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Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY G. GOLDENSON DEPUTY

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
7 IN AND FOR THE COUNTY OF SANTA CLARA

8 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: 213515
Plaintiff,)

9 vs.)

) **PEOPLE'S OPPOSITION TO DEFENSE**
) **MOTION TO SUPPRESS DEFENDANT'S**
) **STATEMENT (*MIRANDA v. ARIZONA*)**

10)
11)
ANTOLIN GARCIA-TORRES,)
Defendant.)

12)
13 **INTRODUCTION**

14 Antolin García-Torres (hereafter "Defendant") asks this Court to suppress a portion of his
15 statement given on April 7, 2012, because, he argues, he was subjected to custodial interrogation
16 ~~prior to the advisement of his *Miranda* rights. This motion should be denied. Defendant was not in~~
17 custody when: he agreed to speak to officers; was told he was not under arrest; was neither
18 searched or handcuffed; was interviewed in a non-accusatory manner in an unlocked room at the
19 police station; and was driven home after the interview. There was no formal arrest; nor was there
20 a restraint on Defendant's freedom of a degree associated with a formal arrest. (*California v.*
21 *Beheler* (1983) 463 U.S. 1121, 1125.)

22 Therefore, Defendant's motion should be denied.
23
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25

1 STATEMENT OF LAW AND ARGUMENT

2 I.

3 DEFENDANT WAS NOT IN CUSTODY FOR PURPOSES OF MIRANDA
4 DURING HIS INTERVIEW WITH OFFICERS ON APRIL 7, 2012.

5 “It is settled that *Miranda* advisements are required only when a person is subjected to
6 ‘custodial interrogation.’ [Citations.]” (*People v. Davidson* (2013) 221 Cal.App.4th 966, 970.)
7 “[S]tatements made in a noncustodial setting are admissible against the speaker” even when they
8 are not preceded by *Miranda* warnings. (*People v. Battaglia* (1984) 156 Cal.App.3d 1058, 1065.)

9 Custodial interrogation has long been defined as “questioning initiated by law enforcement
10 officers after a person has been taken into custody or otherwise deprived of his freedom of action
11 in any significant way.” (*Miranda v. Arizona* (1966) 384 U.S. 436, 444; *People v. Salinas* (1982)
12 131 Cal.App.3d 925, 935.) “[T]he ultimate inquiry is simply whether there [was] a ‘formal arrest
13 or restraint on freedom of movement’ of the degree associated with a formal arrest.” (*California v.*
14 *Beheler* (1983) 463 U.S. 1121, 1125 (*Beheler*); see also *Stansbury v. California* (1994) 511 U.S.
15 318, 322; *People v. Stansbury* (1995) 9 Cal.4th 824, 830.)

16 ~~Whether one is in custody for purposes of *Miranda* is an objective test. (*Yarborough v.*~~
17 *Alvarado* (2004) 541 U.S. 652, 667 (*Yarborough*)). Defendant asks this Court to assess his
18 subjective belief as that of the objectively reasonable person. (See, Motion to suppress statement
19 obtained through custodial interrogation without benefit of *Miranda*, p. 4, 21-24.) This is contrary
20 to authority. As explained by the United States Supreme Court, “Our decisions make clear that the
21 initial determination of custody depends on the *objective* circumstances of the interrogation, not on
22 the subjective views harbored by either the interrogating officers or the person being questioned.”
23 (*Stansbury v. California*, supra, 511 U.S. at p. 323, emphasis added.)

24 In *Thompson v. Keohane*, the Supreme Court described the custody test under *Miranda*:

1 Two discrete inquiries are essential to the determination: first, what were the
2 circumstances surrounding the interrogation; and second, given those
3 circumstances, would a reasonable person have felt he or she was not at liberty to
4 terminate the interrogation and leave. Once the scene is set and the players' lines
and actions are reconstructed, the court must apply an objective test to resolve "the
ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of
movement' of the degree associated with a formal arrest."

5 (*Thompson v. Keohane* (1995) 516 U.S. 99, 112, footnote omitted.) Thus, the relevant inquiry is
6 not what the suspect believed, but "how a reasonable man in the suspect's position would have
7 understood his situation." (*Berkemer v. McCarty* (1984) 468 U.S. 420, 442.)

