

Official Record and Property of the University of San Diego

School of Law

2022 National Criminal Procedure Tournament

San Diego, California

SAN DIEGO TIMES

September 14, 2021

MASS SHOOTING AT BALBOA PARK - 9 KILLED, 6 WOUNDED

San Diego Times correspondents report that earlier today, a masked man wearing black combat gear and armed with a fully automatic rifle killed nine people and wounded six more in a deadly attack in Balboa Park. Witnesses and officials described the scene as horrific. Our correspondents noted that the gunman appeared on a rooftop and opened fire on a crowd while tourists and residents ran for their lives.

Police arrived on the scene as hundreds were fleeing or hiding in terror. The gun and gunman were nowhere to be found.

Rafael Espinoza, a survivor, reported, "It was something out of my worst nightmares. One moment I'm walking in the park with my family, the next thing I know, I hear gunshots, my arm explodes in pain and feels like it's on fire, and my wife is lying face down on the ground not moving. If the police don't find whoever took my wife away from me, I will hunt the killer down myself."

Other reports indicated that the gunman suddenly appeared on a rooftop, fired for about 30 seconds at a crowd, and disappeared.

The only clue as to the murderer's identity seems to be a note that was left behind on the rooftop where the shooter was spotted. Jordan McKay, a 32-year-old, off-duty Marine discovered the note while trying to stop the killer. He reported, "As soon as I heard the gunshots and saw that mother***** on the roof, I ran toward the building and tried to find a way up to get that ****ole. It took me too long, though. By the time I got up there, he was gone. I found this note, though. It said 'Manifesto' at the top and said something about hating society, or something...didn't make a lot of sense. I gave it to the police."

Law enforcement was able to close off the area a short time after the shooting. However, the police were unable to identify the killer. San Diego Law enforcement assures that it will stop at nothing to find the shooter and bring him or her to justice.

SAN DIEGO TIMES

September 21, 2021

BALBOA SHOOTER MANHUNT CONTINUES

A week has passed since the deadly mass shooting in Balboa Park last Tuesday. The killer remains at large.

Many have called law enforcement's failure to find and capture the unknown gunman a humiliating catastrophe. Rachel Nguyen, one of the survivors of the Balboa Park attack, commented, "I can't believe they haven't caught my husband's killer. I mean, it's not like we were shot at in a dark alley with nobody around. This was in broad daylight in Balboa Park. There's gotta be hundreds of security cameras in Balboa Park that would have shown something. These police are lazy. They are sitting on their ***es eating donuts paid for by my dead husband's tax money. I mean, what are we even paying these guys for?"

Detectives from the state and the FBI reportedly have been sent in to assist with the ongoing investigation.

San Diego Chief of Police Marcus Castaneda made the following statement in a recent press release:

"We are working day and night to catch the Balboa Park shooter. Our officers will not rest until we achieve justice for the victims of this terrible crime. Chasing down leads takes time. The killer didn't leave a map to his or her whereabouts. I promise you we are doing everything in our power to find the shooter. We have more than one hundred officers and law enforcement personnel from San Diego, the State, and the FBI, working like dogs to find this monster."

The public has demanded to see a copy of the mysterious "Manifesto" the killer left behind. Chief Castaneda commented:

"At this time, we will not be releasing a copy of the manifesto to the public in the interest of being able to maintain an effective investigation. The Manifesto may be released to the public at a later date."

Chief Castaneda declined to comment further.

SAN DIEGO TIMES

September 30, 2021

BALBOA SHOOTER FOUND

After a two-week long search, the FBI has found the man they believe to be the Balboa Park shooter. The FBI found him dead in his home. The alleged shooter, a 33-year-old male construction worker named Frank McKennery, was a San Diego resident. It appears McKennery committed suicide when the police arrived at his home. McKennery left a note behind confessing to his crimes.

Nick Nadauld, a 39-year-old coworker of McKennery's, was also brought into

custody. Sources say that the FBI identified Nadauld as the owner of the gun used by McKennery. The weapon is now in evidence and has been identified as an M16 Assault Rifle. Forensic ballistics experts, using bullet cases recovered from the crime scene, have already conducted their examination, and have affirmatively identified Nadauld's M-16 as the weapon that was used by the Balboa Park shooter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the Supreme Court of the United States

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

NICK NADAULD,
Respondent.

No. 1788-850191

Official Record and Property of the University of San Diego
School of Law
2022 National Criminal Procedure Tournament
San Diego, California

1
2
3 **In the Supreme Court of the United States**

4
5 **PEOPLE OF THE STATE OF CALIFORNIA,**
6 *Petitioner,*

7
8 v.

9
10 **NICK NADAULD,**
11 *Respondent.*

12
13 **ORDER GRANTING WRIT OF CERTIORARI**

14
15
16 This Court GRANTS certiorari LIMITED to the following questions:

- 17
18 I. DID THE CALIFORNIA FOURTH DISTRICT COURT OF APPEAL ERR IN
19 HOLDING THAT THE RETRIEVAL OF DEFENDANT'S INFORMATION FROM
20 THE AUTOMATIC LICENSE PLATE RECOGNITION DATABASE REQUIRED A
21 WARRANT UNDER THE FOURTH AMENDMENT?
- 22
23 II. DID THE CALIFORNIA FOURTH DISTRICT COURT OF APPEAL ERR IN
24 HOLDING THAT THE WARRANTLESS ENTRY AND SEARCH OF
25 DEFENDANT'S HOME VIOLATED DEFENDANT'S FOURTH AMENDMENT
26 RIGHTS UNDER OUR PRECEDENTS?

27
28 IT IS SO ORDERED. DATED: September 23, 2022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

NICK NADAULD,

Defendant.

Case No.: SCD397124

**ORDER DENYING
DEFENDANT’S MOTION TO
SUPPRESS EVIDENCE**

DATE: November 21, 2021

On October 1, 2021, Defendant Nick Nadauld was charged by indictment with 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 for failure to comply with the assault rifle requirements under California Penal Code Section 30915. Defendant has filed a motion to suppress evidence collected on the date of his initial arrest in this case, pursuant to California Penal Code § 1538.5. For the reasons stated below, the Court **DENIES** Defendant’s motion to suppress evidence.

1 **I. STATEMENT OF FACTS**

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

8 During its investigation of the Balboa Park shooter, law enforcement discovered that Nick
9 Nadauld (“Nadauld”), the Defendant, owned an M16, the same type of weapon used by the Balboa
10 Park shooter. It also learned that at some point prior to September 14, 2021, Nadauld loaned his M16
11 to McKennery. McKennery and Nadauld worked together at a construction company in San Diego
12 for about a year prior to the Balboa Park shooting.

13 Law enforcement confirmed that Nadauld legally acquired his M16 assault rifle when his
14 father, a former member of the military, died five years earlier. Nadauld’s father bequeathed
15 numerous personal effects, including the rifle, to him in a properly notarized last will and testament.

16 Approximately one week prior to the Balboa Park shooting, McKennery expressed an interest
17 in borrowing Nadauld’s M16 for an outdoor target shooting excursion. McKennery told Nadauld that
18 he was a shooting enthusiast and craved to try out an automatic assault rifle. Nadauld assented to the
19 request.

20 Unbeknownst to Nadauld, McKennery had other plans for the weapon. On September 14,
21 2021, McKennery arrived in Balboa Park wearing a mask and non-descript clothing. He climbed to
22 the top of a rooftop and discharged an M16 automatic assault rifle, killing nine and wounding six
23 others.

24 After opening fire from a rooftop in Balboa Park on a large plaza below, McKennery escaped
25 the scene without being identified. The rounds used in the shooting were identified as 5.56x45mm
26 NATO cartridges, a caliber commonly used in a wide variety of assault rifles. McKennery left only
27 one piece of evidence on the top of the rooftop from where he fired the weapon: a “Manifesto,” which
28 threatened future shootings. Exhibit I. The story and motive provided in the “Manifesto” turned out

1 to be nothing more than a fabrication designed by McKennery to send law enforcement on a false
2 trail. Exhibit J. Allegedly, due to a personal vendetta against a woman named Jane Bezel, McKennery
3 plotted to murder Bezel and her fiancé in Balboa Park. Apparently in an effort to conceal his true
4 motive, McKennery also planned to murder seven innocent bystanders in addition to his true targets.

5 Due to the heinous nature of the crime and lack of leads, law enforcement used numerous
6 investigative methods to find the shooter. They first analyzed the surveillance footage from security
7 cameras in and around Balboa Park. Camera footage captured about forty unidentified individuals
8 who fled on foot and did not come forward later to identify themselves. In addition, fifty vehicles
9 were recorded leaving the scene before the police arrived to secure the area. As a result of the
10 blurriness of the surveillance footage, it was impossible to match the faces of the forty unidentified
11 subjects with faces in the government's databases.

12 The police checked the criminal records of the owners of those fifty cars that fled the scene
13 but found no evidence of prior violent crimes. This list of fifty included McKennery. None of them
14 were members of the Jora Guru religion, referenced in the Balboa Park shooter's Manifesto. Police
15 then cross-referenced the fifty vehicle owners with a list of registered assault rifle owners in the area.
16 None of the fifty were law enforcement officers. Nor were any of the fifty vehicle owners found to
17 be on the list of assault rifle owners. One of these fifty individuals identified on this list was Nick
18 Nadauld, the defendant.

19 Next, police retrieved information from the Automatic License Plate Recognition
20 ("ALPR") database about the movements of these fifty vehicles, including McKennery's vehicle.
21 Police forces typically use a version of ALPR to check if a vehicle is legally registered or licensed. A
22 special camera, usually mounted on police vehicles or poles at intersections, scans passing cars for
23 their license plate information and instantly compares the information with a police database. The
24 time and location information for each license plate scan is stored in this database. Police accessed
25 the database to investigate the movements of all fifty vehicles that were recorded leaving Balboa Park
26 after the time of the shooting. As part of the investigation, they also examined the movements of
27 vehicles owned by individuals on the assault rifle list, including Nadauld's. They then cross-
28 referenced the vehicle movements of both groups, and found, along with other pairings, that

1 Nadauld’s vehicle and McKenery’s vehicle had considerable overlap of being at the same locations
2 at similar times.

3 The ten residences on the list that corresponded the most to the driving location data of the
4 fifty vehicles were then covertly investigated by the police, including Nadauld’s residence. On
5 September 24, 2021, law enforcement placed cameras on utility poles near those residences facing
6 them, so that law enforcement could monitor the residences for any suspicious activity. Law
7 enforcement mailed a letter on September 25, 2021, to each of the ten residences, stating that in one
8 month, officers of the law would be arriving at their homes to verify whether their assault rifles had
9 been rendered inoperable pursuant to California Penal Code 30915. Nadauld received the letter on
10 September 27, 2021.

11 On September 28, 2021, at 10:37 am, police received an anonymous call from a telephone
12 booth. A voice was heard saying, “This is the Balboa Park shooter. This time, it’s gonna be a school.”

13 On September 29, 2021, at 5:23 pm, the pole-mount camera placed near Nadauld’s house
14 recorded McKenery pulling into the driveway, giving Nadauld a large duffel bag and then leaving.
15 FBI Officers Jack Hawkins and Jennifer Maldonado were immediately dispatched to Nadauld’s house
16 to investigate.

17 Officers Hawkins and Maldonado arrived at Nadauld’s home thirty minutes after McKenery
18 left and questioned him outside of the front door about Nadauld’s inherited rifle. Exhibit A.
19 Dissatisfied with Nadauld’s responses, and without Nadauld’s permission, Officer Hawkins and
20 Officer Maldonado entered Nadauld’s home and began searching the home for the assault rifle. Upon
21 finding the M16 rifle in Nadauld’s residence and finding that it had not been rendered inoperable as
22 required by California law, Officer Hawkins proceeded to question Nadauld more intensely. During
23 this questioning, Nadauld revealed that McKenery had borrowed the weapon, but insisted that
24 McKenery had been in the desert on the Tuesday of the Balboa shooting and had sent Nadauld a
25 picture of himself there. Following the questioning, the officers brought Nadauld into custody. When
26 law enforcement arrived at McKenery’s house to arrest him, they heard a gunshot inside the house
27 and found McKenery lying dead on the floor inside. Next to his body was a letter confessing to the
28 crime of shooting the victims at Balboa Park. Exhibit J.

1 Under an interagency agreement, the FBI turned over all of their evidence to the San Diego
2 County Police Department for prosecution. On October 1, 2021, a San Diego County grand jury
3 indicted Nadauld with nine counts of second-degree murder under California Penal Code Section 187,
4 nine counts of involuntary manslaughter under California Penal Code Section 192, one count of
5 lending an assault weapon under California Penal Code Section 30600, and one count of failing to
6 comply with California Penal Code Section 30915. Nadauld filed the instant motion to suppress the
7 evidence found on the day of his arrest. First, Nadauld contends that his Fourth Amendment rights
8 were violated, challenging the constitutionality of the police's warrantless usage of the ALPR
9 database to retrieve geographical information, and the warrantless mounting of pole-mount cameras
10 to monitor residences. Nadauld also contends that his Fourth Amendment rights were violated when
11 Officer Hawkins and Officer Maldonado entered and searched his house without a warrant.

12 **II. ANALYSIS**

13 The court finds that Nadauld's Fourth Amendment rights were not violated. Nadauld moved
14 to suppress the record on several grounds. First, he contends that warrantless usage of the ALPR
15 database and mounting a camera facing his home violates the privacy protections of the Fourth
16 Amendment. Second, he challenges the constitutionality of the warrantless search of his home. We
17 find that Nadauld's rights have not been violated and dismiss the motion to suppress.

18 **A. Electronic Surveillance**

19 **1. ALPR**

20 Initially, Nadauld moved to suppress the record based on the warrantless usage of ALPR to
21 track his driving location data. This court concludes that the officers' use of the ALPR technology
22 and database did not violate Nadauld's Fourth Amendment rights.

23 Before embarking on our discussion of ALPR and the privacy concerns it implicates, some
24 clarification is necessary. ALPR is generally used for cross-referencing passing cars with registration
25 information and stolen-vehicle alerts. That use does not touch upon the privacy concerns of the Fourth
26 Amendment and is not discussed herein. This ruling only concerns the other use of ALPR, the
27 database of time and location data created from the compiling of all these quick scans. Exhibit K.

1 The touchstone of Fourth Amendment analysis is whether a person has a reasonable
2 expectation of privacy. *Katz v. United States*, 389 U.S. 347, 360 (1967). The Fourth Amendment
3 protects only a person’s subjective expectation of privacy that society is prepared to recognize as
4 reasonable. *Id.* at 361. A reasonable expectation of privacy is not determined through a singular test
5 or an “exhaustive list of considerations.” *Byrd v. United States*, 138 S. Ct. 1518, 1527 (2018). Instead,
6 it requires consideration of “personal and societal values” and whether those values have been
7 infringed. *Oliver v. United States*, 466 U.S. 170, 173 (1984).

8 ALPR only intermittently records the singular geographical locations of vehicles on public
9 roads. This collection of such data does not create a complete record of all the movements of
10 individuals. Instead, the data creates a sparse collection of datapoints on public roads which reveals
11 little about a person’s private life.

12 The observation of movement on public roads by law enforcement has already been
13 determined to not violate the Fourth Amendment. The Supreme Court in *United States v. Knotts* held
14 that “[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of
15 privacy in his movements from one place to another.” *United States v. Knotts*, 460 U.S. 276, 281
16 (1983). Admittedly, the Court in *Knotts* stated that “different constitutional principles may be
17 applicable” to “dragnet-type law enforcement practices.” *Id.* at 284. But these dragnet practices
18 referred to “twenty-four-hour surveillance of any citizen of this country,” which is not the type of
19 surveillance accomplished by use of the ALPR database. ALPR only logs information when the
20 vehicle passes through the lens of an ALPR camera on public roads, which are not omnipresent. Usage
21 of this database does not enable the government to gain full knowledge of all its citizen’s movements.
22 Rather, it only provides a small glimpse into an individual’s travels on public roads. It is not 24-hour
23 surveillance. Momentary captures of geographic location can be reasonably expected by individuals
24 when they travel on public roads that are policed and protected by law enforcement. The spasmodic
25 gathering of geographical points of public travel does not violate personal values of privacy any more
26 than the observance of individual vehicles by police officers while on patrol. As stated in *Cardwell*
27 *v. Lewis*, 417 U.S. 583, 590 (1974):
28

1 One has a lesser expectation of privacy in a motor vehicle because
2 its function is transportation and it seldom serves as one's residence
3 or as the repository of personal effects. A car has little capacity for
 escaping public scrutiny. It travels public thoroughfares where both
 its occupants and its contents are in plain view.

4 The ALPR database only provides a record of vehicles that traveled in plain view.
5 Furthermore, the database reveals nothing beyond geographical location and time. It does not provide
6 detailed photographs of the occupants in these vehicles, or any inherently incriminating information,
7 unless those vehicles were unregistered or stolen. It does not intrude upon the private affairs of
8 individuals as it only sporadically details their public travels.

9 A similar case of vehicle tracking was examined in *United States v. Hufford*, 539 F.2d 32 (9th
10 Cir. 1976). In *Hufford*, the defendant was suspected of creating illegal methamphetamines with the
11 use of caffeine purchased from a chemical company. *Id.* at 33. With permission from the chemical
12 company, government agents placed a GPS tracker in a drum of caffeine that was purchased by
13 Hufford and transported in Hufford's pickup truck. *Id.* The defendant's automobile movements were
14 at all times in full view of the public; therefore, the public as well as government agents could have
15 reasonably observed what they saw. *Id.* The electronic beeper was merely a more reliable means of
16 ascertaining where Hufford was going as he drove along the public road. *Id.* at 34-35.

17 The same is applicable here: the movements of Nadauld's automobile were public, and the
18 usage of ALPR was simply a far more reliable and economical means of determining Nadauld's
19 movements. None of Nadauld's movements were secret, and the most pertinent movements of the
20 investigation were simply his driving to work, as he and McKennery were co-workers.

21 Additionally, the tracking of a car's public movements does not constitute a search. As
22 explained in *New York v. Class*, 475 U.S. 106, 114 (1986), "[t]he exterior of a car . . . is thrust into
23 the public eye, and thus to examine it does not constitute a search." That which is not a search does
24 not require a warrant. Accordingly, the retrieval of information from the ALPR database requires no
25 warrant, and thus, the warrantless use of ALPR does not violate the Fourth Amendment.

26 **2. Pole-Mount Cameras**

27 Following the same line of reasoning as the usage of ALPR, the warrantless use of pole-mount
28 cameras in a public place does not violate the Fourth Amendment right to privacy. Today, our society

1 is often recorded in public places. We find security cameras monitoring us in businesses, libraries,
2 restaurants, and on the streets. It is reasonable in modern times to expect video surveillance of our
3 public activities. Consequently, the monitoring of the front of Nadauld’s house, which was already
4 fully exposed to the public, does not violate a reasonable expectation of privacy, nor does it constitute
5 a search.

6 In one of the more notable cases addressing this very issue, *United States v. Houston*, the Sixth
7 Circuit Court of Appeals rejected the claim that the use of a police camera on a public pole constituted
8 a search. *United States v. Houston*, 813 F.3d 282 (6th Cir. 2016). In *Houston*, police mounted cameras
9 that recorded the defendant's property for ten weeks atop a utility pole. *Id.* at 285. Because the video
10 surveillance only recorded the same view that a bystander would see on public roads, the Sixth Circuit
11 determined that there was no expectation of privacy. *Id.* at 287. Police's use of technology did not
12 render the monitoring unconstitutional since they could have placed agents on duty 24/7 to keep an
13 eye on the property from the public road. *Id.* at 285.

14 Additionally, the duration of the surveillance did not make the deployment of pole cameras
15 unlawful. *Houston*, 813 F.3d at 290. The court in *Houston* distinguished the surveillance via stationary
16 camera from the surveillance via GPS tracking in *United States v. Jones*, stating that camera
17 surveillance was “not so comprehensive as to monitor Houston’s every move; instead, the camera
18 was stationary and only recorded activities outdoors on the [property.]” *Id.*, see *United States v. Jones*,
19 565 U.S. 400 (2012). Moreover,

20 [b]ecause the camera did not track Houston’s movements away from
21 the [property], the camera did not do what Justice Sotomayor expressed
22 concern about with respect to GPS tracking: ‘generate a precise,
23 comprehensive record of a person’s public movements that reflects a
wealth of detail about her familial, political, professional, religious, and
sexual associations.

24 *Id.* (quoting *Jones* at 955). Lastly, the court explained that “if law enforcement were required to
25 engage in live surveillance without the aid of technology in this type of situation, then the advance of
26 technology would one-sidedly give criminals the upper hand.” *Id.*

27 The First Circuit also reviewed a motion to suppress evidence resulting from a digital video
28 pole camera installed by the government and directed for eight months at the front of the Defendant's

1 home during a criminal investigation. *United States v. Bucci*, 582 F.3d 108, 116 (1st Cir. 2009). It
2 concluded that the defendant's subjective expectation of privacy was not violated by the surveillance
3 carried out using the pole camera because the defendant had not made any steps to conceal the actions
4 that took place in his front yard from the public's gaze. *Id.* The court in that case further determined
5 that because the photos the camera collected only showed behavior that had taken place in public,
6 there was no interference with the defendant's objectively reasonable expectation of privacy. *Id.* at
7 117.

8 We follow the ruling of both the Sixth and First Circuits in this regard. The mounting of the
9 pole camera near Nadauld's home did not view anything more than what could already be seen by
10 any common residential pedestrian. It was placed for only a period of about a week, much shorter
11 than the ten weeks in *Houston*. The inculpatory evidence of the arrival of McKenney's car and the
12 transference of the duffel bag could have been witnessed by any passing bystander. This was public
13 behavior, and as such, Nadauld's Fourth Amendment rights were not violated.

14 **B. Entry and Search of Nadauld's house**

15 The warrantless search of Nadauld's house did not violate the 4th Amendment because there
16 was probable cause and exigent circumstances. As such, the officers' actions in this matter did not
17 violate Nadauld's rights and the evidence shall not be suppressed.

18 A *warrantless* search, such as what occurred here, requires both probable cause and that there
19 be an exception to the warrant requirement, such as exigent circumstances. *See United States v.*
20 *Ogden*, 485 F.2d 536, 539 (9th Cir. 1973)

21 **1. Probable Cause**

22 Officer Hawkins had probable cause to suspect Nadauld of criminal activity because of the
23 totality of the circumstances, which indicated a likelihood of involvement with the Balboa shooting.

24 Probable cause exists when, "under the totality of the circumstances known to the arresting
25 officers, a prudent person would have concluded that there was a fair probability" that a crime was
26 committed. *Gasho v. United States*, 39 F.3d 1420, 1428 (9th Cir. 1994). "Only the probability, and
27 not a prima facie showing, of criminal activity is the standard of probable cause." *Illinois v.*
28 *Gates*, 462 U.S. 213, 235 (1983). Probable cause does not require overwhelmingly convincing

1 evidence, but only "reasonably trustworthy information." *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *see*
2 *Georgon v. City of San Diego*, 177 F. App'x 581, 583-84 (9th Cir. 2006).

3 Considering all the facts, there is a reasonable probability that Nadauld was involved in the
4 Balboa shooting. First, Nadauld was one of only fifty people in San Diego, excluding law enforcement
5 and military, who possessed an automatic assault rifle. Second, it was determined from the ALPR
6 database that Nadauld had a close association with McKennery, the owner of one of the fifty vehicles
7 that fled the Balboa Park shooting. Third, following the receipt of the letter that would have prompted
8 Nadauld to ensure that the M16 was rendered inoperable to comply with the upcoming inspection,
9 McKennery arrived shortly thereafter and gave him a duffel bag large enough to hold a M16 assault
10 rifle. Fourth, Nadauld's responses to Officer Jack Hawkins' questions indicated that he was trying to
11 conceal something incriminating regarding the assault rifle and the search of his house. Considering
12 that the identity of the shooter was unknown, it was reasonable for law enforcement to suspect that
13 Nadauld could be the perpetrator. The requests by Nadauld to wait while he searched for the M16,
14 and if they could come another day, could have provided an opportunity for a violent killer to retrieve
15 his weapon and kill the officers, or to attempt to escape. All these elements constitute reasonable and
16 trustworthy information sufficient for a finding of probable cause to be made.

17 As such, Officers Hawkins and Maldonado had probable cause to enter Nadauld's home and
18 conduct a search.

19 **2. Exigent Circumstances**

20 Though they did not have a warrant, Officers Hawkins and Maldonado were justified in
21 searching Nadauld's home due to exigent circumstances.

22 Although the government generally requires a warrant to search a home, case-specific
23 exceptions may support a warrantless search of an individual's dwelling under certain circumstances.
24 *See Carpenter v. United States*, 138 S. Ct. 2206, 2222 (2018) (case-specific circumstances justified a
25 warrantless search of cell-site records). Exceptions to the warrant requirement exist when the
26 exigencies of a situation make it objectively reasonable under the Fourth Amendment to conduct a
27 warrantless search. Such exigencies include the need to pursue a fleeing suspect, to protect individuals
28 who are threatened with imminent harm, or to prevent the imminent destruction of evidence.

1 Therefore, if law enforcement is facing an urgent situation, such fact-specific threats are likely to
2 justify a warrantless search.

3 The confrontation with Nadauld occurred two weeks after an unknown violent and dangerous
4 individual murdered nine, wounded six, and escaped with little or no trace, with threats of more
5 atrocities. Because of the shooter's utter disregard for human life, it was impossible to predict when
6 he would shoot again. The public was scared and frustrated by the inability of law enforcement to
7 arrest the person who left the entire city of San Diego in fear that they or their loved ones could be
8 gunned down. Additionally, the police department had just received an anonymous phone call that
9 there would be a school shooting. There was a dearth of evidence at the time, and Nadauld was one
10 of the police's few real leads. There was no time to waste, and Nadauld's blatant noncompliance was
11 suspicious considering the urgency of the situation.

12 As such, these were exigent circumstances, and the officers were wholly justified in their
13 warrantless search of Nadauld's dwelling.

14 **3. Fruit of the Poisonous Tree**

15 Nadauld's confession of lending the gun to McKennery cannot be suppressed under the "fruit
16 of the poisonous tree" doctrine. *Wong Sun v. United States*, 371 U.S. 471 (1963) (evidence and
17 witnesses discovered because of an illegal search were "tainted" and thus excluded). As none of the
18 prior actions have been found illegal, Nadauld's resultant confession during the home search is not
19 tainted and shall not be suppressed.

20 Additionally, Nadauld was under no obligation to reveal the information to Officer Hawkins.
21 Officer Hawkins' questions were based on his finding that Nadauld's weapon had not been rendered
22 inoperable as required by California law. Nadauld had not been placed under arrest and therefore was
23 not coerced into this confession.

24 Therefore, Nadauld fails to show "fruits" resulting from this particular search and is therefore
25 not entitled to relief.

26
27
28

1 **C. CONCLUSION & ORDER**

2 For the foregoing reasons, the Court **DENIES** Nadauld’s motion to suppress evidence in its
3 entirety.

4
5 **IT IS SO ORDERED**

6 **Marietta Meagle**

7

MARIETTA MEAGLE

8 Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**
2 **FOURTH APPELLATE DISTRICT**
3 **DIVISION ONE**

4
5
6
7 THE PEOPLE OF THE STATE OF
8 CALIFORNIA,

9 *Appellee,*

10 v.

11
12 NICK NADAULD,

13
14 *Appellant.*

No.: 125-1-7-720
Court No.: SCD397124

DATE: June 3, 2022

15
16 Appeal from the Superior Court of the State of California
17 For the County of San Diego
18 Marietta Meagle, Judge, Presiding

19 Argued and Submitted
20 May 4, 2022
21 San Diego, California

22 Filed April 5, 2022
23 Before Judge Connor Middlebrooks, Judge Tamara Swan, and Judge Peter Hapley,
24 District Judges

25 Opinion by Judge Middlebrooks
26
27
28

1 **OPINION**

2 MIDDLEBROOKS, D. Judge:

3 Appellant Nick Nadauld (“Appellant”) appeals his conviction after a jury found him guilty
4 on charges of involuntary manslaughter, lending of an assault weapon, and failure to render an
5 assault weapon inoperable. Appellant reserved his right to appeal the superior court’s ruling on the
6 suppression motion. Appellant contends the superior court erred in denying his motion to suppress
7 evidence prior to trial. For the foregoing reasons, we agree with Appellant, and remand the case for
8 further proceedings consistent with this opinion.

9 **I. BACKGROUND**

10 Because the facts of this case are not in dispute, this court adopts and incorporates by
11 reference the facts from the superior court’s ruling. The superior court denied Appellant’s motion to
12 suppress evidence which would have disallowed the Government to use the evidence from the
13 ALPR, pole-mount camera, and the house search. Consequently, Appellant was found guilty of all
14 charges excluding murder in the 2nd degree and now appeals the superior court’s order denying his
15 motion to suppress. Appellant’s standing on both claims is not in dispute.

16 **II. ANALYSIS**

17 Appellant argues that his conviction should be reversed because the superior court erred in
18 failing to suppress the Government’s evidence obtained in violation of his Fourth Amendment
19 rights. First, Appellant argues that the warrantless ALPR database search of his location data and
20 the surveillance footage from the pole-mounted camera was unconstitutional under the Fourth
21 Amendment. Second, Appellant contends that Officers Hawkins’ and Maldonado’s search of his
22 house was unconstitutional under the Fourth Amendment.

23 **A. Electronic Surveillance**

24 **1. ALPR**

25 The Fourth Amendment, as applied to the states through the Fourteenth Amendment,
26 protects individuals against "unreasonable searches and seizures" by the government and protects
27 privacy interests where an individual has a reasonable expectation of privacy. U.S. Const. Amend.
28 4; U.S. Const. Amend. 14; *see Smith v. Maryland*, 442 U.S. 735, 740 (1979). An expectation of

1 privacy is protected by the Fourth Amendment where: (1) an individual has exhibited a subjective
2 expectation of privacy; and (2) that expectation of privacy is one that “society is prepared to
3 recognize as ‘reasonable.’” *Id.*, quoting *Katz v. United States*, 389 U.S. 347, 361(1967) (Harlan, J.,
4 concurring).

5 Appellant has done nothing to vitiate a subjective expectation of privacy, unlike the defendant
6 in the recent Court of Appeals case addressing this issue. *United States v. Yang*, 958 F.3d 851 (9th
7 Cir. 2020) (finding that defendant had no reasonable expectation of privacy in the historical location
8 data of a rental car because he had kept it six days past the contracted return date and disabled its GPS
9 locator features). Therefore, the focal issue to be asked is the second, whether the warrantless usage
10 of the ALPR database violates a societal expectation of privacy.

11 The Supreme Court has provided two guideposts to determine which expectations of privacy
12 are entitled to protection. One of which is to resolve “the privacies of life” against “arbitrary
13 power.” *Carpenter v. United States*, 138 S. Ct. 2206, 2214 (2018) (quoting *Boyd v. United States*,
14 116 U. S. 616, 630 (1886). The second is to consider that the framers intended “to place obstacles in
15 the way of a too permeating police surveillance.” *Id.*, (quoting *United States v. Di Re*, 332 U. S. 581,
16 595, (1948)). Our ruling today is founded upon those guideposts.

17 To begin, the superior court’s reliance on *Hufford* is misplaced. *United States v. Hufford*, 539
18 F.2d 32 (9th Cir. 1976). In *Hufford*, the tracking beepers had been placed with the consent of the
19 caffeine drum sellers. *Id.* at 33. The defendant’s purchase of large drums of caffeine was more suspect
20 than the mere ownership of an assault rifle. *Id.* The placement of the second tracking beeper was made
21 pursuant to a court order and followed the discovery of a rotary tableting machine in defendant’s
22 possession. *Id.* Unlike the defendants of *Hufford*, no court order was obtained for the tracking of
23 Nadauld’s vehicle. The likelihood of criminal activity was higher in *Hufford*, due to the caffeine drum
24 purchase and the rotary tableting machine – an expensive device used in pharmaceutical
25 manufacturing. *Id.* Nadauld’s only action to merit the tracking of his vehicle was legally owning an
26 assault rifle. Assault rifle ownership can be entirely benign, while the ownership of a highly
27 specialized and expensive rotary tableting machine left little doubt as to Hufford’s involvement in
28 drug manufacturing. *Id.* Due to Nadauld’s lack of challenge to the Second Amendment, we do not

1 consider its ramifications, but we conclude that legal ownership of an assault rifle among fifty others
2 does not permit the government to track their vehicle movements by accessing the ALPR database
3 without obtaining a warrant. The tracking of fifty individuals who only have a slight possibility of
4 involvement with the crime is too “permeating” of police surveillance to be reasonable. *Di Re*, 332
5 U. S. at 595.

