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

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

ANTOLIN GARCIA-TORRES,
Defendant.

Case No.: 213515

PEOPLE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL REPLY TO OPPOSITION TO MOTION TO SUPPRESS

INTRODUCTION

Antolin Garcia-Torres (hereafter, "Defendant") filed a supplemental reply in which he argues, for the first time, that the affidavit to search warrant 42980 is deficient because the information within the warrant is stale, and there is no nexus between Sierra LaMar's disappearance and the Defendant's vehicle and residence.

Defendant has failed to overcome the presumption of validity for a search warrant. A review of the affidavit demonstrates that given the circumstances presented in the case, the items being sought within the warrant, and the reasonable inferences based upon the facts presented, there was a fair probability to believe that evidence of the kidnapping of Sierra LaMar would be found within Defendant's home and vehicle at the time of the search. Thus, Defendant fails to meet his burden to show the warrant was invalid.

Further, even if this Court were to now find the affidavit deficient, the evidence obtained should not be excluded as the officers acted in objectively reasonable reliance upon the warrant.

Lastly, a warrant is not required for the search of an automobile if there is probable cause. Thus, even absent the warrant, the search of Defendant's vehicle is lawful upon a showing by the People that probable cause existed.

Therefore, for the reasons discussed below, as well as the evidence and argument that will be presented at the hearing, Defendant's motion should be denied.

STATEMENT OF LAW AND ARGUMENT

I.

THE AFFIDAVIT CONTAINS PROBABLE CAUSE.

The affidavit for search warrant 42980 establishes probable cause that evidence of Sierra LaMar's abduction would be found in the defendant's home, car, and person.[1] "Search warrants are presumptively valid, and a magistrate's action in issuing the warrants will only be set aside if the affidavits presented to him, as a matter of law, show a lack of sufficient probable cause." (*People v. Miller* (1978) 85 Cal. App. 3d 194, 200.) Thus, in a motion to quash the warrant, the burden rests on the defendant. (*People v. Amador* (2000) 24 Cal. 4th 387, 393.)

"Probable cause sufficient for issuance of a warrant requires a showing that makes it ' "substantially probable that there is specific property lawfully subject to seizure presently located in the particular place for which the warrant is sought." ' (*People v. Clark* (2014) 230 Cal. App. 4th 490, 496–97.) Accordingly, "[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there

[1]Defendant's supplemental motion only attacks the probable cause as it relates to the search of his home and vehicle; because of this, that is all the People will address here.

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is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) To make this determination, a magistrate may draw reasonable inferences and rely upon the conclusions of law enforcement.

> The magistrate issuing the warrant "is entitled to rely upon the conclusions of experienced law enforcement officers in weighing the evidence supporting a request for a search warrant as to where evidence of crime is likely to be found. It is not essential that there be direct evidence that such evidence will be at a particular location. Rather, the magistrate ' "is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense." ' "

(*People v. Lazarus* (2015) 238 Cal. App. 4th 734, 764; citing *People v. Sandlin* (1991) 230 Cal. App. 3d. 1310, 1315, internal citations omitted.)

Upon review, the magistrate's determination of probable cause is given great deference. (*Illinois v. Gates, supra,* 426 U.S. at p. 236; *People v. Kraft* (2000) 23 Cal. 4th 978, 1041.) "Moreover, doubtful or marginal cases should be resolved in favor of upholding the warrant." (*People v. Tuadles* (1992) 7 Cal. App. 4th 1777, 1784.) Indeed, "it is the duty of a reviewing court "to save the warrant if it can in good conscience do so ...." (*People v. Hochanadel* (2009)176 Cal. App. 4th 997, 1015.)

Defendant argues that the affidavit lacks probable cause. However, this challenge is not on the basis that the information fails to establish probable cause that Defendant committed the abduction of Sierra LaMar. Instead, Defendant alleges that the information within the affidavit is stale and does not create a nexus between the abduction and Defendant's home and vehicle.

