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The Crossing

Written by Michael Connelly

Published by Orion Books

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MICHAEL CONNELLY

THE CROSSING



First published in Great Britain in 2015 by Orion Books,
an imprint of The Orion Publishing Group Ltd
Carmelite House, 50 Victoria Embankment
London EC4Y 0DZ

An Hachette UK Company

1 3 5 7 9 10 8 6 4 2

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A CIP catalogue record for this book is
available from the British Library.

ISBN (Hardback) 978 1 4091 4552 3
ISBN (Export Trade Paperback) 978 1 4091 4590 5
ISBN (Ebook) 978 1 4091 4589 9

Printed in Great Britain by Clays Ltd, St Ives plc

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APRIL FOOLS' DAY

Ellis and Long were four car lengths behind the motorcycle on Ventura Boulevard. They were eastbound, coming up to the big curve where the road would turn south and head down through the pass into Hollywood.

Ellis was behind the wheel, where he preferred to be, even though he was the senior partner and could dictate to Long who drove and who rode shotgun. Long was looking down at the screen on his phone, staring at the video feed, watching over what they called their investments.

The car felt good. It felt strong. There was little play in the wheel. Ellis felt solidly in control. He saw an opening in the right lane and pushed his foot down. The car jumped forward.

Long looked up.

"What are you doing?"

"Getting rid of a problem."

"What?"

"Before it's a problem."

He had caught up and was now riding next to the motorcycle. He glanced over and saw the rider's black boots and the orange flames painted on the gas tank. The flames matched the color of the Camaro.

He pulled a few feet ahead and as the road curved right he allowed the car to drift into the left lane, following the laws of centrifugal force.

He heard the rider yell. He kicked at the side of the car and then gunned it to try to move ahead. That was his mistake. He should have braked and bailed but he tried to gun his way out of it. Ellis was ready for the move and pinned the accelerator. The Camaro surged into the left lane, completing the cutoff.

Ellis heard brakes squeal and a long sustained blast of a car horn as the motorcycle went into the oncoming traffic lanes. Then he heard the high-pitched scraping of steel and the inevitable impact of metal against metal.

Ellis smiled and kept going.

1

It was a Friday morning and the smart people had already taken off for the weekend. This made traffic into downtown a breeze and Harry Bosch got to the courthouse early. Rather than wait for Mickey Haller on the front steps, where they had agreed to meet, he decided to look for his lawyer inside the monolithic structure that covered half a block of space nineteen floors into the air. But the search for Haller would not be as difficult as the size of the building suggested. After clearing the lobby metal detector—a new experience for him—Bosch took an elevator up to fifteen and started checking courtrooms and using the stairs to work his way down. Most of the courtrooms assigned to criminal cases were on floors nine through fifteen. Bosch knew this because of the time he'd spent in those courtrooms over the last thirty years.

He found Haller in Department 120 on the thirteenth floor. Court was in session but there was no jury. Haller had told Bosch he had a motion hearing that would finish by their lunchtime appointment. Harry slipped onto a bench in the back of the public gallery and watched as Haller questioned a uniformed Los Angeles police officer on the witness stand. Bosch

had missed the preliminaries but not the meat of Haller's examination of the officer.

"Officer Sanchez, what I would like you to do now is go through the steps that led to your arresting Mr. Hennegan on December eleventh of last year," Haller said. "Why don't we start with what your assignment was that day."

Sanchez took a moment to compose an answer to what seemed to be a routine question. Bosch noticed that he had three hash marks on his sleeve, one for every five years with the department. Fifteen years was a lot of experience and that told Bosch that Sanchez would be very wary of Haller as well as skilled at giving answers more helpful to the prosecution than the defense.

"My partner and I were on routine patrol in Seventy-seventh Street Division," Sanchez said. "We happened to be traveling westbound on Florence Avenue at the time of this incident."

"And Mr. Hennegan was also traveling on Florence Avenue?"

"Yes, that's correct."

"Which direction was he going?"

"He was also going west. His car was directly in front of us."

"Okay, and then what happened?"

"We came to a red light at Normandie and Mr. Hennegan came to a stop and then we stopped behind him. Mr. Hennegan engaged his right turn signal and then turned right to go northbound on Normandie."