6 The superior court’s assertion that ALPR does not constitute “dragnet” type practices is
7 erroneous. A dragnet is any system of coordinated measures for apprehending criminals or suspects,
8 such as road barricades, traffic stops, and general increased police alertness. It is not limited to 24-
9 hour surveillance. ALPR definitively counts as a “dragnet” type practice as it is a coordinated measure
10 of tracking location data to apprehend criminals. Thus, the “different constitutional principles” of
11 *Knotts v. United States* must apply, and we find the usage of ALPR distinguishable from that holding.
12 *United States v. Knotts*, 460 U.S. 276 (1983).

13 Additionally, the Supreme Court has held “that the Government’s installation of a GPS device
14 on a target’s vehicle, and its use of that device to monitor the vehicle’s movements, constitutes a
15 “search.” *United States v. Jones*, 565 U.S. 400, 404 (2012). Though the ALPR database does not act
16 as a continuous location indicator like a GPS tracking device, it comes within its purview and should
17 be designated as a search. Before embarking on such a search, the Fourth Amendment requires that
18 the police obtain a warrant. *See Franks v. Delaware*, 438 U.S. 154, 164 (1978).

19 Also applicable is the Supreme Court’s holding in *Kyllo v. United States*, as the ALPR
20 database and scanning constitutes a technology that is not in general public use. *Kyllo v. United States*,
21 533 U.S. 27 (2001). Though the ruling in *Kyllo* concerned obtaining the information regarding the
22 interior of a home by use of a thermal imager, we find obtaining an individual’s location data by a
23 state-of-the-art scanner and database is comparable. *Id.* at 34-35. Like thermal imagers, license-plate
24 scanners are not in the general public’s use. The consideration of the publicity of the technology goes
25 to the reasonable expectation of privacy outlined in *Katz*. *Katz*, 389 U.S. at 361. For example,
26 the public technology enabling human flight has exposed to public view – and thus to government
27 observation – uncovered portions of the house and its curtilage that once were private.
28 *See California v. Ciraolo*, 476 U.S. 207, 215 (1986). If license-plate scanning technology was in

1 public use, there might not be a reasonable expectation of privacy regarding such collection of data.
2 However, license-plate scanning technology is not in public use. This heightens, not diminishes, the
3 reasonable expectation of privacy.

4 The fact that the information acquired from the ALPR database only pertained to public
5 movements has not been held to be a bar to Fourth Amendment Protection. In *Carpenter v. United*
6 *States*, the Supreme Court concluded that the government had conducted a search by accessing,
7 through a wireless carrier, the location data from an individual's phone, stating that "an individual
8 maintains a legitimate expectation of privacy in the record of his physical movements" -- even if those
9 movements take place in public. *Carpenter*, 138 S. Ct. at 2217. Accessing a substantial history of a
10 person's movements contravenes societal expectations of privacy. Most citizens would not feel
11 comfortable with the perpetual surveillance of law enforcement of their every movement. Having the
12 government peering over the shoulder of citizens in all their public activities without probable cause
13 and without a warrant violates the spirit of the Fourth Amendment.

14 That the defendants in *Carpenter* had voluntarily disclosed their cell-location to their wireless
15 carriers is also relevant. *Carpenter*, 138 S. Ct. at 2216. Notwithstanding that a third party had full
16 access to the information, the Supreme Court still found that there was a reasonable expectation of
17 privacy. *Id.* at 2223. Though Nadauld's public movements could be considered a disclosure to a third
18 party, as members of the public could observe his vehicle, such does not obviate a reasonable
19 expectation of privacy.

20 However, in the dissenting opinion of *Carpenter*, Justice Kennedy, joined by Justice Thomas
21 and Justice Alito, questioned the applicability of the *Katz* test when dealing with property not
22 belonging to the individuals being searched. *Carpenter*, 138 S. Ct. at 2227; *Katz v. United States*, 389
23 U. S. 347 (1967). In this case, the ALPR database did not belong to Nadauld. They explained their
24 rationale as follows.

25 First, as a matter of settled expectations from the law of property,
26 individuals often have greater expectations of privacy in things and
27 places that belong to them, not to others. And second, the Fourth
28 Amendment's protections must remain tethered to the text of that
Amendment, which, again, protects only a person's own "persons,
houses, papers, and effects.

Carpenter v. United States, 138 S. Ct. 2206, 2227 (2018).

1 Their reasoning is applicable here, as the ALPR database information did not belong to
2 Appellant, or any of the individuals investigated; it already belonged to the government. It was not a
3 search of Appellant’s personal property. Before *Carpenter*, the Supreme Court twice held that
4 individuals have no Fourth Amendment interests in business records which are possessed, owned,
5 and controlled by a third party. *Carpenter*, 138 S. Ct. 2206; *United States v. Miller*, 425 U. S. 435
6 (1976); *Smith v. Maryland*, 442 U. S. 735 (1979). This is true even when the records contain personal
7 and sensitive information. The ALPR database is not a third-party business record, but the similarity
8 is tangible enough to possibly warrant application.

9 However, we must follow Justice Roberts’ majority opinion in *Carpenter*, and we do not call
10 the applicability of *Katz* into question. *Carpenter*, 138 S. Ct. 2206; *Katz*, 389 U. S. 347. The third-
11 party access of cell location data in *Carpenter* is analogous to the ALPR database. *Carpenter*, 138 S.
12 Ct. at 2213. Though there may be some level of public knowledge of a person’s activities, such does
13 not discount a reasonable expectation of privacy. Unless the owner of a vehicle has given consent,
14 we find that warrantless usage of the ALPR database to determine the movements of an individual is
15 unconstitutional. Such an invasion of privacy should only be allowed under probable cause,
16 determined by a judge issuing a warrant.

17 **2. Pole-Mount Cameras**

18 As the mounting of the camera on the utility pole was only conducted by cause of the
19 information retrieved from ALPR, such evidence was derivative of the prior ALPR practice and is
20 therefore excluded by the denial of that ALPR practice here. Thus, a discussion of the
21 constitutionality of private residence surveillance by law enforcement is not required to reverse the
22 superior court’s ruling on this matter. We do not decide the constitutionality of the issue at this time.

23 **B. Entry and Search of Appellant’s House**

24 **1. Probable Cause**

25 To determine whether an officer had probable cause for an arrest, “we examine the events
26 leading up to the arrest, and then decide ‘whether these historical facts, viewed from the standpoint
27 of an objectively reasonable police officer, amount to probable cause.’” *Maryland v. Pringle*, 540
28 U. S. 366, 371 (2003) (quoting *Ornelas v. United States*, 517 U. S. 690, 696 (1996)). Because

1 probable cause “deals with probabilities and depends on the totality of the circumstances,”
2 *Maryland v. Pringle*, 540 U.S. 366, 371 (2003), it is “a fluid concept” that is “not readily, or even
3 usefully, reduced to a neat set of legal rules,” *Illinois v. Gates*, 462 U. S. 213, 232 (1983). It
4 “requires only a probability or substantial chance of criminal activity, not an actual showing of such
5 activity.” *Id.* at 243-244.

6 In terms of probabilities, Appellant’s involvement was far from probable. Appellant was one
7 of a total of fifty people who legally owned an automatic assault rifle and was not law enforcement.
8 Not included in that list are all the people in San Diego who may have purchased a semi-automatic
9 assault rifle and illegally converted it into an automatic assault rifle. This significantly changes the
10 number of people that could have committed the crime. And that is assuming that the Balboa
11 shooter was from San Diego, and there was nothing to exclude the possibility that the shooter hailed
12 from elsewhere in California or even from out of state. Additionally uninvestigated were all the
13 people who legally owned assault rifles through being law enforcement or off-duty military.
14 Though perhaps law enforcement and off-duty military personnel are less likely than the average
15 citizen to commit such a crime, the possibility still undoubtedly existed.

16 The tracking of McKennery's vehicle was one of also fifty vehicles that left Balboa Park.
17 The simultaneous tracking of the movements of fifty rifle owners with the fifty Balboa Park driver
18 suspects assumes, somewhat arbitrarily, as to the association between two drivers. The association
19 also does not include the forty unidentified people who fled from Balboa Park on foot without being
20 identified. In sum, probable cause must be probable. Law enforcement did not have sufficient
21 evidence for a likely conclusion that Appellant was in association with the Balboa shooter, as much
22 of the evidence was coincidental at best.

23 Regarding Appellant’s actions when the police officers came to his front door and
24 questioned him about his activities with the assault rifle, we find that his responses were perfectly
25 reasonable. Law enforcement told Appellant that they would be coming in a month, not that very
26 week. Appellant had a right to the privacy of his home and the privacy of his weapons. For Officer
27 Hawkins to barge into Appellant’s home without permission and without a warrant is exactly the
28

1 type of constitutional violation that the framers meant to prevent. The “overriding respect for the
2 sanctity of the home” must be considered. *Payton v. New York*, 445 U.S. 573, 601 (1980).

3 Considering the totality of circumstances regarding Appellant and the actions of Officer
4 Hawkins, we find that law enforcement did not have probable cause to enter and search Appellant’s
5 home. Combined with a lack of exigent circumstances, we find that the warrantless search of
6 Appellant’s home violated his constitutional rights.

7 **2. Exigent Circumstances**

8 The circumstances of the search were not exigent, and as such the search was
9 unconstitutional.

10 Law enforcement officer must either have a search warrant or be prepared with a reason as
11 to why they do not need one. A warrant will be only issued upon probable cause. U.S. Const. amend
12 IV; *United States v. Leon*, 468 U.S. 897, 904 (1984). The Fourth Amendment contains a “strong
13 preference” for warrants. *Massachusetts v. Upton*, 466 U.S. 727, 734 (1984). Yet, the lack of a
14 warrant is not dispositively fatal, as several exceptions to the warrant requirement have been
15 established. *Katz*, 389 U.S. at 357. Where a search has been conducted without the benefit of a
16 warrant, the government bears the burden of showing that it falls within one of these few
17 “specifically established and well-delineated exceptions.” *Id.* at 356-57.

18 “[C]arefully delineated,” the exception should govern only in genuine emergency situations.
19 *Katz*, 389 U.S. at 357. Circumstances qualify as “exigent” when there is an imminent risk of death
20 or serious injury, or danger that evidence will be immediately destroyed, or that a suspect will
21 escape. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *Kentucky v. King*, 563 U.S. 452, 473
22 (2011).

23 None of these carefully delineated circumstances were present in this case. There was no fleeing
24 suspect, there was no imminent risk of death or serious injury, and there was no clear danger that
25 evidence would be immediately destroyed. Though these things could have occurred in this
26 instance, we find that the risk of them occurring is no greater than the normal circumstances that are
27 encountered when the police are investigating a possible suspect. The investigation took place two
28 weeks after the Balboa shooting. At this point, the investigation was no longer immediate. Though

1 subjectively time-sensitive, owing to pressure from the public and the media, it was not exigent as
2 understood in the recognized sense. Additionally, the police already had reason to suspect
3 McKennery. All the suspects known at this point could have been investigated with warrants. In the
4 case of Appellant and McKennery, there was ample time to procure a warrant from a lawfully
5 appointed magistrate. Though perhaps inconvenient for the officers to obtain such a warrant, the
6 circumstances did not permit them to violate this paramount protection of the Fourth amendment.

7 **3. Fruit of the Poisonous Tree**

8 The Supreme Court first articulated the "fruit-of-the-poisonous-tree" doctrine in *Wong Sun*
9 *v. United States*, 371 U.S. 471 (1963). The "fruit" is evidence derived from an illegal source, the
10 poisonous tree. *Id.* In *Wong Sun*, the Court held that evidence and witnesses discovered because of
11 an illegal search are "tainted" and must be excluded. *Id.* at 492. The *Wong Sun* doctrine also applies
12 when the fruit of the Fourth-Amendment violation is not physical evidence, but a confession. *Id.* at
13 471; *see Taylor v. Alabama*, 457 U.S. 687, 690 (1982).

14 Because the officers could not establish probable cause for their search without the searches
15 conducted by the ALPR and the pole-mount camera, any evidence retrieved as a result would be the
16 "fruits" of the search. And because, as stated above, the searches conducted by the ALPR and pole-
17 mount cameras were impermissible, the "fruits" of those searches must be suppressed. Appellant's
18 pressured admission of lending the assault rifle must be suppressed as well, as "fruits" of the search.
19 If not for Officer Hawkins' house search which unduly pressured Appellant, Appellant likely would
20 not have uttered the statement.

21 **III. CONCLUSION**

22 For the reasons above, the evidence attained through these unconstitutional practices is
23 excluded, the Appellant's motion to suppress is **GRANTED**, and this case is **REMANDED** for
24 further proceedings consistent with this decision. Any question of harmless error and whether a new
25 trial need be ordered is better addressed by the superior court.

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PEOPLE V. NADAULD

CASE NUMBER: SCD397124

SECONDARY INSPECTION FOOTAGE

OF

NADAULD, NICK

ON

SEPTEMBER 29, 2022

Transcribed by: Skyler White

Legend:

HAWKINS: FBI OFFICER JACK HAWKINS

MALDONADO: FBI OFFICER JENNIFER MALDONADO

NADAULD: NICK NADAULD

EXHIBIT A

1 *****

2 **(START OF RECORDING 00:00:00:)**

3 HAWKINS: Looks like this is the place.

4 MALDONADO: Are you sure you don't want to call for more backup?

5 HAWKINS: We don't have time for that. And they're backed up as it is. Let's go, rookie.

6 ***knocking sound***

7 **door opens**

8 NADAULD: Um... Hello officers.

9 HAWKINS: Good afternoon, sir. Are you Nick Nadauld?

10 NADAULD: Yes. Did I do something wrong?

11 HAWKINS: Maybe. Do you still have that M16 your old man left you?

12 NADAULD: Um... I thought you guys were coming in like a month to talk about that.

13 HAWKINS: Well, we thought we'd get a head start. It shouldn't matter though. You were required
14 to render it inoperable within ninety days of receiving it. Didn't your father pass away, what, five
15 years ago? You should have nothing to worry about then.

16 NADAULD: I suppose.

17 HAWKINS: Well, do you have nothing to worry about?

18 *Nadauld stares at the officers for five seconds*

19 NADAULD: No, there's nothing to worry about.

20 HAWKINS: Well then, we'd like to see the gun.

21 NADAULD: I don't want to show you that now, you said you'd come in a month.

22 HAWKINS: Maybe you've heard of what happened in Balboa Park a couple weeks ago? We want
23 to make sure all assault weapons are accounted for.

24 NADAULD: Well, I didn't have anything to do with that.

25 HAWKINS: We want to get all our bases covered.

26 NADAULD: Fine. Why don't you wait here while I go get it?

27

28

EXHIBIT A

1 HAWKINS: Sir, I think we need to come into the house to verify that the weapon has already been
2 rendered inoperable.

3 NADAULD: Well, my house is kind of messy. I'd prefer that you wait out here.

4 HAWKINS: I don't think so, Nick.

5 *Hawkins walks into the house. Nick steps aside.*

6 NADAULD: Hey, I didn't say you could come into my house. Aren't you not allowed if I don't say
7 so?

8 HAWKINS: Where's the gun, Nick?

9 NADAULD: Didn't you hear what I said?

10 HAWKINS: Officer Maldonado, start checking the rooms.

11 NADAULD: Hey, what's going on here? I don't want you in my house!

12 HAWKINS: Why? You got something to hide? 9 people turn up dead, gunned down by an
13 automatic assault rifle, 5.56mm rounds left at the scene, you think we wouldn't put the pieces
14 together?

15 NADAULD: That wasn't me!

16 HAWKINS: You want to help us catch the guy, then? Then tell me where the gun is!

17 NADAULD: It wasn't my gun!

18 *Maldonado enters, holding an M16 with plastic gloves*

19 MALDONADO: Found it, Hawkins. Still looks operable.

20 HAWKINS: Well, well, well. Looks like you're the prime suspect for the Balboa shooting, Nick.
21 How does that sound?

22 NADAULD: It wasn't me! I didn't even have the gun then!

23 HAWKINS: Who'd you give it to?! Frank McKennery?

24 NADAULD: ...Yes! How'd you know that? But I swear he didn't do it! I got worried on the day of
25 the shooting and texted him where he was. He sent a picture of himself in the Arizona desert just
26 target shooting!

27

28

EXHIBIT A

1 HAWKINS: Well, we'll soon have him in custody too to ask him. Hands on your head, we're
2 putting you under arrest.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
PEOPLE V. NADAULD

CASE NUMBER: SCD397124

DESCRIPTION: Phone record: text conversation between Nick Nadauld and Frank McKennery.

Legend:

NADAULD: NICK NADAULD

MCKENNERY: FRANK MCKENNERY

DATE OF CONVERSATION: September 14, 2021

1:04 pm: NADAULD: Hey, where are you??

1:08 pm: MCKENNERY: In Arizona man! Trying out that sweet rifle! Do you wanna see??

1:08 pm: NADAULD: Ok.

1:09 pm: MCKENNERY: (IMG001) [depicts a selfie of Frank McKennery holding the M16 in the desert with a target in the background].

1:09 pm: NADAULD: Ok. Don't send that to anyone else or post it anywhere. I wasn't supposed to loan it, remember? Did you hear what happened in Balboa Park??

1:09 pm: NADAULD: Hello??

1:12 pm: MCKENNERY: I didn't send it anywhere else. No, what happened?

1:12 pm: NADAULD: Damn dude, there was this mass shooting, nine people died...

1:14 pm: MCKENNERY: That's crazy. Did they catch the guy?

1:14 pm: NADAULD: No, not yet. The police didn't find anything.

1:14 pm: MCKENNERY: Wow. That's nuts.

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
PEOPLE V. NADAULD

CASE NUMBER: SCD397124

Cross Examination of Expert Witness Matthew Fitzgerald

Testimony and Notes of Evidence, taken in the above-entitled and -numbered cause, before the **HON. MARIETTA MEAGLE**, Judge, presiding on the 6th day of December, 2021.

APPEARANCES:

REPRESENTING THE PEOPLE OF CALIFORNIA

TYSON TERRY, ESQ.

SAN DIEGO COUNTY DISTRICT ATTORNEY

REPRESENTING THE DEFENDANT

DIANA LARIVIERE, ESQ.

SAN DIEGO COUNTY PUBLIC DEFENDER

REPORTED BY:

AMY LUND, CCR, RPR

OFFICIAL COURT REPORTER

IN AND FOR THE COUNTY

OF SAN DIEGO

EXHIBIT C

1 **FBI FORENSICS INVESTIGATOR MATTHEW FITZGERALD**

2 Cross-Examination by Ms. Lariviere 1

3

4 LARIVIERE: Did you investigate the photographs stored on Mr. McKenery's phone?

5 FITZGERALD: Yes.

6 LARIVIERE: Did you see the time that each photograph was taken?

7 FITZGERALD: Yes.

8 LARIVIERE: Did you see this photograph? [photo referenced in Exhibit B shown to Matthew
9 Fitzgerald.]

10 FITZGERALD: Yes.

11 LARIVIERE: Did you see that the date this photograph was taken originally was September 11,
12 2021?

13 FITZGERALD: Yes.

14 LARIVIERE: No further questions.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT D

1 **SAN DIEGO TIMES**

2 **September 14, 2021**

3 **MASS SHOOTING AT BALBOA PARK - 9 KILLED, 6 WOUNDED**

4
5 San Diego Times correspondents report that earlier today, a masked man wearing black combat
6 gear and armed with a fully automatic rifle killed nine people and wounded six more in a deadly
7 attack in Balboa Park. Witnesses and officials described the scene as horrific. Our
8 correspondents noted that the gunman appeared on a rooftop and opened fire on a crowd while
9 tourists and residents ran for their lives.

10
11 Police arrived on the scene as hundreds were fleeing or hiding in terror. The gun and gunman
12 were nowhere to be found.

13
14 Rafael Espinoza, a survivor, reported, “It was something out of my worst nightmares. One
15 moment I’m walking in the park with my family, the next thing I know, I hear gunshots, my arm
16 explodes in pain and feels like it's on fire, and my wife is lying face down on the ground not
17 moving. If the police don’t find whoever took my wife away from me, I will hunt the killer down
18 myself.”

19
20 Other reports indicated that the gunman suddenly appeared on a rooftop, fired for about 30
21 seconds at a crowd, and disappeared.

22
23 The only clue as to the murderer’s identity seems to be a note that was left behind on the rooftop
24 where the shooter was spotted. Jordan McKay, a 32-year-old, off-duty Marine discovered the
25 note while trying to stop the killer. He reported, “As soon as I heard the gunshots and saw that
26 mother***** on the roof, I ran toward the building and tried to find a way up to get that
27 ****ole. It took me too long, though. By the time I got up there, he was gone. I found this note,
28

EXHIBIT D

1 though. It said ‘Manifesto’ at the top and said something about hating society, or
2 something...didn’t make a lot of sense. I gave it to the police.”

3

4 Law enforcement was able to close off the area a short time after the shooting. However, the
5 police were unable to identify the killer. San Diego Law enforcement assures that it will stop at
6 nothing to find the shooter and bring him or her to justice.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT E

1 **SAN DIEGO TIMES**

2 **September 21, 2021**

3 **BALBOA SHOOTER MANHUNT CONTINUES**

4

5 A week has passed since the deadly mass shooting in Balboa Park last Tuesday. The killer
6 remains at large.

7

8 Many have called law enforcement's failure to find and capture the unknown gunman a
9 humiliating catastrophe. Rachel Nguyen, one of the survivors of the Balboa Park attack,
10 commented, "I can't believe they haven't caught my husband's killer. I mean, it's not like we
11 were shot at in a dark alley with nobody around. This was in broad daylight in Balboa Park.
12 There's gotta be hundreds of security cameras in Balboa Park that would have shown something.
13 These police are lazy. They are sitting on their ***es eating donuts paid for by my dead
14 husband's tax money. I mean, what are we even paying these guys for?"

15

16 Detectives from the state and the FBI reportedly have been sent in to assist with the ongoing
17 investigation.

18

19 San Diego Chief of Police Marcus Castaneda made the following statement in a recent press
20 release:

21 "We are working day and night to catch the Balboa Park shooter. Our officers will not rest until
22 we achieve justice for the victims of this terrible crime. Chasing down leads takes time. The
23 killer didn't leave a map to his or her whereabouts. I promise you we are doing everything in our
24 power to find the shooter. We have more than one hundred officers and law enforcement
25 personnel from San Diego, the State, and the FBI, working like dogs to find this monster."

26

27

28

EXHIBIT E

1 The public has demanded to see a copy of the mysterious “Manifesto” the killer left behind.

2 Chief Castaneda commented:

3

4 “At this time, we will not be releasing a copy of the manifesto to the public in the interest of
5 being able to maintain an effective investigation. The Manifesto may be released to the public at
6 a later date.”

7

8 Chief Castaneda declined to comment further.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT F

1 SAN DIEGO TIMES

2 September 30, 2021

3 **BALBOA SHOOTER FOUND**

4

5 After a two-week long search, the FBI has found the man they believe to be the Balboa Park
6 shooter. The FBI found him dead in his home. The alleged shooter, a 33-year-old male
7 construction worker named Frank McKennery, was a San Diego resident. It appears McKennery
8 committed suicide when the police arrived at his home. McKennery left a note behind confessing
9 to his crimes.

10

11 Nick Nadauld, a 39-year-old coworker of McKennery's, was also brought into custody. Sources
12 say that the FBI identified Nadauld as the owner of the gun used by McKennery. The weapon is
13 now in evidence and has been identified as an M16 Assault Rifle. Forensic ballistics experts,
14 using bullet cases recovered from the crime scene, have already conducted their examination,
15 and have affirmatively identified Nadauld's M-16 as the weapon that was used by the Balboa
16 Park shooter.

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT G

1 Cal. Penal Code § 30600

2
3 § 30600. Manufacture, distribution, sale or transport of assault weapon or .50 BMG rifle

4 (a) Any person who, within this state, manufactures or causes to be manufactured, distributes,
5 transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or
6 lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a
7 felony, and upon conviction shall be punished by imprisonment pursuant to subdivision (h) of
8 Section 1170 for four, six, or eight years.

9
10 (b) In addition and consecutive to the punishment imposed under subdivision (a), any person
11 who transfers, lends, sells, or gives any assault weapon or any .50 BMG rifle to a minor in
12 violation of subdivision (a) shall receive an enhancement of imprisonment pursuant to
13 subdivision (h) of Section 1170 of one year.

14
15 (c) Except in the case of a first violation involving not more than two firearms as provided in
16 Sections 30605 and 30610, for purposes of this article, if more than one assault weapon or .50
17 BMG rifle is involved in any violation of this article, there shall be a distinct and separate
18 offense for each.

EXHIBIT H

1 Cal. Penal Code § 30915

2

3 § 30915. Obtaining assault weapon by bequest or intestate succession

4

5 Any person who obtains title to an assault weapon registered under this article or that was
6 possessed pursuant to subdivision (a) of Section 30630 by bequest or intestate succession shall,
7 within 90 days, do one or more of the following:

8

9 (a) Render the weapon permanently inoperable.

10 (b) Sell the weapon to a licensed gun dealer.

11 (c) Obtain a permit from the Department of Justice in the same manner as specified in Article 3
12 (commencing with Section 32650) of Chapter 6.

13 (d) Remove the weapon from this state.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT I

1 **PEOPLE v. NADAULD**

2 **CASE NUMBER:** SCD397124

3 **DESCRIPTION:** Note (typed), recovered from the rooftop of the San Diego Museum of Art
4 on September 14, 2021, at 12:13 pm.

5

6

Manifesto

7

8 I've always been hated by the world. Ever since I was born, I have been under siege. From my
9 crack-addicted mom, my dad who was in and out of jail, I have constantly been under attack
10 from morons and idiots.

11

12 My whole life has just been one tragedy after another. One loss after another. Yet here I am, 27,
13 no job, no girlfriend. Everybody else gets everything except me. I've always been treated like
14 scum, like lower than human. Psychiatrists just took my money and laughed at me behind my
15 back.

16

17 I tried religion, but that was a waste. Bunch of morons hoping for an afterlife. But there isn't. It's
18 just blackness. Nothingness. Even Guru Jora couldn't help me.

19

20 My friends and I are going to show this world that there's nothing. Nothing but despair.

21

22 We're going to do this again. Get ready. Soon.

23

24

25

26

27

28

EXHIBIT J

1 **PEOPLE v. NADAULD**

2 **CASE NUMBER:** SCD397124

3 **DESCRIPTION:** Note (typed), recovered from the home of Frank McKennery on
4 September 29, 2021, at 6:17 pm.

5

6

Frank McKennery's Death Note

7

8 If you're reading this, then I'm already dead. I regret what I did. There's nothing I can really do
9 to take it back, I know that. I suppose I wanted to set the record straight. I suppose it's the least I
10 can do.

11

12 I killed those people because I was going after this girl, Jane Bezel, and her fiancé. I followed
13 her for years on Instagram, I was in love with her, obsessed with her. And then she got engaged.
14 I couldn't live with it. I couldn't live with her being with another man. I couldn't live with
15 myself.

16

17 I knew if I just went after her and the fiancé, they might be able to connect the dots. So, I played
18 it off as a mass murder. I knew she always went to Balboa Park on Free Tuesdays. I got the rifle
19 from another guy, but I'm not going to say who. He didn't have anything to do with this. He
20 didn't know anything. But I got the gun, I made my plans, and the rest is history. That manifesto
21 I left was just something to send the cops on a wild goose chase.

22

23 If I could take it back, I would. The only thing I can do now is what I'm sure a lot of people
24 want. Me to end. I can give them that.

25

26

27

28

California ALPR FAQs – NCRIC

How do Automated License Plate Recognition (ALPR) systems work?

Automated License Plate Recognition (ALPR) systems function to automatically capture an image of a vehicle and the vehicle’s license plate, transform the plate image into alphanumeric characters using optical character recognition, compare the plate number acquired to one or more databases (also known as “hot lists”) of vehicles of interest to law enforcement, and then alert law enforcement officers when a vehicle of interest has been observed.

How do California Law Enforcement Agencies use ALPR?

In one common use of ALPR technology, license plate encounters are compared against law enforcement databases, also known as “hot lists”. The lists contain the 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. The information is also retained for a fixed retention period, though it is only re-accessible by law enforcement given a legitimate law enforcement purpose.

A second use of ALPR technology is to canvas license plates around any crime scene to assist in the identification of suspects, victims, and witnesses. ALPR technology only acts as a pointer system that allows law enforcement to conduct searches with limited information, including partial license plate information.

Where is ALPR data stored?

ALPR data resides in a secure facility with 24/7 security measures in place.

Does the ALPR system collect my personal identifying information?

The ALPR system does not contain personal identifying information associated with data collected through ALPR devices. The system only contains the data sets of license plate

EXHIBIT K

1 numbers, photos of the vehicles, and geospatial locations from where the images were captured.
2 There is no connectivity in the ALPR system to the vehicle’s registration information or the
3 driver's license information of the owner.
4

5 **How accurate is the ALPR technology?**

6 As ALPR technology is translating optical characters to digital data there is a small error rate in
7 translation of alphanumeric characters that are similar in shape. ALPR operators must recognize
8 that the data collected from the ALPR device, and the content of referenced hot lists, consists of
9 data that may or may not be accurate, despite ongoing efforts to maximize the currency and
10 accuracy of such data. To the greatest extent possible, law enforcement agencies request that
11 vehicle and subject information be verified from separate Law Enforcement information sources
12 to confirm the vehicle or subject’s identity and justification for law enforcement contact. Law
13 enforcement users of ALPR Data must, to the fullest extent possible, visually confirm that the
14 plate characters generated by the ALPR readers correspond with the digital image of the license
15 plate in question.
16

17 **Can members of the public request the images of where their vehicle has been seen by ALPR?**

18 No, the ALPR systems are restricted to law enforcement personnel with a lawful purpose for
19 searching the system. If a member of the public’s vehicle or license plate is stolen, law
20 enforcement agencies with a case number may search the database to search for the stolen
21 vehicle or license plate and establish an alert to notify them if the license plate is encountered.
22

23 **Where are ALPR cameras located?**

24 ALPR units are attached to law enforcement vehicles or deployed at fixed locations, where they
25 collect license plate information from vehicles on public roadways, public property and vehicles
26 that are within public view. As the ALPR devices are a law enforcement investigative tool we do
27 not provide the locations of the cameras. If subjects engaged in violent and/or serial criminal
28

EXHIBIT K

1 activities are made aware of the location of the devices, they could take measures to avoid
2 detection.

3
4 **How long are ALPR records maintained?**

5 Most ALPR records are maintained for a set period within California that ranges by jurisdiction
6 from sixty (60) days to five (5) years with records purged unless the data has become, or it is
7 reasonable to be believed that it will become, evidence in a criminal or civil action or is subject to a
8 lawful action to produce records.

9
10 **Can ALPR devices see into my vehicle?**

11 Unlike red light cameras, ALPR devices do not have illumination to aid in identifying the driver
12 of the vehicle. The purpose of the ALPR is to identify the vehicle, not the occupants. If ambient
13 lighting is sufficient or a subject is outside and near the vehicle their image may be captured.

14
15 California ALPR FAQs, Northern California Regional Intelligence Center (Sep. 19, 2022),
16 https://ncric.org/html/California%20Law%20Enforcement%20ALPR%20FAQ_.pdf

EXHIBIT L

1 **THE PEOPLE OF THE STATE : SUPERIOR COURT OF THE STATE OF**
2 **OF CALIFORNIA CALIFORNIA FOR THE**
3 **COUNTY OF SAN DIEGO**

4 **v. :**
5 **NICK NADAULD, DATE: DECEMBER 21, 2021**
6 **Defendant. :**

7
8 *This form is only to be used to report your verdict.*
9

10 **QUESTION NUMBER ONE**

11 On the nine charges of Murder in the Second Degree, we find the defendant:

- 12 1a. Not Guilty of Murder in the Second Degree
- 13 1b. Guilty of Murder in the Second Degree

14
15 **IF YOU HAVE FOUND THE DEFENDANT NOT GUILTY OF MURDER IN THE**
16 **SECOND DEGREE, GO TO QUESTION NUMBER TWO. IF YOU FOUND THE**
17 **DEFENDANT GUILTY OF MURDER IN THE SECOND DEGREE, SKIP QUESTION**
18 **TWO AND PROCEED TO QUESTION THREE.**

19
20 **QUESTION NUMBER TWO**

21 On the nine charges of Involuntary Manslaughter, we find the defendant:

- 22 2a. Not Guilty of Involuntary Manslaughter
- 23 2b. Guilty of Involuntary Manslaughter

24 **PROCEED TO QUESTION THREE.**
25
26
27
28

EXHIBIT L

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

QUESTION NUMBER THREE

On the charge of Lending an Assault Weapon, we find the defendant:

- 3a. Not Guilty of Lending an Assault Weapon
- 3b. Guilty of Lending an Assault Weapon

PROCEED TO QUESTION FOUR

QUESTION NUMBER FOUR

On the charge of Violating California Penal Code Section 30915, we find the defendant:

- 3a. Not Guilty of Violating California Penal Code Section 30915.
- 3b. Guilty of Violating Penal Code Section 30915

**PLEASE ADVISE THE SHERIFF’S OFFICER THAT YOU HAVE REACHED A
VERDICT.**