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FILED
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DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

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| People of the State of California,<br><br>Plaintiff,<br><br>--vs.--<br><br>Antolin Garcia-Torres,<br><br>Defendant. | Case No.: 213515<br><br>Motion to suppress statement obtained through custodial interrogation without benefit of *Miranda* |

Question Presented

A defendant must be advised of his Miranda rights prior to custodial interrogation. Any statement given in advance of an advisement cannot typically be used at trial. Mr. Garcia-Torres was detained before he was interrogated. He was then brought to the Sheriff's Department substation. He was not advised of his *Miranda* rights until somewhere in the middle of the interrogation. Should the statements he made before he was advised be suppressed?

## Points and Authorities

### Statement of Facts

Sierra LaMar was reported missing on March 16, 2012. Mr. Garcia-Torres became a suspect in her disappearance several days later. Sgt. Leon and his partner spoke with Mr. Garcia-Torres at his residence on April 4, 2012. They informed him that his name had come up during the investigation into Ms. LaMar's disappearance. The recording of the questioning makes it clear that Mr. Garcia-Torres was aware he was being followed and that he had found a tracking device under his car.

Law enforcement later obtained a search warrant permitting them to search Mr. Garcia-Torres, his residence, and his vehicle. The warrant was executed on April 7, 2012. On that date, Mr. Garcia-Torres was detained while he was riding as a passenger in a car.[1] He and the driver were taken out of the car and ordered to sit by the side of the road to wait for the lead investigator, Sgt. Leon. Sgt. Leon arrived about 20-25 minutes later and took Mr. Garcia-Torres to the Sheriff's Department substation in Morgan Hill.

Mr. Garcia-Torres was led into a room and questioned for approximately four hours. His *Miranda* warnings were not read prior to questioning. They were only read after he had been questioned for approximately an hour. Mr. Garcia-Torres was driven home by Sgt. Leon after the interrogation. Sgt. Leon bought him a pack of cigarettes and dropped him off at home.

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[1] See, testimony of Deputy Barton at hearing on Motion to Suppress, August 16, 2016 morning session.

Argument

## I. The portion of Mr. Garcia-Torres's statement coming before he was advised of his *Miranda* rights should be excluded

The 5th Amendment requires that a person subjected to custodial interrogation be advised of his right to remain silent, of the fact that any statements he makes may be used against in court, of the fact that he has the right to the advice of counsel before and during the interrogation, and that counsel will be appointed for him if necessary. (*Miranda v. Arizona* (1966) 384 U.S. 436; *Dickerson v. U.S.* (2000) 530 U.S. 428.) The remedy for a violation of *Miranda* is suppression of the statement. (*Ibid.*)

### A. Mr. Garcia-Torres was subjected to custodial interrogation

A person is in custody for *Miranda* purposes when there has been a "formal arrest or restraint of freedom of movement of the degree associated with a formal arrest." (*California v. Beheler* (1983) 463 U.S. 1121, 1125.) The test used to determine when a person is considered to be in custody is objective and consists of asking the question: would a reasonable person have felt at liberty to terminate the interrogation and leave. (*Yarborough v. Alvarado* (2004) 541 U.S. 652, 662.) A non-custodial situation may become custodial when its character takes on the trappings of an arrest. (*Berkemer v. McCarty* (1984) 468 U.S. 420, 440.) The test is objective and focuses on what a reasonable person in the suspect's position would have believed. (*Thompson v. Keohane* (1995) 516 U.S. 99, 112; *People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403.)

The analysis is, of course, deeply factual. Among the factors courts have considered include how the suspect was brought to the interrogation, the length of the questioning, the location of the questioning, whether the suspect's freedom of movement was curtailed, the number of officers involved, the nature of the questions, and whether the suspect was told he was free to leave. (See *Yarborough v. Alvarado, supra,* 541 U.S. 652; see also *People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162.) For example, the Supreme Court considered whether the interrogation of a 17 year old required *Miranda* warnings in *Yarborough*. The Court found that

facts supporting a finding that the suspect was not in custody were that the police did not transport him to the station, they used no threats, the suspect's parents stayed in the lobby suggesting the interrogation would be brief, the questioning focused on his co-participant, the officers appealed to him to tell the truth without threats, and he went home afterward. But the Court explained that reasonable judicial minds could disagree because there were facts that supported a finding that the suspect was in custody. These facts included that the questioning took place at the police station, it lasted for two hours, the officers did not tell the suspect he was free to leave, and the suspect did not arrive of his own accord (his parents brought him). Ultimately, the Court found that the suspect was not in custody and, therefore, *Miranda* warnings were not required. (*Yarborough v. Alvarado, supra,* 541 U.S. 652.)

Some of the same factors exist in the present case, but they are cut in different ways and the result should be the opposite. For example, unlike Mr. Yarborough, Mr. Garcia-Torres was brought to the Sheriff's Department substation by the police. Indeed, he was detained when the car in which he was riding was stopped. He was removed from the car and required to sit by the side of the road for the lead investigators to arrive. They did not handcuff him when they arrived, but they drove him to the substation. He therefore did not transport himself and he had no ride home.

Like Yarborough's questioning, Mr. Garcia-Torres's interrogation lasted at least two hours. He was questioned during that time by two detectives whose questions made it clear he was a suspect. Unlike Yarborough's experience, Mr. Garcia-Torres was asked about himself in relation to the crime and not about other suspects or co-participants.

The fact that he was permitted and, in fact, was given a ride home is not determinative. Indeed, even though Yarborough was permitted to go home after being interrogated, the Supreme Court found his to be a close case. When one looks at the transcripts of the interrogation, it becomes clear that Mr. Garcia-Torres did not believe it when the interrogators told him they were not going to arrest him. Though the test is objective, there is no evidence that Mr. Garcia-Torres is anything but the reasonable person.

In fact, near the end of his time at the substation, he asks if he can leave and he is told he can't leave yet because they are waiting to take a buccal swab pursuant to the warrant. In other words, he was still detained until the warrant was executed.

The circumstances surrounding the interrogation; to wit, the detention, the fact that Mr. Garcia-Torres was being followed beforehand, the fact that he had found a tracking device on his car, the fact that he was being questioned as a suspect in a high-profile case, and that he had been taken to the substation without an independent means of getting home all contribute to causing a reasonable person to believing he would not be able to terminate the interrogation and leave.

Conclusion

A person is in custody for *Miranda* purposes when he is either arrested or subjected to a detention that bears the trappings of arrest. Mr. Garcia-Torres knew he was the subject of the investigation into the high-profile disappearance of Sierra LaMar, he was detained and made to sit by the side of the road, he was transported to the Sheriff's Department substation, and he was subjected to interrogation. Yet he was not immediately advised of his Miranda rights. Rather, he was advised somewhere in the middle of the interrogation. The failure to advise him means that any statements he made prior to the advisement must be suppressed.

Date: October 18, 2016

Respectfully submitted,



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Deputy Alternate Defender

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I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to this action. My business address is 701 Miller Street, San Jose, CA 95110.

On October 18, 2016 I served the within *Motion to suppress statement obtained through custodial interrogation without benefit of Miranda* on the plaintiff in this action by sending a pdf copy to Dep. District Attorneys David Boyd and Dana Veazey at their office email addresses.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of October 2016 at San Jose, California.

