

1 people who are ostensibly the victims of an attempt
2 murder, plus other crimes. You have somebody who is
3 still at large who is responsible. And under those
4 circumstances, where you have a public safety issue at
5 that point, I don't think necessarily the showing of the
6 one photograph, if you have the information that they
7 had, is necessarily improper.

8 So I'm not as concerned about showing the one
9 photograph on the MDT as I am, if a comment was made that
10 you have described, that somebody has already been
11 identified. If law enforcement said that to Mr. Mendell,
12 I can't even imagine why they would do that. I think
13 that taints Mr. Mendell's identification, no matter how
14 good or bad it was. I think it is fatal, frankly, to his
15 identification.

16 I don't think I need a Franks hearing to make
17 that determination, to be honest with you. And if, in
18 fact, that happened, and I don't see that there's much
19 dispute that that happened between the two of you, I'm
20 not hearing that there's a dispute that that happened,
21 although there appears to be a dispute about what words
22 were said. But if it's anything like that -- frankly,
23 if they said anything about anyone else making an
24 identification that's enough to taint it. They shouldn't
25 be saying anything about anybody else's identification,
26 period. It just shouldn't happen. That's just the way
27 it is. And I don't think you can recover from that. I
28 don't think you can recover the identification.

1 ~~So I think his identification of anybody in the~~
2 ~~six pack is tainted by that,~~ and I would exclude that.

3 I don't think the identification of the MDT
4 ~~photograph is excluded,~~ because that happened before.

5 And you can argue the strength and weaknesses of a single
6 photo ID all you want to a fact finder later on. But the
7 six pack ID I think is tainted beyond redemption.

8 Yeah.

9 MR. MOAWAD: The Court's determination here,
10 obviously, is for the purposes of the motion to quash and
11 motion to traverse.

12 THE COURT: Right.

13 MR. MOAWAD: And obviously, the steps for the
14 substantial likelihood of misidentification are factual
15 and would be heard by the trial court, should that become
16 an issue, as I assume it will. This Court isn't
17 necessarily taking a position on that for that other
18 purpose.

19 THE COURT: Correct. I'm not in the position
20 to do that. I'm --

21 MR. MOAWAD: Understood.

22 THE COURT: ~~The scope of my review is strictly~~
23 ~~as it pertains to the warrant --~~

24 MR. MOAWAD: Understood. Thank you.

25 THE COURT: -- correct. So I take that out of
26 the equation for my review, for my re-review, of the
27 affidavit. And in my estimation, taking that totally out
28 of the equation, and re-weighing the affidavit to see if

1 there's probable cause, I still think there's plenty of
2 probable cause for me to have issued the warrant.
3 There's still, in my estimation, a strong identification
4 by Ms. Rhoads, and a corroborating identification by Ms.
5 Longfellow. And I think that provides plenty for
6 purposes of issuing the warrant.

7 And I'm sorry if I didn't make that clear that
8 it was strictly for purposes of my review of the warrant.

9 The second part of the analysis has to do with
10 whether there's probable cause for the areas that were
11 described. And the first area is the home and the
12 vehicle, and then I'll take the computer second.

13 I will comment that this was probably not the
14 most artfully written warrant. Most aren't. And most of
15 these warrants, frankly, are written quickly because
16 there is a press for time. There is -- usually this is
17 in the middle of a crisis, where things have to happen
18 quickly. And if they don't happen quickly, evidence is
19 often lost and/or someone is getting further and further
20 away.

21 This, obviously, was a major event, and there
22 was a lot of evidence that was getting further away very
23 quickly. Could it have been better written? Yes. Many
24 warrants that we see are not the most articulate. That
25 doesn't mean that they're fatally flawed. And I think
26 the cases that have been cited, and those that have not
27 been cited, support that.

28 With regard to the home and the vehicle, I

1 think it is clear that there is more than enough in the
2 warrant to justify going to the home and finding the
3 vehicle and searching both to locate Mr. Medina. To
4 locate clothing with physical evidence, in this case
5 particularly, blood evidence. To locate the weapon, the
6 firearm. And to locate pepper spray. Both the can that
7 was used as well as the blowback that may have sprayed
8 onto the clothing, which then could have been transferred
9 on to -- into the car or somewhere in the house. I think
10 those are just basic logic, and I don't think they needed
11 to be spelled out any more than they were into the
12 warrant.

