

10/15/09 WJ

FILED
SUPERIOR COURT-STOCKTON

2009 OCT 15 PM 4:18

ROSA JUNQUEIRO, CLERK

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DEPUTY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN JOAQUIN

12 PEOPLE OF THE STATE OF CALIFORNIA,

No. SF112495A

13 Plaintiff,

DEFENDANT'S 1538.5
MOTION TO SUPPRESS
EVIDENCE

14 vs.

Date: Motion setting 10/30/09
Time: 8:30 a.m.
Department 14

16 MELISSA HUCKABY,

17 Defendant.
18 _____ /

19 **NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE**
20 **PURSUANT TO PENAL CODE SECTION 1538.5**

21 TO THE DISTRICT ATTORNEY OF THE COUNTY OF SAN JOAQUIN, AND TO THE
ABOVE-ENTITLED COURT:

22 PLEASE TAKE NOTICE that on the 30th day of October 2009, at 8:30 a.m., or as soon
23 thereafter as the matter may be heard in Department 14 of the above-entitled court, defendant
24 MELISSA HUCKABY, through counsel, will request a date for hearing on DEFENDANT'S
25 motion to suppress evidence pursuant to Penal Code Section 1538.5.

26 PLEASE TAKE FURTHER NOTICE that in order to preserve their right to pretrial
27 appellate review pursuant to Penal Code Section 1510, defendant hereby moves the court for an
28 order directing that the evidence described below and any fruits thereof be suppressed at any trial
or other hearing pursuant to Penal Code Section 1538.5.

1 This motion is made on the grounds that said evidence and fruits were obtained as a result
2 of one or more illegal and/ or unconstitutional searches and seizures or interrogations in
3 violation of Penal Code Section 1538.5 and the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth
4 Amendments to the United Constitution and their California constitutional counterparts, and
5 statutory privileges as set forth in Evidence Code Section 900.

6 The evidence to be suppressed consists of all tangible and intangible evidence obtained as
7 a direct or indirect result of any illegal or unconstitutional act, search and seizure, and/or
8 interrogation, including but not limited to:

9 (A) all tangible and intangible evidence or statements obtained as a direct or indirect
10 result of any warrantless detention or arrest of Mellisa Huckaby, including, but not limited to:

- 11 (1) statement to Officer Swift of Cypress Police Dept on 4/3/01 ;
- 12 (2) statement to Officer DeYoung of the Cypress Police Dept.on 4/10/01 ;
- 13 (3) statement to Officer Bill Crow on 4/10/01 ;
- 14 (4) statement to Officer Beaty of the La Palma Police Dept. on 7/20/07 ;
- 15 (5) statement to Officer McGowne on 7/20/07 ;
- 16 (6) statement to Officer McGone 7/22/07 ;
- 17 (7) statements to Officer Tal on 7/26/07, and 7/28/07 ;
- 18 (8) statements to Officer Parsons on 7/28/07, 8/2/07, 8/3/07, and 8/08/07 ;
- 19 (9) written statement referenced in discovery pages 354-355 ;
- 20 (10) statement to Officer Berdosh on 1/17/09 ;
- 21 (11) statement to Tracy Officer Gilstrap on 3/27/09 ;
- 22 (12) statement to Tracy Officer Reyna on 3/27/09 ;
- 23 (13) statement to Agent Conrad on 3/28/09 and 4/1/09 ;
- 24 (14) statement to Agent Sparrow on 3/28/09 ;
- 25 (15) statement to Agent Brine on 3/28/09 ;
- 26 (16) statements to Tracy Officer Cogburn on 1/17/09, 1/29/09, 4/3/09, 4/09/09 and
27 4/10/09 ;

- 1 (17) statement to Clinical Social Worker Kenneth Everett on or about 4/6/09 ;
2 (18) statement to Tracy Officer Bauer on 3/28/09, 4/07/09, 4/08/09, 4/09/09 (at home and
3 at the station), and 4/10/09 (both parts) ;
4 (19) statement to Officer Kootstra on 4/10/09 ;
5 (20) statement to Officer Knight on 4/07/09 and 4/08/09 ;
6 (21) statements made on 4/10/09 during intake at booking;
7 (22) any items seized incident to or following any detention or arrest, including a purse
8 and the contents thereof seized incident to arrest on 4/10/09.

9 (B) all tangible and intangible evidence obtained as a direct or indirect result of any
10 search, seizure, or questioning performed as a result of, or the fruits of, a search performed on or
11 about 4/6/09 pursuant to a warrant signed 4/6/09 of a 2000 Kia Sportage, License number
12 [REDACTED], including, but not limited to:

- 13 (23) a post-it note ;
14 (24) any sweepings or scientific tests performed thereon.

15 (C) all tangible and intangible evidence obtained as a direct or indirect result of any
16 entry, search, seizure, or questioning performed as a result of, or the fruits of, any entry, search or
17 seizure of defendant's residence at [REDACTED] performed on 3/28/09 by
18 Agents of the FBI and Tracy Police Officers, on 4/06/09 pursuant to a warrant, and on 4/14/09
19 again pursuant to a warrant, including, but not limited to:

- 20 (25) computers ;
21 (26) phones;
22 (27) alcohol;
23 (28) notebooks;
24 (29) medication;
25 (30) luggage;
26 (31) any other items;
27 (32) any scientific testing performed on any of the above items.
28

1 (D) all tangible and intangible evidence obtained as a direct or indirect result of any
2 entry, search, seizure, or questioning performed as a result of, or the fruits of, any entry, search or
3 seizure of defendant's church, the Clover Road Baptist Church located at 1100 W. Clover Road,
4 performed on or about 4/6/09, 4/10/09, 4/14/09 and 4/23/09 pursuant to warrants signed on each
5 of those days, including, but not limited to:

6 (33) blinds ;

7 (34) computer ;

8 (35) rolling pin ;

9 (36) alcohol ;

10 (37) cleaning products;

11 (38) any scientific testing performed on any of the above items .

