

Ground 3 – Police Misconduct – Illegal Search Warrant

The search warrant based on false and misleading statements violated petitioners 4th Amendment U.S. Const. Due Process Right. Petitioner sights (Exhibit “S” - Affidavit from Detective Tracie Reese for search and arrest warrant) showing where Detective Reese falsely claimed that the petitioner was positively identified by three eye witnesses. This is the definition of a “facially invalid warrant” (United States v. Wright, 730 F. Supp. 2d 358, July 29, 2010) According to case law under Wright, all evidence, if any, discovered as a result of the warrant must be suppressed.

Moreover, a case holding that allegations of police misconduct in connection with an arrest or seizure are required to be reviewed under the fourth amendment’s, Gram v. Connor, 490 U.S. 386, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989). When the police issued an arrest warrant for petitioner while knowing he had not been properly identified, they created a deliberate act of misconduct.

The witness interview and 911 audio recordings corroborate this fact when the victim, in their own words, could not see. (See exhibit B – Rhoads Interview)

Witness tampering and eye witness procedural violations by Walnut Creek Detectives are what led to the false identification of Petitioner which not only violated Petitioner's due process rights, but clearly show that it was not a clear cut identification process.

During Witness Rhoads’ interview and 911 call, she stated that she could not see the intruder because she was immediately pepper sprayed in the face, but that she just knew it was Petitioner. She also stated that the intruder was wearing a mask. The problem with any testimony provided by this person is that Rhoads had a history of making claims against Petitioner. She told Detective McColgin that she couldn’t see. She told him that her vision was so effected by the pepper spray that she could barely dial 911. In spite of these declarations about that level of impairment to her vision, it was her assertions that it was Petitioner which were focused upon to the exclusion of all else.

Both Witnesses Mendell and Longfellow, however, were subject to much more than the simple misquoting that occurred with Witness Rhoads.

- Detectives Tracie Reese and Jower interviewed Witness Mendell at the Walnut Creek Police Station where he repeated to the detectives four times that he did not think it was the petitioner. At the conclusion of that videotaped interview, when the two of them exited the interview room they ran into Detective Brian McColgin just outside the door. At this point, the video was still recording, and Detective Reese can be heard introducing Witness Mendell to Detective McColgin. As soon as the introduction was made Mendell tells McColgin that he does not believe it was Petitioner. McColgin tells Mendell that Rhoads had identified Petitioner and can be heard misquoting Witness Rhoads saying, “Hey man, it’s him, Rhoads positively ID’d him, he wasn’t wearing a mask”. (It should be noted that Witness Rhoads stated that the perpetrator was wearing a mask, and that she couldn’t see because she was immediately pepper sprayed.)

Mendell tries to tell McColgin again that it wasn’t Petitioner. Detective McColgin, at this point pushes the issue further and continues telling Mendell that Ms. Roads positively identified Petitioner. Finally, Mendell says, “She said it was Nathan for sure?” McColgin said, “Yes she did. He wasn’t wearing a mask it was just a hat, a hat. A beanie rolled up”.

Only after all of this did Mendell alter his original position. This is the quality of the “positive identification” with regards to Witness Mendell.

- In response to questioning during trial, regarding whether or not Detective McColgin had tried to improperly influence him to change his statement, Mendell stated multiple times that no conversation occurred (RT 1342, 1410:22, 1411 – 1414). Only when Mendell was finally confronted with the fact that there was a recording of the conversation did he state that he and Detective McColgin had some kind of conversation in the hallway (RT 1435-36).

- Mendell is then taken to see a photo lineup which used Petitioner’s drivers license photo. The photo used in this line-up was “immediately recognized” as the same photo Mendell was shown at the scene of the crime (RT 1415:24),

- When Mendell did not want to pick petitioner's photo out of the lineup he was told to, "Just pick whichever looks most like, whichever one seems the most familiar"(RT 1363),
- Mendell and Longfellow were both improperly influenced at the scene of the crime when they were shown Petitioner's drivers license photo and personal information on a Police car computer.

