

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

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4	THE STATE OF ARIZONA,)	
5	Plaintiff,)	
6	vs.)	CR-20063933
7)	2 CA-CR 2008 0205
8	LOUIS THOMAS MACHADO,)	
9	Defendant.)	
	_____)	

BEFORE: THE HONORABLE FRANK DAWLEY
Judge of the Superior Court
Division LF

REPORTER'S TRANSCRIPT ON APPEAL
STATUS CONFERENCE/HEARING ON DEFENDANT'S
ORAL MOTION FOR SEARCH WARRANT

TUCSON, ARIZONA

MAY 14, 2007

Reported by: CHERYL L. AUSTIN, OFFICIAL
RMR, CRR, CR #50029
Prepared for: COURT OF APPEALS

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APPEARANCES :

BARBARA LAWALL, PIMA COUNTY ATTORNEY

BY: WILLIAM McCOLLUM, Esq.
CASEY MCGINLEY, Esq.

Deputy County Attorneys

on behalf of the State; and

PIMA COUNTY PUBLIC DEFENDER'S OFFICE

BY: LORI LEFFERTS, Esq.
THOMAS MARTIN, Esq.

Assistant Public Defenders

on behalf of the Defendant.

P R O C E E D I N G S

1
2 THE COURT: CR-20063933, State vs. Louie
3 Machado.

4 MR. McCOLLUM: For the record, your Honor,
5 William McCollum for the State.

6 MR. MCGINLEY: Case McGinley for the State.

7 MR. MARTIN: Thomas Martin and Lori Lefferts for
8 Mr. Machado, present in custody, your Honor.

9 THE COURT: Okay. We're here today to discuss
10 on the record some things that were discussed I think off
11 the record last time. So certainly either counsel is
12 welcome to repeat those discussions on the record today,
13 but I understand this -- the essential purpose of the
14 hearing has to do with the State's seeking of a search
15 warrant.

16 Is that correct, Mr. Martin?

17 MR. MARTIN: It actually has to do with defense
18 asking the State to seek a search warrant, your Honor, or
19 asking the Court to issue a search warrant based on --
20 well, our motion was filed based on the affidavit I had
21 just given the Court, which I ask be attached to our
22 motion if it already isn't as Exhibit A.

23 THE COURT: I don't think I have a motion. Is
24 there a specific motion?

25 MR. MARTIN: Oh, we never filed a motion?

1 THE COURT: All you filed was a status
2 conference request.

3 MR. MARTIN: Oh, all right. I didn't realize
4 that, your Honor.

5 Well, in that case we formally ask that you
6 issue a search warrant for the address in our affidavit.
7 The affidavit that I've submitted to you is from our
8 investigator. I don't think the significant line is
9 signed by that, if the State would accept or affirm that
10 Mr. Murietta would sign that, and rule based on the
11 assumption that it is signed and avowed to by him. Then
12 I'd like to argue somewhat what's in the motion.

13 I think just refamiliarize yourself with the
14 case and maybe discussing it will bring up the issue. We
15 have an address where a person who was a suspect six
16 years ago at the time of this incident -- six and a half
17 years now, resided then and resides now with his family.
18 We say some things in the affidavit about that suspect
19 which make it -- and I incorporate what's said in there
20 in case I overlook something in arguing this, incorporate
21 what's said in the affidavit as all true as to whether we
22 are entitled to a search warrant or not. And if I don't
23 mention, it doesn't mean that it shouldn't be considered
24 and weighed in determining whether you issue a warrant.

25 But summing it up, your Honor, we have somebody

1 who had what we feel is sufficient motive; somebody who
2 on two occasions prior to the death of the victim in this
3 case had assaulted other women at gunpoint; someone who
4 on two occasions after this incident assaulted other
5 women at gunpoint; someone who was apparently present at
6 the funeral of the victim. The mother of the victim was
7 called after the funeral and specific details were given
8 about the funeral. This person would have been present
9 at the funeral and at least had the ability to know what
10 was spoken of in this phone conversation.

11 Not mentioned in the affidavit is the person who
12 called and said that they -- that the killing was by
13 accident; was not the, -- the voice was not recognized by
14 the victim's mother and/or by the person who the phone
15 call was made. Mr. Machado's voice is known to those
16 people, and the person who made that call, therefore,
17 presumptively is not -- was not Mr. Machado. So somebody
18 made a call essentially admitting they had done the
19 killing and very improbable it could have been
20 Mr. Machado.