12 (E) all tangible and intangible evidence obtained as a direct or indirect result of any
13 search or seizure of any phone records that the defendant has a reasonable expectation of privacy
14 in, including, but not limited to:

15 (39) all text messages received by or sent to the following numbers: [REDACTED] or
16 [REDACTED] ;

17 (40) all text messages made by or sent to Melissa Huckaby or Connie Lawless;

18 (41) all intercepted phone calls for [REDACTED] made pursuant to a warrant signed on
19 4/06/09;

20 (42) all AT&T phone records received pursuant to a 4/07/09 warrant for the following
21 phone numbers: [REDACTED];

22 (43) any records, text or other information extracted from the Samsung (Serial #
23 RV9P748094A, # [REDACTED] AT&T LG phones (Serial # 901KPDT904210
24 phone # [REDACTED]) searched pursuant to a warrant signed on 4/23/09.

25 (F) all tangible and intangible evidence obtained as a direct or indirect result of any
26 search or seizure of any internet records that the defendant has a reasonable expectation of
27 privacy in, including, but not limited to:

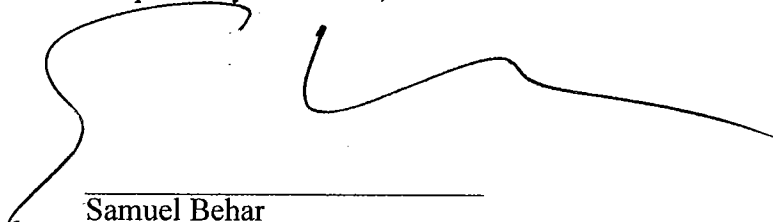
1 (44) any My Space or Facebook records seized pursuant to a search warrant signed on
2 4/22/09.

3 This motion specifically includes all fruits of such illegal acts, whether obtained with or
4 without a warrant, including, but not limited to: all items seized from defendants person,
5 residence, vehicle(s), or any other sites; items or other belongings, cloaked with an expectation of
6 privacy, whether actually or constructively possessed by defendant at the time of the search
7 and/or seizure; statements and gestures of defendant made or observed at the time of, or after any
8 illegal act; all items seized, statements obtained and observations made during the course, or as
9 fruits of, the aforementioned illegal searches and seizures; testimony and statements of witnesses;
10 statements and observations of police officers; subsequent statements and anticipated testimony
11 of any parties; and all fruits thereof.

12 This motion is based upon this Notice, the attached Declaration of Counsel, the files and
13 records of this case, and evidence, argument and authorities to be presented at the hearing on this
14 motion. Defendant will file at a later time a detailed Memorandum of Points and Authorities in
15 support of this motion.

16 DATED: October 15, 2009

17 Respectfully submitted,

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21 Samuel Behar
Deputy Public Defender

22 Attorney for Defendant MELISSA HUCKABY
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DECLARATION OF COUNSEL

FILED
SUPERIOR COURT-STOCKTON

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ROSA JUNQUEIRO, CLERK

[Signature]
DEPUTY

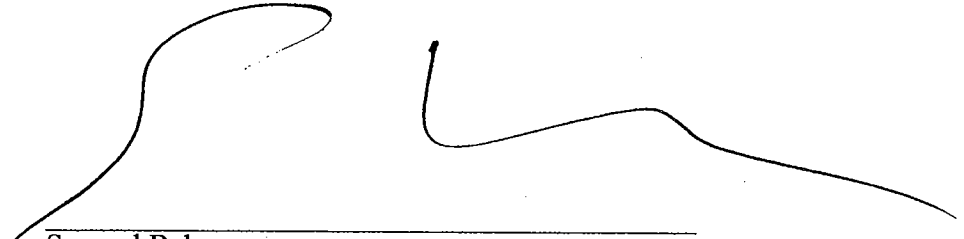
I, Samuel Behar, declare as follows:
I am a Deputy Public Defender for the County of San Joaquin ~~arguing that capacity~~
represent defendant MELISSA HUCKABY in the above-entitled special circumstance murder
case.

My review of Ms. Huckaby's voluminous file indicates the meritoriousness of the present
motion pursuant to Penal Code Section 1538.5. However, due to the complexity of the legal and
factual issues raised by the present motion, and the need for further factual investigation and
legal research, the Memorandum of Points and Authorities in support of the motion has not been
filed. That will be filed in a timely fashion once the hearing date is set. The motion itself is
timely within the meaning of Penal Code Section 1510.

A status conference in this case is set for October 30, 2009. My co-counsel Michael Burt
was appointed in this case on October 8, 2009. My co-counsel and I are diligently conducting
legal research and writing and factual investigation in support of the present motion. We will file
the required Memorandum in support of the motion well in advance of any hearing date selected
by the court for the hearing of this motion.

I declare under penalty of perjury that the foregoing is true and correct of my own
knowledge, except as to those matters stated upon information and belief; and as to those
matters, I declare that I believe them to be true and correct.

Executed this 15th day of October, 2009, at San Francisco, California.



Samuel Behar
Deputy Public Defender