IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. GLEN TAYLOR HELZER, Defendant/Appellant.	)	DEATH PENALTY CASE No. S132256 (Contra Costa Superior Court No. 3-196018-6)

APPELLANT'S REPLY BRIEF

On Automatic Appeal From A Sentence Of Death
From The Superior Court Of California, Contra Costa County
The Honorable MARY ANN O'MALLEY, Judge Presiding

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THE PEOPLE OF THE STATE OF CALIFORNIA,	)	**CAPITAL CASE**
	)	
	)	**No. S132256**
Plaintiff/Respondent,	)	
	)	
v.	)	**(Contra Costa Superior Court**
	)	
GLEN TAYLOR HELZER,	)	**No. 3-196018-6)**
	)	
Defendant/Appellant.	)	
	)	

APPELLANT'S REPLY BRIEF

I. APPELLANT'S MOTION TO SUPPRESS ALL EVIDENCE OBTAINED FROM SEARCHES OF HIS HOME SHOULD HAVE BEEN GRANTED DUE TO THE SEARCHING OFFICERS' FLAGRANT DISREGARD FOR THE TERMS OF THE AUTHORIZING WARRANTS AND THE PROSECUTOR'S FAILURE TO SHOW THAT ALL OF THAT EVIDENCE WAS LEGALLY SEIZED

A. Summary of Arguments

Respondent's opening misstatements of appellant's claim present a straw horse in asserting that "appellant argues that the

defendants' motion to suppress . . . should have been granted because officers seized items that were not specifically named in those warrants" and that "[h]e takes issue only with the Marin County officers' seizure of items pursuant to those warrants . . ." – RB 112.) Appellant has attacked not only the seizures, but also the *searches* conducted by the Marin officers as unlawful because those officers disregarded their warrants' particularization, both as to the victims and crimes for which evidence was being sought and as to the nature of the documents they were supposed to be seeking. (AOB 201-208, 293-308.)

The real issues here are doctrinal. Appellant contends that the Fourth Amendment precludes searching inside a suspect's home for items other than the objects described in the search warrant for that home. Respondent believes a police right to search for other items is implicit in the plain view doctrine, and that the purpose police had in mind when searching inside the home is legally irrelevant. (RB 112-114, 116-117.) Thus, respondent claims, a warrant's authorization to search everywhere in a home for a small item or "trace evidence" necessarily means that "the officers were lawfully in a position to

view the other items that were seized and that they had a lawful right of access to those items." (RB 117.) Ergo, the State's inability or unwillingness to show that the officers were searching for items identified in the warrant when they were searching inside the home is of no importance.

Although the State's arguments on that point may have appeared meritorious at the time this case was tried, they were not consistent with federal Fourth Amendment doctrine. It is now clear that, "[t]he scope of a license—express or implied—is limited not only to a particular area but also to *a specific purpose*." (*Florida v. Jardines* (2013) __ U.S. __, 133 S.Ct. 1409, 1416-1417, emphasis added.) In essence, the Court has endorsed Ninth Circuit and earlier high court authority making unlawful a search for one thing under a warrant describing another.

Without conceding that the officers or the trial court were mistaken in any respect, respondent argues that the extraordinary remedy of blanket suppression of all evidence obtained from the search of appellant's home is not required. (RB 134-143.) Respondent does not, however, claim that appellant should be

precluded from withdrawing his guilty plea if this Court finds that only some of the evidence should have been suppressed. (RB 148-149.)

Finally, respondent invokes the inevitable discovery doctrine on the theory that a subsequently-obtained search warrant allowed another county's officers to search and read everything in appellant's home in pursuit of the objects specified in their warrant. Respondent does not and cannot claim that the latter warrant was an "independent source" for exclusionary rule purposes: that latter warrant that Contra Costa county authorities obtained was obtained by presenting an oral affidavit about the fruits of the earlier searches. It was also directed to different objects. Respondent ignores case law requiring proof of relevant historical facts to support a determination that the State would have inevitably discovered the evidence through lawful means. Respondent also ignores law precluding invocation of the inevitable discovery doctrine where, as here, officers could have, but inexplicably failed, to obtain a properly inclusive warrant without exploiting the taint of earlier searches.

