

1 LAW OFFICES OF THE ALTERNATE DEFENDER
2 DAVID EPPS, # 160173
3 ALFONSO LOPEZ, # 203564
4 BRIAN MATTHEWS, # 191508
5 701 Miller Street, First Floor
6 San Jose, CA 95110
7 Telephone: (408) 299-7234
8 brian.matthews@ado.sccgov.org

FILED
AUG 17 2016

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

9 *Attorneys for Antolin Garcia-Torres*

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA

12 People of the State of California,) Case No.: 213515
13)
14 Plaintiff,) Supplemental Reply to Opposition to
15) Motion to Suppress
16 --vs.--)
17)
18 Antolin Garcia-Torres,)
19)
20 Defendant.)

21 Issue Presented

22 The affidavit supporting a search warrant must present probable cause to believe
23 there will be evidence related to a crime in the place to be searched. Probable cause cannot
24 be based on a hunch or a guess; rather, there must be a showing that there is a fair
25 probability that contraband or evidence will be presently found in the place to be searched.
Does the affidavit provide probable cause?

1
2
3 Points and Authorities

4 Argument

5 **I. The affidavit fails to establish probable cause**

6 The Fourth Amendment guarantees that no search warrant will issue except upon a
7 showing of probable cause. (U.S. Const., 4th Amend.) The task for the Magistrate is to
8 determine if there is a fair probability that contraband or evidence of a crime will be found in
9 a particular place. (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) The affidavit supporting the
10 warrant must demonstrate a fair probability that the contraband will presently be found in
11 the place to be searched. In other words, the information in the warrant cannot be stale.
12 (*People v. Hulland* (2003) 110 Cal.App.4th 1646.) And it must demonstrate a nexus between
13 the place to be searched and the crime. Having probable cause that an individual might be
14 involved in a crime does not necessarily give probable cause to search a particular location.
(*Zurcher v. Stanford Daily* (1978) 436 U.S. 547, 556.)

15 Staleness is a factual determination. An example of a case where the information in
16 the affidavit was deemed stale is *People v. Hulland*. The officer in that case made an
17 undercover purchase of drugs from the defendant but waited 52 days before seeking a search
18 warrant. There was no information that the defendant had engaged in subsequent drug sales
19 and there was no evidence supporting the officer's belief he would find contraband or
20 evidence in the place to be searched. (*People v. Hulland, supra*, 110 Cal.App.4th 1626.)
21 Therefore, the Court of Appeal found that there was reason to believe contraband would
22 still be found in the area to be searched.

23 The nexus between the crime and the location to be searched also requires a factual
24 evaluation. An example of a case where the affidavit lacked the sufficient nexus is *People v.*
25 *Garcia*. The police in that case obtained a search warrant for a bar based on evidence that a
patron had sold drugs at the establishment. They searched the bartender when the warrant

1 was executed and found drugs. The Court of Appeals ruled that there was no nexus between
2 the patron and the establishment. In other words, there was no probable cause to believe
3 that drugs or evidence of drug dealing would be found on the premises. (*People v. Garcia*
4 (2003) 111 Cal.App.4th 715.)

5 The affidavit supporting the search warrant in the instant case similarly fails to
6 establish both that the information in contains isn't stale and that there was a nexus between
7 Mr. Garcia-Torres's residence and car and Ms. LaMar's disappearance. It explains that Ms.
8 LaMar was reported missing on March 16, 2012 and that her cell phone and a bag containing
9 her clothing were found on March 17 and March 18, respectively. On March 28, the crime
10 lab informed law enforcement that it had submitted a DNA profile to CODIS and obtained
11 a candidate match to Mr. Garcia-Torres. They instituted twenty-four hour surveillance on
12 Mr. Garcia-Torres. Nothing is reported about any incriminating results. The warrant was
13 signed on April 3, 2012. Thus, the affidavit reported that Ms. LaMar had disappeared, that
14 Mr. Garcia-Torres was linked to her through DNA results, and that there was no record of
15 them knowing each other than might explain the results. But there is nothing in the affidavit
16 that would lead to the reasonable belief that contraband or evidence relating to her
17 disappearance would be found in his car or at his residence approximately two weeks after
18 she disappeared. There was no probable cause to believe the evidence would still be in those
19 locations.

20 The affidavit also fails to establish a nexus between the location to be searched and
21 the crime. The only facts it provided showed that Ms. LaMar disappeared and the CODIS
22 match. It then included the author's speculation based on training and experience that
23 suspects sometimes leave weapons at crimes scenes or in residences and that they also leave
24 trace evidence at a crime scene. But there were no facts presented to support this
25 speculation. Indeed, one could say these things about any scenario—they don't distinguish
one that contains probable cause from one that does not. Absent from the affidavit are any
facts about how or why Ms. LaMar disappeared, whether Mr. Garcia-Torres's vehicle was
used, and whether there was any reason (other than speculation) to believe anything related

1 to the disappearance would be found at his residence.

2 The affidavit in support of the search warrant failed to demonstrate probable cause to
3 believe evidence was still in the place to be searched and failed to establish a nexus between
4 the incident and the location to be searched. The absence of facts related to the
5 disappearance left the magistrate with the barest of facts and the opinion and speculation of
6 the affiant.

7 **II. The good faith exception does not save the search**

8 The exclusionary rule does not apply if the police act in objectively reasonable
9 reliance on a subsequently invalidated search warrant. (*U.S. v. Leon* (1984) 468 U.S. 897, 922.)
10 This is the so-called good faith doctrine. The doctrine does not apply when the affidavit is
11 “so lacking in indicia of probable cause as to render official belief in its existence entirely
12 unreasonable.” (*Id.*, see also *People v. Hulland, supra*, 110 Cal.App.4th 1646.) The complete
13 absence of facts regarding how Ms. LaMar disappeared and what may have been involved in
14 the disappearance means that one cannot establish probable cause to believe, for example,
15 that Mr. Garcia-Torres’s car was involved. The only way to believe that is through
16 speculation. And to believe evidence would be at his residence requires guesswork.
17 Speculation and guesswork do not equal probable cause and any reasonable officer should
18 know that. Therefore, the good faith exception does not apply.

19 Date: August 15, 2016

20 Respectfully submitted,

21 

22 Brian Matthews
23 Deputy Alternate Defender

1 LAW OFFICES OF THE ALTERNATE DEFENDER
2 DAVID EPPS, # 160173
3 ALFONSO LOPEZ, # 203564
4 BRIAN MATTHEWS, # 191508
5 701 Miller Street, First Floor
6 San Jose, CA 95110
7 Telephone: (408) 299-7234
8 brian.matthews@ado.sccgov.org

FILED
AUG 17 2016

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

Attorneys for Antolin Garcia-Torres

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA


IN AND FOR THE COUNTY OF SANTA CLARA

9 People of the State of California,) Case No.: 213515
10)
11 Plaintiff,)
12) Proof of Service
13 --vs.--)
14)
15 Antolin Garcia-Torres,)
16)
17 Defendant.)

16 I am a citizen of the United States and employed in Santa Clara County. I am over
17 the age of eighteen years and not a party to this action. My business address is 701 Miller
18 Street, San Jose, CA 95110.

19 On August 15, 2016, I served the within Supplemental Reply to Opposition to
20 Motion to Suppress on the Plaintiff in this action by sending a true and correct copy to the
21 Office of the District Attorney through the interagency mail service and electronically to the
22 business email address for Dep. DA David Boyd and Dana Veazey.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on
2 this 15th day of August 2016.

3 
4 Brian Matthews
Deputy Alternate Defender

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25