

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE)	DEATH PENALTY CASE
OF CALIFORNIA,)	
)	No 132256
Plaintiff/Respondent,)	
)	
v.)	(Contra Costa
)	Superior Court
GLEN TAYLOR HELZER,)	No. 3-196018-6)
)	
Defendant/Appellant.)	
_____)	

SUPREME COURT
FILED

JUN 28 2017

Jorge Navarrete Clerk

APPELLANT'S REPLY BRIEF

Deputy

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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DEATH PENALTY

TABLE OF CONTENTS

I.	APPELLANT’S MOTION TO SUPPRESS ALL EVIDENCE OBTAINED FROM THE SEARCH 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	1
B.	Synopsis of Undisputed Facts	5
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	8
	2. Respondent’s dismissal of federal circuit authorities and reliance on this court’s <i>pre-Jardines</i> decisions was mistaken	12
	3. No reasonably well-trained officer would have interpreted the Marin warrants to authorize the searches and seizures at issue.....	20
	4. Respondent errs in denying that there is “objective evidence” that Nash ignored the terms of the Marin warrants he executed.....	28
	5. The conduct of the Marin County detectives was indeed a “general search” of the type the Fourth Amendment was designed to preclude.	30
D.	The Inevitable Discovery Doctrine Does Not Aid the State here .	42

II. THE COURT’S REMOVAL OF A VENIRE MEMBER MODERATELY OPPOSED TO THE DEATH PENALTY WHOSE ABILITY TO FOLLOW THE OATH AND INSTRUCTIONS WAS NOT SUBSTANTIALLY IMPAIRED VIOLATED APPELLANT’S RIGHT TO DUE PROCESS OF LAW AND AN IMPARTIAL JURY

Summary of Arguments 49

A. The record respecting JW’s readiness to follow capital jury instructions 53

B. Readiness to Follow the Penalty Jury Instructions As Disclosed to the Excused Juror is Decisive..... 54

C. The lack of record supporting respondent’s claim that JW morally opposed death sentencing in all cases..... 60

D. The lack of record supporting respondent’s claim that JW would not be able to consider imposing death..... 68

E. Respondent’s proposed rule excluding death scrupled jurors based on inability to aside their moral beliefs in making the penalty decision intrudes upon the defendant’s Sixth Amendment rights without the single justification accepted by the high court: inability to follow the jurors’ oath and instructions 70

F. The trial court’s ruling was based on its own error of law, denied appellant his constitutional rights, and requires reversal..... 75

III. THE DENIAL OF THE RIGHT TO ASK VENIRE MEMBERS IF THEY COULD CONSIDER MITIGATING FACTORS AFTER EXPOSURE TO THE HORRIFYING CORPSE DESECRATION EVIDENCE THE COURT ALLOWED THE PROSECUTOR TO PRESENT VIOLATED APPELLANT’S RIGHT TO DUE PROCESS OF LAW AND AN IMPARTIAL JURY..... 77

IV.	THE ADMISSION OF PHOTOGRAPHIC AND AUDITORY EVIDENCE OF CORPSE DISMEMBERMENT DENIED APPELLANT HIS RIGHT TO A FUNDAMENTALLY FAIR PENALTY TRIAL	85
V.	THE PROSECUTOR’S CLOSING ARGUMENT AND THE TRIAL COURT’S REFUSAL TO GIVE THE JURY APPROPRIATELY SPECIFIC INSTRUCTIONS RENDERED OUR DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL AS APPLIED, PREVENTED CONSIDERATION OF MITIGATING FACTORS, AND COMPROMISED CONSIDERATION OF MITIGATING EVIDENCE	
	Summary of Arguments	86
A.	No part of appellant’s claim was forfeited.....	87
B.	Respondent tacitly concedes that the prosecutor misstated the law.....	91
C.	Respondent does not and cannot deny that the prosecutor’s misstatements misled the jury	92
D.	The trial court did not give the instructions necessary to stop the jury from being misled.....	101
E.	Reversal is Required	104
VI.	THE TRIAL COURT DENIED APPELLANT DUE PROCESS OF LAW AND TRIAL BY JURY WHEN IT INSTRUCTED THE JURY THAT THE IMPACT OF AN EXECUTION ON THE DEFENDANT’S FAMILY MEMBERS SHOULD BE DISREGARDED UNLESS IT ILLUMINATES SOME POSITIVE QUALITY OF THE DEFENDANT'S BACKGROUND OR CHARACTER.....	107