B. Synopsis of Undisputed Facts

Aided by a Contra Costa County SWAT team, Marin County Sheriff's detectives forcibly entered appellant's Concord home under a warrant authorizing them to search for evidence related to two shootings and the disappearance of a third person in Marin County. The warrant included only the following clauses authorizing any search and seizure of documents:

> 4. Receipts and documents related to *9mm handguns and ammunition;*
>
> * * *
>
> 7. Indicia of ownership, including but not limited to leasing documents, Department of Motor Vehicles documents *indicating ownership of the vehicle*, letters, credit card gas receipts, keys and warranties.
>
> 8. Indicia of occupancy or ownership; articles of personal property *tending to establish the identity of persons in control of said premises*, storage areas or containers where the above items are found consisting of rent receipts, cancelled checks, telephone records, utility company records, charge card receipts, cancelled mail, keys and warranties." (9SCT 1847-1848, emphasis added)

Once inside the home, upon seeing the outline of a body in a blood stain on a rug, Marin County Sheriff's Detective Steve Nash left to seek a second warrant for trace evidence confirming that the blood was that of the missing Marin woman, Selina Bishop.

Meanwhile, a detective on Nash's team searched what respondent alternately refers to as a "dayplanner" and "day planner" belonging to a resident of the home, co-defendant Dawn Godwin, and other personal document repositories. They found and seized various retail receipts and other evidence linking the residents to the disappearance of an elderly Concord couple, the Stinemans.

Contra Costa County District Attorney's Office representatives arrived at the home during Nash's absence, but did not claim to direct or authorize the Marin officers' activities. That District Attorney's Office later sought their own warrant for the Concord home, using evidence derived from the search conducted by the Marin officers.

Nash did not learn the details of the Contra Costa warrant or of any list of the objects that the warrant authorized officers to seek.

Before the following day, the mutilated bodies of the Stinemans and that of the missing Marin woman emerged in the

Delta. Thereafter, Nash led officers from both jurisdictions in searching the home and all manner of items they deemed useful to the prosecution of the home's residents.

The trial court saw nothing wrong. It accepted the State's claim that there could be no violation of the Fourth Amendment in searching everywhere in the home and reading every writing they encountered because the objects of the Marin warrants included writings and minute items, including trace evidence. The trial court also accepted the State's claim that the Marin warrants authorized searches for all indicia of anyone's occupancy of appellant's home at any time. It also held that seizures of items outside the scope of the warrants were justified by probable cause to believe they were evidence of a crime, and declared that any illegally seized evidence would have been inevitably discovered under an existing or hypothetical Contra Costa warrant.

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C. Marin Detectives Violated Appellant's Fourth Amendment Rights in Conducting Searches and Seizures Beyond the Scope of Their Warrants

1. Deferential Review of Trial Court Factual Findings Does not Aid Respondent Here

The parties agree on the abstract principles of appellate review of an order denying a motion to suppress. Findings of historical fact are reviewed for substantial evidence. Credibility determinations are reviewed deferentially. The trial court's selection of a rule of law, and its application of the law to the facts, are reviewed independently. (RB 106-107.)

Respondent points to the trial court's finding that the testifying officers were credible, and to Detective Nash's testimony that he made a conscious effort to seize only those items either listed in the warrant or those he had *probable cause to seize.* (2RT 532.) But Nash's credibility and his belief that he had probable cause to seize everything he seized are not determinative of the legality of the searches through which the evidence was discovered. Probable cause justifies seizures, not searches. Insofar as the Marin team were

looking for items not listed in the warrant, the case was lost on the "threshold question" of "whether the search was confined to the warrant's terms." (*United States v. Rettig* (9th Cir 1978) 589 F.2d 418, 423.)

Respondent also claims the State need not explain why officers searched and seized everything they seized from appellant's home – even all of the items listed on the list of challenged items the defense filed – because this Court holds that "evidence must be viewed in the light most favorable to order denying suppression motion." (RB 124, citing *People v. Tully* (2012) 54 Ca1.4th 952, 979.) But viewing evidence in a favorable light is not the same as ignoring a complete dearth of evidence on a point that the defense repeatedly raised in the court below. The failure of the prosecutor to shoulder the burden of proving that all of the seized items, or even the subsets presented in the list of challenged items, were described in a warrant or found in plain view while pursuing an item described in a warrant is not something on which any court can look favorably.

"[S]earches and seizures inside a home without a warrant are presumptively unreasonable." (*Payton v. New York* (1980) 445 U.S.

573, 586.) In general, "seizures of personal property are 'unreasonable within the meaning of the Fourth Amendment . . . unless . . . accomplished pursuant to a judicial warrant.'" *Illinois v. McArthur* (2001) 531 U.S. 326, 330, quoting *United States v. Place* (1983) 462 U.S. 696, 701.) The burden of proving that the items not described in the warrant were seizable under the plain view doctrine lies squarely with the prosecution. (*People v. Murray* (1978) 77 Cal. App. 3d 305, 310-312 ["While a search and seizure conducted pursuant to a warrant is presumed to be legal and the burden is on the defendant to show the illegality [citation], the seizure before us was not pursuant to a warrant but was by virtue of the plain view doctrine. The burden therefore in this regard is upon the prosecutor [citation] to show the applicability of the plain view doctrine.].)

