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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
9 STOCKTON BRANCH

10	The People of the State of California,)	No. SF112495(A)
)	
11	Plaintiff,)	RESPONSE TO DEFENDANT'S
)	1538.5 MOTION TO
12	v.)	SUPPRESS EVIDENCE
)	FILED 10/15/09
13	MELISSA HUCKABY)	
)	DATE: 04/12/10
14)	TIME: 8:30 am
	Defendant(s).)	DEPT: 14

15 During that portion of the hearing set for the week of April
16 12, 2010 that relates to search warrants the People will: (1) ask
17 the court to consider the following new case: *Herring v. United*
18 *States*, (2009) 129 S.Ct.695. It represents a sea change in Fourth
19 Amendment and Exclusionary Rule jurisprudence. "Herring has
20 hammered the final nail into the exclusionary rule's coffin."¹ The
21 U.S. Supreme Court in *Herring* explained that the fact that a search
22 or arrest was unreasonable does not necessarily mean that the
23 exclusionary rule applies. Police mistakes, isolated negligence,
24 reliance on inaccurate information -- do not require a ruling that
25

26 ¹ Sean Doherty, *The End of an Era: Closing the Exclusionary Debate Under Herring v. United*
27 *States*, 37 Hofstra L. Rev. 839 at page 869 (2009).

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1 keeps the evidence from the jury. Even assuming there were 4th
2 amendment violations, that does not necessarily mean the
3 exclusionary rule applies.

4 In accordance with Herring's new guidelines, the trial court on
5 April 12, 2010 will need to assess the flagrancy and
6 deliberativeness of police misconduct, IF ANY, in preparing and
7 serving search warrants to see if it justifies the ultimate high
8 price of hiding the seized evidence from the jury.

9 (2) The People will ask the court to take judicial notice of
10 the closing summary to the grand jury (Reporters Transcript page
11 1780 et. seq.) in order to appreciate the complexity of the
12 investigation that culminated in defendant's arrest. That is because
13 the California Supreme Court in *People v. Bradford* (1997) 15 Cal.4th
14 1229 has acknowledged at page 1291 that "...in a complex case
15 resting upon the piecing together of 'many bits of evidence', the
16 (search) warrant properly may be more generalized that would be the
17 case in a more simplified case resting upon more direct evidence
18 (citations omitted)"

19 (3) The People may invite the court to consider these
20 additional 3 principles: (a) Searches supported by a warrant are
21 presumed reasonable, and the defendant must prove the contrary.
22 *People v. Contreras* (1989) 210 Cal.App.3d 450, 454. (b) Officers
23 executing a search warrant may seize items not listed in the warrant
24 if the officers are lawfully in a position from which they view the
25 items and the officer has a suspicion (not necessarily amounting to
26 probable cause) of a nexus between the item seized and criminal
27 behavior. *People v. Carrington* (2009) 47 Cal.4th 145 at page 166.

1 (c) "In Leon, the Supreme Court held that when an officer relies in
2 good faith on a judicial decision - a warrant signed by a judge - to
3 search for and seize evidence, the exclusionary rule does not apply
4 if it is later shown the warrant was invalid." *People v. Branner*
5 (2009) 180 Cal.App4th 308 at page 320. And "...there is a
6 presumption that officers are conducting a search with good faith
7 belief in its validity when the search is conducted pursuant to a
8 warrant." *People v. MacAvoy* (1984) 162 CA.3d 746, 763.

9 (4) The People remind the court it must decide the preliminary
10 issue whether defendant has met her burden to establish "standing" ²
11 to object to certain searches. (Examples: what right does she have
12 to object to searches of the church? Or of another's room in a
13 mobile home?) The United States Supreme Court law on standing was
14 expressly held applicable to California in the case of *In re Lance*
15 *W.* (1985) 37 Cal.3d 873, 890. The case *People v. Contreras* (1989)
16 210 Cal.App.3d 450, 456 held that it is within the discretion of the
17 trial judge to decide which issue he or she wishes to hear first,
18 either the legality of the search or the standing of the defendant
19 to contest it. The People, nevertheless, request the court require
20 defense meet her burden to establish standing first to forestall our
21 calling multiple witnesses about a search only to learn hours later
22 that defense lacks standing. The People do not concede standing,
23 will insist on competent evidence and will object to attempts to
24 prove standing by mere claims of counsel.

25 Conclusion:

26 In "close cases" search warrants should be upheld. "They are

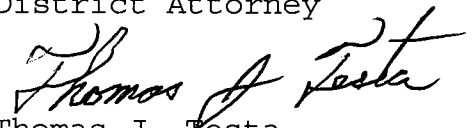
27 _____
28 ² Preferred nomenclature is "expectation of privacy." *People v. Ayala* (2000) 23 Cal.4th 225,
254, fn. 3

1 normally drafted by nonlawyers in the midst and haste of a criminal
2 investigation. Technical requirements of elaborate specificity once
3 exacted under common law pleadings have no proper place in this
4 area. A grudging or negative attitude by reviewing courts towards
5 warrants will tend to discourage police officers from submitting
6 their evidence to a judicial officer before acting...[T]he
7 resolution of doubtful or marginal cases in this area should be
8 largely determined by the preference to be accorded to warrants.
9 (citations omitted)" *United States v. Ventresca* (1965) 380 US 102,
10 108.

11 Dated: 03/01/10

Respectfully submitted,

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