21 That person was a male. That person was
22 apparently present at the funeral. That person that we
23 mention in this affidavit admitted to the police at this
24 time that he was mad at the victim in this case because
25 she had facilitated the meeting between his girlfriend

1 and a third party rival of his that the victim had. That
2 person, in at least two of the incidents which we refer
3 to where he pointed the gun to somebody's head, that
4 person did that based on similar motives where he was
5 angry at third parties about interfering with his
6 relationships.

7 That person told police when they investigated
8 this crime, told police that his father had guns at the
9 residence address which we name in the affidavit, but
10 that they were antiques and they were not usable and he
11 didn't have access to them. However, after the fact --
12 after this killing, on one of the two occasions where he
13 pointed guns at people's head, the gun that he used was
14 his father's weapon and it was not an antique and it was
15 definitely usable and he obviously had access to it
16 because he used it in the offense.

17 So we have somebody with motive, we have
18 somebody lied to the police about his access to guns, we
19 have somebody who has behaved similar on four
20 occasions -- similarly on four occasions. We have
21 somebody who was living at the address at which he
22 apparently obtained the guns at the time this killing
23 occurred. And we have somebody who remains living there
24 at the time and whom the police never made inquiry and --
25 concerning whom the police never made inquiry at that

1 address to see if guns existed there which matched the
2 gun which was the murder weapon in this case.

3 This case differs somewhat in terms of time
4 frame from a drug case because people generally can be
5 expected to -- especially since he says his father has
6 these guns secure, that people who keep guns do not have
7 the necessary disposition or necessity of disposing of
8 them like you would in a drug trade. So if a gun is
9 being kept in a semisecured area, there isn't the same
10 reason to believe that out of necessity, since time is
11 passed, it isn't there.

12 We have him living at the same address that he
13 lived at at the time of the killing. He still remains
14 there. The parents still remain there. There's every
15 reason to believe guns are there. Admittedly, the gun he
16 was caught with was a .45 of his father's after this
17 killing. But we don't know what the guns are in that
18 house, and we are reluctant to just go make inquiry
19 because of the fear that if the gun exists there,
20 they'll -- that will be the people we're dealing with
21 might act protectively and, given sufficient lead time,
22 if the gun happened to be there might dispose of it.

23 For all these reasons, we ask you issue the
24 search warrant pursuant to the fact basis that I have
25 stated, along with anything else that's in the affidavit

1 that I haven't mentioned, and order that a search of the
2 residence at the address that we mention for a .32
3 caliber pistol which may have been the murder weapon in
4 this case.

5 I also would say, your Honor, that the only
6 thing I see that -- to the extent that -- that there's a
7 little weakness in the causal connection, the only thing
8 I see for that -- as the cause of that is that the State
9 didn't do this in the timely fashion it should have. So
10 the only -- you have somebody with motive, somebody with
11 similar behavior, somebody with access to guns who has
12 done similar things, somebody who said they were angry,
13 somebody who was present when the call was made, somebody
14 who would have known the things that were said in the
15 call, somebody in one of these cases subsequent to this
16 who said to the victim, when he pointed the gun at her
17 head, "I've killed before and I'll do it again," and who
18 said in the phone conversation to the family of the
19 victim in this case, "I've killed before." All of that
20 would have been sufficient at the time of this murder had
21 the police followed up at that time, and the only thing
22 that's happened is a lot of time has passed because they
23 didn't follow up.

24 And unless -- and if you don't issue the search
25 warrant based on the probable cause that we've presented,

1 then the State's lack of doing the investigation that it
2 should have is the principle reason that -- you know,
3 that spatially in time we can't necessarily make the
4 connection of the likelihood of that gun being there, but
5 we know guns are there. We know he has access to those
6 guns, and we know he's lied about his access and he's
7 lied about the accessibility to the guns.

8 For all of these reasons, we're asking that you
9 issue the search warrant in this case pursuant to our
10 affidavit and our oral request at this time. I'm sorry,
11 your Honor, we did prepare a written motion and decided
12 not to -- not to file it. But informed the Court of our
13 intentions at the last time we met with the Court and the
14 prosecution off the record.

15 THE COURT: Does the State wish to make a
16 record?

17 MR. McCOLLUM: Yes, your Honor. Very briefly.
18 Thinking back to the day we met in your
19 chambers, there were a number of things that I thought
20 should be placed on the record, and that's one of the
21 reasons we had gathered here today.

22 I believe the Court had requested some
23 presentation by the defense as to the authority the Court
24 would have to issue a warrant under the new
25 circumstances, under these circumstances. I indicated to

1 the defense I would not block this effort. We're after
2 the same thing. I explained that to the family present
3 in the courtroom. We're after the same thing: Whatever
4 the truth is in this case if it's still out there.

5 But at the same time I'm in a position of not
6 being able to ignore the facts that we have before us
7 today. For example, Mr. Martin today, and understandably
8 so, attacked the State for not fulfilling their
9 responsibility on the search warrant back in the year
10 2000. But I think he failed to take into account the
11 fact that at the time the State was conducting an
12 investigation based upon information we are receiving
13 from Mr. Machado. He was telling the police: I was
14 there; I was there; I was there; I was there. He never
15 put Mr. Hutchings there. He was implicating a guy named
16 Andre, not Hutchings.

17 In addition, your Honor, the State, the police
18 were suggesting that Hutchings may have had something to
19 do with it, and they followed up on all the leads they
20 had with regard to Hutchings and nullified him as a
21 suspect.

22 So I don't mind appearing before the Court today
23 and opening up an avenue of investigation, but at the
24 same time I have to pretend somewhat of a defense to the
25 fact that Hutchings wasn't of such a nature -- wasn't a

1 suspect such that justified a warrant at the time. A.

2 And this isn't like letting evidence slip out,
3 the evidence, controlling the scene or not taking
4 something at a crime scene. This involves going into
5 someone's home who has just as much right to privacy as
6 Mr. Machado. So with that said, the only thing I wanted
7 to add was I haven't yet seen the authority, although I
8 think the State leaves open the possibility of a warrant.
9 The only remaining issue is the immunity that covers the
10 Court from acting in full authority.

11 With regard to the warrant that they suggest,
12 the affidavit that's suggested, I worked with them.
13 We've tracked down what we think are all the leads we
14 have to implicate a .32 caliber weapon at that home and
15 have not come up with anything. So there's no evidence
16 of there having ever been a .32 caliber weapon at that
17 house that we can bring to this Court.

18 Second, I have to put on the table that although
19 I think they believe religiously in this avenue of
20 investigation, I would suggest to the Court on the
21 record, in the back and I merely want to make a record
22 here today, that we do have someone who has put himself
23 at the scene, who has given himself a motive, and who has
24 confessed to a murder.

25 But with that aside, the State will execute this

1 warrant if ordered by the Court.

2 THE COURT: So the record is clear,
3 Mr. McCollum, was a request at some point made from the
4 defense that the State -- in other words, your office --
5 seek the warrant?

6 MR. McCOLLUM: Yes, your Honor. There was. And
7 I indicated in the chambers and I'll indicate here again
8 on the record that I envisioned this scenario, although
9 quite unusual, as an exculpatory evidence scenario. I'm
10 not going to contest the representation of facts because
11 it would be no different than me gathering information
12 from my file that I isolated and protected because I no
13 longer believe it has evidentiary value. Everything gets
14 disclosed. So in this scenario I will accept their
15 representation for the purpose of their requested
16 investigation.

17 Could you accept that Mr. Martin?

18 MR. MARTIN: Oh, sure.

19 MR. McCOLLUM: And I could stand here all day
20 and make arguments against what he's represented to the
21 Court, but they're not suggesting a verdict. They're not
22 suggesting a dismissal. They're only suggesting a
23 search. And because of that I feel safe in not
24 contesting every fact.

25 THE COURT: Would it be fair to summarize the

1 State's position as the State's position, or meaning your
2 office or the investigators in your office or with the
3 law enforcement agency are not willing to seek the
4 warrant themselves?

5 MR. McCOLLUM: Yes, your Honor. They have had
6 an opportunity to review the document with the minor --
7 absent the minor changes that were submitted here today,
8 which are not, I think, of any significance. And they
9 believe that it doesn't properly summarize the facts as
10 they found them during the course of the investigation.

11 THE COURT: Okay. I assume that to be true. I
12 just want to make sure since we're now on the record that
13 that -- the record so reflects.

14 So the defense at some point went to the State
15 and said, hey, would you guys be interested in executing
16 this warrant. And you said no, but you wouldn't
17 challenge the defense's application directly to the
18 Court?

