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FILE
MAR 05 2009
K. JAMES CLARK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
[Signature]

Attorney for Defendant,
NATHAN MEDINA

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

NATHAN MEDINA,

Defendant.

} Case No. 5-080656-2
} NOTICE OF MOTION TO TRAVERSE AND
} QUASH THE SEARCH WARRANT AND
} TO SUPPRESS AND DECLARATION OF
} COUNSEL
} (Pen. Code § 1538.5)
} Date: 03/5/2009
} Time: 9:00 a.m.
} Dept: Thirty-One (31)

TO THE DISTRICT ATTORNEY OF CONTRA COSTA COUNTY AND/OR HIS REPRESENTATIVE, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, defendant NATHAN MEDINA, will move for an order quashing and traversing the search warrant executed on his residence and vehicle, and suppressing evidence pursuant to Penal Code sections 1538.5(a)(2)(i) and (a)(2)(iii), respectively.

The accused seeks to traverse and quash the search warrant attached to these moving papers as Exhibit "A," and suppression of all items seized pursuant to said warrant, including all

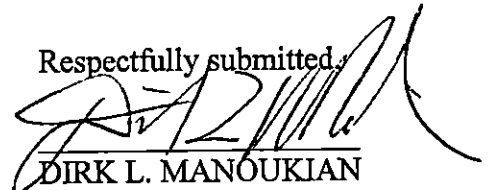
ORIGINAL

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observations and notions acquired by law enforcement during the execution. This motion will be based on the attached memorandum of points and authorities, all other papers and records in this action, plus evidence and argument offered at the hearing on the motion.

Dated: February 10, 2009

Respectfully submitted,



DIRK L. MANOUKIAN
Attorney for Defendant

PROOF OF SERVICE

1 I declare that I am employed in the County of Contra Costa, California. I am over the age of eighteen years
 2 and not a party to the within cause; my business address is 1401 Willow Pass Rd., Suite 880, Concord,
 3 California 94520. On the date forth set below, I served the following: **NOTICE OF MOTION TO**
 4 **TRAVERSE AND QUASH THE SEARCH WARRANT AND TO SUPPRESS AND**
 5 **DECLARATION OF COUNSEL**

6 Steve Moawad Deputy District Attorney Contra Costa County 7 10 Douglas Drive Martinez, CA 94553	(925) 957-2213 (925) 957-2240 FAX
---------------------------------------------------------------------------------------------------------------	--------------------------------------

PROOF OF SERVICE VIA FACSIMILE - CCP §§1013(e), 2015.5, CRC 2008

10 [XX] By arranging for facsimile transmission from facsimile number (925) 602-0622 to the above-listed
 11 facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of
 12 collection and processing of correspondence via facsimile transmission(s) and any such
 13 correspondence would be transmitted via facsimile to the designated numbers in the ordinary course
 14 of business. The facsimile transmission(s) was reported as complete and without error.

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23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
 24 correct, and that this declaration was executed on March 3, 2009 at Concord, CA

25 
 26 KATHRYN BANKS

1 Dirk L. Manoukian (SBN 157540)
2 RUEB, MOTTA & MANOUKIAN
3 A Professional Law Corporation
4 1401 Willow Pass Road, Suite 880
5 Concord, CA 94520
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8 Attorney for Defendant,
9 NATHAN MEDINA

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 vs.

16 NATHAN MEDINA,

17 Defendant.

) Case No. 5-080656-2

) MOTION TO TRAVERSE AND QUASH
) THE SEARCH WARRANT AND TO
) SUPPRESS AND DECLARATION OF
) COUNSEL

) (Pen. Code § 1538.5)

) Date: 03/5/2009

) Time: 9:00 a.m.

) Dept: Thirty-One (31)

18 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO
19 TRAVERSE AND QUASH THE SEARCH WARRANT

20 I

21 STATEMENT OF CASE

22 Mr. Nathan Medina, Defendant, comes before the court charged in an information
23 alleging a number of violations and enhancements, to include violations of Penal Code sections
24 187 [Murder], 460(a) [Residential Burglary], and 211-212.5(a)-664 [Attempted Residential
25 Robbery], as well as the intentional discharge of a firearm pursuant to 12022.53(d). The case at

1 bar is currently set for jury trial to begin on or about March 9, 2009. Initially it was
 2 contemplated that the hearing on these moving papers (motions to traverse and quash the search
 3 warrants) would be held in the trial department. While extremely important, the ruling on these
 4 motions will not be dispositive of the case, and the jury trial will go forward under any possible
 5 result of said hearing. However, it has been requested pursuant to Penal Code section
 6 1538.5(b), that if possible the issuing magistrate hear said motions.
 7

8 In these moving papers Mr. Medina is challenging the validity of the search and seizure
 9 of his property pursuant to attached the attached warrant on the grounds that the affidavit in
 10 support of the warrant is both facially deficient, and that material omissions of fact resulting in
 11 misrepresentations were intentionally or recklessly omitted. The property which is the target of
 12 these moving papers can be divided into two general categories. The first, for which absolutely
 13 no facts supporting probable cause to search and seize were even referenced in the affidavit,
 14 relates to the computers seized and subsequently search by law enforcement. The other, relates
 15 to the remainder of the items seized pursuant to the boiler plate affidavit which significantly
 16 falls short of articulating probable cause.
 17

18 II

19 STATEMENT OF FACTS

20 On March 20, 2008, at approximately 10:30 a.m., Ms. Beverly Rhoads and her adult son
 21 Joshua Rhoads, were home at their residence located at 1110 Boulevard Way, Walnut Creek,
 22 when an individual wearing hat or cap pulled down to his eyes, dark glasses, and a long black
 23 jacket entered their residence. Upon hearing the front door open, Ms. Rhoads entered the front
 24 room and was confronted by the intruder who *immediately* "pepper sprayed" Ms. Rhoads. Ms.
 25

1 Rhoads then retreated to the laundry room with her son Joshua. The intruder fired shots through
2 the laundry room door, and ultimately gaining partial entry shooting and killing Joshua.

3 The intruder then exited the rear of the residence and confronted the tenant, Sean
4 Mendell, who lived in a makeshift residential unit in the back of the property. The intruder
5 confronted Mr. Mendell, apparently looking for Ms. Rhoads. After the gun the intruder was
6 holding discharged during this initial confrontation with Mr. Mendell, the intruder allowed Mr.
7 Mendell to return to his residence to retrieve money. The intruder then followed Mr. Mendell to
8 his residence, and after momentarily confronting Mr. Mendell's girlfriend from the front door
9 threshold, the intruder fled while Mr. Mendell looked for his wallet in his residence.
10

