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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Appellant, v. RAELENE ELVERA JAHANSSON, Defendant and Respondent.	H034446 (Santa Clara County Super. Ct. No. CC817747

I. INTRODUCTION

Defendant Raelene Elvera Jahansson was charged by information with one felony, possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), and two misdemeanors, using or being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a)) and possession of a hypodermic needle or syringe (Bus. & Prof. Code, § 4140). The trial court subsequently granted defendant's motion to suppress evidence pursuant to Penal Code section 1538.5.[1] The People challenged the trial court's order by filing a petition for writ of mandate in this court. After the writ petition was summarily denied, the People advised the trial court that they were unable to proceed due to the suppression of the evidence. The trial court then dismissed the case under section 1385.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

We determine that the People's appeal is not barred by their prior petition for a writ of mandate. Following the direction of *People v. Glaser* (1995) 11 Cal.4th 354 (*Glaser*), we conclude that under the circumstances of this case, the defendant's initial detention outside the premises to be searched was lawful incident to the probation search of the premises, but her continued detention in handcuffs was not reasonable under the Fourth Amendment. (*People v. Stier* (2008) 168 Cal.App.4th 21 (*Stier*)). We will therefore affirm the dismissal order.

II. FACTUAL BACKGROUND

Our summary of the relevant facts, which are essentially undisputed, is taken from the transcript of the April 21, 2009 evidentiary hearing on defendant's motion to suppress evidence.

The sole witness at the hearing on the motion to suppress evidence was Bret Moiseff, a police officer for the City of San Jose. At the time of the search and seizure at issue in this case, Officer Moiseff was assigned to the Santa Clara County Specialized Enforcement Team, which investigates drug sale offenses. On September 9, 2008, Officer Moiseff was involved in the surveillance of a house at 105 Morrow Court in San Jose. The police surveillance was being conducted because Officer Moiseff had received information that the resident, Bob Hatzenpiller, was selling methamphetamine to "persons that would come and go from the [Morrow Court house]." Officer Moiseff was also aware that Hatzenpiller was on probation with a search condition.

While Officer Moiseff was surveilling the house at 105 Morrow Court at about 3:00 p.m. he observed "a Hispanic male" park several houses away, then walk towards the house while making a cell phone call. The man "stayed a short time at the [Morrow Court house], and then walked back to his car, looking around in an excited and/or determined manner as he walked, paused, and ultimately returned to his car."

Officer Moiseff then observed defendant and a male companion park their car in front of the house at 105 Morrow Court. One or both of them got out of the car, walked

towards the front door of the house, and did not return to their car for about 20 to 30 minutes. Although Officer Moiseff did not see defendant and her male companion go into the house, because he did not have a view of the front door, he testified that "both went to . . . what appeared to be into the residence, or at least to the front of the residence out of my sight. It was over the course of the next 20 to 30 minutes where one, if not both, to the best of my recollection, went to and from the car, appearing to be either bringing items to or from the vehicle back to the house, before ultimately both departed." Officer Moiseff also observed that either defendant or her companion was carrying a duffel bag or backpack.

After defendant and her companion drove away, Officer Moiseff continued his surveillance of 105 Morrow Court. Shortly after 4:00 p.m., Officer Moiseff saw Hatzenpiller leave the house and walk towards a nearby strip mall. As he was walking, Hatzenpiller was detained by other agents working with Officer Moiseff. While Hatzenpiller was detained, Officer Moiseff spoke with him in preparation for the probation search that was about to be conducted at 105 Morrow Court. Based on his experience in the investigation of methamphetamine possession and sale, Officer Moiseff wanted to know whether the officers would confront any persons in the house who could arm themselves, destroy evidence, or interfere with the search. He was also concerned that persons outside the residence might have access to a cell phone and alert persons inside the house. Hatzenpiller told Officer Moiseff that there was at least one other person in the house and volunteered the information that "there was methamphetamine in his residence."

After learning from Hatzenpiller that there was methamphetamine in the house at 105 Morrow Court, Officer Moiseff and the other officers decided to walk back to secure the house for the probation search. At that time, Officer Moiseff was particularly concerned about officer safety while conducting the probation search at 105 Morrow Court because he "had seen persons come and go, and it was clear that several persons

had been visiting him and/or staying there . . . ." His officer safety concerns were also based on Hatzenpiller telling him that there was at one least other person and methamphetamine in the house.

While they were approaching the house on foot, Officer Moiseff saw defendant and her male companion return, about 40 or 50 minutes after they had left, and park "in front of the residence, slight offset from the residence, but still in the same area of the house with the same persons in the vehicle." Officer Moiseff and the other officers, who were wearing police jerseys, decided that they needed to "pick up the pace" because defendant and her companion could see them and the officers did not know who they were.

Officer Moiseff had several concerns after seeing defendant and her companion return to the vicinity of 105 Morrow Court. In addition to his concerns about the other person and the methamphetamine in the house, he was now also concerned about defendant and her companion, whom he described as "persons who I believe were associated with the residence, whether they are tenants, co-conspirators, customers, or friends, whatever they may be, were now in a position to see [us] and be in contact with the residence; whether it's via cell phone, or simply walking to the residence, because they were closer than we were . . . . They had a head start, if you will, if they wanted to run, which they didn't. They stayed at the car." Also, Officer Moiseff noticed that defendant's car did not have any license plates.[2]

Because Officer Moiseff believed that defendant and her companion "were involved and/or could thwart our investigation and subsequent search," he walked directly to defendant's car with the other officers, identified himself as a police officer, and told defendant and her companion that he and the other officers were conducting a

[2] Officer Moiseff testified that it was determined, at some point during defendant's detention, that there "was a valid answer for the vehicle."

probation search and they would be detained until the officers could secure the residence. Next, Officer Moiseff "asked both of them out of the vehicle and directed their detention at the vehicle."

During Officer Moiseff's initial one-minute contact with defendant, she was cooperative and he did not notice any symptoms indicating that she was under the influence of drugs. Nevertheless, defendant and her companion were immediately put in handcuffs. The reason for the handcuffing was "to prevent them from doing anything that could thwart the safety of [the officers] making contact at the residence. [¶] [Officer Moiseff] didn't know their association to the house; whether they were tenants, occupants, co-conspirators, friends, associates. [¶] [He] didn't know if either one had cellular phones on them, which people normally do these days." Officer Moiseff then asked another officer to stand by defendant and her companion as he and the other officers continued walking towards the house.