The affidavit before the court provides ample information for the magistrate to conclude that Sierra LaMar was a victim of kidnapping and the evidence of this crime would be located in Defendant's car and residence. Sierra LaMar was last seen by her mother the morning of March 16, 2012. Sierra's habit was to walk to the intersection of Dougherty Avenue and Palm Avenue to

catch the school bus, but Sierra never arrived at school that day. Neither her friends nor her family heard from her after the morning of March 16, 2012. Sierra's phone was found on the side of the roadway off of Sheller Road on March 17, 2012. A search of Sierra's phone and twitter accounts indicated that she was previously active on social media and texting, but no texts were sent after 6:11 a.m. on March 16, 2012, and her last tweet was sent on 6:29 a.m. March 16, 2012.

Sierra's clothing—jeans, bra, underwear, shoes, socks, sweatshirt—as well as her bag, were found hidden behind a bush, near the intersection of Fisher and Hale in Morgan Hill, on March 18, 2012.

The victim's jeans were tested by the Santa Clara County Crime Lab. DNA was located on a cutting from the rear of Sierra's pants where DNA from more than one person was located. Sierra LaMar was the major contributor to the DNA. The minor contributor profile that was submitted to CODIS, resulted in a match to Defendant. The crime lab also observed sperm cells in more than one location on her clothing, but there was insufficient DNA to compare against Defendant. The investigation did not reveal any known contact between the defendant and Sierra LaMar.

A Jetta was registered to Defendant at his Morgan Hill address. His address was confirmed through surveillance. The defendant's Jetta was also registered on the lease for his Morgan Hill residence.

The affiant explained that based upon his training and experience—which included Child Exploitation Investigation training, Cellebrite Certification and Forensics Training, and an assignment within the S.A.F.E. Task Force, which monitors and investigates sexual offenders that target minors—offenders use weapons, chemicals, and drugs to ensure compliance from a victim and suspects often leave weapons at crime scenes or at their residence. Further, trace evidence and

forensic evidence can be left at a crime scene or can be carried by a perpetrator between the crime scene and the places they frequent, including home and work.

Accordingly, these facts would lead to the fair probability that evidence of Sierra's disappearance would be found within the home and vehicle of the man whose DNA was located on her discarded jeans.

A. The Information Within The Warrant Was Not Stale.

Defendant argues that the warrant lacked probable cause because the information within the affidavit was stale. However, given that this case involves an abduction and the victim had not been found, the only reasonable conclusion was that the criminal activity was ongoing and there would still be evidence of the offense within the suspect's home and vehicle.

"The question of staleness turns on the facts of each particular case." (*People v. Hulland* (2003) 110 Cal. App. 4th 1646, 1652 (*Hulland*).) Staleness concerns whether facts within the affidavit establish that, "it is substantially probable the evidence sought will *still* be at the location at the time of the search." (*People v. Bryant* (2014) 60 Cal. 4th 335, 370.)

> *No bright-line rule defines the point at which information is considered stale.* Rather, "the question of staleness depends on the facts of each case. If circumstances would justify a person of ordinary prudence to conclude that an activity had continued to the present time, then the passage of time will not render the information stale.

(*People v. Carrington* (2009) 47 Cal. 4th 145, 163–64, citations and internal quotations omitted, emphasis added; see also *People v. Bryant*, *supra*, 60 Cal. 4th at p. 370.) Thus, in *People v. Lazarus*, a delay of twenty years after the crime of murder did not render the warrant stale. (*People v. Lazarus*, *supra,* 238 Cal. App. 4th at p.765.)

Defendant alleges that "there is nothing in the affidavit that would lead to the reasonable belief that contraband or evidence relating to her disappearance would be found in his car or at his residence approximately two weeks after she disappeared." (Supplemental Reply to Opposition, p.

3.) For this proposition, Defendant relies upon *Hulland.* (*Hulland, supra,* 110 Cal. App. 4th 1646.) This reliance is misplaced.