19 MR. McCOLLUM: Correct, your Honor.

20 THE COURT: All right.

21 MR. MARTIN: May I address a few things,
22 your Honor? And I understand that we don't
23 necessarily -- shouldn't necessarily be going to the
24 merits of the case, but I think when you hear there are
25 two confessions -- I think all Courts are human. When

1 you hear there are two confessions and he placed himself
2 at the scene, it makes it easier to make a decision
3 because it seems with that sort of summary of the
4 circumstances, that maybe this is a specious request.

5 But it isn't a specious request, and the
6 confessions aren't like somebody sat down and typed
7 confessions. They're -- one of them you're a little bit
8 familiar with because it's the mother saying years after
9 the fact that her son said something -- that he did this.
10 This is the mother at the time that had -- and admits
11 that she had great anger toward him and toward his dad
12 about losing custody of some kids. So that confession is
13 only from a third party saying years later he confessed.

14 The other confession is I think going to be --
15 going to be -- what is the word? Taken back. The -- not
16 by our client. This is somebody else's interpretation of
17 a hospital conversation and quite explainable not as a
18 confession at all. And if you see the case in that
19 light, then it's a little -- I'd like to just move you a
20 little more to center. Not that you necessarily did
21 move, but human nature being such as it is, that's
22 conceivable.

23 The case is six years old. The police never
24 asked this person back then if one of the guns his father
25 had was a .32 caliber. Or maybe for good police work you

1 don't want to say that, but they never asked him what
2 caliber guns his father had or if he knew them. And they
3 never asked the father what caliber guns he had. And the
4 reason we don't have the information -- and I, you know,
5 don't want to go back and argue bad police work. I
6 just -- I don't know that it was bad given the
7 circumstances.

8 Nonetheless, there were oversights that were
9 pertinent to finding out to who did this for sure and
10 being certain who did it. There were things that weren't
11 done. And when you're told that the defendant put
12 himself at the scene, the fact is that the defendant put
13 himself at the scene and said things about the crime, all
14 of which turned out to be incorrect. His reasons for
15 doing that are relevant to our defense, but nothing
16 changes -- you have to separate that they have a suspect
17 that they're happy with. If this were so happy, they
18 waited six years to file the charges.

19 At this point in time we're asking, let's look
20 at this other person more closely and here's why we think
21 we have probable cause to at least go to the place he
22 resided and resides now and see if there's a gun that's
23 the proper caliber. And I don't think that simply going
24 and asking the people there, "Do you have a gun?", when
25 they're a close family and demonstrated a very great

1 tolerance for their son's indiscretions, that we can
2 expect the answer under oath. Or not necessarily that,
3 Oh, yeah, we have a .32; or, We had a .32; or, Sure, come
4 in and look for yourselves.

5 And for that reason we think a warrant is
6 appropriate. And that's why we come to you for the
7 warrant and suggest to you that were this -- were this
8 request made in time back then when this was a suspect
9 along with Mr. Machado, that's the place that the Court
10 has to be mentally to make this decision. And if you
11 move back to that place in time and you think that what
12 we have that projects upon the person whose house we're
13 asking to search, then we think under -- in that state of
14 mind, which is the correct state of mind for this, there
15 is probable cause for a minimally intrusive search of the
16 residence at that address. And particularly, apparently,
17 the gun closet or the gun safe to see if there's a .32
18 caliber there. And if there is a .32 caliber, to it see
19 if it matches ballistically the bullet taken out of the
20 victim in this case.

21 THE COURT: The affidavit I have in front of me
22 will be admitted for the purposes of this hearing as
23 Defense Exhibit A. It is an unsigned affidavit, but for
24 the purpose of this hearing I'll treat it as if it were
25 to be signed under oath by Mr. Murietta who is listed as

1 the affiant.

2 For the purpose of this hearing I'll also assume
3 that the search warrant statutes allow someone who is not
4 a certified peace officer to make application for a
5 warrant. Obviously, the execution I think has to be by
6 police, but the application, the State, as Mr. McCollum
7 indicated, is open to some interpretation. So I'll
8 assume for the purpose of today's record that a -- an
9 affiant to a search warrant affidavit is someone who is
10 not a certified peace officer.

11 And so the issue before me then is whether I, as
12 the Judge to whom application has been made, issues a
13 warrant based on the affidavit, Exhibit A. The answer is
14 no. I'm not satisfied that probable cause exists. The
15 information -- there's essentially two issues.

16 Obviously, the defense has made a strong
17 argument regarding why the information should not be
18 viewed as stale, but still in the Court's view it is.
19 But beyond that, the information is lacking as to why a
20 .32 caliber, which apparently is the known murder weapon,
21 would be expected to be found in the place to be seized.
22 So I think the constitution requires more than what the
23 defense is able to put together in this affidavit.

24 And so the record is crystal clear, I'm going
25 based on the affidavit itself, not any outside

1 information, confessions, et cetera, just as I would if I
2 were a judge taking an application from a police officer.
3 I would go on the four corners of the affidavit. So the
4 affidavit is filed. The defense request to issue a
5 warrant directing a search of the proposed residence is
6 denied.

7 Is there anything else at this time?

8 MR. MARTIN: Yes, your Honor. We haven't filed
9 it formally, but it seems to all of us quite apparent
10 that the July date is premature in this. And I'm
11 wondering if you would like to take that up or rather
12 have a formal motion filed.

13 THE COURT: Well, is that something Mr. McCollum
14 has had a chance to discuss with the victim
15 representatives?

16 MR. MCCOLLUM: Yes, your Honor.

17 THE COURT: Do you want to address it today?

18 MR. MCCOLLUM: Yes, your Honor.

19 I indicated to counsel last, after they spoke
20 after the discussion about the issues in this case, it
21 does appear there is a lot more that has to be done by
22 them and by us in response. The July date seemed to be
23 unrealistic to this point. For example, something not
24 mentioned by Mr. Martin and that I suggested to the
25 defense, should this warrant be denied today they might

1 want to consider the possibility of doing a deposition
2 under oath of the father, Rex Hutchings. And so there's
3 a lot of other avenues I think they would like to pursue.

4 I'm not going to stand in their way, and I had
5 discussed it with the family, and they -- they're after
6 the same thing we are: That this case be resolved fairly
7 and accurately when it is resolved, and so we have no
8 objection to the -- the new date being set.

9 THE COURT: Have you discussed a new date?

10 MR. MARTIN: We were talking late August, but we
11 haven't discussed a specific date.

12 THE COURT: Okay.

13 MR. MARTIN: I don't know what counsel is --

14 MR. McCOLLUM: Well, in the meantime,
15 your Honor, my August filled up. I can't leave a date
16 open because of discussion, so now I'm looking at
17 October.

18 THE COURT: Is your client going to waive time?

19 MR. MARTIN: Yes, your Honor. He was prepared
20 it waive time for August. I don't know about October.

21 THE COURT: All right.

22 MR. MARTIN: I think he would probably waive
23 into September.

24 THE COURT: Well, let me do this: I'll go ahead
25 and set a status so you can discuss that because

1 obviously we have to take a waiver of time from the
2 defendant and make sure that the victim representatives
3 have given their input regarding what that new date might
4 be. So why don't I impose on you to come back, say, next
5 Monday?

6 MR. MARTIN: That would be fine with us.

7 THE COURT: At 11:30.

8 MR. McCOLLUM: 11:30.

9 THE COURT: So that's the 21st at 11:30. And
10 the record reflect then that apparently there's an
11 agreement to move the case, but we'll need more input on
12 where we're going to move it to -- or, when, I guess I
13 should say, we're going to move it to and to make sure we
14 have a waiver. Okay.

15 MR. MARTIN: Thank you, your Honor.

16 THE COURT: All right.

17 MR. McCOLLUM: I believe that concludes your
18 docket also.

19 THE COURT: Yes. The 9:00, it does. And the
20 10:00. But I still have one left.

21 (Proceedings closed.)
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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF PIMA)

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 8 I, CHERYL L. AUSTIN, Certified Reporter #50029,
 9 Official Reporter for the Superior Court, in and for the
 10 County of Pima, do hereby certify that I took the
 11 shorthand notes in the foregoing matter; that the same
 12 was transcribed under my direction; that the preceding
 13 pages of typewritten matter are a full, true and accurate
 14 transcript of all the matters adduced, to the best of my
 15 skill and ability.

16
 17
 18 -----

19 CHERYL L. AUSTIN, CR #50029, RMR-CRR
 20 Official Reporter
 21 Pima County Superior Court