After detaining defendant and her companion in handcuffs, Officer Moiseff knocked on the front door of the two-story house and with the other officers entered and conducted a protective sweep that lasted "between five and ten minutes." They found a woman lying on a couch and a loft containing a "makeshift marijuana cultivation area." After completing the protective sweep, Officer Moiseff returned to defendant and her companion, who were then being detained in handcuffs "closer towards the patio area of the front door."

At that point, Officer Moiseff had a second conversation with defendant and her companion, in which he was "trying to determine their involvement with the house." During that conversation, Officer Moiseff observed that defendant displayed symptoms consistent with being under the influence of a controlled substance, including a nervous and excited demeanor, a fragmented speech pattern, and a dry mouth. Another officer found that defendant also had a rapid pulse.

Having determined that defendant was under the influence of a controlled substance, Officer Moiseff arrested her for violating Health and Safety Code section 11550, subdivision (a). He also asked her if he could search her vehicle and defendant said, " 'Yes.' " The items found during the search of defendant's car included a Kleenex box containing syringes. Defendant admitted that she had methamphetamine in her possession, which was found during a subsequent search of her person by female officers.

III. PROCEDURAL BACKGROUND

The felony complaint filed on September 15, 2008, charged defendant with a felony, possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 1) and two misdemeanors, using or being under the influence of a methamphetamine (Health & Saf. Code, § 11550, subd. (a); count 2) and possession of a hypodermic needle or syringe (Bus. & Prof. Code, § 4140; count 3). After a preliminary hearing, defendant was held to answer on all charges. The information was filed on January 15, 2009.

On April 6, 2009, defendant filed a motion to suppress evidence under section 1538.5 that sought an order suppressing all evidence obtained as a result of the search and seizure on September 9, 2008, including any statements by defendant, any officer observations, the results of any chemical or laboratory analysis, and any item found in defendant's possession. Defendant generally asserted that the warrantless search and seizure violated the Fourth Amendment, under the procedure set forth in *People v. Williams* (1999) 20 Cal.4th 119, 130.

In their opposition to the motion to suppress evidence, the People argued that the warrantless search of defendant's person and car did not violate the Fourth Amendment because defendant's initial detention was lawful. The People explained that the police officers had a reasonable suspicion that defendant was involved in criminal activity, since she had been observed walking to and from a house where, the officers had been informed, several customers came daily to purchase methamphetamine. The People also

pointed to the absence of license plates on defendant's car as an additional reason to detain and investigate defendant. Alternatively, the People argued that defendant's initial detention was justified on the ground of officer safety during a protective sweep. The continued detention of defendant after Officer Moiseff observed that she was under the influence of a controlled substance was also lawful, the People argued, because at that point probable cause existed to place defendant under a warrantless custodial arrest. Finally, the People maintained that defendant had consented to the search of her car.

In her reply, defendant contended that Officer Moiseff could not have had a reasonable suspicion that she was involved in criminal activity, or any reason to handcuff her, because he only had a "generalized suspicion that anyone associating with Mr. Hatzenpiller may be doing something illegal" and other officers were aware that her car had a temporary registration. Defendant also rejected the People's claim that her detention was lawful as incident to a protective sweep, on the ground that she had given the officers no reason to believe that she posed a danger or would interfere with their investigation. Moreover, defendant denied that she had voluntarily consented to the search of her car, since she had been placed in handcuffs before the officer requested her consent.

The trial court granted the motion to suppress evidence on April 28, 2009. The court also ordered that the evidence to be suppressed included the methamphetamine found on defendant's person, the observations of defendant after her detention, the results of intoxication and laboratory tests, and the syringes found in defendant's car. After granting the motion and ordering the suppression of evidence, the trial court noted that, as of April 28, 2009, the matter remained on the master trial calendar "to allow the People to evaluate their case."

The trial court's ruling from the bench also included the court's finding that defendant's detention was unlawful: "[W]hat troubles me is, there was no warrant in this case. It was a probationary search. So there was just some information the officers had

that the resident of the home was selling methamphetamine. So we don't even know the quality of the information. We don't need to know the quality of the information, because it was a probationary search. The officers didn't really even need a reason to go in. And I think that your argument would be valid about the defendant being tied to the home if there had been a stronger evidence of drug sales, had there been a search warrant, or even an arrest warrant. But I think that it breaks down just because . . . of the purpose of the officer's entry into the home. And that's what troubles me." The court noted, however, that "[t]his is a close one."

On May 27, 2009, the People filed a petition for writ of mandate in this court, in which they sought a writ vacating the trial court's order granting defendant's motion to suppress evidence and directing the court to enter a new order denying the motion. This court summarily denied the People's writ petition on June 15, 2009.[3]

After their writ petition was denied, the People announced in open court on June 22, 2009, that they were unable to proceed in this matter "[b]ased upon the motion to suppress and the ultimate suppression of the evidence." The trial court immediately dismissed the case. The People subsequently filed a notice of appeal from the dismissal order on July 8, 2009.

IV. DISCUSSION

A. *Appealability*

We will first consider the threshold issue of appealability. Defendant contends that the People's appeal is procedurally barred because this court summarily denied the People's petition for writ of mandate that had previously challenged the trial court's order granting the motion to suppress evidence. According to defendant, the plain language of section 1538.5, subdivision (j) (hereafter, section 1538.5(j)), authorizes the People to seek

[3] This court granted defendant's request to take judicial notice of the court file in the prior writ proceeding, H034264, *People v. Superior Court* (*Jahansson*).

appellate review of an order granting a suppression motion, but requires the People to elect review either by writ or by appeal and does not allow "two bites of the appellate apple."

Our analysis begins with an overview of the People's right to appeal. It is well established that "[t]he prosecution's right to appeal in a criminal case is strictly limited by statute. [Citation.] Long standing authority requires adherence to these limits even though 'the People may thereby suffer a wrong without a remedy.' [Citation]. The circumstances allowing a People's appeal are enumerated in section 1238." (*People v. Chacon* (2007) 40 Cal.4th 558, 564; *People v. Williams* (2005) 35 Cal.4th 817, 823-824.) Relevant to this case, section 1238, subdivision (a)(7) authorizes the People's appeal from "[a]n order dismissing a case prior to trial made upon motion of the court pursuant to section 1385 whenever such order is based upon an order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code."