Witness Longfellow was interviewed for an hour and 12 minutes. Before her interview even started a female Detective kept coming in and asking her questions then leaving. The Walnut Creek Police claimed that the audio recording device in her interview room did not work. The following bullet points are derived from detective notes and trial testimony:

- Longfellow states that while she and Mendell are looking at the Drivers license photo at the scene, she heard Mendell mention Nathan Medina, the lawsuit, and incident where a rock was thrown through a window at Rhoads' house. (Rhoads filed a claim against Petitioner for throwing a rock through her window – it should be noted that this claim was filed in spite of the fact that Rhoads never saw who threw the rock),
- Longfellow recognises that she is being shown the same picture in the photo lineup that she was shown at the scene. She has difficulty with this as the photo does not match the intruder,
- Detective Jower wrote for her, "#2 is what best fits my memory", and had Longfellow sign it.

The search warrant in this case should have been invalidated based upon a variety of reasons. Foremost of these reasons, is that the motion to quash the search warrant was denied based upon evidence which has been kept from Petitioner. This violates Petitioner's constitutional rights.

Next, Detective Reese's affidavit, which claimed that three witnesses positively identified Petitioner was an outright lie. Witness Rhoads did make the claim that it was Petitioner, but admitting that she couldn't see because she'd been pepper sprayed immediately after entering a room by a man wearing a mask. Witness

Mendell stated multiple times that it wasn't Petitioner, but only changed his story after being pressured to do so by Detectives. Finally, the statement of Witness Longfellow cannot even be verified.

The validity of the search warrant in this case is highly questionable. Any judge would recognize that an affidavit is simply inadequate where the witnesses' statements come from coercion. In the instant matter, this is not a subject where this idea is even debatable. The fact is, there is a recording of the conversation in which the Detective and Witness actually introduce themselves, and then the coercion occurs.

Lastly, there isn't even audio for the recording of Witness Longfellow's interview. Thusly, there isn't a verifiable statement on her part that can be relied upon when determining the legality of the warrant. For Witness Longfellow alone, the state violates Petitioner's constitutional rights by asserting as fact evidence which cannot be produced.

During the course of the deliberation of this motion, the Judge, the Prosecutor, and Counsel all retired to the judge's chambers, ostensibly to review multiple 911 calls and witness statements. Longfellow's statement couldn't even be reviewed as it had no audio and thusly could not be transcribed. The rest of the material is comprised of multiple hours of material. Yet, somehow, this material was supposed to have been reviewed in a matter of minutes. The end result of what occurred in the judge's chambers was the denial of the motion to quash the search warrant.

Petitioner has requested the 911 call records and witness statements but was denied access to the evidence. Further, he is in possession of an e-mail from Counsel which states that this material cannot be turned over to him because Counsel claims a confidentiality agreement has rendered it privileged information. A copy of Petitioner's State Bar Complaint catalogs how much work was invested in trying to obtain copies of these statements and 911 call recordings from Counsel. It is included as Exhibit D. (See Exhibit D – state bar complaint)

Supporting cases, rules, or other authority:

California Penal Code section 141 "It is illegal to alter, modify, plant, place, conceal, manufacture, or move any physical matter with the intention of causing someone to

be charged with a crime, or physical matter to be used as evidence in a trial, inquiry, or proceeding.”

Illegal search warrant violates petitioners substantive Due Process Right U.S. Const. 4th Amend.

Violation of Petitioners 5th Amendment United States Constitutional Rights to be given a fair trial by appropriate Due Process.

“Unfairness of a right to a fair trial” (Darden v. Wainwright, 477 U.S. 186, (1968); Parker v. Mathews 132 S. Ct. 2148 (2012); In re Winship, 397 U.S. 358 (1970)

Suppression of Exculpatory Material, manipulation of the facts in question, under (Brady v. Maryland, 373 U.S. 83 (1963); that had reasonable probability that [Petitioners] conviction or sentence would have been different had these materials been disclosed, (Strickler v. Greene, 527 U.S. 263, 296 (1999).

Brady evidence includes statements of witnesses or physical evidence that conflicts with the prosecutions witnesses (People v. Johnson, 38 Cal. App. 3d. 228, 113 Cal. Rptr. 303 (1974)).

Smith v. Dir., TeX Dept of Crim. Justice, Apr. 7, 2023 U.S. LEXIS 81857 “Brady determination” is reasonable, where the State, with all evidence disclosed in the alleged “victim could not identify” petitioner. This makes petitioners claim on Brady even more substantial because it was clear to all parties that the victim could not identify [the petitioner]”