

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 17 2011

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALLEN MICHAEL DONAHUE,

Defendant - Appellant.

No. 10-10004

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

D.C. No. 4:08-cr-01070-RCC-
CRP-1

District of Arizona,
Tucson

ORDER

Before: GOULD and CALLAHAN, Circuit Judges, and KORMAN, Senior District Judge.*

We recall the mandate, which issued prematurely on February 8, 2011.

On January 14, 2011, we filed a memorandum disposition retaining appellate jurisdiction and remanding to the district court with instructions to answer two questions. The district court issued an order on August 1, 2011, answering those questions. In light of the district court's order, we affirm. Because at trial the district court "had the opportunity to do exactly what [it] would have done had [it] held an evidentiary hearing" and "understood that suppression was on the table," and because the court's order clarifies that it would have denied a

* The Honorable Edward R. Korman, Senior United States District Judge for the Eastern District of New York, sitting by designation.

renewed motion to suppress had Donahue renewed that motion, we hold that the claimed violation of Donahue's due process rights was "cured" at trial. *United States v. Hernandez-Acuna*, 498 F.3d 942, 945 (9th Cir. 2007).

The mandate shall re-issue pursuant to Federal Rule of Appellate Procedure 41.

AFFIRMED.