The Penal Code also allows the People to seek writ review of an order granting a motion to suppress evidence. Section 1538.5, subdivision (o) provides, "Within 30 days after a defendant's motion is granted at a special hearing in a felony case, the people may file a petition for writ of mandate or prohibition in the court of appeal, seeking appellate review of the ruling regarding the search or seizure motion." The California Supreme Court has stated that section 1538.5 "now provides multiple opportunities for immediate review by both parties of rulings on motions to suppress . . . . In felony cases, the People can petition for writ if the prosecution has not been dismissed on motion of the superior court pursuant to section 1385 (§ 1538.5, subd. (o)), and can appeal if it has (§ 1238, subd. (a)(7)). . . ." (*People v. Laiwa* (1983) 34 Cal.3d 711, 717, fn. omitted.)

The issue of whether the People may seek appellate review of an order granting a motion to suppress evidence by both appeal and writ--first by an writ petition that is summarily denied, followed by an appeal from the dismissal order based upon the same

suppression order--arises from the following language in section 1538.5(j): "If the People prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them." We observe that there is a split of authority as to the meaning of the word "decision" in section 1538.5(j).

In *People v. Carrington* (1974) 40 Cal.App.3d 647 (*Carrington*), the appellate court determined that the People were required to elect between writ review and review on appeal. The court reasoned that "[a] denial of a writ petition, without an opinion, is a decision for other purposes specified in the Rules on Appeal ([former] rule 24, Cal. Rules of Court). The denial of the People's petition for a writ contesting a trial court's grant of a motion to suppress evidence means resolution of the issue based on a full record of the evidence presented at the hearing on the motion. Appellate courts do not deny such petitions without consideration. Therefore, a denial by minute order of a petition by the People constitutes review by 'writ to decision' within the meaning of section 1538.5, subdivision (j); the result is binding on the People." (*Id.* at p. 650.) The *Carrington* court further stated, "If the People desire a written opinion, they may appeal after a dismissal instead of petitioning for a writ. But they may not exercise both remedies." (*Id.* at p. 651.)

However, no published decision has followed *Carrington* since its publication in 1974. We find that *Carrington* represents the minority view in light of subsequent appellate court decisions that have rejected the *Carrington* court's reasoning. The majority view is set forth in *People v. Allison* (1988) 202 Cal.App.3d 1084 (*Allison*), where the court determined that denial of a writ petition without opinion does not constitute a decision on the merits unless there is an affirmative indication that the denial was on the merits. (*Id.* at p. 1087.) The *Allison* court therefore ruled that its prior denial by minute order of the People's writ petition challenging an order suppressing evidence did not preclude review of the same suppression order on appeal. (*Id.* at p. 1086.) The court concluded, "Here we denied the People's petition for writ of mandate without

opinion and as an act of discretionary denial. That appellate order does not conclusively evidence that denial was upon the merits and so, it neither bars nor governs this decision [on appeal]. [Citations.]" (*Id*. at p. 1088; accord, *People v. Amaya* (1979) 93 Cal.App.3d 424, 427, fn.1 [appeal decided on the merits after summary denial of People's writ petition challenging suppression order]; *People v. Schmidt* (1978) 83 Cal.App.3d 968, 973 [denial of People's writ petition without opinion does not preclude a subsequent appeal challenging suppression order]; *People v. Paris* (1975) 48 Cal.App.3d 766, 769-770 [same].)

We agree with the majority view that summary denial of the People's writ petition challenging a suppression order does not preclude a subsequent appeal from a dismissal order based on that suppression order. Our determination is supported by the California Supreme Court's rulings regarding the procedural effect of summary denial of a writ petition. In *People v. Medina* (1972) 6 Cal.3d 484 (*Medina*), the court determined, in the context of a defendant's appeal, that because "an appellate court's denial without opinion of defendant's pretrial writ [petition] cannot properly be deemed a conclusive decision on the merits, and that defendant is entitled to an appellate court's determination of his [or her] search and seizure contention 'in writing with reasons stated' (Cal. Const., art. VI, § 14), we must now decide the merits of that contention." (*Medina, supra,* 6 Cal.3d at p. 493.)

The California Supreme Court subsequently cited that ruling in *Medina* with approval in *Kowis, supra,* 3 Cal.4th 888, which addressed the issue of "when, if ever, summary denial of a pretrial petition for extraordinary relief establishes law of the case precluding reconsideration of the issue on appeal following final judgment." (*Id*. at p. 891.) The court stated, "In [*Medina*], *supra*, 6 Cal.3d at page 490, we expressed concern that if a summary denial of a writ petition established law of the case precluding consideration of the issue on appeal, then such 'pretrial writ review would become

useless for no well-advised defendant would invoke that provision at the risk of losing the right to be heard at oral argument and to have the merits of his [or her] constitutional contention decided by written opinion.' The same concern applies here. The parties should not be penalized for seeking pretrial review. If a writ petition is given full review by issuance of an alternative writ, the opportunity for oral argument, and a written opinion, the parties have received all of the rights and consideration accorded a normal appeal. Granting the resulting opinion law of the case status as if it had been an appellate decision is appropriate. But if the denial followed a less rigorous procedure, it should not establish law of the case." (*Id*. at p. 899.)

The *Kowis* court therefore ruled that "[a] summary denial of a writ petition does not establish law of the case whether or not that denial is intended on the merits or is based on some other reason." (*Kowis, supra,* 3 Cal.4th at p. 899.) Our Supreme Court affirmed its ruling in *Kowis* in *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, noting that "[o]ne of the policy reasons supporting our holding was that a contrary rule would prevent the losing party from having an opportunity for oral argument on the issues raised in the [writ] petition." (*Id*. at p. 1259.)

It is therefore well established under California Supreme Court authority that summary denial of a party's writ petition does not constitute law of the case and therefore does not preclude that party from seeking review on appeal, with the opportunity for oral argument and a written opinion, of the issues that were raised in the writ petition. (*Medina, supra,* 6 Cal.3d at p. 493; *Kowis, supra,* 3 Cal.4th at p. 891; *Lewis v. Superior Court, supra,* 19 Cal.4th at p. 1259.) This rule is consistent with the majority view that summary denial of the People's writ petition challenging an order granting a motion to suppress evidence does not constitute a "decision" within the meaning of section 1538.5(j) and therefore does not preclude a subsequent appeal of the dismissal order based on the suppression order. We therefore determine that the People's appeal in

the instant case is not barred by the summary denial of their writ petition, and we will decide the appeal on the merits.

