartridges, a caliber commonly used in a wide variety of assault rifles. McKennery left only one piece of evidence on the top of the rooftop from where he fired the weapon: a "Manifesto," which threatened future shootings. The story and motive provided in the "Manifesto" turned out to be nothing more than a fabrication designed by McKennery to send law enforcement on a false trail. (R. at 2). Allegedly, due to a personal vendetta against a woman named Jane Bezel, McKennery plotted to murder Bezel and her fiancé in Balboa Park. Apparently in an effort to conceal his true motive, McKennery also planned to murder seven innocent bystanders in addition to his true targets. (R. at 3).

They began by reviewing surveillance footage from security cameras around Balboa Park. About forty unidentified individuals were captured on camera fleeing on foot and did not come forward later to identify themselves. Furthermore, fifty vehicles fled the scene before police arrived to secure the area. Given the blurriness of the surveillance footage, trying to match the faces of the forty unidentified subjects with faces in the government's databases was impossible. The police investigated the owners of the fifty cars that fled the scene and found no evidence of

prior violent crimes. McKennery was on this list of fifty. (R. at 3). None belonged to the Jora Guru religion, which the Balboa Park shooter mentioned in the Manifesto of the Balboa Park shooting.

The fifty vehicle owners cross-examined with a list of registered assault rifle owners in the area by police. None of the fifty vehicle owners were owners of assault rifles. Following that, police obtained information about the movements of these fifty vehicles, including McKennery's car, from the Automatic License Plate Recognition ("ALPR") database. Police forces typically use a version of ALPR to determine whether a vehicle is legally registered or licensed. A special camera, typically mounted on police vehicles or intersection poles, scans passing cars for license plate information and instantly compares it to a police database. (R. at 3).

This database stores the time and location information for each license plate scan. Police used the database to look into the movements of all fifty vehicles leaving Balboa Park after the shooting. They investigated the movements of vehicles owned by individuals on the assault rifle list, including Nick Nadauld ("Nadauld"). They then cross-referenced the vehicle movements of both groups and discovered Nadauld's vehicle and McKennery's vehicle routes overlapped around the same time. (R. at 4). During its investigation of the Balboa Park shooter, law enforcement discovered that Nadauld, the Defendant, owned an M16, the same type of weapon used by the Balboa Park shooter.

Law enforcement confirmed that Nadauld legally acquired his M16 assault rifle when his father, a former member of the military, died five years earlier. Law enforcement also learned that at some point prior to September 14, 2021, Nadauld loaned his M16 to McKennery. McKennery and Nadauld worked together at a construction company in San Diego for about a year prior to the Balboa Park shooting. (R. at 2). Approximately one week prior to the Balboa Park shooting, McKennery expressed an interest in borrowing Nadauld's M16 for an outdoor target shooting

excursion. McKennery told Nadauld that he was a shooting enthusiast and craved to try out an automatic assault rifle. Nadauld assented to the request. Unbeknownst to Nadauld, McKennery had other plans for the weapon.

The ten assault rifle owners on the list that corresponded the most to the driving location data of the fifty vehicles, were then covertly investigated by the police, including Nadauld's residence. On September 24, 2021, law enforcement placed cameras on utility poles near those residences facing them, so that law enforcement could monitor the residences for any suspicious activity. Law enforcement mailed a letter on September 25, 2021, to each of the ten residences, stating that in one month, officers of the law would be arriving at their homes to verify whether their assault rifles had been rendered inoperable pursuant to California Penal Code §30915. Nadauld received the letter on September 27, 2021. (R. at 4). On September 28, 2021, at 10:37 am, police received an anonymous call from a telephone booth. A voice was heard saying, "This is the Balboa Park shooter. This time, it's gonna be a school." (R. at 4).