"Did he commit a traffic code infraction by turning right when the light was red?"

"No, he did not. He came to a complete stop and then made the turn when it was clear."

Haller nodded and checked something off on a legal pad. He was sitting next to his client, who was in county blues—a sure sign that this was a felony case. Bosch guessed it was a drug case and that Haller was trying to suppress whatever was found in his client's car by claiming it was a bad stop.

Haller was questioning the witness from his seat at the defense table. Without a jury, the judge was not requiring the formality of standing when addressing a witness.

"You made the turn as well, following Mr. Hennegan's car, correct?" he asked.

"That is correct," Sanchez said.

"At what point did you decide to conduct a traffic stop on Mr. Hennegan's vehicle?"

"It was right away. We lit him up and he pulled over."

"Then what happened?"

"The minute he stopped the car, the passenger door opened and the passenger bolted."

"He ran?"

"Yes, sir."

"Where did he go?"

"There is a shopping plaza there with an alley behind it. He went into the alley in an easterly direction."

"Did either you or your partner give chase?"

"No, sir, it would be against policy and dangerous to separate. My partner got on the radio and requested backup and an airship. He broadcast a description of the man who ran."

"An airship?"

"A police helicopter."

"Got it. What did you do, Officer Sanchez, while your partner was on the radio?"

"I exited the patrol car and moved to the driver's side of the

vehicle and told the driver to put his hands out the window, where I could see them."

"Did you draw your weapon?"

"Yes, I did."

"Then what happened?"

"I ordered the driver—Mr. Hennegan—to step out of the vehicle and lie down on the ground. He complied and then I handcuffed him."

"Did you tell him why he was under arrest?"

"At that time he was not under arrest."

"He was handcuffed facedown on the street but you are saying he was not under arrest?"

"We didn't know what we had and my concern was for the safety of myself and my partner. We'd had a passenger bolt from the car, so we were suspicious about what was going on here."

"So the man bolting from the car was what set all of this in motion."

"Yes, sir."

Haller flipped some pages on his yellow pad to look at notes and then checked something on the screen of his laptop, which was open on the defense table. His client had his head tilted down, and from behind, it looked as though he might be asleep.

The judge, who had been slumped so low in his seat that Bosch had only been able to see the top of his gray head, cleared his throat and leaned forward, revealing himself to the courtroom. The placard at the front of the bench identified him as the Honorable Steve Yerrid. Bosch didn't recognize him or his name, which didn't mean a whole lot, since the building housed more than fifty courtrooms and judges.

"Nothing further, Mr. Haller?" he asked.

"I'm sorry, Your Honor," Haller said. "Just checking some notes."

"Let's keep this moving."

"Yes, Your Honor."

Haller apparently found what he was looking for and was ready to proceed.

"How long did you leave Mr. Hennegan handcuffed on the street, Officer Sanchez?"

"I checked the car and once I was sure there was no one else in it, I went back to Mr. Hennegan, patted him down to check for weapons, then helped him up and placed him in the backseat of the cruiser for his own safety and ours."

"Why was his safety in question?"

"Like I said, we didn't know what we had here. One guy runs, the other guy is acting nervous. It was best to secure the individual while we determined what was going on."

"When did you first notice that Mr. Hennegan was acting nervous, as you say?"

"Right away. When I told him to put his hands out the window."

"You were pointing a gun at him when you gave that order, weren't you?"

"Yes."

"Okay, so you have Hennegan in the backseat of your car. Did you ask him if you could search his car?"

"I did and he said no."

"So what did you do after he said no?"

"I went on the radio and called for a dope dog to come to the scene."

"And what does a dope dog do?"

"It is trained to alert if it smells drugs."

"Okay, so how long did that take, to get the dog out to Florence and Normandie?"

"About an hour. It had to come from the academy, where they had a training demonstration."

"So for an hour my client was locked in the back of your car while you waited."

"That is correct."

"For your safety and his."

"Correct."

"How many times did you go back to your car, open the door, and ask him again if you could search his car?"

"Two or three times."

"And what was his response?"

"He kept saying no."