VII. THE TRIAL COURT’S REFUSAL TO INSTRUCT THE JURY THAT IT COULD DECLINE TO IMPOSE DEATH FOR ANY REASON IT DEEMED APPROPRIATE RENDERED CALIFORNIA’S DEATH PENALTY SCHEME UNCONSTITUTIONAL AS APPLIED 113

VIII. THE EXCLUSION OF PROSPECTIVE JURORS BECAUSE OF UNWILLINGNESS OR IMPAIRED ABILITY TO IMPOSE DEATH VIOLATED APPELLANT’S RIGHT TO AN IMPARTIAL AND REPRESENTATIVE JURY 117

IX. THE DEATH PENALTY AS ADMINISTERED IN CALIFORNIA IS CRUEL AND UNUSUAL PUNISHMENT WITHIN THE MEANING OF THE EIGHTH AMENDMENT.. 121

X. CALIFORNIA’S FAILURE TO TIMELY PROVIDE CONDEMNED DEFENDANTS WITH HABEAS COUNSEL OFFENDS THE DUE PROCESS AND EQUAL PROTECTION GUARANTEES OF THE UNITED STATES AND CALIFORNIA CONSTITUTIONS AND REQUIRES REVERSAL OF APPELLANT’S CONVICTIONS AND SENTENCE131

XI. CALIFORNIA’S DEATH PENALTY STATUTE, AS INTERPRETED BY THIS COURT AND APPLIED AT APPELLANT’S TRIAL, VIOLATES THE UNITED STATES CONSTITUTION 133

XII. THE CUMULATIVE EFFECT OF ALL THE ERRORS WAS AN UNFAIR TRIAL AND A DEATH JUDGMENT THAT MUST BE REVERSED UNDER THE 6TH, 8TH, AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION, AND UNDER STATE CONSTITUTIONAL COROLLARIES133

CONCLUSION 135

CERTIFICATE OF COUNSEL136

TABLE OF AUTHORITIES

Cases

<i>Adams v. Texas</i> (1980) 448 U.S. 38	55, 74
<i>Alleyne v. United States</i> (2013) ___ U.S. ___, 133 S.Ct. 2151 ..	116
<i>Andresen v. Maryland</i> (1976) 427 U.S. 463	22
<i>Arizona v. Hicks</i> (1987) 480 U.S. 321	37
<i>Auto Equity Sales, Inc. v. Superior Court</i> (1962) 57 Cal.2d 450	119
<i>Boulden v. Holman</i> (1969) 394 U.S. 478	73
<i>Boyer v. Davis</i> (2016) __ U.S. __ [194 L.Ed.2d 840]	126
<i>Brown v. Payton</i> (2005) 544 U.S. 133	88, 101, 102
<i>Callins v. Collins</i> (1994) 510 U.S. 1141	126
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443	25, 32
<i>Crawford v. Washington</i> (2004) 541 U.S. 36	116
<i>Darden v. Wainright</i> (1986) 477 U.S. 168	57
<i>Darden v. Wainright</i> (M.D. Fla 1981)	58
<i>Eddings v. Oklahoma</i> (1982) 455 U.S. 104	121-123, 129, 132
<i>Florida v. Jardines</i> (2013) __U.S.__, 133 S.Ct. 1409 . 3, 16-17, 30, 38	
<i>Franks v. Delaware</i> (1978) 438 U.S. 154	14
<i>Furman v. Georgia</i> (1972) 408 U.S. 238	124