As to the trial court's findings of historical facts, the relevant findings must be rejected because they are simply contrary to the evidence.

First, the trial court incorrectly recalled the evidence in finding that the Marin officers saw "imprints on the wet carpet in the shape of two bodies" prior to obtaining their second warrant for the

Saddlewood home. No evidence supporting this finding was adduced. Detective Nash's testimony did not contain any assertions that he saw an outline of a second body, nor that he had any other reason to suspect that more than one person had been killed in the house at that juncture. Nash's affidavit in support of the warrant he sought after the entry states that he saw the shape of one body, not two. (9SCT 1883.)

The importance of that first mistake about what the officers saw when they entered appellant's home is evident in the next thing the court said:

> And that then they gotten [sic] the second warrant which included forensic evidence, trace evidence, which could possibly link the crimes for [sic] the missing persons, the Stinemans,[1] Ms. Bishop or the deaths of them and other evidence that would relate to those crimes." (3RT 716.)

In actuality, the second Marin warrant did not authorize a search for anything related to the Stinemans. The affidavit for that warrant makes no mention of them. Nash testified that he learned

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about their disappearance only after he obtained that warrant and served it. (2RT 622.)

Finally, the trial court was mistaken in finding that all of the evidence discovered in appellant's home would have been inevitably discovered pursuant to what it called "warrant six." No warrant six was before the court. If the court intended to refer to the existing Contra Costa County warrant for appellant's home, the finding lacks evidentiary support if not logical plausibility. As discussed in pages to follow, a finding that illegally obtained evidence would have been inevitably discovered by lawful means requires substantial evidence of historical facts that were never proved.

2. Respondent's dismissal of federal circuit authorities and reliance on this Court's pre-Jardines decisions was mistaken

The Fourth Amendment ensures the "right of the people to be secure in their persons, houses, papers and effect, against unreasonable searches and seizures." (U.S. Const., amend 4.) Thus, "[a]n examination of the books, papers, and personal possessions in a

suspect's residence is an especially sensitive matter, calling for careful exercise of the magistrate's judicial supervision and control. See *Stanford v. Texas*, 379 U.S. 476, 85 S. Ct. 506, 13 L. Ed. 2d 431 (1965)." (*United States v. Rettig, supra*, 589 F.2d 418, 422-423 (*Rettig*).)

Written by Justice Anthony Kennedy while a judge on the Court of Appeals for the Ninth Circuit, *Rettig* held the search of a home violative of the Fourth Amendment where undertaken for the purpose of obtaining evidence of a conspiracy to import cocaine under a warrant issued for evidence of marijuana related crimes. Respondent argues that *Rettig* is off point because there is "no evidence on the record that Detective Nash had any motive or intent to search for evidence of crimes other than the Woodacre murders" *when he applied for his warrants*. (RB 131.) But the undisclosed intent of the agents while *obtaining* the warrant in *Rettig* warrant was not the reason the Ninth Circuit found their subsequent search improper. To quote:

> The case before us is to be distinguished from those in which the defendant seeks to attack the factual accuracy of the underlying affidavits in order to establish a

> warrant's improper issuance. See *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), and cases cited therein. Where factual inaccuracy of the affidavit is alleged, a warrant is invalidated only if it is established that the affiant was guilty of deliberate falsehood or reckless disregard for the truth, and if, with the affidavit's false material set to one side, the information remaining in the affidavit is inadequate to support probable cause. Id. 438 U.S. at 156, 171, 98 S. Ct. 2677, 2685. The April 3 warrant was validly issued for the purpose set forth in the affidavit, and there is no contention of an insufficient showing of probable cause to issue the warrant for that purpose. However, the failure to disclose does enlighten our review of the search and seizures that actually took place as we determine whether or not the agents went beyond the confines of the warrant. (*United States v. Rettig*, *supra*, 589 F.2d 418, 422-423.)

Respondent also implies that *Rettig* is inapposite because the opinion does not mention the plain view doctrine, under which the searching officers' discovery of evidence need not be inadvertent. But as *Rettig* and numerous federal and California cases show, the plain view doctrine is inapplicable where the search that brought the evidence into view was not one directed to the objects described in the warrant. California appellate courts have long held: