No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

NAHACH GARAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

G. MICHAEL TANAKA
Attorney at Law
Counsel of Record
12400 Wilshire Blvd., Suite 400
Los Angeles, CA 90025
(323) 825-9746
Michael@mtanakalaw.com

Attorney for Petitioner

QUESTIONS PRESENTED

1. Whether, a purported inventory search that produces no inventory, can justify the warrantless search of automobile after its occupants have been removed from the vehicle.

2. Whether a magistrate may issue a warrant finding probable cause for a search where the police officer's affidavit states a belief that contraband will be found based on the officer's training and experience without proving any facts about how the training and experience leads to that belief.

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In the Supreme Court of the United States

NAHACH GARAY

V.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Nahach Garay respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at *United States v. Garay*, 938 F.3d 1108 (9th Cir. 2019). App., *infra*, 1a-5a.

JURISDICTION

The Ninth Circuit filed its opinion on September 17, 2019. This petition is timely filed pursuant to Sup. Ct. R. 13. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

U. S. Const., Amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Petitioner Garay was charged with possession of a firearm and ammunition by a felon in violation of 18 U.S.C. § 922(g)(1). Garay entered a plea of not guilty.

Pretrial, Garay moved to suppress the evidence found in the vehicle following his arrest and the evidence found following a search of the contents of his cell phone. The court held a suppression hearing,

and the following facts were adduced relevant to the search.

In the afternoon of March 17, 2017, San Bernardino County Deputy Sheriff Jonathan Rizzardi, driving an unmarked vehicle, saw a red Nissan Sentra stop at a stop sign at the intersection of Mesa and North State streets in Muscoy, California. A black Nissan, apparently following the red one, pulled into the opposing traffic lane and stopped next to the red Nissan while the occupants spoke to each other.

Rizzardi was behind the two vehicles, but could not pass them. The red Nissan started through the intersection and pulled over on the other side of it. Rizzardi activated his flashing lights. The driver, later identified as appellant Garay, looked back and then accelerated away. Rizzardi followed as the red Nissan sped through the residential area, running several stop signs, and passing vehicles on the wrong sign of the road. After a short chase, Garay lost control of the vehicle while turning onto Cajon Boulevard, crashing into a ditch.

Garay exited the car and turned up an embankment. His passenger, Ricardo Castaneda-Rosas, was standing on the outside by the passenger door, reaching into the passenger-side window. Rizzardi

drew his weapon and ordered both men to the ground; they complied.

California Highway Patrol Officer Toradeo Carter joined the chase. He saw the Nissan in a ditch and Rizzardi holding the two men at gunpoint. He parked and assisted Rizzardi. In response to Carter's question, Garay admitted having some "dope and wax." Carter searched Garay and found $3,490 and four bindles containing what appeared to be marijuana, cocaine and methamphetamine.

The car had suffered heavy damage and was towed due to the damage and under California Vehicle Code section 22561(h)(1), because the driver had been arrested. Carter conducted an inventory search of the Nissan because the car was to be towed. San Bernardino County Sheriff's Department policy requires the officer to complete a CHP 180 form, which includes "an inventory of any personal property contained within the vehicle." The CHP 180 form submitted by Officer Carter lacked any inventory of personal property. The section of the form for a listing of an inventory was left blank.

Officer Carter's search yielded an AR-15 pistol, a .357 Magnum pistol, and various ammunition. He also found two cell phone, including

a Samsung Galaxy Express 3. Rizzardi arrested Garay for the vehicle code violations committed during the chase and for possession of narcotics and firearms.

Rizzardi prepared a search warrant application on March 9, 2017, two days later, to search both cell phones. With respect to probable cause, he stated that “"subjects like to take pictures of firearms and narcotics with their smart phones/cell phones” and “subjects will also communicate via text message to conduct ongoing criminal activity.” No specific examples were offered.

A state judge signed off on the warrant. Rizzardi transferred the two phones to a specialist in the Sheriff's Department. The specialist downloaded the contents onto a CD. Rizzardi retrieved the CD on March 14, 2017. He reviewed the contents of the Samsung phone and found a photo of one of the handguns recovered from the Nissan. A text message sent from the phone read, “Nahach Garay San Bernardino CA 92404,” and a second message sent one minute later said, “My Info.”