For the guidance of the parties and the trial court, we will review the options for appellate review that are available to the People where the order granting the defendant's motion to suppress evidence has resulted in the People's inability to proceed with the prosecution. As one appellate court has stated, the "two methods for seeking appellate review are tailored to fit the two postures in which the People might find themselves following a successful motion to suppress evidence. In the first posture, the People have sufficient evidence to go forward despite the suppression of some evidence. Writ review would then be the preferable form of appellate review because it permits a speedy inspection of the trial court's ruling. [¶] In the second posture, the People are unable to go forward without the suppressed evidence. In this situation, the People announce this fact to the trial court with the expectation that the matter will be dismissed on the court's own motion under section 1385. The People may then bring an appeal (although they are not required to) . . . ." (*People v. Bonds* (1999) 70 Cal.App.4th 732, 738-739.)

Writ relief is rarely granted where appellate remedies are adequate (see, e.g., *In re Antilia* (2009) 176 Cal.App.4th 622, 630 [writ will not be issued if the challenged order is directly appealable or if appeal from a final judgment provides an adequate remedy]). Therefore, a writ petition challenging a trial court's suppression order, where that order has resulted in the People's inability to go forward without the suppressed evidence and the trial court may issue an appealable dismissal order under section 1385, is unlikely to succeed because there is an adequate appellate remedy. In those circumstances, a writ petition may unnecessarily consume the resources of both the court and the parties.

Having determined, however, that the People's appeal in this case is not procedurally barred, we will turn to the merits of the appeal.

B. *The Motion to Suppress Evidence*

The People argue that defendant's initial detention and her continued detention, as well as the warrantless search of her person and car, were all lawful under the Fourth Amendment. For these reasons, the People contend that the trial court erred in granting defendant's motion to suppress evidence and dismissing the case after the People announced that they were unable to proceed due to the suppression of the evidence.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]" (*Glaser*, *supra*, 11 Cal.4th at p. 362; *In re Raymond C.* (2008) 45 Cal.4th 303, 306.) We will begin our analysis by addressing the lawfulness of defendant's initial detention.

1. The Initial Detention

The People argue that defendant's initial detention did not violate the Fourth Amendment because (1) it was reasonable for the police officers to detain her incident to the protective sweep due to officer safety concerns when searching a house where drug trafficking has been reported; and (2) the detention was brief, lasting only about five to ten minutes.

Defendant disagrees, maintaining that her detention was not necessary for officer safety purposes because she was a mere visitor to the house who was "sitting peacefully in her car on the street" and did not pose any danger to the officers while they were conducting a protective sweep.

People v. Glaser

Our resolution of the initial detention issue is governed by the rules established in the California Supreme Court's decision in *Glaser*. In ruling upon the lawfulness of the detention of a defendant incident to the execution of a search warrant on a residence by

members of a narcotics task force, the *Glaser* court recognized that "[t]o decide whether relevant evidence obtained by assertedly unlawful means must be excluded in a trial for crimes allegedly committed after June 8, 1982, we look exclusively to whether its suppression is required by the United States Constitution. [Citations.]" (*Glaser*, *supra*, 11 Cal.4th at p. 363.)

Relying on "two leading decisions of the United States Supreme Court," *Terry v. Ohio* (1968) 392 U.S. 1 and *Michigan v. Summers* (1981) 452 U.S. 692, the *Glaser* court ruled that the lawfulness of a temporary detention is determined by a balancing test: "To test the detention against 'the ultimate standard of reasonableness embodied in the Fourth Amendment' (citation), we balance the extent of the intrusion against the government interests justifying it, looking in the final and dispositive portion of the analysis to the individualized and objective facts that made those interests applicable in the circumstances of the particular detention. [Citations.]" (*Glaser*, *supra*, 11 Cal.4th at p. 365.) The California Supreme Court has also instructed that "[w]hether an officer's conduct was reasonable is evaluated on a case-by-case basis in light of the totality of the circumstances. [Citations.]" (*In re Raymond C.*, *supra*, 45 Cal.4th at p. 307.)

In performing the balancing test, the court first examines " 'the character of the official intrusion.' " (*Glaser*, *supra*, 11 Cal.4th at p. 365.) In *Glaser*, the official intrusion consisted of the detention of the defendant incident to the execution of a search warrant on a residence by members of a narcotics task force. As the search party approached the residence, they saw the defendant's truck pass them on the road. When the search party arrived at the residence, they found the defendant's truck parked in the driveway and the defendant outside the truck and about to open a gate that led to the backyard. While some officers went inside to secure the residence, other officers held the initially unresponsive defendant at gunpoint face down on the gravel driveway and handcuffed him. (*Id*. at pp. 360-361.)

The *Glaser* court found that the intrusiveness of the detention was increased by the fact that the defendant had been detained at gunpoint. (*Id*. at p. 366.) The intrusiveness was decreased, however, by the brevity of the two-minute detention. "While the length of the detention is only one circumstance, here its brevity weighs heavily in favor of a finding of reasonableness. [Citation.]" (*Id*. at p. 367.) The intrusiveness was also decreased by the location of the detention--at the back gate of a private residence--which reduced the embarrassment and stigma of the detention. (*Ibid*.) Further, the fact that the detention was incident to a search under warrant lessened the intrusiveness because "detentions in the course of a premises search are inherently less likely to be abused than those undertaken in order to investigate the person detained[.]" (*Ibid.*)

Next, the *Glaser* court examined the government interests that might justify the defendant's detention. (*Glaser, supra,* 11 Cal.4th at p. 367.) The court noted that "[t]wo interrelated justifications are readily identifiable on this record: the officers' concern for security while they executed the search warrant and their interest in determining what connection, if any, defendant had with the premises being searched." (*Ibid*.) Regarding officer safety, the court stated that "[t]he police interest in protecting against violence during the search of a home for narcotics has been widely recognized. 'In the narcotics business, "firearms are as much 'tools of the trade' as are most commonly recognized articles of narcotics paraphernalia." ' [Citations.]" (*Ibid*.) Moreover, the court noted, "[t]he danger is potentially at its greatest when, as here, the premises to be searched are a private home, rather than a place of public accommodations . . . ." (*Id*. at pp. 367-368.) As to "[t]he government interest in determining the identity of a person entering premises being searched," the *Glaser* court stated that "[t]he risk posed by residents or familiars of the household, who may be involved in the criminal activities therein, is obviously greater than that posted by mere visitors who happen unwittingly on the scene." (*Id.* at p. 368)