On September 29, 2021, at 5:23 pm, the pole-mount camera placed near Nadauld's house recorded McKennery pulling into the driveway, giving Nadauld a large duffel bag and then leaving. FBI Officers Jack Hawkins and Jennifer Maldonado were immediately dispatched to Nadauld's house to investigate. Officers Hawkins and Maldonado arrived at Nadauld's home thirty minutes after McKennery left and questioned him outside of the front door about Nadauld's inherited rifle. Officer Hawkins asked Nadauld to enter his residence. Nadauld offered to bring the officers the assault rifle, however, refused entry into his residence. Dissatisfied with Nadauld's responses, and without Nadauld's permission, Officers Hawkins and Maldonado entered Nadauld's home and began searching the home for the assault rifle. Nadauld repeated several times

to Officers Hawkins and Maldonado to leave his residences. Officer Maldonado observed in Naduald room the M16 assault rifle in plain view. (R. at 1).

Upon finding the M16 rifle in Nadauld's residence and finding that it had not been rendered inoperable as required by California law, Officer Hawkins proceeded to question Nadauld more intensely. During this questioning, Nadauld revealed that McKennery had borrowed the weapon, but insisted that McKennery had been in the desert on the Tuesday of the Balboa shooting and had sent Nadauld a picture of himself there. Following the questioning, the officers placed Nadauld into custody. When law enforcement arrived at McKennery's house to arrest him, they heard a gunshot inside the house and found McKennery lying dead on the floor inside. Next to his body was a letter confessing to the crime of shooting the victims at Balboa Park. (R. at 4).

On October 1, 2021, a federal grand jury indicted Nadauld with nine counts of second-degree murder under California Penal Code §187, nine counts of involuntary manslaughter under California Penal Code §192, one count of lending an assault weapon under California Penal Code §30600, and one count of failing to comply with California Penal Code §30915. Naduald filed a motion to suppress evidence collected on the date of his initial arrest in this case, pursuant to Rule 12(b)(3)(c) of the Federal Rules of Criminal Procedure. The trial court found that Nadauld's Fourth Amendment rights were not violated and denied the motion to suppress the discovery of the assault rifle and his confession to the police. A jury found Nadauld guilty of involuntary manslaughter, lending of an assault weapon, and failure to render an assault weapon inoperable, but not guilty of second-degree murder. (R. at 5).

On April 5, 2022 Nadauld filed an appeal for his conviction. Nadauld contends the district court erred in denying his motion to suppress evidence prior to trial due to a violation of his Fourth Amendment rights. The Ninth Circuit Court of Appeals found law enforcement practices

unconstitutional and reversed the district court's decision not to grant Nadauld's motion to suppress evidence attained from the home search. The United States files an appeal to the California State Supreme Court. (R. at 13).

SUMMARY OF ARGUMENTS

The Ninth Circuit Court of Appeals ruling should be affirmed by this court because:

The Ninth Circuit Court of Appeals properly ruled a Fourth Amendment violation occurred. Law enforcement is required to obtain a warrant for the information retrieved from the Automatic License Plate Recognition database (ALPRs). First law enforcement used the ALPRs database to track peoples' movements through these cameras. Then law enforcement used that information to create a list of individuals whose location overlapped with assault rifle owners. The Court of Appeals correctly ruled there was a reasonable expectation of privacy to a person's geographical location, moreover, the third-party doctrine does not apply. The Court recognizes a dangerous precedent in allowing the government using your geographical location.

The appellate court properly reversed the district court's ruling because law enforcement lacked probable cause and exigent circumstances for a warrantless search and seizure of Naduald's residence. The district court erred in denying Naduald's motion to suppress. Evidence seized, unlawfully, from Naduald's residence and a tainted confession are both a product of FBI agent's willful misconduct. A warrantless search was a Fourth Amendment violation of Naduald's right to privacy.

THE STANDARD OF REVIEW

DE NOVO

Probable Cause and Exigent Circumstances

We review the district court's findings of facts and determinations of credibility for clear error, but its ultimate legal conclusions of probable cause and exigent circumstances are reviewed de novo. *United States v. George*, 883 F.2d 1407, 1411 (9th Cir. 1989).