11 While Ms. Rhoads told the police that she "thought" the intruder was Mr. Nathan
12 Medina, Mr. Mendell was unable to identify a photograph (a single and sole photo shown by
13 law enforcement) of Mr. Medina as the intruder which was shown to him very shortly after the
14 incident. Mr. Mendell admitted to having met Mr. Medina in the past, but still had been unable
15 to identify Mr. Medina when shown only a single and sole photo of Mr. Medina. Moreover, it
16 was only after Mr. Mendell was told by Detective McClogin of the Walnut Creek Police
17 Department that Nathan Medina was the intruder and that Ms. Rhoads (despite her extremely
18 limited and compromised opportunity to view the intruder) had identified Mr. Medina. After
19 telling Mr. Mendell that Mr. Medina was in fact the intruder and had been previously identified,
20 law enforcement then showed Mr. Mendell a photographic lineup (a "six pack") and again
21 asked if he could identify the intruder. During this second, post suggestive influence viewing,
22 Mr. Mendell unsurprisingly selected Mr. Medina as possibly the intruder.
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25 On March 20, 2008, at approximately 7:00 p.m., Detective Tracie Reese of the Walnut
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1 Creek Police Department, presented a Contra Costa Superior Court Judge with an affidavit
 2 seeking a warrant to search a residence located at 2472 Morello Heights Circle, Martinez, CA,
 3 the person of the accused, and his vehicles. Said search warrant was executed and various items
 4 were seized, including a number of computers. Many of the items seized have been analyzed by
 5 law enforcement and are anticipated to be introduced as evidence in the prosecutions case. It is
 6 these physical items and the data extracted from the hard drives which are the targets of these
 7 moving papers.
 8

9 III

10 POINTS AND AUTHORITIES

11 A. The "Boiler Plate" Search Warrant Affidavit is Devoid of Probable Cause and the 12 Warrant is Insufficient on Its Face.

13 The search warrant was issued without probable cause. As Penal Code section
 14 1538.5(a)(2) proscribes, the fruits of a search may be suppressed if "The search or seizure with
 15 a warrant was unreasonable because (i) the warrant is insufficient of its face." The well know
 16 and tested standard of review is "whether, given all the circumstances set forth in the
 17 affidavit...there is a fair probability that contraband or evidence of a crime will be found in
 18 [the] place [to be searched]." (Illinois v. Gates (1983) 462 U.S. 213, 238; see also, People v.
 19 Camarella (1991) 54 Cal. 3d 592, 601.) The courts are careful to stress that while the
 20 magistrate's determination of probable cause is entitled to deferential review, there must have
 21 been a "substantial basis" for the finding that the property sought was "probably present" on the
 22 premises. (People v. Kraft (2000) 23 Cal. 4th 97, 1040-1041.)

23 "Probable cause exists when the information on which the warrant is based is such that a
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1 reasonable person would believe that what is being sought will be found in the location to be
 2 searched.” (People v. Stanley (1999) 72 Cal.App.4th 1547, 1554.) “Probable cause must attach
 3 to each place to be searched. [Citations.] Thus, an affidavit for a search warrant must contain
 4 facts demonstrating a substantial probability that [contraband or] evidence of a crime will be
 5 located in a particular place. [Citations.] A statement that the affiant ‘has cause to suspect and
 6 does believe’ that the evidence is located at the targeted premises is insufficient.” (Fenwick &
 7 West v. Superior Court (1996) 43 Cal.App.4th 1272, 1278-1279.)

9 Moreover, the affidavit must establish a nexus between the criminal activities and the
 10 place to be searched. (People v. Hernandez (1994) 30 Cal.App.4th 919, 924.) It is well
 11 understood, that “[T]he opinions of an experienced officer may legitimately be considered by
 12 the magistrate in making the probable cause determination.” (People v. Deutsch (1996) 44
 13 Cal.App.4th 1224, 1232.) However, it is equally well understood that an affidavit based on
 14 mere suspicion or belief, or stating a conclusion with no supporting facts, is wholly insufficient.
 15 (Illinois v. Gates, *supra*, 462 U.S. at p. 239.)

17 In the case at bar, both the “Narrative Statement of Probable Cause” and the “Opinions
 18 and Conclusions” portions of the affidavit in support of the search warrant fail to articulate facts
 19 which would support a finding of probable cause. Because of the obvious and indisputable lack
 20 of *any facts or opinions what so ever* related to the seizure of the computers, the issue of the
 21 seizure and ultimate search of the computers will be dealt with separately from the other
 22 remaining items seized at Mr. Medina’s residence and from his vehicle.

24 1. **The Seizure and Search of Mr. Medina’s Home and Vehicle.**

25 As discussed above, there must be articulated in the affidavit for the search warrant

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evidence which in the totality of the circumstances establishes a fair probability that evidence of the crime and/or contraband will be located at the target location or vehicle. The mere fact probable cause may exist to *arrest* someone for a particular crime does not automatically establish probable cause to search their residence or vehicle. As the California Supreme Court warned, “[M]ere evidence of a suspect’s guilt provides not cause to search his residence.” (People v. Gonzalez (1990) 51 Cal.3d 1179, 1206.) The Ninth Circuit Court of Appeals has repeatedly upheld this principle by stressing that, “[P]robable cause to believe that a suspect has committed a crime is not by itself adequate to obtain a search warrant for the suspect’s home.” (U.S. v. Pitts (9th Cir. 1993) 6 F.3d 1366, 1369.) Other courts have succinctly stated the rule by explaining that “we start with the premise that probable cause to arrest does not automatically provide probable cause to search the arrestee’s home.” (U.S. v. Jones (3rd Cir. 1993) 994 F.2d 1051, 1055.)

In the case at bar, the affidavit in question does not even attempt to articulate a basis for why or what evidence of the crime would be located at Mr. Medina’s home or in his vehicle. In fact, the affiant concedes in the “Opinions and Conclusions” portion of the affidavit that no facts exist to believe a vehicle was in any way connected to the crime. Remarkably, the affiant admits that the only specific items sought in Mr. Medina’s residence was “his scent” evidence to *possibly* assist an animal tracking effort, to *maybe* find an escape route, which could *potentially* lead to the discovery of other *unknown* evidence. The affiant goes on to concede that the only basis for the request to search Mr. Medina is that Mr. Medina “may be” hiding out in his residence, and that “may be” some unknown evidence could possibly be found. The fact that the police already knew Mr. Medina was not at his residence and still represented this as a

1 basis for their request to search the residence will be addressed in the Motion to Traverse
2 section of these moving papers.

3 Such purely speculative assertions, totally devoid of factual specifics, is exactly the type
4 of "hunch" work that was condemned by the Gates Court as unconstitutional as a matter of law.
5 (Illinois v. Gates, supra, 462 U.S. at p. 239.) The affiant never references a single fact, or even
6 a single opinion or conclusion, as to why any evidence of any crime would be found at Mr.
7 Medina's residence. Simply put, the affiant stated that a crime was committed, that Mr. Medina
8 was a possible suspect, and therefore his home and vehicle should be seized and search because
9 "may be" something of evidentiary value might be found. As a matter of law, such an affidavit
10 is facially deficient of any indication of probable cause.
11

12 It is important to recognize that the case at bar is *not* a situation involving on going
13 criminal activity such as drug sales. While some California decisions support the contention
14 that in on going criminal activities, such as drug sales or possession of child pornography, it is
15 reasonable to conclude that if probable cause to arrest a suspect for such activity exists then so
16 may probable cause to search his or her residence. This is simply not the case with Mr. Medina.
17 No evidence existed, and no evidence was presented to the magistrate, to support the finding of
18 probable cause to search his residence and vehicle.
19

20 **2. The Seizure and Subsequent Search of Mr. Medina's Computers.**

21 Incorporating by reference all of the above cited points and authorities related to the lack
22 of probable cause to search Mr. Medina's home and vehicle generally, coupled with the total
23 and complete lack of even any mention or reference to computers in the affidavit, overwhelming
24 establishes that the seizure and search of Mr. Medina's computers was blatantly done without
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1 probable cause. There is no circumstances of the crime, no possible inferences that could
2 reasonably be reached, and simply no facts whatsoever that would support this fishing trip
3 seizure of the computers.