After the case was submitted to federal authorities for prosecution, federal law enforcement sought a second warrant to search petitioner’s cell phone. Special Agent Angela Kaighin of the Bureau of

Alcohol, Tobacco, Firearms, and Explosive prepared an affidavit in support of a federal search. Agent Kaighin stated her training and experience led her to believe that people who are prohibited from owning guns use digital devices to take photographs of the guns and to coordinate buying and selling of the guns. A magistrate judge signed the search warrant for the cell phone. Kaighin retrieved the Samsung phone and executed the warrant. She inventoried her findings and submitted a return to the warrant.

Garay argued that the search of the vehicle could not be justified as an inventory search. The search was obviously a pretext for law enforcement purposes as evidenced by the officer's failure to complete inventory form required by their policy. He argued that the search of his cell phone was illegal because the warrant was not supported by probable cause.

The district court denied the motion to suppress, finding the seizure was valid as an inventory search, notwithstanding the failure to comply with the Highway Patrol's policy for inventory searches. The district court also rejected the challenge to the warrants for the search of petitioner's phone.

Petitioner proceeded to trial to preserve his ability to appeal the denial of the suppression motion. Both parties waived jury, and the case was submitted on stipulated facts. The court received the stipulation as evidence and found Garay guilty as charged in the indictment.

Petitioner appealed the judgment of conviction. On appeal, he argued that the that the district court erred in denying his motion to suppress the items found in the vehicle and the information in his cell phone. He challenged the district court's findings that the warrantless search of the vehicle was a valid inventory search and that the affidavits established probable cause for the cell phone search.

The Ninth Circuit rejected those arguments in an opinion filed September 17, 2019. Acknowledging that inventory searches are consistent with the Fourth Amendment only if they are not used as an excuse to rummage for evidence, *Florida v. Wells*, 459 U.S. 1, 4 (1990), and that the police failed to comply with the sheriff's department inventory policy by not completing an inventory sheet of the property found inside the car, the opinion nonetheless upheld the search. It excused the failure to complete the inventory as an immaterial deviation from policy, and something else was required to show that the search was in

fact a search for incriminating evidence. Pet. App. 4a.

The opinion also found the affidavits in support of the warrants for the cell phone searches to be adequate. It held that bare statements of belief by the officers based on their training and experience sufficed. "We have long held that affiants seeking a warrant may state conclusions based on training an experience with having to detail that experience." Pet. App. 5a.

This petition for writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

This case presents two important question that warrant exercise of this Court's certiorari jurisdiction: 1) whether, a purported inventory search that produces no inventory, can justify the warrantless search of automobile after its occupants have been removed from the vehicle; and 2) whether a magistrate may issue a warrant finding probable cause for a search where the police officer's affidavit states a belief that contraband will be found based on the officer's training and experience without proving any facts about how the training and experience leads to that belief.

A. A warrantless "inventory" search that does not produce an inventory violates the Fourth Amendment

This Court has allowed warrantless searches of impounded vehicles cabined by routine, caretaking function of the police. *See, e.g.*, *Cooper v. California*, 386 U.S. 58, 61-62 (1967); *Harris v. United States*, 390 U.S. 234, 236 (1968); *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). But an "inventory" search cannot be a pretext for a warrantless search for investigative purposes or for evidence of a crime. To guard against unconstitutional warrantless searches, the inventory search must follow standard procedure. *Id*. at 375-76.

Here, the undisputed facts show the "officer did not complete the inventory list that ordinarily would be completed as part of a department inventory search." *Garay*, 938 F.3d at 1112. The Ninth Circuit said that this failure alone was not a material deviation and did not invalidate the search. *Id*. The opinion is another step toward impermissibly transforming the inventory search exception into a rule circumventing the Fourth Amendment.

