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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SISKIYOU**

10 THE PEOPLE OF THE STATE OF CALIFORNIA
11 Plaintiff,
12 vs.
13 DEREK DOUGLAS EIMER
14 DOB: 10/26/1964
15 Defendant.

NO. YKCRM 15-1123

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

Date: November 5, 2015
Time: 8:30am
Dept: TBD

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

18 The People oppose the motion to suppress and motion to dismiss filed by the Defendant.
19 The opposition will be based on the below points and authorities, evidence produced at the
20 hearing, and any argument heard at the hearing.
21

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

24 The doctrine of collateral estoppel is applicable to criminal cases. (Ashe v. Swenson
25 (1970) 397 U.S. 436, 443.) "[W]hen an issue of ultimate fact has once been determined by
26 a valid and final judgment, that issue cannot again be litigated between the same parties in
27 any future lawsuit." (Ibid.)

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

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

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

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

24 (Id. at p. 341; similarly, see People v. Garcia (2006) 39 Cal.4th 1070, 1077; see also People
25 v. Quarterman (2012) 202 Cal.App.4th 1280, 1288-1291; People v. Yokely (2010) 183
26 Cal.App.4th 1264, 1273.) “The rule is based upon the sound public policy of limiting
27 litigation by preventing a party who has had one fair trial on an issue from again drawing it
28 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

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

4 Collateral estoppel does not apply, however, to findings in criminal cases in which
5 the defendant did not participate. (*Beets v. County of Los Angeles* (2011) 200 Cal.App.4th
6 916, 928.) “Accordingly, the appearance of justice the criminal justice system needs is best
7 served if all participants in alleged criminal conduct are tried on their cases’ own merits,
8 without concern for the results of other trials.” (*People v. Superior Court (Sparks)* (2010)
9 48 Cal.4th 1, 16.)

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

21 **II. No evidence can be suppressed because the offense was committed in the 22 officer’s presence.**

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

27 The requirement that the offense be committed in the officer’s presence is merely
28 statutory—it is not grounded in the Fourth Amendment. The Fourth Amendment requires only

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

8 The United States Supreme Court in *Atwater v. City of Lago Vista* (2001) 532 U.S.
9 318, held that the Fourth Amendment permits a warrantless custodial arrest for a very minor,
10 fine-only criminal offense based on probable cause. (Id. at pp. 323, 340, 353.) The offense
11 for which Ms. Atwater was arrested was committed in the officer's presence. Thus, the Court
12 did not decide whether it was necessary for the offense to have been committed in the
13 officer's presence for a misdemeanor arrest to be reasonable under the Fourth Amendment.
14 (Id. at p. 341, fn. 11.)

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

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

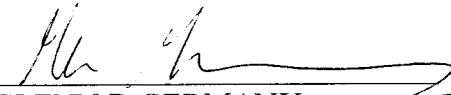
22 Pre-Proposition 8 cases liberally construed the term "in [the officer's] presence."
23 (People v. Welsch (1984) 151 Cal.App.3d 1038, 1042.) Neither physical proximity nor sight
24 is essential. (See People v. Burgess (1959) 170 Cal.App.2d 36.) "The test is whether the
25 misdemeanor 'is apparent to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

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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

1 **PROOF OF SERVICE**

2 I, Lisa Robustellini, declare:

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

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

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

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

8 **CASE NO. YKCRM 15-1123**

9 **FOR**

10 **DEREK DOUGLAS EIMER**

11
12
13 _____ By personally delivering a true copy thereof to the person(s) and at the
14 address(es) set forth below:

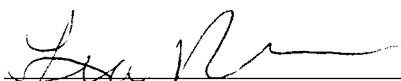
15
16 ~~_____~~ By placing a true copy thereof in a sealed envelope with postage thereon fully
17 prepaid, in the United States Post Office mail box at Yreka, California,
18 addressed as set forth below:

19
20 James L. Buchal
21 3425 SE Yamhill, Suite 100
22 Portland, OR 97214

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

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

27 EXECUTED this 29th day of October, 2015, at Yreka, California.

28 

LYSA ROBUSTELLINI