As mixed questions of law and fact, the "probable cause" and "exigent circumstances" determinations require bifurcated review: whether a particular set of circumstances gave rise to "probable cause" or "exigent circumstances" is reviewed *de novo* and findings of fact are reviewed for clear error. *United States v. Tibolt*, 72 F.3d 965, 969 (1st Cir. 1995).

ARGUMENT

I. Was It a Fourth Amendment Violation When Law Enforcement Retrieved Information from An Automatic License Plate Recognition (ALPRs) Database Without a Warrant?

The Ninth Circuit Court of Appeals correctly determined that a Fourth Amendment violation occurred. An Automatic License Plate Scanner (ALPRs) has infringed on Fourth Amendment rights guaranteed to us in the constitution. Under *Katz v. the United States*, 389 US 347, 88 S. Ct. 507 (1967), an expectation of privacy must be subjective and objective. First, the citizen must prove that they had an actual, subjective expectation of privacy in the place searched. Second, the citizen bears the burden of showing that society objectively accepts that expectation as legitimate. *Id.*

Under *Smith v. Maryland*, 442 U.S. 735, 736, 99 S. Ct. 2577, 2578 (1979), the Court has ruled that you do not have a reasonable expectation of privacy to information voluntarily disclosed to third parties. However, the Court must see that the ALPRs database did not receive consent to keep a record of a person's location. This Court today must uphold the ruling of the Ninth Circuit Court of Appeals and protect individual people's rights from being watched by the government.

A. A *search existed, therefore it is required to get a warrant for the car location of Nadauld.*

First, Nadauld must prove that they had an actual, subjective expectation of privacy in the place searched. Automatic License Plate Readers (ALPRs) are a police department tool widely popular across the United States of America. ALPRs "has two major components: the actual scanners, which record license plates, and the databases which collect, compile, and analyze this information for officers to access at the click of a button." *NOTE: Big Brother is Scanning: The Widespread Implementation of ALPR Technology in America's Police Forces*

ALPRs are a powerful tool that can give police departments access to a database of information. Police are using this evolving technology "to capture images of license plates, which are then recorded along with the time, date, and global positioning system (GPS) coordinates where the plate was spotted. "*Article: The Privacies of Life: Automatic License Plate Recognition is Unconstitutional Under The Mosaic Theory of Fourth Amendment Privacy Law*. The ALPRs cameras and database prove to be a valuable tool for police departments as it allows for these captured images with their GPS location to be stored. Citizens have no knowledge where these small cameras are posted at intersections poles. Law enforcement claim a security issue about informing the public. A citizen drives through multiple intersections, unbeknownst to them their information is being stored.

After the Balboa Park shooting, the police investigated all person that fled the park in a vehicle and did not come forward to the police. (R. at 3). Law enforcement ran out of leads with the fifty individuals that fled by car as none of them had records. Law enforcement chose to look at individuals who are registered assault rifle owners in San Diego. (R. at 3). Nadauld is a registered assault rifle owner, and with the police investigation his name popped up. ALPRs captured Nadauld driving around San Diego on the day of the shooting. Police retrieved the information, and began cross-referencing the vehicle movements of both groups. (R. at 3).

The courts in *Katz* have stated, "he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Katz v. the United States,* 389 U.S. 347, 348, 88 S. Ct. 507, 509 (1967). Nadauld's geographical location is captured and stored into the ALPRs database as he passes through intersections in San Diego. Nadauld has expectation that the public can watch his movements, however, his movements being captured and stored is a different matter. Under *United States v. Maynard,* 392 U.S. App. D.C. 291, 615 F.3d 544 (2010), the mosaic theory

holds that when individual pieces of otherwise unimportant information are grouped together, they can amount to important intelligence information requiring high-level confidentiality. Law enforcement could use this geographical information to paint a picture of Nadauld's religious beliefs, political affiliation, medical history, and personal relationships. Naduald and Frank McKennery vehicles had a "considerable overlap of being at the same locations at similar times." (R. at 4). The geographical location captured with ALPRs technology painted a narrative about Nadauld as an accomplice in the Balboa Park Shooting.

The Courts in *Carpenter* held that "an individual maintains a legitimate expectation of privacy in the record of his physical movements." The facts in Carpenter are distinguishable from our case because of the ALPRs tracking his movements around San Diego. Police used Carpenter's location through his cellphone, and the court ruled that "the government must generally obtain a warrant supported by probable cause before acquiring a user's cell-site location information records." *Carpenter v. United States,* 138 S. Ct. 2206, 2208 (2018).

The ALPRs kept a record of Nadauld's geographical movements, and police used that information to connect him to the Balboa Park shooting. The police painted a narrative about Nadauld. The Courts in *United States v. Knotts,* 460 U.S. 276, 103 S. Ct. 1081 (1983) had stated "the risk that this enhanced surveillance, intrusive at best, might push fortuitously and unreasonably into the private sphere protected by the Fourth Amendment." The case facts from *Riley v. California* are distinguishable to the ALPRs because they held cell phones "[w]ith all they contain and all they may reveal, they hold for many Americans... Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant." *Riley v. California,* 573 U.S. 373, 403, 134 S. Ct. 2473, 2494-95 (2014) The ALPRs "while not as constant as cell-site location information, allows the police to gain a

thorough understanding of a person. " *Note: Should the Use of Automated License Plate Readers Constitute a Search After Carpenter v. United States?* Comparing ALPRs technolgy to "cell-site information it is retroactive and involves the collection of information" on all individuals. *Id.* The Court illustrates the dangers of technology like ALPRs, and if not regulated can infringe on peoples Fourth Amendment protections. Therefore, Nadauld has a subjective expectation of privacy in his location.

Second, society objectively accepts that expectation of privacy as legitimate. ALPRs is software that is not readily available to the public and only to police departments. *California ALPR FAQs* The Court previously ruled on matters which have violated people's Fourth Amendment rights. The Court in *Kyllo v. United States* have ruled when police use "sense-enhancing technology" it will "constitutes a search, at least where the technology in question is not in general public use." The police used a thermal imaging device to detect a heat pattern in the private home. *Kyllo v. United States*, 533 U.S. 27, 29, 121 S. Ct. 2038, 2040 (2001) The Court in *Florida v. Jardines*, held "use of trained police dogs to investigate the home and its immediate surroundings is a search." *Florida v. Jardines*, 569 U.S. 1, 11-12, 133 S. Ct. 1409, 1417-18 (2013). The court in both of these cases had ruled these items would be considered a search because the public would not find it reasonable. Society would not find it reasonable for a thermal imaging device to scan their house from the sidewalk, and to have a trained dog on their porch, alerting police of controlled substances.

The Court previously ruled on matters which have violated people's Fourth Amendment rights. In Nadauld's case, the court of appeals realized his Fourth Amendment right were violated with the ALPRs technology. Society is not be prepared to recognize ALPRs tactics of storing the geographical location as reasonable. In California, "most ALPR records are maintained for a set

period"; it "ranges by jurisdiction from sixty (60) days to five (5) years." *California ALPR FAQs* A reasonable person in society would not like the idea that "Big Brother" constantly keeps an eye on them. The camera location is not disclosed because they are a "law enforcement investigative tool; we do not provide the locations of the cameras." *California ALPR FAQs* The Courts in *Smith* ruled that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Smith v. Maryland,* 442 U.S. 735, 740 (1979). Nadauld did not consent to the government storing his geographical location in an ALPRs database.

Society recognizes that a warrant is required to retrieve Nadauld geographical location, moreover, the Fourth Amendment secures against unreasonable searches. Law enforcement used his geographical location to connect him to the Balboa Park shooting. Society is not prepared to recognize ALPRs tracking and storage of geographical location; therefore, a warrant is required for this type of search.