First, *Hulland* involved a criminal offense that was completed with no evidence of ongoing activity for almost two months prior to the warrant. In *Hulland*, the police arranged a controlled purchase of marijuana from the defendant. (*Hulland, supra,* 110 Cal. App. 4th at p. 1649.) Fifty-two days after the controlled buy, officers obtained a search warrant for the defendant's two residences. (*Id.* at pp. 1649-1650.) The *Hulland* Court found that the information within the warrant was stale because "[t]here was no information before the magistrate regarding any prior or subsequent criminal activity by Hulland, nor was there any evidence of such activity ever taking place at his residence." (*Id.* at p. 1652.)[2] Thus,"[a]lthough probable cause has been found to exist when a search warrant issues shortly after a drug transaction, the hiatus between the sale and the search in the instant matter evidences a lack of probable cause to search absent additional factors, such as proof of ongoing transactions, suspicious activity at the premises to be searched, or other evidence indicating ongoing criminal activity." (*Id.* at p.1655.) Accordingly, *Hulland* addressed the limited facts presented in that case— a delay in obtaining a warrant after a drug transaction with a complete lack of evidence to show ongoing criminal activity.

The present case is not one involving a hiatus of criminal activity. To the contrary, the circumstances indicated *ongoing criminal activity* because Sierra LaMar was still missing. "If circumstances would justify a person of ordinary prudence to conclude that an *activity had continued to the present time*, then the passage of time will not render the information stale." (*Hulland, supra,* 110 Cal. App. 4th at p.1652, emphasis added.) Since Sierra had not been located, the reasonable conclusion at that time was that the criminal activity was ongoing and that Sierra had been abducted and was being detained against her will.

Second, given the character of the criminal activity, and the items being sought in the warrant, it was reasonable to conclude that evidence of the abduction would still be present mere weeks after Sierra LaMar was initially taken. (See *People v. Wilson* (1986) 182 Cal. App. 3d 742, 754-55, citing Professor LaFave in his treatise on Search and Seizure: "Of the factors identified in *Andresen*, the one which is most frequently relied upon in the appellate decisions is the character of the criminal activity under investigation.") Here, unlike *Hulland*, the circumstances presented were not that of a solitary drug sale in a parking lot, but the abduction of a girl. Given the magnitude of abducting and concealing a human being, it was reasonable to believe that there would be evidence of Sierra LaMar, or the crime, present within the defendant's automobile and residence.

Further, the items being sought in the warrant—weapons, items used to incapacitate, blood, DNA, trace evidence, and fibers,—are of the type that would likely be present weeks after the offense. A weapon, such as a firearm, is one that is likely to be retained by a suspect long after the crime. (See *People v. Lazarus*, *supra,* 238 Cal. App. 4th at p.765.) This same logic applies to the retention of other weapons that may be used in a crime to incapacitate a victim. Similarly, it is reasonable to conclude that DNA, trace evidence, and fibers, are items that may be unwittingly retained by a suspect in his home or vehicle for some period of time after an abduction.

B. <u>The Affidavit Established A Nexus Between The Criminal Offense And The Places to Be Searched.</u>

Defendant argues that there is no nexus between the crime and the Defendant's home and vehicle. Defendant's sole authority for this argument is *People v. Garcia* (2003) 111 Cal. App. 4th 715 (*Garcia*). *Garcia* is wholly distinguishable.

[2] It should be noted that in *Hulland,* the People conceded the issue of staleness on appeal. Further, the controlled buy occurred in a parking lot that was in a different city from the defendant's residence.

In *Garcia*, the question presented was whether the sale of controlled substances from a business establishment open to the public by a target with no apparent connection to the establishment other than that as a patron, provided probable cause for a search warrant. (*Garcia*, *supra*, 111 Cal. App. 4th at pp. 721-722.) There were no facts to believe the target of the warrant stored controlled substances at the establishment or had any other connection to the business. (*Id.* at p. 722.) Further, it was "unreasonable to infer that a patron of a bar would store controlled substances in the part of the bar to which the public had access." (*Id.* at p. 722.) Accordingly, the *Garcia* Court concluded that the search warrant lacked probable cause, but, nonetheless, found that suppression was not required as the officers acted in reasonable reliance upon the warrant. (*Id.* at p. 725.)

Given the circumstances of this case, the only reasonable interpretation was that Sierra LaMar had been abducted and evidence regarding her abduction would be found in the residence and car of the man whose DNA was discovered on her jeans. An affidavit "must be interpreted in a common sense fashion rather than a hypertechnical one." (*People v. Miller, supra.* 85 Cal. App. 3d at p. 200.) Thus, "[i]t is not essential that there be direct evidence that such evidence will be at a particular location. Rather, the magistrate is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense. " (*People v. Sandlin*, *supra,* 230 Cal. App. 3d at p. 1315, internal quotations omitted.) Further, the magistrate may make "normal inferences as to where a criminal might likely hide incriminating evidence." (*People v. Miller*, *supra,* 85 Cal. App. 3d at p. 201.)

In light of the facts within the affidavit, it was reasonable to infer that evidence would be found within Defendant's home and vehicle. After she disappeared, foreign DNA was found on Sierra LaMar's discarded jeans. This DNA was traced to Defendant—a man to which she had no apparent connection and lived in the same area. The presence of sperm on her clothing gave

further weight to the belief that her abductor was a male. That her clothing and phone were discarded in two separate locations, led to the reasonable inference that Defendant used his car to dispose of her property. Similarly, the fact that she was without clothing—as her jeans, underwear, bra, sweatshirt, shoes, and socks were dumped behind a bush—supports the reasonable inference that she was abducted, transported, and concealed in Defendant's vehicle.

In addition, "[a] number of California cases have recognized that from the nature of the crimes and the items sought, a magistrate can reasonably conclude that a suspect's residence is a logical place to look for specific incriminating items." (*People v. Miller*, *supra,* 85 Cal. App. 3d at p. 204.) Here, given the nature of the crime and the necessary concealment of Sierra LaMar, the reasonable inference was that the victim, or evidence of the crime, would also be found within Defendant's nearby home.

Lastly, "[t]he opinions of an experienced officer may legitimately be considered by the magistrate in making the probable cause determination." (*Garcia*, *supra,* 111 Cal. App. 4th at p. 721.) Accordingly, the opinion of the affiant that trace evidence is frequently left at a crime scene and can be carried by a perpetrator from the crime scene to their home, work, and other places that they frequent, also reasonably informed the magistrate in making the determination that evidence of the crime would be present in Defendant's home and vehicle.

Therefore, upon consideration of the facts presented within the affidavit, and in light of the great deference accorded to the magistrate's decision, Defendant has failed to overcome the presumption of validity for the search warrant at issue in this case. Accordingly, Defendant's motion should be denied.

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II.

THE OFFICERS ACTED IN GOOD FAITH RELIANCE UPON THE WARRANT.

Assuming *arguendo* that the Court were to find that the search warrant lacked probable cause, evidence should not be excluded because the officers acted in good faith. When an officer acts in objectively reasonable reliance upon a search warrant, the exclusionary rule does not apply even if the warrant is later determined to have been issued without probable cause. (*United States v. Leon* (1984) 468 U.S. 897, 922 (*Leon*).) If a warrant is challenged on the grounds of lack of probable cause, the "good faith" test becomes "whether a reasonable and well-trained officer 'would have *known* that his affidavit failed to establish probable cause and that he should not have applied for the warrant.' " (*People v. Camarella* (1991) 54 Cal.3d 592, 605-606, italics in original, citation omitted.)

> The test, which was initially formed in *Leon,* and which was subsequently articulated clearly in *Malley*, is whether a reasonable and well-trained officer "would have *known* that his affidavit failed to establish probable cause and that he should not have applied for the warrant." But if such an officer would not reasonably have known that the affidavit (and any other supporting evidence) failed to establish probable cause, there is no reason to apply the exclusionary rule, because there has been no objectively unreasonable police conduct requiring deterrence.

(*Id.* at pp. 605–06, citations omitted.) When the affidavit presents only a close or debatable question on the issue of probable cause, however, an officer can reasonably rely on the magistrate's warrant. (*Id.* at p. 606; *People v. French* (2011) 201 Cal.App.4th 1307, 1323-1325; *People v. Romero* (1996) 43 Cal.App.4th 440, 447.) In addition, "the fact that the officers sought and obtained approval of the warrant application from a superior and a deputy district attorney before submitting it to the magistrate provides further support for the conclusion that an officer could reasonably have believed that the scope of the warrant was supported by probable cause." (*Messerschmidt v. Millender* (2012) 565 U.S.1235, 1249.)

The People have the burden of proving objectively reasonable reliance to support application of the good faith exception to the exclusionary rule. (*People v. Willis* (2002) 28 Cal.4th 22, 36-37; *People v. Camarella*, *supra*, 54 Cal.3d at p. 596.)

Here, should the Court now find that the affidavit fails to establish probable cause, the exclusionary rule does not apply to the evidence obtained by way of the warrant. Under the circumstances presented, there is no basis to believe that a reasonable, well-trained officer would have *known* that the affidavit failed to establish probable cause. Therefore, even if this Court were to now deem the warrant invalid, the exclusionary rule is not applicable as the officers acted in good faith.

III.
AN AUTOMOBILE CAN BE SEARCHED WITHOUT A WARRANT UPON A SHOWING OF PROBABLE CAUSE.

If probable cause exists, police may search a vehicle, including containers within the vehicle, without a warrant. (*California v. Acevedo* (1991) 500 U.S. 565.) In *People v. Superior Court*, the defendant filed a motion to quash and a motion to suppress the evidence obtained within the defendant's vehicle under the warrant. (*People v. Superior Court* (2007) 151 Cal. App. 4th 85 (*Nasmeh*).) The Superior Court concluded that seizing the defendant's vehicle and taking it to the crime lab exceeded the scope of the warrant, and therefore, granted the motion to suppress forensic evidence discovered in the cargo area of the defendant's Jeep. (*Id.* at p. 92.) On writ of mandate, the Sixth District Court of Appeal found that the trial court erred in granting the motion to suppress based upon the warrant. (*Id.* at p. 100.) Not only was the warrant valid, but the Court found that the search of the vehicle could be conducted without a warrant under the automobile exception. (*Id.* at p. 100.) "When the police have probable cause to believe an automobile contains contraband or evidence they may search the automobile and the containers within it without a warrant." (*Id.* at p. 100.)

> [I]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.' " In addition, and as noted, "if the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search of the vehicle."

(*Id.* at pp. 100-01, internal citations omitted.) A search of a vehicle need not be contemporaneous to its lawful seizure; thus, "the passage of time between the seizure and the search of [a] car is legally irrelevant." (*Id.* at pp. 101-02.)

In the present case, the People anticipate presenting the totality of probable cause that existed at the time Defendant's vehicle was seized. This showing of probable cause justifies the search of Defendant's vehicle independent of the warrant. Therefore, the search of Defendant's vehicle was lawful.

CONCLUSION

For all the foregoing reasons, and based on additional evidence and oral argument that will be presented at the hearing, the People respectfully request that the motion to quash the warrant be denied.

Date: August 25, 2016

Respectfully submitted,

JEFFREY F. ROSEN, DISTRICT ATTORNEY

By

Dana Veazey
Deputy District Attorney

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 August 26, 2016, I served the following documents upon the interested parties in this action by the method(s) indicated below:

People's Response to Defendant's Supplemental Reply to Opposition to Motion to Suppress

[ ] 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:

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

Al Lopez
Alternate Defender's Office

Brian Matthews
Alternate Defender's Office

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 August 26, 2016, at San Jose, California.

Dina Garcia

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