Recent Case Report

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Garcia v. County of Merced

(9th Cir. 2011) __ F.3d __ [2011 WL 1680388]

Issues

(1) Did officers have probable cause to arrest an attorney for smuggling drugs into the Merced County Jail? (2) In obtaining a warrant to search the attorney's office, did officers misrepresent an informant's criminal record?

Facts

An inmate in the Merced County Jail told sheriff's investigators that a local attorney, John Garcia, was smuggling methamphetamine into the facility. The inmate, Robert Plunkett, said he learned about the smuggling operation from one of Garcia's clients, a fellow inmate named Alfonso Robledo. According to Plunkett, Robledo told him that a woman named Sylvia Brown was Garcia's "usual source" of methamphetamine, and that Garcia would hide the drugs in a Bugler tobacco pouch which he would deliver to Robledo during their attorney-client meetings at the jail. Robledo also suggested to Plunkett that he could also supply Garcia with drugs on those occasions when Plunkett was out of jail on a pass.

After meeting with Plunkett, the investigators attempted to corroborate his story by confirming that Garcia was Robledo's attorney, that Plunkett had an "in-custody relationship" with Robledo, that Robledo was in jail on drug charges, and that Plunkett was not in a computer database of unreliable informants. More importantly, an investigator monitored a phone call from Plunkett to Sylvia Brown during which Brown appeared to welcome the news that Plunkett had obtained drugs for Garcia to deliver to Robledo.

Next, the investigators decided to make a controlled delivery of drugs from Plunkett to Garcia. After obtaining approval of the operation from a Superior Court judge and a representative of the District Attorney's Office, they provided Plunkett with a Bugler tobacco pouch containing methamphetamine which was "clearly visible to anyone opening the pouch." The investigators then followed Plunkett and watched as he met with Garcia and handed him the Bugler bag which Garcia opened in Plunkett's presence. Garcia then took the bag to his office.

Later that day, officers arrested Garcia and obtained a warrant to search his law office.[1] During the search, they found the following:

- In the bathroom: A small amount of methamphetamine in a plastic bag.
- In Garcia's office: A small amount of methamphetamine and six packages of Bugler tobacco.

Garcia later told the officers that his investigator had flushed the methamphetamine from the tobacco pouch down the toilet before they arrived, and that the methamphetamine they found in the bathroom was "spillage."

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[1] **NOTES**: Information as to the timing of the arrest and search was obtained from the *Merced Sun-Star*. The warrant was served in accordance with the special master procedure. See Pen. Code § 1524(c).

The results of the investigation and search were forwarded to the California Attorney General's Office which declined to prosecute Garcia.[2] He then filed a federal civil rights lawsuit against Merced County, the officers, and a long list of other people, alleging that he was arrested without probable cause, and that the officers engaged in "deliberate falsehood or reckless disregard for the truth" because they failed to include details pertaining to Plunkett's criminal background in the search warrant affidavit. When a federal district judge refused to grant qualified immunity to the officers, they appealed to the Ninth Circuit.

Discussion

The main issue on appeal was whether the officers had probable cause to arrest Garcia. As the court explained, probable cause exists if, based on a consideration of the totality of circumstances, there was a "fair probability" that the arrestee committed a crime.[3] The court then took note of the circumstances upon which the arrest was based:

- Plunkett notified officers that Robledo told him that Garcia was smuggling drugs into the county jail. Plunkett also provided the officers with details about the smuggling operation as related by Robledo.
- The officers had reason to believe that Plunkett was a reliable informant because (1) they had corroborated the relationships between Garcia, Robledo, and Plunkett, and (2) they overheard the telephone conversation between Plunkett and Sylvia Brown during which Brown seemed to confirm Robledo's account of Garcia's smuggling operation.
- The officers saw Plunkett give the tobacco bag containing methamphetamine to Garcia.
- The methamphetamine "was clearly visible to anyone opening the pouch."
- Garcia opened the pouch.
- The officers saw Garcia take the methamphetamine to his office.

Based on these circumstances, the court ruled that Garcia's act of accepting and opening the pouch provided the officers with (1) probable cause to arrest him for possession of methamphetamine, (2) probable cause to arrest him for being "actively involved in smuggling a controlled substance and contraband into the jail," and (3) probable cause to search his office. Consequently, the court ruled that, not only were the officers entitled to qualified immunity, there was no factual basis for the lawsuit. Said the court, "[T]here can be no doubt that Garcia's acceptance of the Bugler tobacco pouch from a person known to him to be a fellow inmate of his client, to be delivered to that client in jail, served unmistakably, without any more, as adequate confirmation and corroboration of the informant's detailed information."

As noted, Garcia also argued that the officer who applied for the search warrant misrepresented Plunkett's criminal record when he failed to state in the affidavit that Plunkett had an extensive criminal record. It is, however, settled that when an affiant makes it clear that a source was a garden variety informant, it is unnecessary to provide details as to why his information might be unreliable.[4] As the court explained in *Garcia*,

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[2] **NOTE**: This information was obtained from the *Merced Sun-Star*.

[3] See *Illinois* v. *Gates* (1983) 462 U.S. 213, 244 ["probable cause requires only a probability or substantial chance of criminal activity"].

[4] See *People* v. *Kurland* (1980) 28 Cal.3d 376, 394 ["Even if [the omitted] facts might support an inference of Z's dishonesty or vulnerability to police pressure, that inference was already inherent

"[I]t has long been clear beyond doubt to anyone in the criminal justice system that the word of a jailhouse informant alone—any jailhouse informant—is suspect and ordinarily requires corroboration before it can be accepted as probable cause." Thus, said the court, the "precise details of an informant's problems with the law" are not normally necessary if, as occurred here, it was apparent from the affidavit that the source was a person with "suspect and shaky character."

In addition to ordering the lawsuit dismissed, the court pointed out that "[t]his is not a case of rogue officers disregarding the plaintiff's constitutional rights." On the contrary, the officers "carefully evaluated Plunkett's information, checked it against known facts," "consulted with two deputy district attorneys who approved of the procedure they planned to use," and "did not take Garcia into custody on the informant's information alone, but waited to see what Plunkett's contact with Garcia would produce."

Comment

This was a frivolous lawsuit—patently so. It is therefore incomprehensible that the district court failed to weed it out at the early stages.[5] It should also be noted that, according to the State Bar's website, Mr. Garcia was not disciplined for his actions in this matter, and he continues to practice law in Merced. POV

in Z's status as a confidential tipster."]; *People* v. *Webb* (1993) 6 Cal.4th 494, 522 ["we deem it unrealistic to require that a warrant affidavit include an informant's detailed drug and psychiatric history, or every past act that can be considered unlawful or dishonest"].

[5] **NOTE**: One possible reason for the district court's lapse was provided by the Ninth Circuit: "The mistake made by the district court in its analysis of probable cause was to use Garcia's *subsequent* self-serving denial that he *knowingly* accepted methamphetamine in the pouch as a reason, in a qualified immunity context, to conclude that probable cause *at the time of Garcia's arrest* was a disputed factual issue."