B. Since the information was not voluntarily disclosed, therefore the third-party doctrine does not apply.

In *Smith v. Maryland*, the Third-Party Doctrine established that people do not have a reasonable expectation of privacy of information you disclose. The Court in *Smith* acknowledges, "All telephone users realize that they must ‘convey’ phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed." *Smith v. Maryland,* 442 U.S. 735, 742, 99 S. Ct. 2577, 2581 (1979). It is well established that law enforcement is not entitled to the contents of an individual phone call because that information is private. That phone call conversation is covered under the Fourth Amendment unless law enforcement has probable cause and gets a warrant. Society would recognize that it is reasonable for the dial numbers not to be private since it had to disclose the information to the phone company.

ALPRs and face recognition technology are similar because both of these technologies are pushing the boundary of the Fourth Amendment. Face recognition "technology identifies a human face "through the automated, computational analysis of its facial features" *Shultz v. N.Y. State Educ. Dep't,* 2021 NY Slip Op 33434(U), ¶ 1 (Sup. Ct.) These technologies would make us believe that we have voluntarily disclose this information. The government fails to recognize that there is a level of privacy, we must give up to be part of society. Nadauld knows that when he drives down the street, people can see his car model, car color, license plate, and him. He understands that millions of people see him every day, and he understands to participate in society. Nadauld consents to give this information away, however, Naduald does not consent to being tracked by pictures of his geographical location. Naduald is being tracked and his location is stored in ALPRs database. If you are walking down the street, people recognize that society can see what you are wearing, color of your hair, your height, and weight. Citizens recognize they will disclose this information to be part of society, however, they will not accept unconsented identification from face recognition technology.

The third-party doctrine does not apply because to be part of society there is a certain level of privacy we must disclose, however, that disclosure is not for investigation purposes. Naduld did not voluntarily give the government permission to store his information in an ALPRs database. Therefore, the court must recognize that the third-party doctrine does not apply.

C. Policy: The Spirit of the Fourth Amendment

Our founding fathers had no idea the world would enter a new age of technology when they drafted the Fourth Amendment. Technology evolves at a rapid speed with unbelievable capabilities. The advancement of technology raises concerns for people's constitutional rights. The dissent in *Whalen v. Roe* had stated, “The central storage and easy accessibility of computerized

data vastly increase the potential for abuse of that information." *Whalen v. Roe*, 429 U.S. 589, 607, 97 S. Ct. 869, 880 (1977). In a complaint filed by *Brian Hofer Lawsuit v. CoCo Sheriff* his rental car was flagged by ALPRs technology as a stolen car. Hofer was pulled over by law enforcement with guns raised. Law enforcement arrested him and his brother, however, law enforcement was mistaken as the ALPRs gave them the wrong information. The technology may be useful for law enforcement, but if not regulated the state can quickly become a police state without repercussions for its actions.

This technology has several concerns with the information it stores and discloses to the government. The government must have a neutral party decide whether there is probable cause to obtain a search warrant. In *United States v. Knotts*, 460 U.S. 276, 103 S. Ct. 1081 (1983), the Court had stated, "the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." The government has all the power, which is not what the founding fathers had in mind when they designed the Fourth Amendment. Therefore, the court must recognize the need to implement regulations on ALPR, and a warrant is required.

II. Warrantless Searches Without Exceptions Are Prohibited by the Constitution.

The court examines factors law enforcement relied on to establish probable cause and exigent circumstances exists for a warrantless search of Naduald's residence. The Supreme Court emphasizes home searches and seizures without a warrant are unreasonable, and law enforcement bears the burden to show exceptions exist. First, law enforcement must prove there is probable cause, and second, must demonstrate a need to forfeit a warrant based on exigent circumstances. *United States v. George*, 883 F.2d 1407, 1411 (9th Cir. 1989).