As other Circuits have explained, "An inventory search is not a surrogate for investigation, and the scope of an inventory search may

not exceed that necessary to accomplish the ends of the inventory. " *United States v. Khoury*, 901 F.2d 948, 958 (11th Cir. 1990); *see also United States v. Laing*, 708 F.2d 1568, 1570 (11th Cir.) (per curiam); *United States v. Prescott*, 599 F.2d 103, 105 (5th Cir. 1979) ("Inventory searches must be limited to effectuation of the recognized purposes for which they are conducted and they may not be used as a pretext for intrusive investigatory searches that would otherwise be impermissible."); *United States v. Edwards*, 577 F.2d 883, 893 (5th Cir.); *United States v. Gravitt*, 484 F.2d 375, 380-81 (5th Cir. 1973) (inventory search intrusion should be "tailored to the specific public interests which lie at the root of the finding that the intrusions are reasonable"). To that end, "The policy or practice governing inventory searches should be designed to produce an inventory." *Florida v. Wells*, 495 U.S. 1, 4 (1990).

By excusing the lack of an inventory, the Ninth Circuit's opinion severs the tie that justifies the warrantless search. Without requiring the police to produce an inventory, little prevents the wholesale rummaging through all vehicles in police custody as a warrantless search for evidence. Petitioner urges this Court to grant certiorari to prevent this erosion of the Fourth Amendment.

B. Probable cause for a search cannot be established by a conclusory affirmation of belief that contraband will be found based only a bare statement of training and experience

Searches of cell phones "typically expose to the government far more than the most exhaustive search of a house." *Riley v. California*, 134 S. Ct. 2473, 2491 (2014). Here, the police searched the contents of petitioner's cell phone after obtaining warrants. The affidavits in support of the warrants, however, cited only the affiants' belief that the phone would yield evidence of a crime based on their training and experience. Notably lacking was an explanation of how that "training and experience" related to the facts prompting the search. *Garay*, 937 F.3d at 1113.

The opinion, noting the Circuit's standards were "not so stringent," held "that affiants seeking a warrant may state conclusions based on training and experience without having to detail that experience." *Id.* That is a dangerous precedent. It, in effect, cedes the probable cause determination to the police.

This Court explained the importance of probable cause in

Dunaway v. New York, 442 U.S. 200, 213 (1979):

> The central importance of the probable-cause requirement to the protection of a citizen's privacy afforded by the Fourth Amendment's guarantees cannot be compromised in this fashion. "The requirement of probable cause has roots that are deep in our history." *Henry v. United States*, 361 U.S. 98, 100 (1959). Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that "common rumor or report, suspicion, or even 'strong reason to suspect' was not adequate to support a warrant for arrest." *Id*., at 101, (footnotes omitted). The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience accommodating the factors relevant to the "reasonableness" requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule. *See Brinegar v. United States* 338 U.S. 160, 175-76(1949).

Given its centrality, the failure to require the police to fully explain the facts and basis supporting their assertion that there is probable cause to believe the search would yield evidence sets a dangerous precedent. It is for the magistrate, not the police, to decide whether

probable cause exists, especially where the search is of a cell phone. By permitting the police to elide the critical supporting facts and reasons under the cloak of "training and experience," the opinion creates a dangerous precedent. This Court should grant review to stop this practice and reaffirm the independent duty of the magistrate to determine whether probable cause exists before the police search a citizen's private cell phone.

CONCLUSION

For all the foregoing reasons, petitioner submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

DATED: December 16, 2019

s/G. Michael Tanaka
G. MICHAEL TANAKA
Attorney at Law
Counsel of Record

Attorney for Petitioner

APPENDIX

938 F.3d 1108
United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Nahach Manuel GARAY, aka Nahach Guerrero, aka Polar Bear, Defendant-Appellant.

No. 18-50054
|
Argued and Submitted August 13, 2019 Pasadena, California
|
Filed September 17, 2019

Synopsis

Background: After denial of his motion to suppress, defendant was convicted in the United States District Court for the Central District of California, R. Gary Klausner, J., of being a felon in possession of a firearm. Defendant appealed.

Holdings: The Court of Appeals, Schroeder, Senior Circuit Judge, held that:

[1] seizure of defendant's cell phone was reasonable as part of an inventory search, and

[2] affidavits in support of separate state and federal warrants to search defendant's cell phone contents established probable cause.

Affirmed.

West Headnotes (10)

[1] Searches and Seizures
Inventory and impoundment; time and place of search

Before towing or impounding a vehicle, officers may seize and inventory the contents of that vehicle in order to avoid liability for missing items. U.S. Const. Amend. 4.

[2] Searches and Seizures
Inventory or booking search

If done according to standardized criteria and not in bad faith or for the sole purpose of investigation, police inventory procedures satisfy the Fourth Amendment. U.S. Const. Amend. 4.

[3] Searches and Seizures
Inventory and impoundment; time and place of search

Police seizure of defendant's cell phone was reasonable as part of an inventory search, despite defendant's assertion that search was used to rummage for evidence due to police not completing inventory list, where car was about to be towed following defendant's arrest, car was totaled and in a ditch, contents of car had to be removed and safeguarded before car was towed, location was a crime scene so items were evidence, and police obtained information from tow truck driver. U.S. Const. Amend. 4.

[4] Searches and Seizures
Inventory or booking search

Inventory searches are consistent with the Fourth Amendment only if they are not used as an excuse to rummage for evidence. U.S. Const. Amend. 4.

1 Cases that cite this headnote

[5] Searches and Seizures
Inventory or booking search

Failure to complete an inventory form does not invalidate an inventory search. U.S. Const. Amend. 4.

[6] Searches and Seizures
Inventory or booking search

Administrative errors should not, on their own, invalidate inventory searches; there must be something else, that is, something to suggest the police raised the inventory-search banner

in an after-the-fact attempt to justify a simple investigatory search for incriminating evidence. U.S. Const. Amend. 4.

[7] Searches and Seizures
Probable or Reasonable Cause

An affidavit in support of a search warrant shows probable cause if, under the totality of the circumstances, it reveals a fair probability that contraband or evidence of a crime will be found in a particular place. U.S. Const. Amend. 4.

[8] Searches and Seizures
Particular concrete applications

Affidavits in support of separate state and federal warrants to search defendant's cell phone contents gave rise to at least fair probability that evidence of a crime would be found, as required to issue the warrants, where affidavits described events leading up to application, including high-speed chase leading to defendant's crash and attempt to flee, as well as discovery of drugs on defendant and guns and phones in car, and affidavits recited affiants' training and experience. U.S. Const. Amend. 4.

[9] Searches and Seizures
Factual showing, in general

Affiants seeking a warrant may state conclusions based on training and experience without having to detail that experience. U.S. Const. Amend. 4.

[10] Searches and Seizures
Factual showing, in general

Magistrate judges, in deciding whether to issue a search warrant, may rely on the conclusions of experienced law enforcement officers regarding where evidence of a crime is likely to be found. U.S. Const. Amend. 4.

Attorneys and Law Firms

***1109** Michael Tanaka (argued), Los Angeles, California, for Defendant-Appellant.

Julia L. Reese (argued), Assistant United States Attorney; L. Ashley Aull, Chief, Criminal Division; Nicola T. Hanna, United States Attorney; United States Attorney's Office, Los Angeles, California; for Plaintiff-Appellee.

Appeal from the United States District Court for the Central District of California, R. Gary Klausner, District Judge, Presiding, D.C. No. 2:17-cr-00188-RGK-1

Before: Mary M. Schroeder and Susan P. Graber, Circuit Judges, and Michael H. Watson, * District Judge.

* The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

OPINION

SCHROEDER, Circuit Judge:

***1110** Nahach Garay appeals his conviction under 18 U.S.C. § 922(g)(1) as a felon in possession of a firearm. He challenges the denial of his motion to suppress evidence found as a result of the search of his cell phone, seized from his rental car after a high-speed chase. The phone contained photographs that tied him to the firearm that was recovered from the car. The district court ruled that the phone was lawfully seized in an inventory search of the car and that the warrants authorizing the search of the phone's contents were supported by probable cause.

The government's threshold contention on appeal is that Garay lacked standing to challenge the search of the phone because he had abandoned any reasonable expectation of privacy in its contents when he ran from the car. We need not address this question. Under the Supreme Court's recent decision in *Byrd v. United States*, —— U.S. ——, 138 S. Ct. 1518, 1530, 200 L.Ed.2d 805 (2018), such an inquiry is not jurisdictional, and, so, we need not consider it before we analyze the merits of Garay's Fourth Amendment claim. Because we conclude that the searches of both the car and the phone were lawful, we affirm.

BACKGROUND

When San Bernardino County deputy sheriffs attempted, in March of 2017, to stop Garay for a traffic violation, Garay, with a passenger in the car, led them on a high-speed chase. The chase culminated in Garay's crashing the car into a ditch and attempting to flee on foot. A search of his person revealed thousands of dollars in cash and quantities of four different illegal drugs. He was placed under arrest.

With the car totaled in the ditch, the officers had to arrange to have the car towed. In preparation, they searched the contents of the car, finding two loaded rifles, ammunition, and two cell phones, one of which was claimed by the passenger. The officers filled out a Vehicle Report on which they listed some property (firearms), but they did not list other property in the "remarks" section. They booked the rifles, ammunition, and cell phones as evidence.

To search the contents of the cell phones, state law-enforcement officers obtained a warrant on the strength of an officer's affidavit describing the circumstances leading up to the discovery of the phones. These circumstances included the drugs and cash found on Garay's person and the affiant's knowledge, based on training and experience, that individuals who possess firearms take pictures of them and communicate via text messages to further their criminal activity. When the case was referred for federal prosecution, a second, federal warrant was issued on the basis of similar information as well as on the "collective experiences" of law enforcement agents that felons prohibited from possessing guns use mobile phones to coordinate buying and selling guns.

Garay contends that the warrantless seizure of the phone itself was unreasonable and that the affidavits supporting the search of the contents of Garay's phone were inadequate.

*1111 DISCUSSION

I. The Issue of Standing

The government argues that Garay abandoned any reasonable expectation of privacy he may have had in the contents of his phone when he left it in a totaled car and tried to flee from the arresting officers. This, the government argues, is a threshold issue that prevents Garay from having standing to challenge the search or seizure of the phone.

The Supreme Court recently clarified in *Byrd* that Fourth Amendment standing, unlike Article III standing in the civil context, is "not a jurisdictional question and hence need not be addressed before addressing other aspects of the merits of a Fourth Amendment claim." 138 S. Ct. at 1530. We conclude that the search and seizure of Garay's cell phone were both reasonable under the Fourth Amendment. Accordingly, we need not decide whether Garay abandoned all reasonable expectation of privacy in the cell phone.

II. The Inventory Search and the Reasonableness of the Seizure of the Phone

[1] **[2]** Before towing or impounding a vehicle, officers may seize and inventory the contents of that vehicle in order to avoid liability for missing items. *See South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976). If done according to standardized criteria and not in "bad faith or for the sole purpose of investigation," police inventory procedures satisfy the Fourth Amendment. *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).

[3] **[4]** The government correctly contends that the seizure of Garay's cell phone was justified as part of an inventory search in preparation for the car's towing. Garay does not dispute that the decision to tow the car was a reasonable and good-faith exercise of the officers' care-taking function; Garay had just been arrested and the car was totaled and lying in a ditch. *See also* Cal. Veh. Code § 22651(h)(1) (authorizing officers to tow car after driver is arrested). It is well established that, once a vehicle has been impounded or towed, police are permitted to inventory the car's contents. *Opperman*, 428 U.S. at 369, 96 S.Ct. 3092. Garay contends, however, that the officers used their authority to inventory the car's contents here to unlawfully rummage for evidence. Inventory searches are consistent with the Fourth Amendment only if they are not used as an excuse to rummage for evidence. *See Florida v. Wells*, 495 U.S. 1, 4, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990) ("an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence").

To support his argument that this search was pretextual, Garay cites the absence of any inventory sheet listing the property found inside the car, a list required under the sheriff's department's inventory policy. As noted above, the officers listed only some property in the Vehicle Report, though they booked additional property as evidence. The district court dismissed this argument, pointing out that a department's

policies do not define constitutional rights. Such policies do, however, assist courts to determine whether an inventory search is legitimate, as opposed to pretextual. *See United States v. Wanless*, 882 F.2d 1459, 1463–64 (9th Cir. 1989) (invalidating an inventory search that deviated from required procedures).

In this case, we see no reason to hold that the officers were rummaging for evidence. The contents of the wrecked car had to be removed and safeguarded before the car was towed from the site. That is the essence of an inventory search. Because the site was in effect a crime scene, the items in the car were sensibly treated ***1112** as evidence. The searching officer complied with the department's inventory-search policy in material respects. For instance, he obtained the tow truck driver's signature and noted the date and time of the driver's arrival; he obtained a file number for the inventory; he checked a box on the relevant inventory form indicating that items of potential value were in the car before identifying and booking the items recovered from the car as "evidence/property."

[5] That the officer did not complete the inventory list that ordinarily would be completed as part of a department inventory search is not, on its own, a material deviation from policy. Other circuits have expressly recognized that the failure to complete an inventory form does not invalidate an inventory search. *See United States v. Loaiza-Marin*, 832 F.2d 867, 869 (5th Cir. 1987) (per curiam) ("failure to compile the written inventory does not render the inventory search invalid"); *United States v. Trullo*, 790 F.2d 205, 206 (1st Cir. 1986) ("We will not hold that the officer's failure, technically, to follow the inventory form procedures for valuables meant it was not an inventory search."); *United States v. O'Bryant*, 775 F.2d 1528, 1534 (11th Cir. 1985) ("We also reject O'Bryant's contention that the inventory search exception to the general prohibition against warrantless searches was violated because [the officer] did not prepare a complete list of the briefcase's contents."); *United States v. Richardson*, 2000 WL 1273425, at *2 (4th Cir. Sept. 5, 2000) (per curiam) (unpublished) ("[T]he failure to complete an inventory list does not render suspect either the motive for conducting the search or the reasonableness thereof.").

Further, we as well as several other circuits have upheld inventory searches despite other comparable administrative errors. *See, e.g.*, *United States v. Penn*, 233 F.3d 1111, 1115–17 (9th Cir. 2000) (inventory search lawful even though officer may have allowed passenger to remove personal property from the car before the search, which was "contrary" to "police and city policy"); *see also United States v. Williams*, 777 F.3d 1013, 1016 (8th Cir. 2015) (loose items of minimal value omitted from inventory list); *United States v. Garreau*, 658 F.3d 854, 857 (8th Cir. 2011) (stolen firearm omitted from inventory list); *United States v. Cartwright*, 630 F.3d 610, 616 (7th Cir. 2010) (incomplete inventory list); *United States v. Lopez*, 547 F.3d 364, 371 (2d Cir. 2008) (officer failed to "itemize each object").

[6] The underlying principle was perhaps best stated in *United States v. Rowland*, where the Eighth Circuit explained that administrative errors should not, on their own, invalidate inventory searches: "There must be something else; something to suggest the police raised 'the inventory-search banner in an after-the-fact attempt to justify' a simple investigatory search for incriminating evidence." 341 F.3d 774, 780 (8th Cir. 2003) (quoting *United States v. Marshall*, 986 F.2d 1171, 1175 (8th Cir. 1993)). The point is also illustrated by our recent decision in *United States v. Johnson*, in which we held that the search was not an inventory search "because the officers themselves *explicitly admitted* that they seized items from the car in an effort to search for evidence of criminal activity." 889 F.3d 1120, 1127–28 (9th Cir. 2018) (per curiam).

Here, by contrast, we find no reason to conclude that the inventory search was used to rummage for evidence. Given the circumstances leading up to the search, the officers no doubt expected to find evidence of criminal activity inside the vehicle. But that expectation would not invalidate an otherwise reasonable inventory search. *See* ***1113** *United States v. Bowhay*, 992 F.2d 229, 231 (9th Cir. 1993) (explaining that "dual motives" in inventory-search context are permissible). The district court did not err in concluding that Garay's cell phone was lawfully seized as part of a valid inventory search.

