NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LUIS SANTOS, Defendant-Appellant.	No. 18-50039 D.C. No. 2:16-cr-00849-DSF-1 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted March 5, 2019
Pasadena, California

Before: COLE**, Chief Judge, and FISHER and NGUYEN, Circuit Judges.

Luis Santos appeals the denial of his motion to suppress evidence that was seized following a traffic stop. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

Santos contends that the traffic stop was not supported by reasonable

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable R. Guy Cole, Jr., United States Chief Judge for the Sixth Circuit Court of Appeals, sitting by designation.

suspicion. We agree that the initial stop violated the Fourth Amendment because there is no evidence in the record of any traffic violation. The government has chosen not to rely on Deputy James Peterson's testimony. Thus, the only evidence of the stop is the video from the patrol car's dash-camera, which does not show any basis for the stop.

Santos next argues that the subsequent search and seizure of forty pounds of methamphetamine from a tire in the trunk, and his later admission to transporting the methamphetamine, should be suppressed. Generally, evidence obtained through an unlawful search or seizure is the "fruit of the poisonous tree" and inadmissible under the exclusionary rule. *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963). However, fruits of unlawful searches may be admissible when the fruits are discovered "by means sufficiently distinguishable to be purged of the primary taint." *Id.* at 488. We consider the following factors: (1) the temporal proximity between the unlawful stop and the acquisition of evidence, (2) the presence of intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. *See Brown v. Illinois*, 422 U.S. 590, 603–04 (1975).

Here, the second *Brown* factor—the presence of intervening circumstances—weighs strongly against Santos. Minutes after the traffic stop and soon after Deputy Peterson placed Santos in the back of the police car, Santos's cousin, who was one of passengers in Santos's car, climbed over the center console

into the driver's seat and fled in the vehicle. Santos's cousin merged back onto the freeway with the wrong blinker illuminated and crashed shortly thereafter. When Deputy Michael Vann arrived on the scene to provide backup, he found Santos's car two miles down the freeway from the location of the traffic stop. The car was roughly 100 feet off the road and had been driven through a fence. It had sustained visible damage. Santos's cousin lay on the side of the freeway with serious injuries. The third passenger was not at the scene. After towing the car back to the station, officers opened a deflated tire in the trunk of Santos's car and discovered forty pounds of methamphetamine.

Under these circumstances, we conclude that the taint from the illegal traffic stop did not "tend[] to significantly direct the investigation to the evidence in question." *United States v. Chamberlin*, 644 F.2d 1262, 1269 (9th Cir. 1980). The erratic flight from the police, beginning with Santos's cousin driving off onto the freeway with the incorrect blinker illuminated and ending with him crashing two miles away through a fence and severely injuring himself, sufficiently attenuated the taint from the initial stop. *See, e.g., United States v. Garcia,* 516 F.2d 318, 319 (9th Cir. 1975) (finding that suspicious behavior, a suspicious vehicle, and an erratic, high-speed chase attenuated the taint); *United States v. Boone*, 62 F.3d 323, 325 (10th Cir. 1995) (finding the taint dissipated when motorists dangerously sped away from a traffic stop and tossed drug-laced glass bottles out of the car).

Santos's cousin committed a voluntary, intervening act of dangerous flight that resulted in serious injury and broke the causal chain.[1] *Cf. United States v. Ogilvie*, 527 F.2d 330, 332 (9th Cir. 1975) (finding that a safe flight did not give rise to reasonable suspicion for a traffic stop).

Finally, the totality of the circumstances here, including the unsafe flight and resulting injuries to the driver and the flight of the other passenger, supplied the officers with probable cause to search the trunk of the car and the tire within it. *See United States v. Roberts*, 470 F.2d 858, 859 (9th Cir. 1972) ("[W]hen Roberts drove away at high speed [in conjunction with the other suspicious facts], he thereby supplied probable cause to believe that there was someone or something in the car of an incriminating character").

AFFIRMED.

[1] We conclude that the first *Brown* factor—temporal proximity—is neutral at best. The record does not reveal exactly when officers found the methamphetamine, but it is clear that the search was not conducted at the scene. The third *Brown* factor—the flagrancy of the police misconduct—weighs in Santos's favor because the stop was improper, but the misconduct is not sufficient to overcome the attenuation of the taint from the dangerous flight.