A. *Insufficient evidence did not established probable cause for a warrantless search and seizure.*

Law enforcement had very low probabilities for probable cause based on evidence Naduald and McKennery vehicle's locations overlap. (R. at 4). Probable cause is insufficient under these facts and circumstances to enter and search Naduald's home without a warrant. Probable cause is the probabilities from facts by a reasonably prudent person not experts. The probable cause standard is to protect society from troublesome and annoying interferences to unsupported accusations of crime. *Brinegar v. United States*, 338 U.S. 160, 176 (1949). "As these comments illustrate, probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232, (1983).

Naduald is one of fifty people in San Diego who legally owned a registered assault rifle. (R. at 3). "There are 185,569 'assault weapons' currently registered with the California Department of Justice. Another 52,000 assault weapon registrations were backlogged and left unregistered when the last California registration period closed in 2018." *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1021 (S.D. Cal. 2021). With over 200,000 assault weapons located California, law enforcement only cross-referenced fifty owners of assault weapons. (R. at 3). The probable cause cannot be undermined by focusing on a coincidence of fact to create probable cause. *Maryland v. Pringle*, 540 U.S. 366, 373 (2003). The fact is Naduald is 1 out of 200,000 plus citizens who own assault weapon in California making involvement less likely than 1 out of 50.

Law enforcement should have also taken into account registered assault rifles registered in another state, such as Nevada and Arizona. Both states are in very close proximity to San Diego. Violent felons cannot own firearms in California. California Penal Code §29800. Therefore,

Nadauld was not a violent felon because he had a registered firearm. Nadauld did not own one of the fifty vehicles recorded leaving the scene before the police arrived to secure the area. (R. at 3). Law enforcement based probable cause on two factors. One, FBI witness a duffel bag being passed to Naduald from McKennery. (R. at 3). Second, Nadauld owns 1 of 185,569 registered assault weapons in California. "The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *id* 371. The totality of circumstances proves law enforcement lacked evidence to sustain probable cause for exception for a warrantless search, therefore, the search and seizure are unconstitutional.

B. Exigent circumstances did not exist to conduct a search and seizure without a warrant.

Law Enforcement failed, the burden of proof, in showing exigent circumstances exist that allow FBI agents to enter and search Naduald's home without a warrant. "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *Coolidge v. New Hampshire*, 403 US 443 (1971). "Under the 'exigent circumstances' exception to the warrant requirement, agents can search without a warrant if the circumstances 'would cause a reasonable person to believe that entry…was necessary.'" *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984). The courts must refer to these factors in allowing a warrantless search and seizure: (1) if it was a necessity, (2) amount of time to acquire a search warrant, (3) possibility that evidence will be destroyed, (4) a fleeing suspect, (5) the imminent threat of risk of death or serious injury, (6) any other inappropriate actions that hinder a lawful police investigation. *United States v. Reed*, 935 F.2d 641, 642 (4th Cir. 1991).

Officers Hawkins and Maldonado raided Nadauld's home due to public pressure rather

than the presence of exigent circumstances. The Bill of Rights speaks to the basic principle of an individual's right of privacy of home and property, and these principles may not be abandoned to ease the burden of criminal investigations by law enforcement. *Mincey v. Arizona*, 437 U.S. 385, 39 (1978). Law enforcement violated Nadauld's Fourth Amendment rights because of the public outcry in law enforcements failure to catch the Balboa Park Shooter. (R. at 31). The task in proving the need for an exemption relies on the party seeking exemption. These values will not be undermined in times of turmoil because of their "fundamental constitutional concepts." *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971).

Nadauld made no attempt to flee when law enforcement arrived at his residence. Instead, he cooperated with law enforcement when they asked to question him outside of his front door about the inherited rifle. (R. at 23). Law enforcement were not in pursuit of a fleeing suspect when they barged into Nadaud's home. The shooting took place September 14, two weeks before law enforcement spoke to Naduald. (R. at 4). The two-week time frame left ample amount of time for Nadauld to flee the area if those were his intentions. "Police officers may enter premises without a warrant when they are in hot pursuit of a fleeing suspect." *Kentucky v. King*, 563 U.S. 452, 460 (2011). Considering the time that elapsed, law enforcement could have secured a warrant during that period.