Applying the balancing test, the *Glaser* court concluded that the defendant's detention was lawful because the circumstances gave the officers "grounds to suspect that defendant was more than a chance visitor and to fear harm if he was not contacted and secured in some manner." (*Glaser, supra,* 11 Cal.4th at p. 372, fn. omitted.) The court also ruled that even if the defendant's conduct was consistent with innocent behavior, an innocent explanation would not "necessarily defeat the existence of reasonable cause to detain. [Citation.]" (*Id.* at p. 373.) "What is required is not the *absence* of innocent explanation, but the *existence* of 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' [Citation.]" (*Ibid.*)

After reaching this conclusion, the *Glaser* court established the following general standard for determining the lawfulness of a temporary detention incident to a house search: "When, in the course of initiating a search under warrant of a private residence for illegal drugs or related items, police officers encounter on the premises a person whose identity and connection to the premises are unknown and cannot immediately be determined without detaining the person, the officers may constitutionally detain him or her for the period of time required and in the manner necessary to make those determinations and to protect the safety of all present during the detention. . . . If the person is determined not to be an occupant, further detention is proper only if justified by other specific, articulable facts connecting him or her to the criminal activity suspected to be occurring on the premises or establishing a danger to the officers if the person is released." (*Glaser, supra,* 11 Cal.4th at p. 374.)

The balancing test articulated in *Glaser* has been applied to a detention incident to a probation search. (*People v. Matelski* (2000) 82 Cal.App.4th 837, 849 (*Matelski*.) In *Matelski*, police officers arrived at a home to conduct a probation search because the probationer had failed a drug test. The officers saw the defendants walking out the front door and detained them for the purpose of determining if they were convicted felons with

whom the probationer could not associate as a condition of his probation. After the officers asked the defendants for their names and dates of birth, a warrant check revealed that both defendants had outstanding arrest warrants and as a result they were arrested and searched. Methamphetamine and marijuana pipes were found in defendant Matelski's purse. (*Ibid*.)

The *Matelski* court determined that the detention was lawful because, under the *Glaser* balancing test, the intrusion was minimal, lasting only 15 minutes, and was outweighed by the governmental interests in determining the defendant's connection to the probationer and in officer safety. (*Matelski, supra*, 82 Cal.App.4th. at pp. 850-851.) The court rejected defendant's argument that they should have been allowed to leave, explaining that the detention was justified "because of the possibility they could have armed themselves and returned, perhaps with others, to threaten the officers." (*Id*. at p. 850.)

Application of the Glaser Balancing Test to the Initial Detention

We determine that defendant's initial detention took place when Officer Moiseff first contacted defendant at her car, which was parked outside the premises of the residence to be searched. We further determine, under *Glaser*, that the initial detention of defendant, before she was placed in handcuffs, was lawful under the circumstances of this case.

The *Glaser* standard for the lawfulness of a temporary detention incident to a house search, as we have noted, is as follows: "When, in the course of initiating a search under warrant of a private residence for illegal drugs or related items, police officers encounter on the premises a person whose identity and connection to the premises are unknown and cannot immediately be determined without detaining the person, the officers may constitutionally detain him or her for the period of time required and in the manner necessary to make those determinations and to protect the safety of all present during the detention. . . . If the person is determined not to be an occupant, further

detention is proper only if justified by other specific, articulable facts connecting him or her to the criminal activity suspected to be occurring on the premises or establishing a danger to the officers if the person is released." (*Glaser*, *supra*, 11 Cal.4th at p. 374.)

The circumstances relevant to the initial detention in this case included Officer Moiseff's observation of defendant and her companion arriving earlier that day at a house that was under surveillance due to suspected drug sales, staying approximately 20 to 30 minutes, and carrying items to and from the house and their car. By the time defendant and her companion returned to the house less than one hour later and parked offset in front of the house, Officer Moiseff had been informed by the probationer that there was methamphetamine and another person in the house. In light of the danger posed by a narcotics search of a private home, as described in *Glaser*, *supra*, 11 Cal.4th at pages 367-368, and based on his prior observations, Officer Moiseff could reasonably detain defendant and her companion for the purpose of determining their identity and their connection to the premises they were about to search. (*Id*. at p. 374.) We also find that the intrusiveness of the brief initial detention--in which Officer Moiseff detained defendant outside her car for about one minute while explaining why she was being detained--was outweighed by the legitimate government interests in officer safety. (*Ibid*.)

Accordingly, we determine pursuant to the balancing test established in *Glaser*, *supra*, 11 Cal.4th at page 374 that the initial one minute detention of defendant incident to the protective sweep was reasonable under the Fourth Amendment.

2. The Continued Detention

Having determined that defendant's initial detention was lawful, we next consider the lawfulness of defendant's continued detention, which occurred when Officer Moiseff placed her in handcuffs and continued to detain her near the front door of the probationer's house during the five to ten minute protective sweep.

Application of the Glaser Standard to the Continued Detention

As stated in *Glaser*, the risk of violence inherent in the search of a private home for narcotics "is minimized if the police exercise complete command of the search site" by detaining persons encountered at the beginning of a search for the purposes of "ensuring the safety of officers and others present, preventing the flight of residents involved in the suspected criminal activity, and facilitating orderly completion of the search." (*Glaser*, *supra*, 11 Cal.4th at p. 374.) However, *Glaser* instructs that if, during the initial detention to determine the person's identity and connection to the premises about to be searched, "the person is determined not to be an occupant, further detention is proper only if justified by other specific, articulable facts connecting him or her to the criminal activity suspected to be occurring on the premises or establishing a danger to the officers if the person is released." (*Id.* at p. 374.)

After oral argument, we asked the parties to submit supplemental briefing on the following issue: "In this case, did the police officers determine that defendant was an occupant of the premises to be searched? If she was not determined to be an occupant, what, if any, 'specific, articulable facts' ([*Glaser*], *supra*, 11 Cal.4th at p. 374) connected her to the criminal activity suspected to be occurring on the premises or established a danger to the officers if she was released?"

In their supplemental letter brief, the People concede that police officers did not determine whether defendant was an occupant of the house about to be searched before they continued to detain her. The People also do not argue that defendant would have posed a danger to the police officers if she were released.