13 I could probably, if I sat down for longer
14 than I had, thought of any number of other things, but
15 those are just basic things in a homicide situation of
16 this nature. And I think the warrant was more than
17 sufficient to support looking for those things in both
18 the home and the car. So I think there was more than
19 adequate probable cause for both the home and the
20 vehicle, just for those items alone. And I think it's
21 perfectly logical that those items would be located in
22 either of those two places, along with Mr. Medina.

23 As for the computers. The analysis is a little
24 bit more lengthy, but not much. We live in a computer
25 age, and virtually everyone relies on computers for many
26 different things. And in particular, it occurred to me,
27 as I was looking through this, I can't remember the last
28 time that I actually got through a newspaper or local

1 news, the first thing that I do in the morning is look up
2 SF or sfgate.com for local news, and I think MSN.com for
3 national news, because I don't have time to sit down and
4 look at a newspaper. I think most people -- I shouldn't
5 say most -- a lot of people do the same, because it's
6 instantaneously available.

7 And I think it is not unreasonable, and it is
8 articulated, again, in boilerplate form, but it is
9 articulated in the attachment to the affidavit that one
10 of the things they wanted to look for is newspaper
11 articles about this event.

12 So I don't think it is illogical or
13 unreasonable that the law enforcement wanted to look on,
14 wanted to see, whether or not there is anything in the
15 computer, to look for local news stories, reports about
16 the incident, to see what police knew and what they were
17 releasing to the media about the event. We see this all
18 the time that search warrants reveal that people involved
19 in criminal activity are following what law enforcement
20 knows and what they are releasing to the media.

21 They also listed in the affidavit, again, part
22 of the boilerplate attachment, a list of cell phone
23 numbers. This can assist law enforcement in locating
24 someone. And it also assists in planning, in
25 investigating planning of an event. They were looking
26 for the list of cell phone numbers, which they can then
27 investigate to see what led up to this event, if there's
28 planning involved.

1 Also included in the list, let's see, were
2 maps, diagrams, photos of the victim, photos of the
3 scene, activity showing planning, preparation, motive,
4 which could involve, or include, paperwork having to do
5 with a lawsuit, business dealings between the victim and
6 Mrs. Rhoads, his mother, and Mr. Medina and his family.

7 Motive may be a important part of this case. I
8 don't think it's unreasonable at all, considering these
9 parties knew each other, and at least from what law
10 enforcement knew at the time, Mrs. Rhoads had an ongoing
11 acrimonious lawsuit pending with Mr. Medina's parents
12 over a construction project that went bad. And it would
13 be perfectly logical that they would want to look into
14 whether or not Mr. Medina had any documents on his
15 computer having to do with that lawsuit, or having to do
16 with Mrs. Rhoads or her son, to see if there's any
17 evidence of motive. That would be perfectly logical for
18 them to do and something for them to look for to explain
19 why this happened, why Mr. Medina is involved in this
20 activity.

21 So I don't think that the computers were -- or
22 looking for or seizing the computers was out in left
23 field at all. And I don't think -- I think the motion
24 only mentioned sent articles. I think there was a whole
25 lot more to the affidavit and to the attachments in terms
26 of what they were looking for and the reasons that they
27 were looking for those items. I think those are
28 perfectly logical. They could have probably been more

1 articulate in tying together the list to their opinion,
2 but I think the basics are there, and the logical nexus,
3 or connection, I think, is certainly there.

4 So I think there was more than sufficient
5 probable cause for them to seek to search both home, the
6 vehicle and the computers. And I will deny the motion
7 to quash there. So I think the warrant is fine.

8 You have a date in Department 1 tomorrow
9 morning. I don't think I can get the court file up there
10 unless one of the two of you bring it back up there, so
11 I'm going to ask you to do that.

12 I'm going to return, Mr. Manoukian, your prelim
13 binder to you. Thank you for lending that to me.

14 MR. MANOUKIAN: You're welcome, Your Honor.

15 THE COURT: I'm going to put the court file
16 back together. And if one of you will be good enough to
17 transport it. That way you will be ready to get sent out
18 to trial. And if you'll give me just a minute to go get
19 that CD.

20 Is there a stipulation to return of that --

21 MR. MOAWAD: Yes.

22 THE COURT: -- item back to Mr. Manoukian for
23 his file?

24 MR. MANOUKIAN: That's fine, Your Honor.

25 THE COURT: Okay. And let me just make sure
26 that I put everything in here that needs to go up.

27 And we will notify Department 1 that one of you
28 has the file.