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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. DYTON WILLIAM GILLILAND DOB: 10/31/1960 Defendant.	NO. YKCRM 15-1124 PEOPLE'S OPPOSITION TO MOTION TO SUPPRESS AND MOTION TO DISMISS Date: 1-5-15 Time: 8:30 am Dept TBD

TO THE CLERK OF THE COURT, THE DEFENDANT, AND DEFENDANT'S COUNSEL, JAMES BUCHAL:

The People oppose the motion to suppress and motion to dismiss filed by the Defendant. The opposition will be based on the below points and authorities, evidence produced at the hearing, and any argument heard at the hearing.

I. The doctrine of collateral estoppel estops the defense from stating the law is unconstitutional.

The doctrine of collateral estoppel is applicable to criminal cases. (Ashe v. Swenson (1970) 397 U.S. 436, 443.) "[W]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." (Ibid.)

> In criminal cases, the doctrine of collateral estoppel is not to be applied with hypertechnicality, "but with realism and rationality. Where a previous judgment of acquittal was based upon a general verdict, as is usually the case, this approach requires a court to 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.' "

(People v. Gordon (2009) 177 Cal.App.4th 1550, 1557, citing Ashe v. Swenson, supra, at pp. 443-444.)

In Lucido v. Superior Court (1990) 51 Cal.3d 335, the California Supreme Court defined the requirements of the doctrine:

> Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. [Citation.] Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.] The party asserting collateral estoppel bears the burden of establishing these requirements.

(Id. at p. 341; similarly, see People v. Garcia (2006) 39 Cal.4th 1070, 1077; see also People v. Quarterman (2012) 202 Cal.App.4th 1280, 1288-1291; People v. Yokely (2010) 183 Cal.App.4th 1264, 1273.) "The rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy." (Bernhard v. Bank of America (1942) 19 Cal.2d 807, 811; see also People v. Garcia, supra, 39 Cal.4th at p. 1077.) The burden is on the party seeking to invoke the doctrine, generally the defendant, to establish the factual predicate for the doctrine to apply. (People v. Yokely, supra, 183 Cal.App.4th at p. 1273.)

Thus, under some circumstances, collateral estoppel can bar finding a defendant guilty in a separate trial of charges related to charges for which he or she was previous acquitted. (See People v. Gordon, supra, 177 Cal.App.4th at pp. 1558-1560.) Collateral

estoppel also can bar a defendant from relitigating certain issues, such as whether there was probable cause to arrest, when the exact issue was decided on appeal in a previous criminal case in another county. (People v. Vogel (2007) 148 Cal.App.4th 131.)

Collateral estoppel does not apply, however, to findings in criminal cases in which the defendant did not participate. (Beets v. County of Los Angeles (2011) 200 Cal.App.4th 916, 928.) "Accordingly, the appearance of justice the criminal justice system needs is best served if all participants in alleged criminal conduct are tried on their cases' own merits, without concern for the results of other trials." (People v. Superior Court (Sparks) (2010) 48 Cal.4th 1, 16.)

Although defense counsel here argues that this issue has been litigated and decided, it is a misstatement of the state of the case. *People v. Rinehart* (Cal Supreme Court case #S222620) was a case through Plumas County that made its way to the appellate court. That court decided the suction dredge laws were unconstitutional, which is what Defendant relies upon in his motion. However, the California Supreme Court agreed to review the decision of the appellate court on January 21, 2105. Defense counsel failed to note this in its motion, despite the fact he represents Mr. Rinehart in the Supreme Court matter. The appellate decision is not valid law – either in this district or throughout the state because the issue is still being litigated. The court cannot categorically dismiss a case saying it is unconstitutional when the constitutionality of the issue is still be litigated. Defense's motion to dismiss must be denied.

II. No evidence can be suppressed because the offense was committed in the officer's presence.

A peace officer may arrest a person without a warrant for a misdemeanor whenever "[t]he officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence." (Pen. Code § 836(a)(1).) Violation of this state statutory provision alone does not implicate the exclusionary rule of the Fourth Amendment.

The requirement that the offense be committed in the officer's presence is merely statutory–it is not grounded in the Fourth Amendment. The Fourth Amendment requires only

that an arrest be supported by probable cause. Since the adoption of Proposition 8, suppression of evidence is not proper when a misdemeanor arrest is supported by probable cause regardless of whether the crime occurred in the officer's presence. (People v. Donaldson (1995) 36 Cal.App.4th 532, 535-539; People v. Burton (2013) 219 Cal.App.4th Supp. 9, 13-15; People v. Trapane (1991) 1 Cal.App.4th Supp. 10, 13-14; see also People v. McKay (2002) 27 Cal.4th 601; see generally, In re Lance W. (1985) 37 Cal.3d 873, 896)

The United States Supreme Court in Atwater v. City of Lago Vista (2001) 532 U.S. 318, held that the Fourth Amendment permits a warrantless custodial arrest for a very minor, fine-only criminal offense based on probable cause. (Id. at pp. 323, 340, 353.) The offense for which Ms. Atwater was arrested was committed in the officer's presence. Thus, the Court did not decide whether it was necessary for the offense to have been committed in the officer's presence for a misdemeanor arrest to be reasonable under the Fourth Amendment. (Id. at p. 341, fn. 11.)

> It will come as no surprise, then, that the United States Supreme Court has never ordered a state court to suppress evidence that has been gathered in a manner consistent with the federal Constitution but in violation of some state law or local ordinance. To the contrary, the high court has repeatedly emphasized that the Fourth Amendment inquiry does not depend on whether the challenged police conduct was authorized by state law.

(People v. McKay, supra, 27 Cal.4th at p. 610.)

Pre-Proposition 8 cases liberally construed the term "in [the officer's] presence." (People v. Welsch (1984) 151 Cal.App.3d 1038, 1042.) Neither physical proximity nor sight is essential. (See People v. Burgess (1959) 170 Cal.App.2d 36.) "The test is whether the misdemeanor 'is apparent to the officer's senses.' [Citation.] Any and all of the senses are included." (In re Alonzo (1978) 87 Cal.App.3d 707, 712.)

Game Warden Cervelli witnessed the defendant operating a suction dredge in violation of the law. There is no evidence to suppress because Warden Cervelli witnessed a crime being committed in his presence. The motion to suppress must be denied.

DATED: October 29, 2015

J. KIRK ANDRUS, District Attorney

By: _____
GLENN D GERMANY
DEPUTY DISTRICT ATTORNEY

PROOF OF SERVICE

I, Lisa Robustellini, declare:

I am a citizen of the United States, over the age of eighteen years and not a party to the within action;

My business address is P. O. Box 986, Yreka, California 96097;

That on October 29, 2015, I served a true and correct copy of the following:

PEOPLE'S OPPOSITION TO MOTION TO SUPPRESS AND MOTION TO DISMISS

CASE NO. YKCRM 15-1124

FOR

DYTON WILLIAM GILLILAND

_____ By personally delivering a true copy thereof to the person(s) and at the address(es) set forth below:

X By placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Yreka, California, addressed as set forth below:

James L. Buchal
3425 SE Yamhill, SUite 100
Portland, OR 97214

_____ By personally transmitting via facsimile to the person(s) and at the number(s) set forth below:

I declare under penalty of perjury under the laws of the State of California that he foregoing is true and correct.

EXECUTED this __29th_____ day of October, 2015, at Yreka, California.

LISA ROBUSTELLINI