III. Adequacy of Warrant to Search Cell Phone's Contents

[7] **[8]** Two magistrate judges, one state and one federal, issued warrants to search the cell phone's contents. Garay argues that the affidavits contained in the warrant applications were not supported by probable cause. The question before us, therefore, is whether the magistrate judges had a substantial basis to conclude that the warrant applications established probable cause. *See United States v. Celestine*, 324 F.3d 1095, 1100 (9th Cir. 2003). An affidavit in support of a search warrant shows probable cause if, under the totality of the

circumstances, it reveals "a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

The district court found the support for each warrant to be more than adequate. The affidavit in support of the state warrant described all the relevant circumstances. These included the high-speed chase leading up to the crash and Garay's attempt to flee, followed by Garay's arrest and the discovery of drugs and cash on his person, as well as the discovery of loaded guns, ammunition, and cell phones inside the car. The affidavit also recited the affiant's training and experience, reflecting that people who possess firearms "like to take pictures of [those items]" with their cell phones, and "will also communicate via text" regarding criminal activity.

When the case was later referred for federal prosecution, the affidavit for the federal warrant covered the same ground as the state affidavit, but was even more specific in stating that the affiant, based on her training and experience, as well as the "collective experiences" of other law enforcement agents, knew that felons prohibited from owning guns "often use digital devices, including mobile phones, to coordinate buying or selling those guns ... to promote their possession of guns to others" and to contact suppliers for future purchases or referrals.

Garay nevertheless contends that both warrants lacked probable cause. He asserts that the affiants' belief on the basis of their "training and experience," unadorned by sufficient supporting details, cannot properly be considered in establishing probable cause. He argues that, before the affiants' beliefs may be taken into consideration, the affiants must detail the nature of their expertise or experience and how that experience bears on the facts prompting the search.

[9] **[10]** Our standards, however, are not so stringent. We have long held that affiants seeking a warrant may state conclusions based on training and experience without having to detail that experience. *See, e.g.*, *United States v. Hendershot*, 614 F.2d 648, 654 (9th Cir. 1980) (finding that affiant's conclusion "based on [his] experience from prior bank robbery investigations" was proper; emphasizing that "[i]t is not necessary to detail that experience to determine that the conclusion is not capricious" (internal quotation marks omitted)). We have also held that magistrate judges may "rely on the conclusions of experienced law enforcement officers regarding where evidence of a crime is likely to be found." *United States v. Fannin*, 817 F.2d 1379, 1382 (9th Cir. 1987) (citing *United States v. Crozier*, 777 F.2d 1376, 1380 (9th Cir. 1985)).

Further, there was a sufficient factual basis for both magistrate judges to conclude, independently of the affiants' beliefs, ***1114** that evidence might be found on Garay's cell phone. Garay relies on authorities in which the warrant applications had contained no factual basis from which to connect the place to be searched with the evidence sought. *See, e.g.*, *United States v. Underwood*, 725 F.3d 1076, 1086 (9th Cir. 2013) ("[T]he affidavit provides *no* factual basis for the conclusion that drug trafficking evidence would be found at Underwood's home."). But here, the affidavits explained all of the circumstances leading up to the search of the car that had been wrecked, and explained that Garay was then arrested for having drugs and cash on his person. These facts, coupled with the affiants' experience and beliefs, provide a reasonable basis to infer that evidence tying Garay to the criminal activity of which he was suspected might be found on the cell phone. Magistrate judges may, as they likely did here, draw their own reasonable inferences about where evidence might be kept based on the nature of the suspected offense and the nature of the evidence sought. *Fannin*, 817 F.2d at 1382; *see also United States v. Lucarz*, 430 F.2d 1051, 1055 (9th Cir. 1970).

We owe "great deference" to magistrate judges' probable-cause findings. *United States v. Krupa*, 658 F.3d 1174, 1177 (9th Cir. 2011) (quoting *United States v. Hill*, 459 F.3d 966, 970 (9th Cir. 2006)). The district court correctly determined that the affidavits supporting both warrants in this case gave rise to at least a fair probability that evidence of a crime would be found on Garay's cell phone.

AFFIRMED.

All Citations

938 F.3d 1108, 19 Cal. Daily Op. Serv. 9310, 2019 Daily Journal D.A.R. 8998

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