However, the People assert that defendant's continued detention was lawful because there were specific, articulable facts connecting her to the criminal activity suspected to be occurring on the premises, including "1. Probationer suspected of drug sales from house [¶] 2. Surveillance that day of persons going to the home consistent with drug trafficking information of persons coming and going for short periods of time

[¶] 3. Defendant and companion observed going in and out of probationer's house (circumstantially) and getting items from car during surveillance, staying about 20-30 minutes, that was consistent with drug sales activity [¶] 4. Probationer advises methamphetamine in house, corroborating Officer Moiseff's information and further justifying officer safety concerns [¶] 5. Probationer advises that one person and a small dog in the house [¶] 6. Upon Officer Moiseff's return to house to conduct probation search he sees defendant and companion have returned and parked in front of house and knows he has a problem of being compromised as he is approaching with police badge [¶] 7. Officer safety concerns heightened based upon training and experience of surveillance systems of drug dealers and involved associates alerting people in house to police presence and their imminent entry [and] [¶] 8. Prevalence of cell phones and knowledge that persons and drugs in house necessitated brief handcuffed detention to facilitate safe securing of home[.]"

In her supplemental letter brief, defendant disagrees with the People's view of the circumstances surrounding her continued detention. Defendant argues that there were no specific, articulable facts to suggest that she was involved in criminal activity or that she posed a danger to the police officers. Defendant explains that her "mere association with the Hatzenpiller residence fails to establish her participation in suspected drug trafficking" and notes that Officer Moiseff "had no independent information suggesting that [defendant] was involved in the suspected illegal activity on the premises."

Our review of the record reveals that during the initial detention of defendant, Officer Moiseff did not ask her whether she was an occupant of the probationer's house or otherwise attempt to determine her connection to the house:

"[DEFENSE COUNSEL]: Okay. So, as you said, your concern was to secure the scene. At what distance were you from [defendant's car] when you first made some sort of contact directly with [defendant]?

"[OFFICER MOISEFF]: I walked directly to the vehicle. [¶] . . . [¶]

"[DEFENSE COUNSEL]: At what point did you first speak to [defendant]?

"[OFFICER MOISEFF]: At that point I was speaking to both of them, but, again, it was very brief, and just to the point of securing or detaining them right there. [¶] And then I moved into the residence while . . . I believe it was Agent Munoz and possible Agent Rimple stood by outside, to the best of my recollection.

"[DEFENSE COUNSEL]: With regard to what you said to [defendant], when you first had words come out of your mouth, was she in the car or outside the car?

"[OFFICER MOISEFF]: I believe both parties were still inside the vehicle.

"[DEFENSE COUNSEL]: And when [defendant] was sitting in the car, what did you say?

[OFFICER MOISEFF]: "To the best of my recollection, I identified ourselves as police officers, and that we were conducting a search, a probation search, and directed, I believe, both of them to exit the vehicle, or one at a time. However it transpired at the scene, to secure them at the scene, while we then proceeded forward into the residence. [¶] . . . [¶]

"[DEFENSE COUNSEL]: So you told them that you were doing a probation search, and that you were investigating the sales of narcotics from the residence, correct?

"[OFFICER MOISEFF]: No. I didn't say that at that point. Initially, it was just enough words to explain to them who we were and what we were doing. I didn't go into any details about Mr. Hatzenpiller allegedly selling methamphetamine, or the other information that persons had said about that at that point at least. [¶] . . . [¶]

"[DEFENSE COUNSEL]: You directed [defendant] to exit the vehicle, correct?

"[OFFICER MOISEFF]: To the best of my recollection, yes.

"[DEFENSE COUNSEL]: Where did you tell her to stand?

"[OFFICER MOISEFF]: I think I asked both of them out of the vehicle and directed their detention at the vehicle. I think it was to the front of the vehicle, to the best of my recollection.

"[DEFENSE COUNSEL]: And you, in fact, told them they were being detained?

"[OFFICER MOISEFF]: I believe I used that term. I'm not sure exactly in what phrase, but something to the effect of we are doing a search. I believe it was something to the effect of we are detaining them until we can secure the residence . . . . [¶] And I advised other officers or agents to stand by with [defendant and her companion] while we proceeded forward.

"[DEFENSE COUNSEL]: Did you put [defendant] in handcuffs, or did someone else?

"[OFFICER MOISEFF]: I believe I may have . . . . But I believe I participated in the physical detention of her, to the best of my recollection.

"[DEFENSE COUNSEL]: So, [defendant and her companion] were immediately put in handcuffs by someone?

"[OFFICER MOISEFF]: To the best of my recollection, yes."

Thus, the evidence shows that Office Moiseff failed to determine, during his initial detention of defendant, whether she was an occupant of the probationer's house. Defendant's continued detention was therefore "proper only if justified by other specific, articulable facts connecting [her] to the criminal activity suspected to be occurring on the premises or establishing a danger to the officers if the person is released." (*Glaser, supra,* 11 Cal.4th at p. 374.)

As to defendant's potential dangerousness, Officer Moiseff testified that when defendant was told to get out of her car and then handcuffed, she and her companion were cooperative: "They did not run. They did not kick or flail. And that's basically how I determine being cooperative. They did not try to overtly flee, or fight, or anything of that nature." Officer Moiseff also agreed that defendant had not threatened him in any way.

Since Officer Moiseff did not determine during defendant's initial detention that she was an occupant of the probationer's house, and he was not concerned that she posed

a physical danger to himself or the other officers, her continued detention during the protective sweep was unlawful unless the evidence showed there were "specific, articulable facts connecting [defendant] to the criminal activity suspected to be occurring on the premises . . . ." (*Glaser, supra*, 11 Cal.4th at p. 374.) In that regard, Officer Moiseff testified that he continued to detain defendant because he believed that she and her companion "were associated with the residence" and "were involved and/or could thwart our investigation and subsequent search."

We find that Officer Moiseff's observations of defendant apparently entering the probationer's house, then leaving and later returning to park her car nearby, were sufficient to show that defendant was more than a chance visitor, and arguably supported Officer Moiseff's belief that defendant was somehow "associated" or "involved" with the probationer's house. However, Officer Moiseff's observations alone do not satisfy the *Glaser* standard for the continued detention of a person who is not an occupant of the house to be searched and who does not pose a physical danger to the officers if released, since these observations are insufficient to constitute "specific, articulable facts" that connected defendant, who was sitting in a vehicle outside the premises to be searched, to the methamphetamine sales that Officer Moiseff suspected were occurring there. (*Glaser, supra*, 11 Cal.4th at p. 374.)