4 Computers are recognized reservoirs of highly personal data that enjoy a strong and
5 reasonable expectation of privacy. As such, warrantless searches, or searches exceeding the
6 scope of a warrant, of computers are generally prohibited. (U.S. v. Carey (10th Cir. 1999) 172
7 F.3d 1268, 1276; see also, U.S. v. Turner (1st Cir. 1999) 169 F.3d 84, and U.S. v. Arnold (C.D.
8 Cal. 2006) 454 F.Supp.2d 999, 1003.) Generally, the affidavit to authorize a search of data on a
9 computer must demonstrate probable cause to believe that specific data or graphics exist, that
10 they are evidence of a crime, and that they are now stored in the computer. Additionally, the
11 affidavit must provide a reasonably detailed description of the place to be searched, the
12 equipment to be searched, and the data or graphics to be seized.

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15 The general boiler plate affidavit submitted by law enforcement fails to articulate the
16 minimum requirement of probable cause to search for items reasonably connected to the
17 incident. This lack of even general articulations of factually supported opinions and conclusion
18 is magnified ten fold when analyzed in the context of computer data. This undisputed total
19 absence of facts or opinions related to any probable cause related to the computers establishes
20 that the issuing of the search warrant including the computers was without probable cause and
21 in violation of Mr. Medina's previously cited statutory and constitutional rights.

22
23 **B. The Affidavit in Support of the Search Warrant Contained Material Misstatements
and Omissions Requiring a Franks Hearing.**

24 The United States Supreme Court provides a criminal defendant with a right to a
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1 hearing, aimed at testing the veracity of a search warrant affidavit, where a defendant makes a
 2 "substantial preliminary showing" - via an offer of proof - that 1.) a false statement was
 3 knowingly and intentionally included in the affidavit, or done so with reckless disregard for the
 4 truth; and 2) the false statement is necessary to the finding of probable cause. (Franks v.
 5 Delaware (1978) 438 U.S. 154, 155-56.) Only the substantial evidence, not the clear and
 6 convincing standard, of deliberate or reckless omission, is required to obtain a Franks hearing.
 7 (United States v. Stanert (9th Cir. 1985) 762 F.2d 775, 781.) The proper scope of that hearing
 8 would include actual sources of an affiant's information, evidence establishing the material
 9 omissions, the veracity of such information, and the reasonableness of the affiant's reliance
 10 thereupon. (Franks, supra, p. 2683.)
 11

12 If the Franks hearing produces evidence establishing that any of the material allegations
 13 in the affidavit were intentionally or recklessly false, then those false statements must be
 14 excised from the affidavit, and the warrant retested for probable cause. (Franks, supra, p.
 15 2676.) Furthermore, the Fourth Amendment requires that if:
 16

17 the allegation of perjury or reckless disregard is established by the
 18 defendant by a preponderance of the evidence and, with the affidavit's
 19 false material set to one side, the affidavit's remaining content is
 20 insufficient to establish probable cause, the search warrant must be
 21 voided and the fruits of the search excluded to the same extent as if
 22 probable cause was lacking on the face of the affidavit.
 23 (People v. Camarella (1991) 54 Cal.3d 592, 596.)

24 The Federal and State Constitutions mandate a similar procedure to determine if an
 25 affidavit for a search warrant contained "improper omissions." (People v. Luevano (1985) 167
 26 Cal.App.3d 1123, 1128, fn. 3.) When a search warrant is attacked on the ground that it is

1 incomplete, the trial court:

2 must determine whether any of the asserted omissions are material.
 3 Omissions are "material" if the affidavit was rendered substantially
 4 misleading.... If a material fact is reasonably omitted, no sanction is
 5 imposed. [Citations] If a material fact is negligently omitted, the reviewing
 6 court should view the affidavit as if it had included that fact and retest
 7 it for probable cause. [Citations] Lastly, if a fact is recklessly omitted or omitted
 8 with an intent to mislead, the warrant should be quashed, regardless of
 9 whether the omission is ultimately deemed material.
 10 (People v. Carpenter (1997) 15 Cal.4th 312, 363.)

11 The attached declaration of Dirk L. Manoukian, counsel for defendant NATHAN
 12 MEDINA, provides an offer of proof as to the substantial evidence of the severe material
 13 omissions and misrepresentations in the warrant affidavit, which supports the request for a
 14 Franks hearing on Mr. MEDINA's motion to traverse the warrant. As said offer of proof
 15 alleges, the affidavit for the search warrant failed to accurately explain to the magistrate the
 16 extremely brief and chaotic split second opportunity Ms. Rhoads had to view the intruder prior
 17 to her being pepper sprayed. The affidavit also omitted that fact that Ms. Rhoads had not seen
 18 Mr. Medina for an extremely long time and his physical appearance had changed significantly.

19 The affidavit also omitted the exculpatory fact that despite Mr. Mendell having met Mr.
 20 Medina prior to the incident in question, he was unable to identify a photograph of Mr. Medina
 21 shown to him by law enforcement only minutes after viewing the intruder. In fact, the fact that
 22 a sole and single photograph of Mr. Medina was shown to Mr. Mendell and he was unable to
 23 identify Mr. Medina, even after such an inherently suggestive procedure, was totally omitted
 24 from the affidavit submitted for the magistrate's review.

25 Additionally, the affidavit omitted the fact that *following* Mr. Mendell's on camera
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1 interview by the law enforcement, during which he continued to be unable to identify Mr.
 2 Medina as the intruder, a police officer had a conversation with Mr. Mendell *assuring* him that
 3 indeed Mr. Medina was the responsible. This conversation occurred out of the camera frame,
 4 but was captured on the audio portion. In this audio portion a Walnut Creek Police Officer, who
 5 appears to be Detective McCloglin, contacts Mr. Mendell and tells him that Mr. Medina was the
 6 intruder and that Ms. Rhoads had positively identified him. Shortly thereafter, Mr. Mendell was
 7 again shown a photo of Mr. Medina contained in a photographic lineup. It was only this
 8 tentative identification of Mr. Medina that was included in the affidavit.
 9

10 The combination and magnitude of these misleading statements and material omission of
 11 improper investigative procedure irreversibly tainted the magistrate's fair and impartial analysis.
 12 Once these highly probative exculpatory omissions are included in the analysis of the otherwise
 13 boiler plate affidavit, the facts do not support even the standard for a detention, let alone the
 14 finding of probable cause required. Moreover, these intentional omissions and improper,
 15 suggestive police tactics also prohibit law enforcement from claiming relief under Leon's "good
 16 faith" principles.
 17