8 The High Court's determination that the custody analysis for *Miranda* is an objective one
9 further demonstrates why Defendant's reliance on *Yarborough* is misplaced. In *Yarborough*, the
10 Supreme Court held that the state court reached a reasonable conclusion in finding that the
11 seventeen-year-old defendant was not in custody during his two-hour interview at the police
12 station. (*Yarborough, supra*, 541 U.S. at pp. 656, 664.) The *Yarborough* Court explained that
13 police officers need not consider a suspect's psychological factors in the objective custodial
14 analysis. (*Id.* at p. 668.)

15 In most cases, police officers will not know a suspect's interrogation history. Even
16 if they do, the relationship between a suspect's past experiences and the likelihood a
reasonable person with that experience would feel free to leave often will be
17 speculative. True, suspects with prior law enforcement experience may understand
18 police procedures and reasonably feel free to leave unless told otherwise. On the
19 other hand, they may view past as prologue and expect another in a string of
20 arrests. We do not ask police officers to consider these contingent psychological
factors when deciding when suspects should be advised of their *Miranda* rights.
The inquiry turns too much on the suspect's subjective state of mind and not
enough on the "objective circumstances of the interrogation.

21 (*Yarborough, supra*, 541 U.S. at pp. 668–69, internal citations and quotations omitted.)

22 Accordingly, far from supporting the defense argument, *Yarborough* stands for the proposition
23 that, under the relevant objective analysis, Defendant was not in custody for purposes of *Miranda*.

1 The United States Supreme Court has never offered lower courts a definitive list of
2 objective factors relevant to determining custody. However, the courts tend to rely on a number of
3 objective factors, including: (1) whether the suspect has been formally arrested or the objective
4 indicia of arrest are present; (2) absent formal arrest, the length of the detention or contact; (3) the
5 site or location of the interrogation; (4) the ratio of officers to suspects; (5) the demeanor of the
6 questioning officers; (6) the length, nature, and form of questioning; and (7) whether the
7 investigation has focused on the suspect (as would have been perceived by a reasonable person).
8 The totality of circumstances controls—no one factor is dispositive. (See *People v. Forster* (1994)
9 29 Cal.App.4th 1746, 1753-1754; see also *Yarborough v. Alvarado, supra*, 541 U.S. 652.)

10 Lengthy and detailed questioning, even over several hours, would not lead a reasonable
11 person to believe his or her freedom of movement had been impaired where the tone is generally
12 nonaccusatory. But even pointed questioning about a suspect's involvement does not convert the
13 questioning into a custodial interrogation. (*People v. Vasquez* (1993) 14 Cal.App.4th 1158, 1164;
14 *People v. Spears* (1991) 228 Cal.App.3d 1, 21-26.) Nor does the fact that questioning occurs at the
15 police station at the officer's request show one is in custody. (*California v. Beheler, supra*, 463
16 U.S. 1121; *People v. Kopatz* (2015) 61 Cal.4th 62, 79-82; *People v. Stansbury, supra*, 9 Cal.4th
17 824.) In fact, several leading cases hold the interrogation was non-custodial despite the presence of
18 all of these factors. (*People v. Stansbury, supra*; *Oregon v. Mathiason* (1977) 429 U.S. 492
19 (*Mathiason*); see also *People v. Moore* (2011) 51 Cal.4th 386, 394-404; *People v. Spears, supra*;
20 but see, *People v. Aguilera* (1996) 51 Cal.App.4th 1163 [accusatory questioning after telling
21 suspect they would take him home if he told the truth held custodial].)

22 Here, after looking at the totality of the circumstances, the only reasonable conclusion is
23 that Defendant was not "in custody" for purposes of *Miranda*. Deputy Barton testified that on
24 April 7, 2012, at approximately 7:50 in the morning, he conducted a traffic stop on the car in

1 which Defendant was riding. (Exhibit 1, Testimony of Deputy Barton) ¹ The stop was conducted
2 pursuant to a search warrant. Defendant was told that some detectives would like to speak to him
3 and he sat on the guardrail of Monterey Highway. The deputy did not draw any weapons; nor did
4 he search or handcuff Defendant. While waiting for the detectives, Deputy Barton and Defendant
5 engaged in casual conversation regarding fishing and other related topics. Defendant was not told
6 he was under arrest.

7 When Defendant was contacted by Sergeants Leon and Quinonez, the interaction was
8 casual and friendly.² Defendant was told he was not under arrest and he agreed to go to the
9 substation. He was told he would be driven home. He was neither searched nor handcuffed.
10 Defendant voluntarily rode with the two officers in an unmarked car. The interview was in an
11 unlocked interview room. Defendant was offered breaks and something to eat and drink. The
12 interview was conducted for less than an hour (when factoring in breaks) and Defendant was then
13 advised of his *Miranda* rights— which he waived. At the conclusion of the interview, after
14 providing the buccal swab sample as provided by the search warrant, Defendant was driven home
15 with a stop along the way in which Sergeant Leon purchased him cigarettes.

16 ~~The situation presented in the present case is not unlike *California v. Beheler* (1983) 463~~
17 U.S. 1121 (*Beheler*). In *Beheler*, the Supreme Court held that the defendant was not “in custody”
18 when he voluntarily accompanied police to the station for an interview. In *Beheler*, the police
19 informed the defendant that he was not under arrest and the defendant was permitted to return
20

21
22 ¹The following is based upon the testimony of Deputy Barton during the morning session of August 17,
23 2016, in the motion to suppress which is attached as Exhibit 1. It is the People’s understanding that the
defense will stipulate to the admission of this transcript for purposes of the *Miranda* hearing.

24 ²The following is based upon the testimony of Sergeant Leon in this case on August 26, 2016, as well as the
25 transcript and recording of Defendant’s statement on April 7, 2012. The recording was admitted as People’s
Motion in Limine Exhibit 2b. The transcript was admitted as People’s Motion in Limine Exhibit 12.

1 home. (*Id.* at p. 1122.) The Court explained that whether one is “in custody” for purposes of
2 *Miranda* looks at the totality of the circumstances as to “whether there is a “formal arrest or
3 restraint on freedom of movement” of the degree associated with a formal arrest.” (*Id.* at p. 1125.)
4 That Beheler’s interview took place at the station and he was a suspect because he had spoken to
5 the police earlier, did not mean that he was in custody under the *Miranda* analysis. (*Id.* at p. 1125.)
6 The *Beheler* Court explained, “we have explicitly recognized that *Miranda* warnings are not
7 required “simply because the questioning takes place in the station house, or because the
8 questioned person is one whom the police suspect.” (*Id.* at p. 1125, citing *Mathiason, supra*, 429
9 U.S. at p. 495.)

10 Similarly, in *Mathiason, supra*, 429 U.S. 492 the United States Supreme Court held:

11 [P]olice officers are not required to administer *Miranda* warnings to everyone
12 whom they question. *Nor is the requirement of warnings to be imposed simply*
13 *because the questioning takes place in the station house, or because the questioned*
14 *person is one whom the police suspect. Miranda* warnings are required only where
15 there has been such a restriction on a person’s freedom as to render him “in
16 custody.” It was that sort of coercive environment to which *Miranda* by its terms
17 was made applicable, and to which it is limited.

18 (*Id.* at p. 495, emphasis added.) Therefore, the fact that Defendant’s voluntary

19 conversation with officers occurred at the station does not impose a requirement to provide

20 *Miranda* warnings. Nor did anything in the interaction indicate a restraint on Defendant’s
21 freedom that is associated with formal arrest: Defendant was told he was not under arrest
22 and would return home; he was not handcuffed or searched; he was driven in an unmarked
23 car; the tone was casual; he was interviewed in an unlocked room and given breaks; and
24 the nature and form of the questions were non-accusatory.

25 Further, Defendant asks the Court to find that he was “in custody” based upon the
fact that he had previously found a tracking device on his car in the days prior. However,
whether the person is in *Miranda* custody is only judged by the circumstances at the time

Exhibit 1

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE VANESSA ZECHER

DEPARTMENT 40

---oOo---

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 ANTOLIN GARCIA-TORRES,)
)
 DEFENDANT.)

Case No. 213515

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

August 17, 2016 - MORNING SESSION

VOLUME 32

Pages 595 to 647

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A P P E A R A N C E S :

FOR THE PEOPLE: DAVID R. BOYD
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Deputy District Attorney

FOR THE DEFENDANT: BRIAN MATTHEWS
Deputy Alternate Defender

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Deputy Alternate Defender

COURT REPORTER: SALLY A. SEPULVEDA, CSR
Certificate No. 12817

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1 San Jose, California

August 17, 2016

2

P R O C E E D I N G S

3

4 THE COURT: Good morning. Welcome to Department 40.
5 We are on the record in the matter of People versus
6 Garcia-Torres. All counsel are present this morning. Mr.
7 Garcia-Torres is present this morning. Good morning.

8

THE DEFENDANT: Good morning.

9 THE COURT: We are on the record this morning to
10 continue the hearing on the motion to suppress, and to also
11 commence the hearing on the motion for change in venue.

12 Off the record -- and I will summarize now on the record --
13 I advised all counsel that I am aware that there are witnesses
14 present who will be testifying in one or both motions. The
15 Court has no objection to counsel calling witnesses in whatever
16 order with respect to whichever motion makes it most convenient
17 for the witnesses for either side.

18 So which motion will we be beginning with this morning, and
19 which witness?

20 MS. VEAZEY: Your Honor, the People intend to call
21 Deputy Barton for the 1538.5.

22 THE COURT: Okay. With the motion to suppress.

23 MS. VEAZEY: Yes.

24 THE COURT: All right. So you may get Deputy Barton,
25 please. Thank you.

26 MR. MATTHEWS: Your Honor, as she does that, and she's
27 aware, I would ask to file a Supplemental Reply to the
28 Opposition. I've already e-mailed it to counsel and the Court.

1 THE COURT: Yes, of course.

2 MR. MATTHEWS: May I submit that for filing?

3 THE COURT: Absolutely. Yes.

4 MR. BOYD: Your Honor, while we're taking care of
5 routine matters, I presented to the clerk returned SDT
6 documents. This was -- I'm trying to remember. It related to
7 the 1538.5. I submitted them to the clerk. I'm putting on the
8 record that the last two SDT's have been returned to the Court,
9 and the Defense has received copies, per the Court's request.

10 THE COURT: Thank you. The Court will acknowledge
11 receipt of those records.

12 Deputy Barton, would you kindly step forward. You can stop
13 right there, sir, and be sworn.

14 **DEPUTY ERIC BARTON,**

15 called as a witness on behalf of the People herein, was
16 duly sworn, examined, and testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Please have a seat. Can you please state
19 and spell your name for the record.

20 THE WITNESS: My name is Deputy Eric Barton; E-R-I-C,
21 B-A-R-T-O-N.

22 **DIRECT EXAMINATION**

23 BY MS. VEAZEY:

24 Q. How are you employed?

25 A. I am currently employed by the Santa Clara County Sheriff's
26 Department, and I have been for the last six years.

27 Q. And you are currently -- which division are you working?

28 A. I work for Headquarters, Patrol, and South County.

1 Q. And you've been a sworn deputy for six years?

2 A. Approximately six years.

3 Q. Deputy, were you working on April 7, 2012, at approximately
4 7:50 in the morning?

5 A. Yes, I was.

6 Q. And on that date and time were you in a marked patrol car?

7 A. Yes, I was.

8 Q. Were you wearing a full uniform, as you are today?

9 A. Yes.

10 Q. Did you have a partner that day, or was it only you in the
11 car?

12 A. It was only me in the car.

13 Q. Were you contacted that morning to make contact with
14 someone you later identified as Antolin Garcia-Torres?

15 A. Yes.

16 Q. Could you explain how that occurred.

17 A. I was working routine patrol in South County, and I was
18 contacted by the Surveillance Team, and they asked me to assist
19 with a vehicle stop on Mr. Torres.

20 Q. And do you see Mr. Torres in court here today?

21 A. I do.

22 Q. Would you please identify him and describe an article of
23 his clothing.

24 A. He's the gentleman sitting to my right wearing a yellow
25 shirt.

26 MS. VEAZEY: May the record reflect the
27 identification?

28 THE COURT: Yes.

1 Q. (By Ms. Veazey) Deputy, you said you were contacted by the
2 Surveillance Team. Do you mean a team that was surveilling the
3 defendant at that time?

4 A. Yes, ma'am.

5 Q. Was it your understanding that there was going to be a
6 search warrant served that day?

7 A. Yes, ma'am.

8 Q. And what was your role in contacting the defendant?

9 A. They requested that I conduct the vehicle stop on the
10 subject, and just make contact with him and detain him until the
11 detectives can arrive on scene.

12 Q. And when you say "the subject," you mean the defendant?

13 A. Mr. Torres, yes.

14 Q. Did you know whether there was going to be any buccal swabs
15 taken from the defendant, or were you aware of that?

16 A. No, I was not.

17 Q. Now, where did you find the defendant on the morning of
18 April 7th?

19 A. I was informed that he was at the Coyote Bait & Tackle
20 located off Monterey Highway.

21 Q. That's Santa Clara County?

22 A. Yes, ma'am.

23 Q. And was he -- did you arrive at the bait & tackle shop?

24 A. Yes, I did.

25 Q. Where did you first see him?

26 A. I saw the vehicle that they described to me, which was a
27 Ford. I believe it was a Ford 500. And I observed the vehicle
28 leaving the parking lot of the Bait & Tackle driving southbound

1 on Monterey Highway.

2 Q. Where was defendant positioned in the vehicle?

3 A. They informed me that he was a passenger inside of the
4 vehicle.

5 Q. So when you saw him was he actually a passenger seated in
6 that truck?

7 A. After I conducted my vehicle stop, yes.

8 Q. And when you say you conducted a vehicle stop, what do you
9 mean by that?

10 A. I saw the vehicle driving southbound on Monterey. I
11 activated my forward-facing red lights of my patrol vehicle, and
12 the vehicle yielded and came to a stop at southbound Monterey,
13 just north of Bailey.

14 Q. And you said that -- so this was a truck. So the defendant
15 was the front passenger?

16 A. It was not a truck.

17 Q. Oh, I'm sorry. The car.

18 A. It was a car.

19 Q. Okay. So the defendant, was he the front passenger in the
20 car?

21 A. Yes, he was.

22 Q. Someone else, obviously, was driving.

23 A. Yes.

24 Q. Were there any other passengers in the car?

25 A. There was only two occupants in the vehicle.

26 Q. Did you speak to the defendant at that time?

27 A. I did.

28 Q. And what did you tell him?

1 A. When I approached the vehicle Mr. Torres identified me from
2 a previous encounter that we had. He asked that -- he made a
3 comment along the lines of, "Deputy Barton, pulling me over
4 again?" I said, "Yes, but this time there are some detectives
5 that would like to speak to you."

6 Q. And what happened next?

7 A. I had both occupants of the vehicle exit the vehicle and
8 have a seat on the west side guardrail of Monterey Highway.

9 Q. When you say you had them exit the vehicle, how did you
10 have them do this? Did you request them to? Did you order them
11 to?

12 A. I instructed them to exit the vehicle and have a seat on
13 the side of the road.

14 Q. Did you have any weapons drawn?

15 A. No, I did not.

16 Q. Did you ever have any weapons drawn during your interaction
17 with the defendant on April 7th?

18 A. No, I did not.

19 Q. And when you had the defendant get out of that Ford, did
20 you put him in handcuffs?

21 A. No, I did not.

22 Q. Did you search him?

23 A. No, I did not.

24 Q. And where did you have -- you said you had him sit on the
25 side of the road?

26 A. Yes, ma'am. There was a guardrail on the west side of
27 Monterey Highway, and I had them both sit down on that
28 guardrail.

1 Q. So both him and the driver?

2 A. Yes, ma'am.

3 Q. And approximately how long after you had the defendant exit
4 that vehicle did the detectives arrive?

5 A. I would say approximately 20 to 25 minutes.

6 Q. And during that time what occurred with the defendant?

7 A. Just casual conversation about fishing and things like
8 that.

9 Q. So when you say "casual conversation," that means you were
10 speaking to the defendant?

11 A. I was.

12 Q. And you said that -- besides fishing, did you talk about
13 anything else that you recall?

14 A. Not that I can recall.

15 Q. Did you ever tell the defendant he was under arrest?

16 A. No, I did not.

17 Q. And while you were sitting or standing on the side of the
18 road with the defendant and the driver's car, were any other
19 officers present during that initial encounter?

20 A. No, there was not.

21 Q. Approximately what time -- well, actually, let me ask you.
22 The detectives that were going to arrive, was one of them Sgt.
23 Leon?

24 A. Yes.

25 Q. And approximately what time did he arrive at the scene?

26 A. I believe it was approximately 0815 in the morning.

27 Q. And after Sgt. Leon arrived at the scene around 8:15, is
28 that when he went and contacted the defendant? Sgt. Leon.

1 A. Yes.

2 Q. And then your interaction with the defendant stopped at
3 that point?

4 A. Yes.

5 Q. Thank you. And do you know what happened with the driver
6 of the vehicle?

7 A. I do not.

8 Q. Did your interaction stop with him as well?

9 A. Yes.

10 MS. VEAZEY: Thank you. Nothing further.

11 THE COURT: Mr. Matthews.

12 MR. MATTHEWS: Just briefly. Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. MATTHEWS:

15 Q. So Deputy Barton, I think you told us that you stopped the
16 vehicle because the Surveillance Team asked you to?

17 A. Yes, sir.

18 Q. To your knowledge, was that a team conducting 24-hour
19 surveillance on Mr. Garcia-Torres?

20 A. To my knowledge, yes.

21 Q. And they told you they wanted you to stop the vehicle
22 because some detectives wanted to talk to him?

23 A. That the detectives had a search warrant.

24 Q. So they told you that the detectives already had a search
25 warrant?

26 A. Yes.

27 Q. Now, when you stopped the car that he was the passenger in,
28 were you driving your own patrol car?

1 A. Yes, I was.

2 Q. And were you in full uniform?

3 A. Yes, I was.

4 Q. Does that include wearing a gun?

5 A. Yes.

6 Q. Do you wear a baton?

7 A. Yes.

8 Q. Do you have anything else that could be described as a
9 weapon that's a part of your uniform that you were wearing that
10 morning?

11 A. Tools on my duty belt. I also have pepper spray, OC spray.
12 The tools on my duty belt is also -- I have pepper spray.

13 Q. So you said that you turned on your lights, and the car
14 pulled over.

15 A. Yes.

16 Q. And then did you pull behind it?

17 A. Yes, I did.

18 Q. And did you say anything -- well, let me back up. Does

19 your patrol vehicle have an intercom feature where you can talk
20 to a person outside of the car?

21 A. It does.

22 Q. Did you use that?

23 A. No, I did not.

24 Q. After you pulled the car over, what's the first thing that
25 you did?

26 A. Exited my patrol vehicle.

27 Q. Did you then walk up to the car that you pulled over?

28 A. Yes, sir.

1 Q. Did you go to the passenger side or the driver's side?

2 A. I went to the driver's side.

3 Q. What did you tell the driver when you got there?

4 A. I -- it was more of me having a conversation with Mr.
5 Torres, that I remember.

6 Q. What did you tell Mr. Garcia-Torres?

7 A. Like I previously stated, he made that comment about me
8 pulling him over again.

9 Q. And you said, "This time, there's some detectives who want
10 to talk to you"?

11 A. Yes, sir.

12 Q. Did you tell him to get out of the car?

13 A. I instructed him to exit the vehicle. Yes, sir.

14 Q. And you detained him at that point; right?

15 A. Yes, sir.

16 Q. So in your mind, he was not free to leave?

17 A. Yes, sir.

18 Q. So you directed him at that point to sit on the side of the
19 road; is that right?

20 A. Yes, sir.

21 Q. At some point did he ask if he could get back into his
22 vehicle?

23 A. Not to my knowledge.

24 Q. Do you remember him saying he was cold, that he wanted to
25 get back in the vehicle?

26 A. Not to my knowledge.

27 Q. Did you record the interaction you had with Mr.
28 Garcia-Torres?

1 A. No, sir.

2 Q. Now, you had him sit by the side of the road for about 20
3 to 25 minutes; is that correct?

4 A. Yes, sir.

5 Q. And you were the only deputy there with him at that time?

6 A. Yes, sir.

7 Q. And all you did at that point was talk about fishing?

8 A. Casual conversation. Yes, sir.

9 Q. Did you tell him why Sgt. Leon -- or why some detectives
10 wanted to talk to him?

11 A. No, sir.

12 MR. MATTHEWS: I have no further questions. Thank
13 you.

14 THE COURT: Ms. Veazey.

15 MS. VEAZEY: Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MS. VEAZEY:

18 Q. Deputy Barton, when you were contacting the defendant on
19 April 7th, it was your understanding that there was a search
20 warrant?

21 A. Yes.

22 Q. And when defense counsel was asking you about the weapons
23 on your duty belt, did you use or even, I guess, withdraw your
24 baton that day with the defendant?

25 A. No, ma'am.

26 Q. Did you use OC spray?

27 A. No, ma'am.

28 Q. Did you use a weapon of any kind during that interaction

1 with the defendant?

2 A. No, ma'am.

3 MS. VEAZEY: Nothing further.

4 THE COURT: Thank you. Mr. Matthews.

5 **RE CROSS EXAMINATION**

6 BY MR. MATTHEWS:

7 Q. Deputy Barton, why did you have Mr. Garcia-Torres sit on
8 the side of the road, as opposed to in the car?

9 A. I felt that that was a safer choice than sitting in a
10 vehicle on the side of the road, off the road sitting on a
11 guardrail.

12 Q. Was it easier for you to control the situation that way?

13 A. It was.

14 MR. MATTHEWS: No further questions.

15 THE COURT: Ms. Veazey.

16 MS. VEAZEY: Just one more question.

17 **FURTHER REDIRECT EXAMINATION**

18 BY MS. VEAZEY:

19 Q. Deputy Barton, I asked you about the search warrant. But
20 was it your understanding it was for defendant's person and his
21 property? What was your understanding regarding the search
22 warrant?

23 A. I was just instructed that they needed me to assist to
24 detain him because they had a warrant for him.

25 Q. For the defendant?

26 A. For the defendant. I didn't know what the warrant
27 entailed.

28 Q. So you didn't specifically read it?

1 A. No.

2 Q. But you were told there was a warrant for the defendant?

3 A. Yes.

4 MS. VEAZEY: Thank you.

5 THE COURT: Mr. Matthews.

6 MR. MATTHEWS: No, thank you. I have nothing further.

7 THE COURT: All right. Thank you. Does either side
8 need Detective -- Deputy Barton subject to recall? Ms. Veazey?

9 MS. VEAZEY: We'll keep him subject to recall.

10 THE COURT: All right. Deputy Barton, you may step
11 down. You are subject to recall. If you receive a phone call
12 from any attorney in this proceeding, you are ordered back.

13 Okay?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you. Please do not discuss your
16 testimony with any other witness to the proceedings. Thank you.

17 MR. MATTHEWS: If I might have a quick moment with
18 counsel?

19 THE COURT: Of course.

20 MS. VEAZEY: Your Honor, if I may just address
21 scheduling?

22 THE COURT: Yes, you may.

23 MS. VEAZEY: I was able to get ahold of my other
24 witness I anticipated possibly having come today. But he is
25 available tomorrow afternoon or Friday, if either of those times
26 work.

27 THE COURT: All right. Tomorrow afternoon does work
28 for the Court, at 1:30.

(ENDORSED)
FILED
OCT 24 2016

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

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PROOF OF SERVICE

STATE OF CALIFORNIA) People v. ANTOLIN GARCIA TORRES
) ss.
COUNTY OF SANTA CLARA) Docket No. 213515

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years, and not a party to the above-entitled action. My business address is: Office of the District Attorney, 70 West Hedding Street, West Wing, San Jose, CA 95110

On October 24, 2016, I served the following documents upon the interested parties in this action by the method(s) indicated below:

MOTION TO SUPPRESS STATEMENT OBTAINED THROUGH CUSTODIAL INTERROGATION WITHOUT BENEFIT OF MIRANDA

BY FIRST CLASS MAIL: by placing a true copy thereof, enclosed in a sealed envelope, for postage and deposit with the U.S. Postal Service on the same date it is submitted for mailing, and addressed as follows:

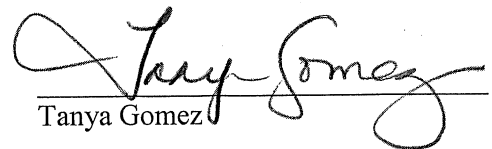
BY PERSONAL DELIVERY: by causing a true copy thereof to be hand-carried to the recipient at the address indicated:

HAND DELIVERED IN COURT BY DDA DANA VEAZEY TO:
Alfonso Lopez
Brian Matthews

BY FACSIMILE TRANSMISSION: by faxing a true copy thereof to the recipient at the facsimile number indicated:

BY COUNTY PONY MAIL: by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 24, 2016, at San Jose, California.


Tanya Gomez