Additionally, we reiterate that *Glaser* instructs that "[w]hen, in the course of initiating a search under warrant of a private residence for illegal drugs or related items, police officers encounter on the premises a person whose identity and connection to the premises are unknown and cannot immediately be determined without detaining the person, the officers may constitutionally detain him or her for the period of time required and in the manner necessary to make those determinations and to protect the safety of all present during the detention. . . ." (*Glaser, supra*, 11 Cal.4th at p. 374.) Accordingly, before continuing to detain defendant, the police officers were required, by the *Glaser* standard for a continued detention, to conduct a further investigation in which they (1)

determined defendant's identity; (2) determined her connection to the premises to be searched; and (3) determined whether she would pose a physical danger to the officers if she were released.

Here, the record reflects that Officer Moiseff continued to detain defendant without determining her identity or her connection to the probationer's house. He also continued to detain defendant in handcuffs although he did not believe that she posed a physical danger to the police officers. We therefore determine that the *Glaser* standard for a continued detention was not satisfied and the continued detention of defendant, without further investigation by the police officers, was not reasonable under the Fourth Amendment.

Our determination that the continued detention of defendant in handcuffs was not reasonable under the Fourth Amendment is also based on our further determination that defendant was not detained by the use of reasonable force. As we have noted, under *Glaser*, police officers may constitutionally detain an unknown person who is on the premises of a private residence about to be searched for the purpose of determining the person's identity and connection to the premises. (*Glaser*, *supra*, 11 Cal.4th at p. 374.) However, the detention must be conducted in "the period of time required and *in the manner necessary* to make those determinations and to protect the safety of all present during the detention." (*Ibid*., italics added.) More specifically, as the United States Supreme Court has instructed, even when officers properly detain the occupant of a place to be searched, "reasonable force must be used to effectuate the detention. [Citation.]" (*Muehler v. Mena* (2005) 544 U.S. 93, 98-99.) And, placing handcuffs on a detained person is "undoubtedly a separate intrusion in addition to the detention . . . ." (*Id*. at p. 99.)

We asked the parties, after oral argument, to submit supplement briefing on the following question: "Was handcuffing defendant during the five to ten minutes she was

detained during the protective sweep reasonably necessary for the detention? (See [*Stier*, *supra*, 168 Cal.App.4th 21].)"

The People respond in their supplemental letter brief that handcuffing was reasonably necessary, as Officer Moiseff testified, to prevent defendant and her companion "from doing anything that could thwart the safety of the officers making contact with the residence, as there was only one officer to stand by them, and he didn't know if either of the subjects had cellular phones on them, which people normally do these days."

Defendant argues in her supplemental letter brief that it was unreasonable to handcuff her because the police officers had no information that she was armed or was about to commit a violent crime, or that she had attempted to flee or to use a cell phone. Defendant emphasizes that she cooperated with the police officers and there was no evidence that she and her companion outnumbered the officers who were present at the scene. Additionally, defendant asserts that it was unreasonable to keep her handcuffed after the protective sweep was completed and there was no longer any concern that she might contact a person inside the probationer's house.

The general rules regarding handcuffing a person during detention were set forth in *Stier*, *supra*, 168 Cal.App.4th at pages 27-28: "Generally, handcuffing a suspect during a detention has only been sanctioned in cases where the police officer has a reasonable basis for believing the suspect poses a present physical threat or might flee. [Citation.] The more specific information an officer has about a suspect's identity, dangerousness, and flight risk, the more reasonable a decision to detain the suspect in handcuffs will be. [Citation.] Circumstances in which handcuffing has been determined to be necessary for the detention include when (1) the suspect is uncooperative; (2) the officer has information the suspect is currently armed; (3) the officer has information the suspect is about to commit a violent crime; (4) the detention closely follows a violent crime by a person matching the suspect's description and/or vehicle; (5) the suspect acts

in a manner raising a reasonable possibility of danger or flight; or (6) the suspects outnumber the officers." (*Ibid.*; see also *In re Antonio B.* (2008) 166 Cal.App.4th 435, 442 [handcuffing does not convert detention into an arrest where officer had "reasonable basis to believe that detainee presented a physical threat to the officer or would flee."].)

Thus, the issue is "whether the handcuffing was reasonably necessary for the detention. [Citation.]" (*Stier*, *supra*, 168 Cal.App.4th at p. 27.) The United States Supreme Court has ruled that handcuffing the occupant of a house during execution of a search warrant was reasonable under the Fourth Amendment where the warrant authorized a search for weapons and a wanted gang member resided in the house. (*Muehler v. Mena*, *supra*, 544 U.S. at p. 100.) "In such inherently dangerous situations, the use of handcuffs minimizes the risk of harm to both officers and occupants. [Citation.]" (*Ibid.*) In contrast, where there was no evidence that a person suspected of smoking marijuana posed a danger to the officer performing the detention, it was held that the prosecution had failed to establish that handcuffing was reasonably necessary to the detention. (*Stier*, *supra*, 168 Cal.App.4th at p. 28.)

Similarly, in the present case, the prosecution did not establish that defendant posed a present physical danger to the officers at the scene. To the contrary, Officer Moiseff testified that defendant was cooperative during his contacts with her. Officer Moiseff also testified, when asked why it was necessary to handcuff defendant and her companion, that he detained them in handcuffs in order "to prevent them from doing anything that could thwart the safety of us making contact at the residence. [¶] I didn't know their association to the house; whether they were tenants, occupants, co-conspirators, friends, associates. [¶] I didn't know if either one had cellular phones on them, which people normally do these days."

Accordingly, the record reflects that Officer Moiseff had no information about defendant's "identity, dangerousness, and flight risk," nor did the prosecution establish any of the other factors that may support the reasonable use of handcuffs on a detainee,

such as information that she was currently armed or about to commit a violent crime, or that the officers were outnumbered. (*Stier*, *supra*, 168 Cal.App.4th at pp. 27-28.) We also find that, under the circumstances of this case, the reasonable use of force to effectuate the detention could have included, for example, the police officers asking defendant to get out of her car and keep her hands in sight while they questioned her about her identity and her connection to the probationer's house.

Additionally, we note the contrast between the facts of the present case, in which defendant was cooperative during her contacts with Officer Moiseff when she was detained and handcuffed during daylight hours after parking her car near the house to be searched, and the facts the *Glaser* court found to justify the detention of a defendant at gunpoint incident to a house search. In *Glaser*, the police officer was "faced with an unidentified person who appeared to be a resident or familiar visitor of a house in which, [the officer] had probable cause to believe, criminal drug activity was occurring—a person who was standing where he could not be clearly seen under the prevailing conditions, who was unresponsive to verbal attempts at contact, and who, if left alone, would walk into the middle of a search being conducted by several other officers. [The officer] had no practical choice but to detain defendant, and under these circumstances, the means used—drawing his weapon and ordering defendant to the ground briefly for handcuffing—were not unreasonable." (*Glaser*, *supra*, 11 Cal.4th at p. 369.)

We therefore find that under the circumstances of this case, where the prosecution did not establish any of the factors supporting the reasonable use of handcuffs, handcuffing defendant was not reasonably necessary to her continued detention. (*Stier*, *supra*, 168 Cal.App.4th at p. 27.) For that reason, we determine that the continued detention of defendant in handcuffs for five to ten minutes during the protective sweep of the probationer's house was not reasonable under the Fourth Amendment. (*Muehler v. Mena*, *supra*, 544 U.S. at pp. 98-99.)

3. The Investigatory Detention and Subsequent Search of Defendant's Person and Car

The People additionally argue there was probable cause to detain defendant after the protective sweep of the probationer's house was completed, because at that point Officer Moiseff had returned to question defendant about her involvement with the house and observed that she was under the influence of a controlled substance. They also contend that the search of defendant's car and person was lawful because defendant's condition of being under the influence of a controlled substance provided probable cause to believe that contraband would be found in her car.

Defendant maintains that the trial court's implied finding--that defendant's consent to the car search was involuntary because she was handcuffed at the time the police officer requested her consent--is supported by substantial evidence. Defendant also contends that the observations of her drug use during her illegal detention must be suppressed as fruits of the poisonous tree. We agree with both points.[4]

It is undisputed that Officer Moiseff obtained defendant's consent to search her car while she was handcuffed. Where, as here, the detention was not lawful due to the use of unreasonable force, and the officer did not have probable cause to search the detainee at the time of handcuffing, the handcuffed detainee's consent to a search is not considered to be voluntary. (*Stier*, *supra*, 168 Cal.App.4th at p. 28 [search of suspect's person while handcuffed involuntary]; *In re Antonio B.*, *supra*, 166 Cal.App.4th at p. 442.)

Further, having determined that the continued detention of defendant in handcuffs was unlawful, we find that the evidence obtained as a result of the continued detention, including the officers' observations of defendant during the detention and the recovery of

[4] We note that defendant does not expressly address the People's position that the search of her person was lawful.

drug paraphernalia from her car and methamphetamine from her person, must be suppressed pursuant to United States Supreme Court and California Supreme Court authority.

The California Supreme Court has ruled that "[e]vidence need not be suppressed as 'fruit of the poisonous tree,' though actually procured as the result of a Fourth Amendment violation against the defendant, if it inevitably would have been obtained by lawful means in any event. [Citation.] Moreover, suppression is not necessarily required *even if* the evidence would not have come to light *but for* an infringement of the defendant's Fourth Amendment rights. (*Wong Sun v. United States* (1963) 371 U.S. 471, 487-488 (*Wong Sun*).)" (*People v. Boyer* (2006) 38 Cal.4th 412, 448.)

"Rejecting a strict 'but for' test, the United States Supreme Court has admonished that in such cases, 'the more apt question . . . is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." [Citation.]' (*Wong Sun, supra*, 371 U.S. 471.) 'Under *Wong Sun*, evidence is not to be excluded merely because it would not have been obtained but for the illegal police activity. [Citation.] The question is whether the evidence was obtained by the government's exploitation of the illegality or whether the illegality has become attenuated so as to dissipate the taint. [Citation.]' [Citation.]." (*People v. Boyer*, *supra*, 38 Cal.4th at p. 448; *People v. Gallant* (1990) 225 Cal.App.3d 200, 211 [where "the initial detention was illegal, the evidence seized thereafter must be excluded unless there was an intervening, independent consent by defendant"].)

In the present case, Officer Moiseff testified that he did not observe that defendant was under the influence of a controlled substance during her initial detention. Officer Moiseff further testified that he only observed that defendant was under the influence of a controlled substance five to ten minutes later, after he had completed the protective sweep and defendant continued to be detained in handcuffs. Because Officer Moiseff

believed that defendant was under the influence of a controlled substance, he arrested her and asked if he could search her car. Defendant's person was searched after her arrest.

We find that Officer Moiseff was able to make the observation that defendant was under the influence of a controlled substance due to her unlawful detention in handcuffs. We therefore determine that Officer's Moiseff's observations of defendant, as well as the items recovered in the search of her car and person, were "obtained by the government's exploitation of the illegality" of the unlawful detention and should be suppressed. (*People v. Boyer*, *supra*, 38 Cal.4th at p. 448.) For that reason, we will uphold the trial court's order granting defendant's motion to suppress evidence and affirm the order of dismissal.

V. DISPOSITION

The order of dismissal is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

_____

MIHARA, J.

_____

MCADAMS, J.

Filed 10/15/2010

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Appellant, v. RAELENE ELVERA JAHANSSON, Defendant and Respondent.	H034446 (Santa Clara County Super. Ct. No. CC817747 ORDER GRANTING PARTIAL PUBLICATION

Appellant has requested that our opinion, filed on September 30, 2010, be certified for partial publication. It appears that our opinion meets the standards set forth in California Rules of Court, rules 8.1105(c). The request is GRANTED. The opinion is ordered published in the Official Reports with the exception of Part IV B.

_____
BAMATTRE-MANOUKIAN, ACTING P.J.

_____
MIHARA, J.

_____
MCADAMS, J.

Trial Court:	Santa Clara Superior Court Superior Court No.: CC817747
Trial Judge:	The Honorable David A. Cena
Attorney for Plaintiff and Appellant: THE PEOPLE	Dolores A. Carr District Attorney Judith B. Sklar Deputy District Attorney
Attorneys for Defendants and Respondent: RAELENE ELVERA JAHANSSON	Scott D. Handleman Under Appointment by the Sixth Appellate Program for Respondent.

People v. Jahansson
H034446