18 **C. As a Matter of Law, The Affidavit at Bar Contains Three of the Four Described**
 19 **Circumstances In Which Courts Have Held The "Good Faith" Exception Does Not**
 20 **Apply.**

21 There are limited situations in which the well know "good faith exception" cannot be
 22 relied upon as a matter of law to save a search based on a defective warrant. It is the
 23 government's burden to establish they are not seeking reliance on the "good faith exception" in
 24 one of the excluded circumstances. U.S. v. Leon (1984) 468 U.S. 897, 921; People v.
 25 Camarella (1991) 54 Cal.3d 592, 597. The Leon Court set out the four general situations in
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1 which "good faith" reliance cannot be established, whereupon the evidence seized by law
 2 enforcement must be suppressed: the issuing magistrate was misled by information that the
 3 affiant officer know or should have known was false; the magistrate wholly abandoned the
 4 judicial role of neutrality and disinterest; the affidavit was so lacking in indications of probable
 5 cause that it would be entirely unreasonable for an officer to believe probable cause existed;
 6 and, the warrant was so facially deficient in failing to particularize the place to be searched or
 7 things to be seized that the executing officers could not reasonably presume it to have been
 8 valid. (U.S. v. Leon, supra, 468 U.S. at 923; see also, People v. Camarella, supra, 54 Cal.3d at p.
 9 596.)

11 As the Leon Court went on to explain, the "good faith exception to the exclusionary rule,"
 12 cannot save the search of defendant's person or vehicle if the affiant's misrepresentations and
 13 omission were more than merely negligent. As the Supreme Court explained,

15 [R]eviewing courts will not defer to a warrant based on an affidavit
 16 that does not "provide the magistrate with a substantial basis for
 17 determining the existence of probable cause. [] Sufficient information
 18 must be presented to the magistrate to allow that official to determine
 19 probable cause; his action cannot be a mere ratification of the bare
 20 conclusions of others." (Id., at p. 915.)

21 As detailed above, and proffered in the attached declaration of counsel, the affidavit at bar
 22 contains at least three (3) of the four (4) circumstances condemned by the United States and
 23 California Supreme Courts. The magistrate was unquestionably misled by the deficient
 24 narration of the circumstances of Ms. Rhoads observations of the intruder. Moreover, the
 25 magistrate was misled by the material omissions related to Mr. Mendell's identification of Mr.
 26 Medina and the suggestive, unconstitutional manner in which it was obtained. This conduct

1 alone is exactly the type of circumstance in which law enforcement may not claim reliance on
2 the "good faith" exception to a defective search.

3 While Mr. Medina does not contend that the magistrate abandon her role as a neutral and
4 disinterested jurist, the magnitude of the misrepresentations had a significantly contaminating
5 effect on the magistrates evaluation of the affidavit. Specifically, the affidavit in question is so
6 lacking in any even indirect indications of probable cause that is entirely unreasonable for any
7 officer to believe probable cause existed to search the residence or vehicle. The affiant admits
8 in the affidavit that she has no idea if the intruder used a vehicle, and in fact the only attempt
9 that was even made to articulate *any* indications of probable cause related to scent evidence for
10 a K-9 search. No reference to the manner of the crime, the instrumentality of the crime, the
11 clothing or other attributed characteristic of the intruder, or any factual recital at all is contained
12 in the affidavit. It is not hyperbole to contend that the affidavit at bar is a text book example of
13 a boiler plate affidavit completely devoid of facts or supported opinions.

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16 Similarly, even a pedestrian review of this boiler plate, untailed affidavit reveals the
17 facially deficient particularization of the items to be seized. While at first glance rather
18 innocuous, the very first few items on the affiant's speculative "wish list" betray the truly boiler
19 plate nature of the document. One of the items the affiant represents to the magistrate that has a
20 "fair probability" of being found in Mr. Medina's residence or vehicle is "news articles" related
21 to the crime or victim. The search of Mr. Medina's residence was the same day as the crime. It
22 was impossible for this representation to be even possible, and yet it was made. The same
23 portion of the affidavit requests to search the residence to locate Mr. Medina, but at the time the
24 warrant was submitted for review the police knew Mr. Medina was not in his residence.
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1 Moreover, the affiant's only reference to any firearm evidence uses the generic "above
2 described weapon." Despite the extensive ballistic evidence at the scene available for detailed
3 description and factually supported opinion, the affiant chose to not specify any nexus between
4 any firearm evidence at the scene and the target residence. In fact, the only reference to specific
5 firearm evidence in the entire affidavit is a statement that Mr. Mendell believed the item was
6 most likely a "cap gun or pellet gun."
7

8 Additionally, the generic nature of the affidavit and lack of particularization of the items
9 to be seized can be gleaned from the fact that the affiant spent numerous paragraphs on boiler
10 plate language related to computers and stored data with absolutely no nexus to the crime, yet
11 the affiant never mentions the obvious item of pepper spray which was particular to the crime.
12 These generalized requests for items that could not possibly exist, and for items totally
13 unassociated with the crime, coupled with the omission of truly particularized evidence related
14 to the crime, squarely place the affidavit at bar in the fourth category of affidavits for which the
15 "good faith" exception is not available. As one of the key California appellate decisions
16 interpreting Leon explained, if the officer whose good faith is in question was involved in
17 preparation of the affidavit, the fact that he or she misstated or omitted any information, or was
18 aware of such misrepresentations, tends to show the objective unreasonableness of belief in the
19 existence of probable cause. (People v. Maestas (1988) 204 Cal.App.3d 1208, 1219, discussing
20 Leon, supra at 914.)
21

22 CONCLUSION

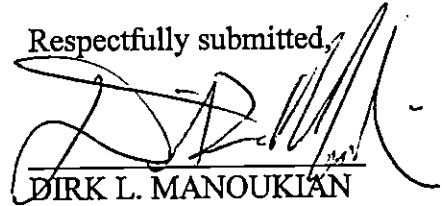
23 Based on the foregoing points and authorities, as well as all evidence and argument
24 permitted at the hearing on the motions, Mr. Medina respectfully requests that this Honorable
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1 Court grant his motions to quash and traverse the search warrant, and suppress all evidence and
2 observations collected during its execution.

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4 Dated: February 10, 2009

Respectfully submitted,



DIRK L. MANOUKIAN
Attorney for Defendant

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1 **DECLARATION OF DIRK L. MANOUKIAN**

2 I, DIRK L. MANOUKIAN, declare:

- 3 1. I am retained counsel of record for the Defendant NATHAN MEDINA.
 4 2. I have reviewed and investigated the claims set forth in the affidavit in support of search
 5 warrant at bar, and note the following misrepresentations and omissions contained therein,
 6 which I believe are material to the finding of probable cause for this warrant:
 7

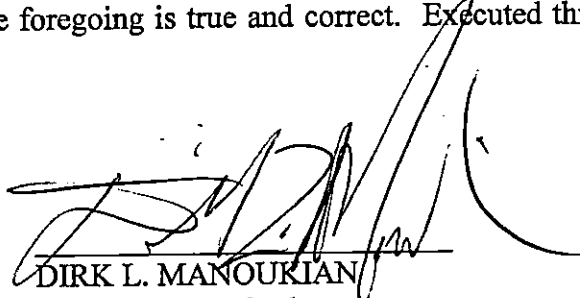
8 a. The affidavit qualitatively and quantitatively omits the extremely brief and
 9 compromised nature of Ms. Rhoads opportunity to view the intruder.