<i>Glossip v. Gross</i> (2015) __U.S. ____, 135 S.Ct. 2726	126-130
<i>Gore v. United States</i> (D.C. 2016) 145 A.3d 540	44, 47
<i>Gray v. Mississippi</i> (1987) 481 U.S. 648	76
<i>Griffith v. Kentucky</i> (1987) 479 U.S. 314	121
<i>Guerra v. Sutton</i> (9th Cir. 1986) 783 F.2d 1371	40
<i>Harris v. United States</i> (2002) 536 U.S. 545	116
<i>Hicks v. Oklahoma</i> (1980) 447 U.S. 343	91
<i>Hitchcock v. Dugger</i> (1987) 481 U.S. 393	134
<i>Illinois v. McArthur</i> (2001) 531 U.S. 326	10
<i>In re Marriage of Cornejo</i> (1996) 13 Cal.4th 381	111
<i>In re Tahl</i> (1970) 1 Cal.3d 122	67
<i>Jones v. Chappell</i> (C.D. Cal. 2014) 31 F.Supp.3d 1050	122-125
<i>Jones v. Davis</i> (9 th Cir 2015) 806 F.3d 538	122
<i>Lockhart v. McCree</i> (1986) 476 U.S. 162	70, 71, 120
<i>Marks v. Clarke</i> (9th Cir. 1997) 102 F.3d 1012	40
<i>Marron v. United States</i> (1927) 275 U.S. 192	31, 34
<i>McGautha v. California</i> (1971) 402 U. S. 183	114, 115
<i>Morgan v. Illinois</i> (1992) 504 U.S. 719	59, 60, 75
<i>MT v. Superior Court</i> (2009) 178 Cal.App 4th 1170	119

<i>Murray v. Giarratano</i> (1989) 492 U.S. 1	132
<i>Nix v. Williams</i> (1984) 467 U.S. 431	42, 44
<i>NLRB v. Canning</i> (2014) ___ U.S. ___ [134 S.Ct. 2550]	51
<i>Ogburn v. State</i> (Ind. Ct. App. 2016) 53 N.E.3d 464	26, 27, 29
<i>Ohio v. Roberts</i> (1980) 448 U.S. 56	116
<i>Ornelas v. Randolph</i> (1993) 4 Cal.4th 1095	23
<i>Payton v. New York</i> (1980) 445 U.S. 573	9
<i>Pena-Rodriguez v. Colorado</i> (2017) __ U.S. __, 2017 U.S. LEXIS 1574	117
<i>People v. Andersen</i> (1994) 26 Cal.App.4th 1241	108
<i>People v. Arias</i> (2008) 45 Cal. 4th 169	22
<i>People v. Ashmus</i> (1991) 54 Cal.3d 932	121
<i>People v. Balint</i> (2006) 138 Cal.App.4th 200	22-24
<i>People v. Bolden</i> (2002) 29 Cal.4th 515	85
<i>People v. Boyer</i> (1989) 48 Cal. 3d 247	42
<i>People v. Boyette</i> (2002) 29 Cal.4th 381	119
<i>People v. Bradford</i> (1997) 15 Cal.4th 1229	15
<i>People v. Capistrano</i> (2014) 59 Cal. 4th 830	65, 66
<i>People v. Carrington</i> (2009) 47 Cal.4th 145	15

<i>People v. Cash</i> (2002) 28 Cal.4th 703	77, 78, 80, 82, 84
<i>People v. Coffman and Marlow</i> (2004) 34 Cal.4th 1	108
<i>People v. Cole</i> (1988) 202 Cal.App.3d 1439	104
<i>People v. Crandell</i> (1988) 46 Cal. 3d 833	97, 98
<i>People v. Davenport</i> (1985) 41 Cal.3d 247	87
<i>People v. Earp</i> (1999) 20 Cal.4th 826	81
<i>People v. Falsetta</i> (1999) 21 Cal.4th 903	104
<i>People v. Foster</i> (2010) 50 Cal. 4th 1301	90
<i>People v. Haley</i> (2004) 34 Cal. 4th 283	66
<i>People v. Heard</i> (2003) 31 Cal.4th 946	52, 76
<i>People v. Hernandez</i> (2003) 30 Cal.4th 835	90
<i>People v. Hernandez</i> (2012) 53 Cal. 4th 1095	131
<i>People v. Herrera</i> (Col. 2015) 2015 CO 60	24-26, 29
<i>People v. Hill</i> (1992) 3 Cal.4th 959	135
<i>People v. Hill</i> (1998) 17 Cal.4th 800	119
<i>People v. Holt</i> (1997) 15 Cal. 4th 619	100
<i>People v. Kraft</i> (2000) 23 Cal.4th 978	38
<i>People v. Landry</i> (2016) 2 Cal.5th 52	108
<i>People v. Leon</i> (2015) 61 Cal. 4th 569	71