"Did you or other police officers ever find the passenger who ran from the car?"

"Not as far as I know. But the whole thing was turned over to the South Bureau Narcotics Unit after that day."

"So when this dog finally arrived, what happened?"

"The K-9 officer walked him around the subject's vehicle and the dog alerted at the trunk."

"What was the dog's name?"

"I think it was Cosmo."

"What kind of vehicle had Mr. Hennegan been driving?"

"It was an old Toyota Camry."

"And so Cosmo told you there were drugs in the trunk."

"Yes, sir."

"So you opened the trunk."

"We cited the dog's alert as probable cause to search the trunk."

"Did you find drugs, Officer Sanchez?"

"We found a bag of what appeared to be crystal meth and a bag of money."

"How much crystal meth?"

"Two point four pounds, it turned out to be."

"And how much money?"

"Eighty-six thousand dollars."

"Cash?"

"All cash."

"You then arrested Mr. Hennegan for possession with intent to sell, correct?"

"Yes, that was when we arrested him, read him his rights, and took him to South Bureau for booking."

Haller nodded. And was looking at his notepad again. Bosch knew he had to have something else. It came out when the judge prompted him once again to proceed.

"Officer, let's go back to the stop. You testified earlier that Mr. Hennegan turned right on a red light after coming to a complete stop and waiting for the moment that it was clear and safe for him to make that turn. Do I have that right?"

"Yes, correct."

"And that was correct under the law, yes?"

"Yes."

"So if he did everything right, why did you light him up and force him to pull over?"

Sanchez made a quick glance toward the prosecutor, who sat at the table opposite Haller. He had so far said nothing but Bosch had watched him taking notes during the police officer's testimony.

The glance told Bosch that this was where Haller had found the weakness of the case.

"Your Honor, can you ask the witness to answer the question

and not look at the prosecutor for the answer?" Haller prompted.

Judge Yerrid leaned forward again and told Sanchez to answer. Sanchez asked for a repeat of the question and Haller complied.

"It was Christmastime," Sanchez said. "We always give out turkey tickets at that time of year and I was pulling them over to give them turkey tickets."

"Turkey tickets?" Haller asked. "What is a turkey ticket?"

2

Bosch was enjoying the Lincoln Lawyer show. Haller had expertly put all the details of the arrest on the record, had circled back to the Achilles heel of the case, and was about to exploit it big time. Bosch now thought he knew why the prosecutor had been silent throughout the procedure. There was nothing he could do about the facts of the case. It was going to come down to how he argued them to the judge later.

"What are turkey tickets, Officer Sanchez?" Haller asked again.

"Well, there is a chain of markets in South L.A. called Little John's and every year around Thanksgiving and Christmas they give us these gift certificates for turkeys. And we give them out to people."

"You mean like a gift?" Haller asked.

"Yes, a gift," Sanchez said.

"How do you choose who gets these turkey tickets?"

"We look for good deeds, people doing what they are supposed to be doing."

"You mean drivers obeying the traffic laws?"

"That's right."

"So in this case you pulled over Mr. Hennegan because he did the right thing on that turn at the red light?"

"Yes."

"In other words, you stopped Mr. Hennegan for not breaking the law, correct?"

Sanchez looked at the prosecutor again, hoping for some help. None came and he struggled through an answer.

"We did not know he was breaking the law until his partner bolted and we found the drugs and money."

Even Bosch saw it as a pathetic stance. But Haller wasn't letting it go by.

"Officer Sanchez," he said, "I ask you very specifically, at the moment you put your car's lights on and sounded the siren in order to pull Mr. Hennegan over, Mr. Hennegan had done nothing you saw to be wrong, nothing illegal. Is that correct?"

Sanchez mumbled his answer.

"Correct."

"Please say your answer clearly for the record," Haller said.

"Correct," Sanchez said in a loud, annoyed tone.

"I have no further questions, Your Honor."

The judge asked the prosecutor, whom he called Mr. Wright, if he wanted to cross-examine the witness, and Wright elected to pass. The facts were the facts and nothing he could ask could change them. The judge dismissed Officer Sanchez and addressed the lawyers.

"This is your motion, Mr. Haller," he said. "Are you ready for arguments?"

A brief dispute followed as Haller said he was ready to proceed with oral arguments and Wright suggested that written arguments be submitted instead. Judge Yerrid threw it Haller's

way and said he wanted to hear oral arguments and then decide if written arguments were necessary.

Haller stood and moved to the lectern between the prosecution and defense tables.

"I'll be brief, Your Honor, as I think the facts of the case are pretty clear. By any measure of those facts, not only is the probable cause to make this traffic stop insufficient, it simply doesn't even exist. Mr. Hennegan was obeying all traffic laws and not acting suspiciously in any way when Officer Sanchez and his partner put on their lights and siren and forced him to pull to the side of the road."

Haller had carried a legal tome with him to the lectern. He now looked down at a highlighted section of text and continued.

"Your Honor, the Fourth Amendment requires that a search and seizure be pursuant to a warrant supported by probable cause. However, there are exceptions to the warrant requirement under *Terry,* one of which is that a vehicle may be stopped when there is probable cause to believe that an infraction has been committed or there is reasonable suspicion to believe that the occupants of the vehicle are engaged in a crime. In this instance we have none of the requirements for a *Terry* stop. The Fourth Amendment places strict limitations on the state in its exercise of power and authority. Handing out turkey tickets is not a valid exercise of constitutional authority. Mr. Hennegan committed no traffic offense and by the arresting officer's own admission was driving in a perfectly legal and correct way when he was forced to pull over. It does not matter what was found to be in the trunk of his car later. The government trampled on his right to be protected from unlawful search and seizure."

Haller paused, perhaps attempting to gauge if he needed to say more.

"Additionally," he finally said, "the one hour Mr. Hennegan spent locked in the back of Officer Sanchez's patrol car constituted an arrest without warrant or probable cause, again a violation of his protections against unlawful search and seizure. Fruit of the poisonous tree, Your Honor. It was a bad stop. Everything that came out of it was therefore tainted. Thank you."

Haller walked back to his chair and sat down. His client gave no indication that he had listened and understood the argument.

"Mr. Wright?" the judge said.

The prosecutor stood and reluctantly approached the lectern. Bosch had no law degree but he did have a solid working knowledge of the law. It was clear to him that the case against Hennegan was in trouble.

"Your Honor," Wright began. "Every day of the week police officers have what we call citizen encounters, some of which lead to arrest. As the Supreme Court says in *Terry,* 'Not all personal intercourse between police officers and citizens involves seizure of persons.' This was a citizen encounter—the intention of which was to reward good behavior. What turned this in a new direction and provided the probable cause for the actions of the officers was the passenger fleeing the defendant's vehicle. That was the game changer."

Wright checked the notes on the yellow pad he had brought with him to the lectern. He found the string and continued.

"The defendant is a drug dealer. The good intentions of these officers should not preclude this case's going forward. The court has wide discretion in this area and Officer Sanchez and his partner should not be penalized for carrying out their duty to the fullest."

Wright sat down. Bosch knew his argument had been tan-

tamount to throwing himself on the mercy of the court. Haller stood up to respond.

"Your Honor, if I could make one point. Mr. Wright is Mr. Wrong here. He quoted from *Terry* but left out that when an officer, by means of physical force or show of authority, restrains a citizen, then a seizure has occurred. He seems to have a slide rule with which he likes to move the point of seizure vis-à-vis probable cause. He says there was no seizure until the passenger jumped from Mr. Hennegan's car and probable cause arose. But that logic does not work, Your Honor. Through the siren and lights on his car, Officer Sanchez forced Mr. Hennegan's car to the side of the road. And for an arrest of any kind to transpire, there had to be probable cause for that stop. Citizens are free to travel and move about unimpeded in this country. Forcing a citizen to stop and chat is a seizure and a violation of the right to be left alone to lawful pursuits. The bottom line is, a turkey ticket is not probable cause. It is this case that is the turkey, Your Honor. Thank you."

Proud of his last turn of phrase, Haller returned to his seat. Wright did not get back up to throw out the last word. His argument, what there was of it, had been submitted.