10 b. The affidavit omits the facts known to law enforcement that Ms. Rhoads had not
 11 seen Mr. Medina for an extremely long period of time and his appearance had changed
 12 significantly.

13 c. The affidavit omits all reference to a single photo of Mr. Medina "show-up"
 14 conducted by law enforcement shortly after the incident in which Mr. Mendell was unable to
 15 identify Mr. Medina as the intruder.
 16

17 d. The affidavit omits all reference to an improper and critically suggestive pre line-
 18 up conversation between law enforcement and Mr. Mendell in which Mr. Mendell is told by law
 19 enforcement that Mr. Medina was in fact the intruder and had been identified by Ms. Rhoads.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed this
 21 10th day of February 2009, at Concord, CA.
 22

23 
 24 DIRK L. MANOUKIAN
 25 Attorney for Defendant
 26



COUNTY OF Contra Costa
STATE OF CALIFORNIA

AFFIDAVIT FOR SEARCH WARRANT

and **AFFIDAVIT FOR ARREST WARRANT**
(Penal Code § 817, "RAMEY")

No. _____

On the basis of his/her/their personal knowledge and on the basis of other information contained in the Attachments hereto, Detective Tracie Reese Affiant(s), being duly sworn, deposes and says that there is probable cause to believe the property and/or thing(s) and/or person(s) described herein may be found at the location(s) set forth and that the following provisions of California Penal Code Section 1524 are applicable:

(Mark only the following 1524 P. C. provisions which are applicable to this Search Warrant.)

- the property was stolen or embezzled - 1524(a)(1)
- the property or thing(s) were used as the means of committing a felony - 1524(a)(2)
- the property or thing(s) are in the possession of any person with the intent to used it as a means of committing a public offense; OR
- the property or thing(s) are in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing it from being discovered 1524(a)(3)
- the property or thing(s) consist of any item or constitutes any evidence that tends to show a felony has been committed or tends to show that a particular person has committed a felony 1524(a)(4)
- the property or things consist of evidence which tends to show that sexual exploitation of a child in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years in violation of 311.11, has occurred or is occurring 1524(a)(5)
- an arrest warrant is outstanding for the person to be seized 1524(a)(6)
- a Child Protective Custody Warrant is outstanding for the person to be seized 1524(a)(6) and Family Code 3124.5

04/02/04

AFFIDAVIT FACE SHEET - PAGE 1

EXHIBIT A

a provider of "electronic communication service" or "remote computing service", as defined in Section 1524.2(a), has records or evidence regarding a subscriber or customer which (1) is of a type specified in Section 1524.3 (i.e. the subscriber/customer's name, address, telephone number or other subscriber number or identity; the types of services the subscriber/customer utilized; the length of time the person has been a subscriber/customer of that service; and local and long distance telephone toll billing records; and (2) which records or evidence show that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor or public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery 1524(a)(7)

because this is a search for documentary evidence which is in the possession or under the control of a lawyer, physician, psychotherapist or clergyman who is not a suspect in the criminal activity to which the documentary evidence being sought relates, the **Special Master** provisions of Section 1524(c) are applicable Penal Code 1524(c)

and requests the issuance of a warrant to search:

Section 1: THE PREMISES located at and described as: 2472 Morello Heights Circle Martinez, CA. 94553. This residence is a single-story home that is tan in color with black and white trim. The roof of the house is covered with gray composition shingles. The front door of the residence faces east and the numbers "2472" are affixed to the wall above the bricks that frame both sides of the garage.

This premises may consist of hidden areas that would be permitted to search under this warrant search and would include a crawl space, attics, storage spaces, appurtenant buildings, the surrounding grounds, and all containers therein and thereon which could contain any of the items sought.

Section 2: THE CONTAINER(S) located at and described as:

None.

Section 3: THE VEHICLE(S) described as:

Ford, 2003, license plate #CA 7H25427.

Pontiac, 2003 license plate # CA 3USH256.

And any vehicles that are in the custody or control of Nathan Robert Medina, as evidenced by ignition keys, or car door keys, or vehicle ownership documents in his possession, or his person, or under his dominion and control, or by statements of witnesses assigned to this unit.

04/02/04

AFFIDAVIT FACE SHEET - PAGE 2

Including the passenger compartment, storage areas such as trunk and glove box, and any containers within the vehicle(s) which could contain any of the items sought.

Section 4: THE PERSON(S) of: Nathan Robert Medina. (DOB 11/16/1965, Drivers license number U1071410, Brown hair, Blue eyes, 5'11", 200 pounds)

Section 5: FOR THE FOLLOWING PROPERTY, THING(S) and/or PERSON(S)

listed in Exhibit # A, attached.

listed below:

Officers are authorized to take photographs, audiotape and/or videotape during the service of this search warrant.

Officers are authorized to seize such person(s) and/or property and/or things or any part thereof and to retain such property and/or thing(s) in your custody subject to order of a competent court pursuant to Penal Code section 1536.

The Attachments indicated below are incorporated by reference and by physical attachment into this Affidavit and are part of this Affidavit as though set forth here word-for-word; probable cause contained in:

Narrative Statement Of Probable Cause.

The following:

Statement(s) of expertise and opinion:

I/we have reasonable cause to believe that grounds exist for the issuance of a search warrant based on the content of this affidavit which includes the above-referenced attachments, and pray that a search warrant be issued.

I/we certify (or declare) under penalty of perjury under the laws of the State of California that the information in this Affidavit is true and correct:

Francis Rene
Affiant

Affiant

Subscribed to and sworn before me this 20 day of March, 2008, at 8:00 AM PM

A. J. Brady
Magistrate's Signature Judge of the Superior Court

COUNTY OF Contra Costa
STATE OF CALIFORNIA

SEARCH WARRANT

No. _____

The People of the State of California to any peace officer in the County of Contra Costa
PROOF by affidavit has been made before me this day by Detective Tracie Reese that there
is probable cause to believe the property and/or thing(s) and/or the person(s) described
below in Section 5 below may be found at the location(s) described below in Sections 1
through 4, and that the following provisions of California Penal Code Section 1524 are
applicable:

(Mark only the following 1524 P. C. provisions which are applicable to this Search Warrant.)

- the property was stolen or embezzled - 1524(a)(1)
- the property or thing(s) were used as the means of committing a felony - 1524(a)(2)
- the property or thing(s) are in the possession of any person with the intent to use it as a means of committing a public offense; OR
- the property or thing(s) are in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing it from being discovered 1524(a)(3)
- the property or thing(s) consist of any item or constitutes any evidence that tends to show a felony has been committed or tends to show that a particular person has committed a felony 1524(a)(4)
- the property or things consist of evidence which tends to show that sexual exploitation of a child in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years in violation of 311.11, has occurred or is occurring 1524(a)(5)
- an arrest warrant is outstanding for the person to be seized 1524(a)(6)
- a Child Protective Custody Warrant is outstanding for the person to be seized 1524(a)(6) and Family Code 3134.5
- a provider of "electronic communication service" or "remote computing service", as defined in Section 1524.2(a), has records or evidence regarding a subscriber or customer which (1) is of a type specified in Section 1524.3 (i.e. the subscriber/customer's name, address, telephone number or other subscriber number or identity; the types of services the subscriber/customer utilized; the length of time the person has been a subscriber/customer of that service; and local and long distance telephone toll billing records; and (2) which records or evidence show that

01/04/06

SEARCH WARRANT - PAGE 1

property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery 1524(a)(7)

because this is a search for documentary evidence which is in the possession or under the control of a lawyer, physician, psychotherapist or clergyman who is not a suspect in the criminal activity to which the documentary evidence being sought relates, the Special Master provisions of Section 1524(c) are applicable Penal Code 1524(c)

YOU ARE THEREFORE COMMANDED TO SEARCH:

Section 1: THE PREMISES located at and described as: 2472 Morello Heights Circle Martinez, CA. 94553. This residence is a single-story home that is tan in color with black and white trim. The roof of the house is covered with gray composition shingles. The front door of the residence faces east and the numbers "2472" are affixed to the wall above the bricks that frame both sides of the garage.

Including basements, attics, storage spaces, appurtenant buildings, the surrounding grounds, and all containers therein and thereon which could contain any of the items sought,

Section 2: THE CONTAINER(S) located at and described as:

Section 3: THE VEHICLE(S) described as:

Ford, 2003, license plate #CA 7H25427.
Pontiac, 2003 license plate # CA 3USH256.

And any vehicles that are in the custody or control of Nathan Robert Medina, as evidenced by ignition keys, or car door keys, or vehicle ownership documents in his possession, or his person, or under his dominion and control, or by statements of witnesses assigned to this unit.

Including the passenger compartment, storage areas such as trunk and glove box, and any containers within the vehicle(s) which could contain any of the items sought.

Section 4: THE PERSON(S) of:

Nathan Robert Medina. (DOB 11/16/1965, Drivers license number U1071410 Brown hair, Blue eyes, 5'11", 200 pounds)

Section 5: FOR THE FOLLOWING PROPERTY, THING(S) and/or PERSON(S)

listed in Exhibit # A , attached.

01/04/08

SEARCH WARRANT - PAGE 2

_____ listed below:

Officers are authorized to take photographs, audiotape and/or videotape during the service of this search Warrant

and to seize such person(s) and/or property and/or things or any part thereof and to retain such property and/or thing(s) in your custody subject to order of a competent court pursuant to Penal Code section 1536.

NIGHT-TIME Service: Good cause having been shown by Affidavit, you may serve this warrant at any time of the day or night when my initials are here →

LSB

GIVEN under my hand this 20 day of March, 2008, at 7:55 pm
AM (PM)

J. Brady
Magistrate's Signature

Judge of the Superior Court.

NARRATIVE STATEMENT of PROBABLE CAUSE

On 03/20/08 at approximately 1032 hours, Walnut Creek Police dispatch received a 911 call from the residence located at 1110 Boulevard Way in Walnut Creek. The female caller, later identified as Beverly M. Rhoads, told WCPD dispatcher, Michelle Morgret, that her son, Joshua Rhoads, was just murdered by Nathan Medina in the laundry room at the residence. She described Medina as a white male in his 30's, wearing a black hat and possessing a handgun. She did not know if Medina had left the house. Rhoads said she was currently in the laundry room on the west side of her residence. Rhoads believed her son, Joshua Rhoads, was deceased.

On 03/20/08, at approximately 1039 hours, WCPD dispatcher, Deborah Bushnell received a 911 call from Sean Mendell. Mendell, who was calling from the same residence, told Bushnell that Medina shot at him in the back yard of the residence, with what he believed was a handgun or pellet gun. Mendell said he locked himself and his girlfriend, Mary Longfellow, into a detached room located behind the residence. He did not know if the suspect had left the residence. He described the suspect as a white adult male wearing all black, including a black beanie on his head.

Police units arrived on-scene and contacted Sean Mendell and Mary Longfellow, who were asked to exit the residence by Walnut Creek Police Dispatch. Beverly Rhoads, who was still on the phone with Walnut Creek Police dispatch, was too afraid to leave the residence because she did not know if the suspect was still present. At approximately 1246 hours, Walnut Creek police officers went to the west side of the residence, opened the window to the laundry room of the residence and saw Rhoads in the fetal position on top of a counter. Officers also saw a white male adult in a pool of blood on the floor of the laundry room. The male subject was motionless and pale. Officers were able to remove Rhoads through the window of the laundry room.

Detective McColgin spoke with Beverly Rhoads. Rhoads reported that she was inside her house with her adult son, Joshua Rhoads when she heard the front door of the house open. She went to the front door and was confronted by a white male adult, who she recognized as Nathan Medina. Medina was wearing a black knit cap and dark colored shirt. Medina sprayed Beverly Rhoads with pepper spray. Rhoads said she screamed and ran toward the back of her house. Her son Joshua ran out into the hallway and confronted Medina. Medina immediately pepper sprayed Joshua. Medina then attempted to grab Beverly however; she and Joshua ran into the laundry room and closed the door. Beverly Rhoads said Medina began shooting his gun through the laundry room door. He then broke down the door and shot Joshua several more times. The suspect then fled the scene. Beverly Rhoads said Medina was armed with a dark colored handgun. She said she has known Medina and his family for approximately twenty years. Rhoads said she is currently involved in a lawsuit against Medina's step-father.

Joshua Rhoads was pronounced dead at the scene by A.M.R. and suffered at least one gunshot wound to the head.

On 3/20/08, Detective Jower and I spoke with Sean Mendell at the Walnut Creek Police Department. Mendell told us that he rents a detached room that is located in the backyard of 1110 Boulevard Way. Mendell rents the room from Beverly Rhoads, who he has been friends with for many years. Mendell is also long time friends with Beverly's son, Joshua Rhoads. Mendell said that Beverly Rhoads commonly goes by the name of "Sam".

On 3/20/08, Mendell was inside of his residence with his girlfriend Longfellow. At approximately 1026 hours, Mendell heard "three loud bangs". Mendell looked through the front window of his home, which overlooks the back of the main residence, and noticed that the backyard gate and the door from the garage to the backyard were both open. Mendell was concerned that the family dog would escape; therefore Mendell went outside to close the gate. Mendell exited his residence and as he walked towards the east side of the backyard, towards the gate, he heard the sliding glass door from Beverly's bedroom open. Mendell looked towards the sliding glass door and saw a white male adult, wearing a black beanie style cap, sunglasses and a trench coat exit through the sliding glass door. The WMA walked quickly towards him, and as the WMA did so the WMA removed a handgun from the WMA's trench coat. The WMA waived the handgun in the air and repeatedly yelled, "where is Sam, where is Sam Rhoads". When the WMA got near Mendell, Mendell dropped to his knees. Mendell offered to give the WMA anything that he wanted. The WMA put the handgun to the left side of Mendell's head and fired one round from the handgun. Mendell heard a loud "bang" in his left ear, at which time Mendell thought he had been shot in the head. When he realized he had not been shot, Mendell looked at the suspect, who was manipulating the handgun in what Mendell thought was an effort to reload the gun. The WMA said to Mendell, "give me your money". Mendell told the WMA he would go into his residence and get his money for him. The WMA agreed and followed Mendell to the threshold of Mendell's front door. Mendell retrieved his wallet and when Mendell returned to his front door, the WMA was gone.