On September 28, law enforcement received an anonymous call from an individual claiming to be the Balboa Park shooter. The caller claimed a school shooting was next, yet, law enforcement decided just to observe Nadauld residence. (R. at 4). Law enforcement conduct cannot be as they perceived emergency exigent circumstances for a warrantless search the next day. In *Espinoza,* the courts held that a 4-hour gap between police witnessing an altercation inside house

did not allow a warrantless enter for exigent circumstances later that evening. *United States v. Espinoza*, 2009 U.S. Dist. (E.D. Cal. Oct. 15, 2009).

Naduald was a law-abiding citizen who posed no risk of death or serious injury. Officers declined to call for backup because Naduald was no threat. (R. at 23). Nadauld offered to grab the weapon for law enforcement. (R. at 23). Law enforcement could have lawfully detained Nadauld for 48 hours while obtaining a search warrant if they feared the destruction of evidence. California Penal Code §825. "The mere possibility of loss or destruction of evidence is insufficient justification. Affirmative proof of the likelihood of the destruction of evidence, along with the necessity for warrantless entry are required." *United States v. Radka*, 904 F.2d 357, 362 (6th Cir. 1990). Similar to *Radka*, there was no imminent threat of destruction to evidence. Naduald had no reason to destroy or tamper with the rifle since he had no knowledge the rifle was involved in a crime. He believed McKennery was in Arizona with rifle when the shooting occurred. (R. at 4). Law enforcement did not have a valid purpose or reason that creates exigent circumstances, thus, did not have an exception to enter Nadual's residence without a search warrant.

C. Inadmissible evidence deemed fruits of the poisonous tree since obtained from a constitutional violation.

The discovery of the rifle and Naduald's confession are both tainted since law enforcement obtained this evidence through an unlawful search and seizure of Naduald's residence. (R. at 24). The courts have forbidden evidence obtained from unlawful searches in an effort to preserve the "sanctity of the home and inviolability of the person." *Wong Sun v. United States*, 371 U.S. 471, 484 (1963).

Here, a violation of Nadauld's Fourth Amendment is in direct correlation with the rifle discovery and Naduald's confession. The connection is clear, law enforcement lacked probable

cause to enter. But for law enforcement's unlawful search of Naduald's residence, officer Maldonado would not have seen the rifle in Naduald's room in plain view. (R. at 24). In *Hicks,* this court held the "plain view" doctrine requires probable cause to be a valid search, and reasonable suspicion does not satisfy probable cause standard. *Arizona v. Hicks,* 480 U.S. 321, 322 (1987).

Nadauld made a statement inside the home after being badger by Officer Hawkins upon discovery of the rifle. "[A] well-established precedent requires suppression of the confession unless that confession was 'an act of free will [sufficient] to purge the primary taint of the unlawful invasion.'" *Kaupp v. Texas,* 538 U.S. 626, 632 (2003). Officer Hawkins could have asked Naduald about McKennery at the front door, however, did not begin to question about McKennery until after the seizure of the rifle. (R. at 24). In *Wong,* this court emphasize "the exclusionary prohibition extends as well to the indirect as the direct products of such invasions." *Wong Sun v. United States,* 371 U.S. 471, 484 (1963). FBI officers acted in violation of the Fourth Amendment by entering Nadauld residence without a warrant, consent, or probable cause with exigent circumstances. This conduct taints all evidence acquired from the search, thus, rendering all evidence inadmissible for prosecution case in chief.

CONCLUSION

For the reasons stated above, the Supreme Court should affirm the Ninth Circuit Court of Appeals decision to grant Nadauld's motion to suppress evidence obtained through unconstitutional conduct and a confession tainted by fruits of the poisonous tree by law enforcement.