<i>People v. Lewis and Oliver</i> (2006) 39 Cal.4th 970	72
<i>People v. Leyba</i> (1981) 29 Cal.3d 591	76
<i>People v. Lucero</i> (1988) 44 Cal. 3d 1006	89
<i>People v. McGraw</i> (1981) 119 Cal.App.3d 582	15
<i>People v. Mendoza</i> (2000) 24 Cal. 4 th 130	73
<i>People v. Miller</i> (1987) 196 Cal. App. 3d 846	15
<i>People v. Millwee</i> (1998) 18 Cal.4th 96	66
<i>People v. Milner</i> (1988) 45 Cal. 3d 227	89
<i>People v. Moore</i> (2011) 51 Cal4th 1104	110
<i>People v. Morgan</i> (2007) 42 Cal. 4th 593	102, 103
<i>People v. Murray</i> (1978) 77 Cal. App. 3d 305	10
<i>People v. Ngo</i> (2014) 225 Cal. App. 4th 126	108
<i>People v. Payton</i> (1992) 3 Cal.4th 1050	88, 89, 92, 103, 106
<i>People v. Pearson</i> (2012) 53 Cal.4th 306	52, 63, 76
<i>People v. Prieto</i> (2003) 30 Cal.4th 226	72
<i>People v. Ramos</i> (2004) 34 Cal.4th 494	68
<i>People v. Rangel</i> (2016) 62 Cal.4th 1192	88, 119
<i>People v. Riccardi</i> (2012) 54 Cal. 4th 758	67
<i>People v. Rios</i> (1976) 16 Cal. 3d 351	41

<i>People v. Robles</i> (2000) 23 Cal.4th 789	46
<i>People v. Rodrigues</i> (1994) 8 Cal.4th 1060	63, 66
<i>People v. Rodriguez</i> (1986) 42 Cal.3d 730	72
<i>People v. Ruiz</i> (1988) 44 Cal. 3d 589	97
<i>People v. Saunders</i> (1993) 5 Cal.4th 580	109
<i>People v. Schmeck</i> (2005) 37 Cal.4th 240	133
<i>People v. Scott</i> (1994) 9 Cal.4th 331	108, 109
<i>People v. Seijas</i> (2005) 36 Cal. 4th 291	76
<i>People v. Seumanu</i> (2015) 61 Cal.4th 1293	122-125, 129
<i>People v. Smithey</i> (1999) 20 Cal.4th 936	111
<i>People v. Stewart</i> (2004) 33 Cal.4th 425	58, 72
<i>People v. Taylor</i> (2010) 48 Ca1.4th 574	84
<i>People v. Thomas</i> (2011) 52 Cal. 4th 336	68
<i>People v. Tully</i> (2012) 54 Ca1.4th 952	9
<i>People v. Valdez</i> (2012) 55 Cal. 4th 82	78
<i>People v. Vieira</i> (2005) 35 Cal.4th 264	80
<i>People v. Whitt</i> (1990) 51 Cal. 3d 620	87, 88
<i>People v. Williams</i> (1971) 22 Cal.App.3d 34	134
<i>People v. Williams</i> (2013) 56 Cal.4th 165	131