Mendell told me that he did not recognize the suspect. Mendell described the handgun as a black, semi-automatic style handgun. Mendell said that because he was not injured after he heard the gun discharge, he believes the handgun was most likely a cap gun or pellet gun.

Mendell told me that he is aware that Beverly Rhoads was having civil problems with a contractor by the name of Tony. Rhoads hired Tony approximately six years ago to do an addition to her residence. Mendell told me that Tony has a son by the name of Nathan, who also helped Tony with the addition. Mendell said that Rhoads had many arguments with Tony and Nathan over the quality of their work. Mendell said that Rhoads ultimately fired Tony and eventually sued Tony for approximately two hundred and fifty thousand dollars. Mendell said that ever since the lawsuit, Rhoads has complained to him about many threatening phone calls that Rhoads has had with Tony.

Approximately six months ago, Rhoads was the victim of vandalism and believed the responsible to be Tony or Nathan.

Mendell told me that he met Nathan approximately four years ago, however would not recognize Nathan if he saw him again.

On 03-20-08, Detective Jower and Detective Carman interviewed Mariele Longfellow in an interview room at the Walnut Creek Police Department. Detective Carman told me that Longfellow stated that on 03-20-08, at approximately 9:00 A.M. Longfellow woke up at her boyfriend Sean Mendell's residence. Longfellow said that Mendell went into the main house at about 10:00 A.M. to make breakfast. Mendell returned quickly and then began receiving business calls. Longfellow said that at approximately 10:30 A.M. she heard two to three clanking noises (further described as metal hitting something). Longfellow said that a few minutes later she heard two to three more of the same noises. Longfellow said that she guessed the noises were coming from the side gate. Longfellow said that she got out of bed and looked through the window. Longfellow saw that both the side gate and the door leading from the backyard into the garage were open. Mendell went outside to secure the gate to prevent the dog from escaping from the yard. Longfellow said that approximately a minute later she heard a loud pop (similar to the noise of a firecracker). Longfellow then heard Mendell scream and state "What do you want? I'll give you anything". Longfellow said that she looked through the window and saw Mendell hunched over on the lawn area in between the main residence and the back house (Mendell's room). Longfellow said that a male subject wearing a dark colored beanie, sunglasses, and a black trench coat was standing within arms reach of Mendell and had a black handgun pointed at his head. Longfellow said that the handgun was in the male subject's right hand and was close to the left side of Mendell's head, if not touching his head. Longfellow further described the suspect as being a white male in his mid thirties, approximately 5'10" to 6'00" tall and having a medium build. Longfellow said that she moved away from the window and within about a minute the door to Mendell's room opened.

Longfellow said that Mendell walked into the room and she asked him if he (Mendell) wanted her to call the police. Mendell replied, "Not yet". Mendell then told Longfellow to find his wallet. Longfellow looked toward the front door and saw the same male subject standing just outside the threshold of the door. Longfellow said that the male subject had a black handgun in his right hand, which was pointed toward both of them. Longfellow said that the male subject appeared frantic and was moving the handgun slowly from side to side. Longfellow said that both she and Mendell raised their hands into the air. Longfellow recalled that the male subject's face appeared to look recently unshaven. Longfellow added that the male subject possible had freckles or dirt on his face. Longfellow also added that she believed the male subject was wearing tightly fitted black rubber gloves. Longfellow stated that she turned her back toward the male subject and began looking for Mendell's wallet. Longfellow said that when she could not find Mendell's wallet, she grabbed money from her wallet and gave it to Mendell. Mendell then went outside with the money, however the male subject was no longer visible. Longfellow said that Mendell came back inside his residence (back house) and they

locked the front door. Longfellow said that they both got into the closet for a couple of minutes and then Mendell called 911 from his cellular telephone.

Longfellow said that at the direction of the WCPD they then walked from the back house (Mendell's residence) to the main house. Longfellow said that as they walked through the backyard, she could smell gunpowder. Longfellow said that they entered the main house from the backyard, via a sliding glass door off of the living room. Longfellow said that as she crossed through the living room she could smell gunpowder. Longfellow said that she exited the main residence, via the front door, where she was greeted by the police.

I conducted a records check on Nathan Medina and located a Nathan Medina with the date of birth 11/16/1965. Officer Rohwer with the Walnut Creek Police Department showed Beverly Rhoads a Department of Motor Vehicles photograph of Nathan Medina. Rhoads positively identified Medina as the person who shot Joshua Rhoads.

On 3/20/08, Detective Jower prepared a photo line-up with a picture of Nathan Medina in the number two position, along with five other similar looking subjects. Detective Jower, who was alone with Longfellow, read Longfellow the photo line-up admonishment. Longfellow looked at the photo line-up and said, "number 2 is what best fits my memory".

Detective Jower also read Sean Mendell the photo line-up admonishment. Detective Jower was alone with Mendell. Mendell looked at the photo line-up and said, "I think it was number two that tried to kill me".

Nathan Medina's drivers license lists 2472 Morello Height Circle in Martinez. I conducted a query on vehicles registered to Nathan Medina and located a 2003 Ford pick up truck with the license plate 7H25427 and a 1988 Pontiac with the license plate 3US256. The 2003 Ford is registered to Jennie Hamilton or Nathan Medina at 2472 Morello Heights Circle in Martinez. The Pontiac is registered to Nathan Medina, however only listed a Post Office Box address.

On 03/20/08, Detective Carman with the Walnut Creek Police Department contacted United States Postal Inspector Shad Matheny regarding Nathan Robert Medina and 2472 Morello Heights Circle in Martinez. Inspector Maheny stated that Nathan Medina had not filed a change of address with the United States Postal Service within the last eighteen months. Inspector Maheny also stated that he had spoken with the mail carrier for the aforementioned address and said that the mail carrier could not confirm or deny that Nathan Medina lives at 2472 Morello Heights Circle in Martinez, however she recognized the last name "Medina" as receiving mail at the address.

OPINIONS AND CONCLUSIONS

Your affiant, Detective Tracie Reese is currently employed by the Walnut Creek Police Department as a Police Officer and has been serving in that capacity since March of 2002. I am currently assigned to the Investigations Bureau, Crimes against Persons unit.

Prior to coming to the Walnut Creek Police Department, I was employed for 6.5 years as a police officer in the City of Antioch. I attended the Basic Peace Officer's Standards and Training Academy at Los Medanos College in Pittsburg, California. During that Basic Academy, I received instruction on person and property crimes including but not limited to burglaries, assaults, robberies, homicides and other various crimes.

During my tenure, I have assisted in the investigations of numerous assault and homicide cases. I have also received training during the Field Training Program at both Walnut Creek Police Department and Antioch Police Department in the investigations of assaults and homicides. I have also spoken with other more experienced Officers / Detectives and received additional informal in-house training regarding these types of crimes.

Based on this investigation it is my opinion that Nathan Robert Medina is responsible for the murder of Joshua Rhoads. I also believe that Median is responsible for the attempted murder of Sean Mendell, after firing one bullet from his pistol toward the head of Mendell.

I am requesting a search warrant for the home and vehicle of Nathan Medina that is authorized to be served any time of the day or night. I believe that Medina may have fled the scene of the homicide in one of his vehicles or on foot. It is my opinion that Medina would have left his scent at the scene of the crime, therefore with the use of an article from his residence and the assistance of a tracking K-9 we may be able to detect

Medina's escape route. Learning of Medina's escape route may assist in the discovery of further evidence.

It is my opinion that Medina may be concealing himself inside his residence and that evidence from the murder may be concealed or destroyed inside of his residence. I also believe that Medina may have learned that he is a suspect in the homicide investigation, therefore if this warrant is not served as soon as practical, Medina may destroy evidence. I am requesting a Ramey Warrant for the arrest of Nathan Medina for the murder of Joshua Rhoads, as well as for the attempted murder of Sean Mendell.

EXHIBIT "A"

- Collection of blood evidence from suspect found on any surface or item including light switches, towels, sinks, handles, plumbing traps, clothing, hampers, laundry, trash can, washer/dryer, including collection of bloody items. The above to include drops, spatter, pools, transfers, smears or trace blood. I request the use of color reactive or luminescent chemicals to detect trace blood if necessary.
- Evidence of clean up attempts including visible efforts, wipe marks, diluted traces of blood, materials such as rags, paper towels, bloody water, sponges, mops, vacuum. Evidence of blood into sub-flooring, carpet padding, floor and wall cracks.
- Bloody footprints/fingerprints/shoeprints.
- Processing for/of patent and latent impressions/finger prints on any surface or item. Collection of items bearing prints permitted. Processing by dusting, chemical, laser methods.
- Firearm evidence including the following firearm: Paraphernalia associated with the ownership or possession of the above described weapon, including such items as: Ammunition, expended bullet casings, containers and devices for handling and storing ammunition such as manufacturers packaging, ammunition clips, ammunition pouches, receipts for ammunition or the firearm, holster or other carrying devices, cleaning equipment, bullet parts, instruction material, owners manuals, items containing bullet holes such as targets, cans, walls, snap shots which show any of the above items. Firearm discharge evidence such as shell casings, bullets, unexpended and/or ejected, fired bullets and their fragments or parts, wadding, shot collars, gunshot residue, bullets holes in objects, trajectory evidence, comparison bullets which were previously fired, items struck by bullets. Receipts for the purchase of firearms, Receipts for purchase of ammunition. Pictures showing the suspect with any firearms.
- Indicia. Items of personal property, of the type which would commonly be found in a persons house, which tend to prove the identity of a person(s) who reside there and which tend to prove the identity of the person(s) who are in possession of any of the search warrant items (listed above) which are found and seized there. Examples of such items include: Addressed mail that has been received there; utility bills; receipts for rent or mortgage payments; personal identification cards, snapshots, fingerprints.
- A black or dark colored trench coat.
- A black or dark colored knit cap.

- Black plastic or metal-framed sunglasses.
- Black gloves.
- Documentary evidence which, by its content, directly or indirectly refers to this homicide, to the victim, or scene, including letters, notes, news articles.
- Maps, diagrams, photos of victim or scene, or notes of victim or scene by activity showing planning, preparation or motive.
- Investigating officers are authorized to search all "computer systems," "computer program or software," and "supporting documentation" as defined by Penal Code section 502, subdivision (b), and any associated peripherals that are believed to contain some or all of the evidence described in the warrant, and to conduct an off site search of the seized items for the evidence described. Investigating officers and those agents acting under the direction of the investigating officers are authorized to access all computer data to determine if the data contains "records" and "information" described above. If necessary, investigating officers are authorized to employ the use of outside experts, acting under the direction of the investigating officers, to access and preserve computer data.
- Computer systems, computer hardware (including peripherals and cables), software, and data, including, but not limited to, central processing units (CPUs), hard disk drives, floppy disk drives, tape drives, removable media drives, optical/CD-ROM drives, servers, workstations, display screens, input devices (including but not limited to keyboards, mice, and trackballs), printers, modems, peripherals, floppy disks, magnetic tapes, cassette tapes, removable storage media (such as Bernoulli media), and/or optical/CD-ROM disks or cartridges, found together or separately from one another. Such systems also commonly include electronic cables linking computer systems to other systems or phone lines.
- Documentation or other material describing the operation of any computer systems, computer hardware, software, and/or computer peripherals found at the premises, including instructions on how to access disks, files, or other material stored within same, including but not limited to computer manuals, printouts, passwords, filename lists, "read me" and/or "help files".
- All of the above records, whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or memory on storage devices such as optical disks, programmable instruments such as telephones, "electronic address books" calculators, "personal digital assistants" such as Palm Pilots, or any other storage media, or any other form of "writing" as defined by Evidence Code section 250, together with indicia of use, ownership, possession, or control of such records.

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- Any computer in the suspects care and control, including lap top varieties. This includes the hard disk drive, floppy disk drives and other memory storage devices used by the computer/s.
- Any modems used to connect the computer/s to a phone line and thus giving it access to other computer networks.
- Any printer, which may attach to the computer/s and be used to print items from the computer/s memory.
- Any CD/DVD disks, which may contain stored information from the suspects computer/s. Including diskettes of pirated or stolen programs.
- Any lists of names, bulletin boards, access numbers to credit card accounts, or written or typed computer instructions on how to access bulletin boards or restricted access codes.
- Any publications or manuals on how to access restricted access codes.
- Any lists of restricted access codes, specifically lists of Pacific Bell, Sprint, MCI, or other private phone service calling card access codes, long distance extender codes or lists of any phone companies customers personal identification numbers and private phone numbers.
- A scent article for dog tracking purposes, such as a toothbrush or pillowcase.

PROOF OF SERVICE

1 I declare that I am employed in the County of Contra Costa, California. I am over the age of eighteen years
2 and not a party to the within cause; my business address is 1401 Willow Pass Rd., Suite 880, Concord,
3 California 94520. On the date forth set below, I served the following: **MOTION TO TRAVERSE
4 AND QUASH THE SEARCH WARRANT AND TO SUPPRESS AND DECLARATION
5 OF COUNSEL**

6 Steve Moawad Deputy District Attorney Contra Costa County 7 10 Douglas Drive 8 Martinez, CA 94553	(925) 957-2213 (925) 957-2240 FAX
-----------------------------------------------------------------------------------------------------------------	--------------------------------------

PROOF OF SERVICE VIA FACSIMILE - CCP §§1013(e), 2015.5, CRC 2008

9
10 **[XX]** By arranging for facsimile transmission from facsimile number (925) 602-0622 to the above-listed
11 facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of
12 collection and processing of correspondence via facsimile transmission(s) and any such
13 correspondence would be transmitted via facsimile to the designated numbers in the ordinary course
14 of business. The facsimile transmission(s) was reported as complete and without error.

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23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
24 correct, and that this declaration was executed on March 3, 2009 at Concord, CA

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KATHRYNBANKS