Judge Yerrid leaned forward once again and cleared his voice right into the bench's microphone, creating a loud blast in the courtroom. Hennegan sat bolt upright, revealing that he had in fact been sleeping through the hearing that might decide his freedom.

"Excuse me," Yerrid said after the ringing sound receded. "Having heard the testimony and the arguments, the court grants the motion to suppress. The evidence found in the trunk of—"

"Your Honor!" Wright shouted as he jumped up from his seat. "Clarification."

He held his hands out wide as if he were surprised by a ruling he certainly had to have known was coming.

"Your Honor, the state has no case without the evidence from the trunk of that vehicle. You are saying the drugs and the money are tossed?"

"That's exactly what I am saying, Mr. Wright. There was no probable cause to make the stop. As Mr. Haller stated, fruit of the poisonous tree."

Wright now pointed directly at Hennegan.

"Your Honor, the man is a drug dealer. He is part of the plague on our city and society. You are putting him back out on—"

"Mr. Wright!" the judge barked into his microphone. "Do not blame the court for the failings of your case."

"The state will be filing a notice of appeal within twenty-four hours."

"It is the state's right to do so. I will be most interested in seeing if you can make the Fourth Amendment disappear."

Wright dropped his chin to his chest. Haller took the moment to stand and pour salt on the prosecutor's wounds.

"Your Honor, I would like to make a motion to dismiss the charges against my client. There is no longer any evidence in support of the filing."

Yerrid nodded. He knew this was coming. He decided to grant Wright a small dose of mercy.

"I am going to take that under advisement, Mr. Haller, and see if the state actually does file an appeal. Anything else from counsel?"

"No, Your Honor," Wright said.

"Yes, Your Honor," Haller said. "My client is currently incarcerated in lieu of half a million dollars' bail. I ask that he be released on recognizance pending appeal or dismissal."

"The state objects," Wright said. "This man's partner ran. There is no indication Hennegan won't do the same. As I said, we will be appealing this ruling and returning to prosecute the case."

"So you say," the judge said. "I am going to take consideration of bail under advisement as well. Let's see what the state does after considering the case further. Mr. Haller, you can always request a rehearing on your motions if the District Attorney's Office moves too slowly."

Yerrid was telling Wright not to sit on this or he would take action.

"Now if there is nothing else, we're adjourned here," the judge said.

Yerrid paused a moment to see if there was anything else from the lawyers, then stood up and left the bench. He disappeared through the door behind the clerk's desk.

Bosch watched Haller clap Hennegan on the shoulder and lean down to explain to his client the great victory he had just won. Bosch knew the rulings didn't mean that Hennegan would immediately waltz out of the courtroom or the county jail. Not even close. Now the dealing would begin. The case was no doubt a wounded duck that couldn't fly. But as long as Hennegan was being held in jail, the prosecutor still had some leverage in negotiating an end to the case. Wright could offer a lesser offense in exchange for a guilty plea. Hennegan would end up looking at months instead of years and the D.A. would still get a conviction.

Bosch knew that was how it worked. The law could bend. If there were lawyers involved, then there was always a deal to be made. The judge knew this, too. He had been faced with an untenable situation. Everyone in the courtroom knew that Hen-

negan was a drug dealer. But the arrest was bad and therefore the evidence tainted. By keeping Hennegan in county lockup he was allowing a resolution to be worked out that might prevent a drug dealer from walking away. Wright quickly packed his briefcase and turned to leave. As he headed toward the gate, he glanced at Haller and said he would be in touch.

Haller nodded back, and that was when he noticed Bosch for the first time. He quickly finished conferring with his client as the courtroom deputy came over to take Hennegan back to lockup.

Soon afterward, Haller came through the gate to where Bosch sat waiting.

"How much of that did you catch?" he asked.

"Enough," Bosch said. "I heard 'Mr. Wright is Mr. Wrong.'"

Haller's smile went wide.

"I've been waiting years to get that guy on a case and be able to say that."

"I guess I should say congratulations."

Haller nodded.

"Tell you the truth, that doesn't happen too often. I can probably count on my two hands how many times I've prevailed on a motion to suppress."

"You tell your client that?"

"Somehow the subtleties of the law are lost on him. He just wants to know when he's getting out."