<i>People v. Wilson</i> (2008) 44 Cal.4th 758	71
<i>People v. Zambrano</i> (2007) 41 Cal.4th 1082	79, 81
<i>Riley v. California</i> (2014) U.S. , 134 S. Ct. 2473	25, 35
<i>Ring v. Arizona</i> (2002) 536 U.S. 584	116
<i>Stanford v. Texas</i> (1965) 379 U.S. 476	13
<i>State v. Topanotes</i> (Utah 2003) UT 30, 76 P.3d 1159	47
<i>United States v. Camou</i> (9th Cir. 2014) 773 F.3d 932	47
<i>United States v. Doxey</i> (6th Cir. 2016) 833 F.3d 692	43
<i>United States v. Echegoyen</i> (9th Cir. 1986) 799 F.2d 1271	47
<i>United States v. Eng</i> (2 nd Cir 1992) 971 F.2d 854	46
<i>United States v. Ewain</i> (9th Cir. 1996) 88 F.3d 689	18
<i>United States v. Foster</i> (10th Cir. 1996) 100 F.3d 846 .	32, 33, 34, 39
<i>United States v. Gorman</i> (9th Cir. 1996) 104 F.3d 272, 274	20
<i>United States v. Heldt</i> (D.C. Cir. 1981) 668 F.2d 1238	41
<i>United States v. Holmes</i> (D.C. Cir. 2007) 505 F.3d 1288	42, 45
<i>United States v. Johnston</i> (9th Cir. 2015) 789 F.3d 934	19, 20
<i>United States v. Leon</i> (1984) 468 U.S. 897	26
<i>United States v. Lundin</i> (9th Cir. 2016) 817 F.3d 1151	47, 48
<i>United States v. Medlin</i> (10 th Cir 1988) 842 F.2d 1194	33

<i>United States v. Mejia</i> (9th Cir. 1995) 69 F.3d 309	47
<i>United States v. Pindell</i> (D.C. Cir. 2003) 336 F.3d 1049	22
<i>United States v. Place</i> (1983) 462 U.S. 696	10
<i>United States v. Rettig</i> (9 th Cir 1978) 589 F.2d 418.	9, 13-14, 19, 32, 33, 39, 41
<i>United States v. Sedaghaty</i> (9 th Cir 2013) 728 F.3d 885	17-19
<i>United States v. Stokes</i> (2d Cir. 2013) 733 F.3d 438	45
<i>United States v. Taveras</i> (E.D.N.Y. 2007) 488 F. Supp. 2d 246 ..	82
<i>United States v. Thomas</i> (4th Cir. 1992) 955 F.2d 207	47
<i>United States v. Wallace</i> (9th Cir. 1988) 848 F.2d 1464	133-134
<i>United States v. M Williams</i> (2008) 553 U.S. 285	22
<i>United States v. Young</i> (9th Cir. 2009) 573 F.3d 711, 723	48
<i>Uttecht v. Brown</i> (2007) 551 U.S. 1	55-57
<i>Wainwright v. Witt</i> (1985) 469 U.S. 424	52, 55, 66, 67, 72, 74
<i>Walton v. Arizona</i> (1990) 497 U.S. 639	116
<i>Witherspoon v. Illinois</i> (1968) 391 U.S. 522	55, 67

California Statutes

Code of Civ. Proc. § 229, subd. (h)	118
Code Civ. Proc. § 232, subd. (b)	55

Pen. Code § 190.3	100
Pen. Code § 1259	108
Pen. Code § 1538.5	35, 41

Constitutions

U.S. Const., Eighth Amendment	122-124, 128, 129
U.S. Const., Fourth Amendment	2, 3, 7, 10, 12, 13, 25, 31, 32, 35, 42, 48, 76
U.S. Const., Sixth Amendment	75, 76, 114, 115, 117, 118

Other Authorities

American Bar Assn. (ABA), <i>Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 9.1, Commentary</i> (rev. ed. Feb. 2003) 31 Hofstra L. Rev. 913....	127
Smith, <i>The Supreme Court and the Politics of Death</i> 94 Va. L. Rev. 283	127
3 Story, <i>Commentaries on the Constitution of the United States</i> (1833) §1773	117
Wayne R. LaFave, <i>Search and Seizure</i> (5th ed. 2012)	44, 47

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<hr style="width:50%; margin-left:0;"/>)	

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 Cal.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

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: