

No. 24-

IN THE
Supreme Court of the United States

JORGE VASQUEZ,

Petitioner,

v.

CALIFORNIA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE STATE OF CALIFORNIA SUPREME COURT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Can law enforcement's failure to state any facts whatsoever to establish probable cause to believe that there was evidence of a crime or contraband at a residence be excused as "good faith" under the Fourth Amendment to the United States Constitution?

RELATED PROCEEDINGS

Superior Court of California in and for Tulare County: *The People of the State of California v. Jorge Vasquez*, No. VCF413074 (Sept. 17, 2024)

California Court of Appeal: *Jorge Vasquez v. Superior Court in and for the County of Tulare*, No. F088730 (Oct. 23, 2024)

California Supreme Court: *Jorge Vasquez v. Superior Court in and for the County of Tulare*, No. S287666 (Dec. 11, 2024)

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PETITION FOR WRIT OF CERTIORARI

Jorge Vasquez respectfully petitions for a writ of certiorari to review the judgment of the California Supreme Court in this case.

OPINIONS BELOW

The California Supreme Court denied review without an opinion. (Pet. App. A, 1a.) The California Court of Appeal denied the Petition for Writ of Mandate without an opinion. (Pet. App. B, 2a-3a.)

JURISDICTION

The California Supreme Court entered its order denying review on December 11, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides:

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.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

On June 5, 2021, law enforcement obtained a warrant to search a residence at 427 East Oak Avenue in Porterville, California. The affidavit in support of the warrant did not contain any information establishing who resided at 427 East Oak Avenue nor did it provide any facts related to probable cause to search the residence. (Pet. App. C, 4a-12a)

Petitioner moved to suppress the evidence obtained as a result of the unlawful search pursuant to the warrant under California Penal Code section 1538.5. The magistrate denied the motion to suppress and held Petitioner to answer to the charged offenses and the prosecution filed an Information based on the holding order of the magistrate charging Petitioner in the Superior Court of California with multiple felonies. (Pet. App. D, 13a-39a.)

Petitioner moved to set aside the Information pursuant to California Penal Code section 995 (hereafter “Motion

to Set Aside"). (Pet. App. E, 40a-48a.) The Motion to Set Aside was denied by the Superior Court of California after briefing and argument. (Pet. App. F, 49a-51a.) A petition for writ of mandate and/or prohibition was filed in the California Court of Appeal for the Fifth Appellate District. The Court of Appeal denied the petition for writ without requesting additional briefing and without an opinion. (Pet. App. B, 2a-3a.) Petitioner petitioned the Supreme Court of California for review and the Supreme Court denied the petition without an opinion. (Pet. App. A, 1a.)

Since the California Supreme Court and the California Court of Appeal denied the respective petitions without issuing an opinion, the only statement of decision was made by the Superior Court of California. In its decision, the Superior Court of California denied Petitioner's Motion to Set Aside which raised the federal constitutional question presented here. (Pet. App. F, 49a-51a.)

The Superior Court specifically found,

... the police neglect to put information in the affidavit that links the address they want to search to his criminal activity. They don't put in the affidavit that they established the 427 Oak address was linked to Mr. Vasquez here. (Pet. App. F, 50a.)

Nevertheless, over Petitioner's objection, the Superior Court found that even with the complete failure to establish any cause to search the residence, the case came within the good faith exception of *United States v. Leon*, 468 U.S. 897 (1984).

REASONS FOR GRANTING THE PETITION

I. THE TRIAL COURT BELOW ERRONEOUSLY EXTENDED THE “GOOD FAITH” EXCEPTION TO EXCUSE THE OFFICERS FROM THEIR FOURTH AMENDMENT DUTIES DESPITE THE COMPLETE FAILURE TO PROVIDE PROBABLE CAUSE TO SEARCH THE RESIDENCE

Under the Fourth Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment, an affidavit supporting a search warrant must contain facts establishing probable cause. The magistrate must then determine, “given all the circumstances set forth in the affidavit before him,” whether “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 218, 238 (1983).

Here, there was absolutely no cause at all, probable or otherwise, stated in the affidavit. There was no basis for the magistrate to issue a warrant for 427 East Oak Avenue in Porterville, California, any more than to issue a warrant for any other house.

In *United States v. Leon*, 468 U.S. 897 (1984), this Court made it clear that the good-faith exception is supposed to protect police officers from a technical error on the part of the judge, for instance, in close or emerging issues of law. However, the police officer can only rely on an otherwise proper showing of probable cause:

Nevertheless, the officer’s reliance on the magistrate’s probable-cause determination

and on the technical sufficiency of the warrant he issues must be objectively reasonable, cf. *Harlow v. Fitzgerald*, 457 U.S. 800, 815-819, 102 S.Ct. 2727, 2737-2739, 73 L.Ed.2d 396 (1982), and it is clear that in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued. *Leon*, 468 U.S. at 922-923.

Leon only saves the police officer where a reasonable police officer believes that the objective representations were sufficient. Here, no reasonable police officer could so believe. The attempt to invoke *Leon* where there is a failure to set forth any cause for the search of a residence is a bridge too far. It simply renders the Fourth Amendment meaningless rather than a Constitutional protection requiring probable cause to search a residence.

II. THE PETITION SHOULD BE GRANTED TO CLARIFY THAT THE *LEON* GOOD FAITH EXCEPTION DOES NOT INCLUDE WARRANTS ISSUED WHERE NO PROBABLE CAUSE IS STATED FOR THE SEARCH OF A RESIDENCE

The California Supreme Court, by denying review of the lower court's use of *United States v. Leon*, 468 U.S. 897 (1984) to excuse the failure to establish any cause for the search of a residence, suggests that this Honorable Court should make it clear that *Leon* creates an exception that has limits related to the purpose of the exception. As interpreted by the California courts below, the exception would swallow the rule. The rule is stated within the plain language of the Fourth Amendment.

This Court has stated, “The Fourth Amendment protects ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’ The “very core” of this guarantee is ““the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”” *Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).” *Caniglia v. Strom*, 593 U.S. 194, 198 (2021).

To allow a warrant to issue and a search to be conducted of a residence without any showing of probable cause is a direct and unequivocal violation of the Fourth Amendment.

CONCLUSION

Petitioner respectfully requests that the Court grant this Petition for Writ of Certiorari to clarify the constitutional requirement for the establishment of probable cause and further clarify that where such probable cause was entirely omitted from the affidavit, the search of the premises pursuant to that warrant is unlawful, and any evidence derived therefrom should be suppressed.

Respectfully submitted,

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DATED: March 11, 2025

APPENDIX

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**APPENDIX A — DENIAL OF THE COURT
OF APPEAL, FIFTH APPELLATE DISTRICT,
FILED DECEMBER 11, 2024**

COURT OF APPEAL,
FIFTH APPELLATE DISTRICT

No. F088730

S287666

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JORGE VASQUEZ,

Petitioner,

v.

SUPERIOR COURT OF TULARE COUNTY,

Respondent,

THE PEOPLE,

Real Party in Interest.

The petition for review is denied.

**APPENDIX B — DENIAL OF THE COURT
OF APPEAL OF THE STATE OF CALIFORNIA IN
AND FOR THE FIFTH APPELLATE DISTRICT,
FILED OCTOBER 23, 2024**

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

No. F088730

(Tulare Super. Ct. No. VCF413074)

JORGE VASQUEZ,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE COUNTY,

Respondent,

THE PEOPLE,

Real Party in Interest.

Filed October 23, 2024

Appendix B

ORDER

BY THE COURT:*

The “Petition for Writ of Mandate . . . ,” filed on October 3, 2024, is denied.

/s/ Levy
Levy, A.P.J.

* Before Levy, A.P.J., Smith, J. and DeSantos, J.

**APPENDIX C — SEARCH WARRANT
AND STATEMENT OF PROBABLE CAUSE
OF THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF TULARE, DATED JUNE 5, 2021**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA

to any peace officer in Tulare County Case No.21P22774

The affidavit below, sworn to and subscribed before me, has established probable cause for this search warrant which you are ordered to execute as follows:

Place(s) to be searched:

- Described in Exhibit 1A, 427 East Oak Avenue, Porterville California 93257 *attached* hereto and incorporated by reference.
- Described in Exhibit 2A, the person of Jorge Vasquez attached hereto and incorporated by reference.

Property to be seized: Described in Exhibits 1B and *attached* hereto and incorporated by reference.

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Disposition of property: ***Any item seized during the lawful service of this Search Warrant shall be disposed of in accordance with law by the Porterville Police Department. The officers serving this Search Warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victim(s) if such items have been photographically documented and /or dispose of in accordance with state law and department policy.***

Date and time warrant issued Judge of the Superior Court

♦AFFIDAVIT♦

Affiant's name and agency: Detective Erika Rodriguez #251, Porterville Police Department.

Incorporation: The facts in support of this warrant are contained in the Statement of Probable Cause which is incorporated by reference. Incorporated by reference and *attached* hereto are Exhibit A, describing the place(s) to be searched; and Exhibit B, describing the evidence to be seized.

Evidence type: (Penal Code § 1524)

- **Stolen or embezzled property.**
- **Property or things used as a means of committing a felony.**

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- **Property or things in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.**
- **Property or things that are evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.**
- **Property or things consisting of evidence that tends to show that sexual exploitation of a child, in violation of Penal Code § 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Penal Code§ 311.11 has occurred or is occurring.**
- **Night Service: [If checked] Authorization for night service is requested based on information contained in the Statement of Probable Cause, filed herewith.**

Declaration: I declare under penalty of perjury that the information within my personal knowledge contained in this affidavit, including all incorporated documents, is true.

6-5-21
Date

[Illegible]
Affiant

*Appendix C***EXHIBIT 1A**
PLACES TO BE SEARCHED

THE PREMISE: 427 East Oak Avenue, Porterville California, 93257, is a two story residence located on the South side of East Oak Avenue. The residence is located approximately 75 yards from the front of the roadside edge. The residence is a wooden blue/grey exterior with a darker blue wood trim and light tan roof. The front of the property is surrounded by a wooden white fence approximately three feet in height with two open gravel driveways on the east and west side of the fence. The front of the residence faces north with a front black security door. The numbers 427 are located on the west portion of the mailbox. The number 4 is white in color and the numbers 2 and 7 are black. The mail box is located near the west entrance of the driveway. The numbers 427 are also located above the entry way of the residence, white in color with a brown backdrop.

The search is to include any rooms, attics, basements and other parts therein and the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind and any and all vehicles coming, going, or pertaining to the property and/or suspect in question and located therein.

The search is to include any electronic and cellular communication devices. To include but not limited to, Cellular phones, tablets, computers, and data storage devices, which are located in the residence, property, and vehicles.

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VEHICLE(S): Any vehicle in the immediate vicinity of 427 East Oak Avenue, Porterville California, 93257, that is in the custody or control of the resident, as evidence by ignition keys, or car door keys, or vehicle ownership documents in his/her possession, or on his/her person, or under his/her dominion and control, or by statements of witnesses, or any vehicle within the garages, grounds, or storage areas to be searched. Which includes a black/dark grey GMC bearing California license plate "65293B3" which is parked directly in front of 427 East Oak Avenue. Such search shall include containers of any kind within the vehicle.

Peace Officers or assigned representatives are authorized, during the execution of this Search Warrant, to video tape, photograph and/or take digital images, at the discretion of the Searching Officers, inside and outside of the location, any and all items and/or vehicles at the location, in addition, can identify and photograph and/or digital image all persons present at the Search Warrant location during the period of execution of this Search Warrant.

EXHIBIT 1B
ITEMS TO BE SIEZED**Cell Phone Content**

The search of this phone is to include but not be limited to: stored phone numbers in electronic "address books;" sent, received, saved or deleted SMS and/ or MMS messages; emails; sent, received, and/ or stored still images and moving video; stored audio files; stored and/ or transmitted

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“notes”, appointments, and other information on personal calendars; accessed, downloaded and / or transmitted information to / from the Internet; social media accounts (i.e. Facebook, Instagram, Twitter, Snapchat,)

Cellular telephones may also include global positioning system (“GPS”) technology for determining the location of the device; the search is to include but not be limited to stored GPS data within the device.

Cellular telephones frequently contain removable storage drives, often a SD card, SD stick, Micro SD, or Mini SD card. These removable storage devices supplement the internal storage capacity of the phone and frequently contain the above described types of data. The search of this phone is to include any of the aforementioned removable storage drives within the cellular telephone.

Electronic Content

Any records, whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, “electronic calendar\address books” calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.

Any written or computer communication in printed or stored medium such as E-Mail and Chat Logs whether in active files, deleted files or unallocated space on the hard drive, floppy drive or any data storage media.

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All files, data, images, software, operating systems, deleted files, altered files, system configurations, drive and disk configurations, date and time, and unallocated and slack space, for evidence.

Any clothing worn or used by Jorge Vasquez and AR to include bedding, sheets or any other material related to the incident.

Any and all items which could be associated or related to evidence of a criminal act relating to the attempted murder, or that a crime has been committed.

EXHIBIT 2A
PLACES TO BE SEARCHED

The person of Jorge Vasquez, date of birth 2-19-73.

EXHIBIT 2B
ITEMS TO BE SIEZED

DNA of Jorge Vasquez 2-19-73, to include any blood or bodily fluids, via a buccal swab.

Any information obtained through the execution of this warrant that is unrelated to the objective of the warrant shall be sealed and shall not be subject to further review, use, or disclosure except pursuant to a court order or to comply with discover as required by sections 1054.1 and 1054.7 of the California Penal Code.

Appendix C

STATEMENT of INVESTIGATOR'S EXPERTISE
STATE of CALIFORNIA – COUNTY of TULARE

Your affiant, E. Rodriguez, states she is a Detective employed by the State of California with the Porterville Police Department, for approximately 2 years and 3 months. Your affiant is currently assigned to the General Investigations Unit in the City of Porterville in the County of Tulare.

Your affiant has successfully attended and graduated from a California Police Academy, which is certified by the Commission of Peace Officer Standards and Training (P.O.S.T.). Your Affiant has received training in the areas of criminal and traffic collision investigations, drug and alcohol symptomology, and detection of alcohol and or drug impaired drivers. Your Affiant has attended and completed a 40 hour course for Standard Field Sobriety Tests to detect impaired drivers.

STATE of CALIFORNIA, COUNTY OF TULARE
STATEMENT OF PROBABLE CAUSE IN SUPPORT
OF AFFIDAVIT

On 6-5-21 at approximately 1104 hours Officers from the Porterville Police Department were dispatched to the front of the Porterville Police Department regarding possible child molestation. The reporting party Marissa Diaz stated on 6-4-21, her five year old son, Confidential Juvenile (AR) told her approximately two weeks ago, Jorge Vasquez, who is a family friend put his fingers in his buttocks and urinated on his buttocks. Diaz advised

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Officers she believes AR was describing Vasquez ejaculating on his buttocks rather than urinating. AR told Diaz, Vasquez also hit him and told him to get naked. AR told Diaz, Vasquez also touched his penis and was playing Fortnite together, naked. Diaz discreetly recorded AR's statement using her IPad prior to responding to the police department. Detectives also interviewed Diaz which confirmed the aforementioned statement provided to patrol officers. It was later discovered AR's half-brother who is eleven years of age divulged to his grandmother approximately one month ago, Vasquez touched his penis twice. In addition Vasquez is a PC 290 registrant for a prior felony conviction of PC 288 and currently appears to be out of compliance for failing to update his address which is also a felony violation.

Your affiant has reason to believe that by searching the residence, vehicles, and electronic devices, evidence can be located related to this assault.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

Signature of Affiant [Illegible]

Subscribed and sworn to before me on _____ 2021 at
_____ AM/PM

Signature of Magistrate

Name of Magistrate

**APPENDIX D — INFORMATION SUMMARY
OF THE SUPERIOR COURT, STATE OF
CALIFORNIA, FOR THE COUNTY OF TULARE,
VISALIA, FILED NOVEMBER 28, 2023**

**THE SUPERIOR COURT, STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE
VISALIA**

DA No. 21-008407
Court No. VCF413074

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

**JORGE VASQUEZ DOB: 02/19/1973
AKA: GEORGE VASQUEZ,**

Defendant.

**INFORMATION
THREE STRIKES**

Filed November 28, 2023

*Appendix D***INFORMATION
SUMMARY**

<u>Ct. No.</u>	<u>Charge</u>	<u>Allegation</u>	<u>Range</u>	<u>Defendant</u>
1	288.7(B)	1170.12 667.61(A)/(D) 667.61 667.51(A) 667(A)(1)	15 Yrs – Life State Prison	Jorge Vasquez
2	288(A)	1170.102 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A)(1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
3	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
4	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez

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5	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
6	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
7	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
8	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez

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9	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
10	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1)	3,6,8 Yrs. State Prison	Jorge Vasquez
11	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1)	3,6,8 Yrs. State Prison	Jorge Vasquez
12	288(A)	1170.12 667.61(A)/(D) 667.61 667.51(A) 667(A)(1)	3,6,8 Yrs. State Prison	Jorge Vasquez

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13	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
14	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
15	288(A)	1170.12 667.61(A)/(D) 667.61(B)/(E) 667.61 667.51(A) 667(A)(1) 1203.066(A)(8)	3,6,8 Yrs. State Prison	Jorge Vasquez
16	647.6(C) (2)	1170.12 667.51(A) 667(A)(1)	2-4-6 State Prison	Jorge Vasquez
17	290(B)	1170.12 667.51(A) 667(A)(1)	16,2,3 State Prison	Jorge Vasquez

The District Attorney of the County of Tulare, by this Information alleges that:

Appendix D

COUNT 1

On or about and between June 5, 2018 and June 6, 2020, in the County of Tulare, the crime of ORAL COPULATION OR SEXUAL PENETRATION WITH CHILD 10 YEARS OLD OR YOUNGER, in violation of PENAL CODE SECTION 288.7(B), a Felony, was committed by JORGE VASQUEZ, who being a person 18 years of age and older, did engage in oral copulation and sexual penetration, as defined in Penal Code Section 289, with P.S, a child who was 10 years of age and younger.

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

COUNT 2

On or about and between June 5, 2018 and June 6, 2020, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and

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lewdly commit a lewd and. lascivious act upon and with the body and certain parts and members thereof, to wit, ORAL COPULATION, of P.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require *to* register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 3

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by

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JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts _and members thereof, to wit, HAND TO PENIS WHILE PLAYING VIDEO GAMES ON UNION AVENUE, of P.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 4

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT

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UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony; was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO PENIS AT MELISSA'S HOUSE ON UNION AVENUE, of P.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Section 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

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COUNT 5

On or about and between June 5, 2018 .and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO PENIS IN SAN LUIS OBISPO COUNTY, of P.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

“NOTICE: Conviction of this offense will require the court to order you to subject to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

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COUNT 6

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in, violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO PENIS ON BALCONY ON OAK AVENUE, FIRST TIME, of P.S, a child under the age of fourteen years, ,with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired

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Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 7

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14; in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO PENIS ON BALCONY ON OAK AVENUE, LAST TIME, of P.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNTS 8

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO BUTTOCKS, of P.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 9

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO PENIS, of J.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime,”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 10

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO BUTTOCKS, of J.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR; A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 11

On or about and between June 5, 2018: and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO BUTTOCKS, of A.R, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 12

On or about and between June 5, 2018 and June 5, 2021, in the County of Tulare, the crime of ORAL COPULATION OR SEXUAL PENETRATION WITH CHILD 10 YEARS OLD OR YOUNGER, in violation of PENAL CODE SECTION 288.7(B), a Felony, was committed by JORGE VASQUEZ, who being a person 18 years of age and older, did engage in oral copulation and sexual penetration, as defined in Penal Code Section 289, with A.R, a child who was 10 years of age and younger.

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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COUNT 13

On or about and between August 2, 2019 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO “BALLS” AND/OR PENIS, FIRST TIME, of N.S, a child under the age of fourteen years, with the intent of arousing; appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired

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Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 14

On or about and between August 2, 2019 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO “BALLS” AND/OR PENIS, NEXT TIME, of N.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS), Penal Code section 1202.1.”

COUNT 15

On or about and between August 2, 2019 and June 5, 2021, in the County of Tulare, the crime of LEWD ACT UPON A CHILD UNDER AGE 14, in violation of PENAL CODE SECTION 288(A), a Felony, was committed by JORGE VASQUEZ, who did willfully, unlawfully, and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members thereof, to wit, HAND TO “BALLS” AND/OR PENIS, LAST TIME, of N.S, a child under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the said defendant(s) JORGE VASQUEZ and the said child.

“NOTICE: Conviction of this offense will require to register pursuant to Penal Code section 290 et seq. Willful failure to register is a crime.”

“NOTICE: Pursuant to Penal Code Sections 11166 and 11168, a Suspected Child Abuse Report (SCAR) may have been generated in this case. Penal Code Sections 11167 and 11167.5 limit access to a SCAR. A protective order issued by a court is necessary to obtain a copy of the report.”

“NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).”

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“NOTICE: Conviction of this offense will require the court to order you to submit to a blood test for evidence of antibodies to the probable causative agent of Acquired Immune Deficiency Syndrome (AIDS). Penal Code section 1202.1.”

COUNT 16

On or about and between August 2, 2019 and June 5, 2021, in the County of Tulare, the crime of ANNOYING OR MOLESTING A CHILD UNDER 18 WITH A PRIOR SEX CRIME CONVICTION, in violation of PENAL CODE SECTION 647.6(C)(2), a Felony was committed by JORGE VASQUEZ, who did willfully and unlawfully annoy and/or molest N.S, a child under 18 years of age.

It is further alleged that prior to the commission of that offense, the defendant had been convicted of one of the felony offenses specified in Penal Code section 647.6(c)(2):

COURT	CODE/	CONVICTION
CASE NO.	STATUTE	DATE
BA101469	PC288(A)	06/28/95

COUNTY	STATE	COURT
		TYPE
Los Angeles	CA	SUPERIOR

*Appendix D***COUNT 17**

On or about and between March 1, 2021 and June 5, 2021, in the County of Tulare, the crime of FAILURE TO REGISTER INITIALLY OR AFTER ADDRESS CHANGE: FELONY VIOLATION, in violation of PENAL CODE SECTION 290(B). a Felony, was committed by JORGE VASQUEZ, who being a person required to register based upon a felony conviction and juvenile adjudication for an offense listed in Penal Code section 290(c), did willfully and unlawfully fail to register within five (5) working days of coming into, and changing residence and location within a jurisdiction.

***SPEC ALLEG-SEX CRIMES - AGGRAVATED
CIRCUMSTANCES***

It is further alleged, within the meaning of Penal Code sections 667.61(a) and (d), as to defendant JORGE VASQUEZ, as to count(s) 1-15 that the following circumstances apply:

COURT	CODE/ STATUTE	CONVICTION DATE
CASE NO.		
BA101469	PC288(A)	06/28/95
COUNTY	STATE	COURT TYPE
Los Angeles	CA	SUPERIOR

*Appendix D****SPEC ALLEG-SEX CRIMES - AGGRAVATED CIRCUMSTANCES***

It is further alleged, within the meaning of Penal Code section 667.61(b)and (e), as to defendant JORGE VASQUEZ, as to count(s) 2-11; 13-15 that the following circumstances apply: MULTIPLE VICTIMS.

SPEC ALLEG-HABITUAL SEXUAL OFFENDER

It is further alleged, pursuant to Penal Code section 667.71, as to count(s) 1-15 that the defendant JORGE VASQUEZ, was previously convicted of the crime of:

COURT	CODE/ STATUTE	CONVICTION DATE
BA101469	PC288(A)	06/28/95

COUNTY	STATE	COURT TYPE
Los Angeles	CA	SUPERIOR

***3RD STRIKE: TWO OR MORE SERIOUS OR
VIOLENT FELONY CONVICTIONS AND CURRENT
CHARGE IS SPECIFIED FELONY***

It is further alleged, that prior to the commission of the offense or offenses alleged in Counts, the defendant

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JORGE VASQUEZ had been convicted of the following two or more serious and/or violent felonies, as defined in Penal Code section 667(d) and Penal Code section 1170.12(b):

COURT	CODE/ STATUTE	CONVICTION DATE
BA101469	PC288(A)	06/28/95

COUNTY	STATE	COURT TYPE
Los Angeles	CA	SUPERIOR

Furthermore, Count(s) 1-17 is a serious and/or violent felony, thus subjecting the defendant to sentencing pursuant to the provisions of Penal Code section 667(b)-(j) and Penal Code section 1170.12.

***SPEC ALLEG-PRIOR SEX OFFENSE AND
PRESENT 288/288.5 OFFENSE***

It is further alleged as to count(s) 1-17 that said defendant(s) JORGE VASQUEZ, was on and about JUNE 28, 1995, in the Superior Court of the State of California, for the County of LOS ANGELES, convicted of violating Penal Code Section 288(A) within the meaning of Penal Code Section 667.51(a) and 667.6(a).

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It is further alleged as to count(s) 1-17 that said defendant(s) JORGE VASQUEZ, was on and about JUNE 28, 1995, in the Superior Court of the State of California, for the County of LOS ANGELES, convicted of violating Penal Code Section 288(A) within the meaning of Penal Code Section 667.51(a) and 667.6(a).

It is further alleged as to count(s) 1-17 that said defendant(s) JORGE VASQUEZ, was on and about JUNE 28, 1995, in the Superior Court of the State of California, for the County of LOS ANGELES, convicted of violating Penal Code Section 288(A) within the meaning of Penal Code Section 667.51(a) and 667.6(a).

It is further alleged as to count(s) 1-17 that said defendant(s) JORGE VASQUEZ, was on and about JUNE 28, 1995, in the Superior Court of the State of California, for the County of LOS ANGELES, convicted of violating Penal Code Section 288(A) within the meaning of Penal Code Section 667.51(a) and 667.6(a).

SPEC ALLEG-CAL PRIOR-SERIOUS FELONY

It is further alleged as to count(s) 1-17 pursuant to Penal Code section 667(a)(1) that the defendant(s) JORGE VASQUEZ, has suffered the following prior conviction(s) of a serious felony:

COURT	CODE/ STATUTE	CONVICTION DATE
BA101469	PC288(A)	06/28/95

Appendix D

COUNTY	STATE	COURT TYPE
Los Angeles	CA	SUPERIOR

***SPEC ALLEG-SUBSTANTIAL SEXUAL
CONDUCT-288, 288.5.***

It is further alleged pursuant to Penal Code section 1203.066(a)(8) as to count(s) 2-7; 9; 13-15 that the victims, P.S, J.S, & N.S, in the above offense was under the age of 14 years and the defendant(s) JORGE VASQUEZ had substantial sexual conduct with P.S, J.S, & N.S.

* * * * *

Pursuant to Penal Code Section 1.054.5(b), the People are hereby informally requesting that defense counsel [illegible] provide discovery to the People as required by Penal Code Section 1054.3.

Pursuant to *People v. Cunningham*, the People hereby put the defendant on notice that the aggravated sentence [illegible] may be sought in this case.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT CONSISTS OF 17 COUNT(S).

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Executed at VISALIA DIVISION, California, on
11/27/2023.

TIM WARD
DISTRICT ATTORNEY
County of Tulare, State of California

/s/ Daniel Underwood
DANIEL UNDERWOOD
CHIEF DEPUTY DISTRICT ATTORNEY

Agency: PORTERVILLE .POLICE DEPARTMENT

COMPLAINT PROCESSED BY: TA

**APPENDIX E— DEFENDANT'S NOTICE
OF MOTION AND MOTION TO SET ASIDE
THE INFORMATION (PEN. CODE, § 995);
MEMORANDUM OF POINTS AND AUTHORITIES,
IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
TULARE, FILED MARCH 18, 2024**

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE**

Case No. VCF413074

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

JORGE VASQUEZ,

Defendant.

Date: TBD
Time: TBD
Dept.: 10

Hon. Nathan G. Leedy

Filed March 18, 2024

**DEFENDANT'S NOTICE OF MOTION AND
MOTION TO SET ASIDE THE INFORMATION
(PEN. CODE, § 995); MEMORANDUM
OF POINTS AND AUTHORITIES**

**TO THE CLERK OF THE ABOVE-ENTITLED
COURT, TO THE DISTRICT ATTORNEY FOR THE**

Appendix E

**COUNTY OF TULARE AND DEPUTY DISTRICT
ATTORNEY CHELSEA WAYT:**

PLEASE TAKE NOTICE that Defendant Jorge Vasquez hereby moves and will move on a date and at a time to be determined in the above-entitled Court, for an order setting aside the Information filed on November 28, 2023, or for such other and further relief as the Court may deem just and proper on the grounds that Defendant was held to answer without reasonable or probable cause (Pen. Code, § 995, subd. (a)(2)(B)).

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the transcript of the preliminary hearing, the transcript of the hearing on the Motion to Quash facially Insufficient Search Warrant and to Suppress Evidence and the Motion to Suppress Fruits of Facial Insufficient Warrant and to Return Property, such supplemental memoranda of points and authorities as hereafter may be filed with the Court, all pleadings and documents heretofore filed with the Court and such oral argument as may be presented at the hearing on the motion.

Dated: March 18, 2024 Respectfully submitted,

SANGER LAW FIRM, P.C.

By: /s/ Robert M. Sanger
Robert M. Sanger
Attorneys for Defendant
Jorge Vasquez

*Appendix E***MEMORANDUM OF POINTS AND AUTHORITIES****STATEMENT OF FACTS**

On June 5, 2023, law enforcement executed a search warrant at 427 East Oak Avenue in Porterville, California. In the portion of the affidavit describing the property to be searched, 427 East Oak Avenue was identified by its location and the physical features of the building and surrounding property. A vehicle with a license plate of 7, 65293B3 parked in front of the residence was also identified. The affidavit did not contain any information establishing who resided at 427 East Oak Avenue nor did it provide any facts related to probable cause to search the residence.

Without a lawful warrant for the residence, law enforcement seized several items from the residence including a bed sheet, a gray Samsung tablet, an Xbox One X, a black Xbox 360, two Seagate hard drives, a white Samsung tablet, and a black VIX touchscreen, miscellaneous documents, financial documents and a kid's sweater. Law enforcement officers also conducted interviews and made observations while executing the search warrant.

The defendant moved to suppress the evidence obtained as a result of the unlawful search pursuant to Penal Code section 1538.5.¹ The motion to suppress was

1. All future statutory references are to the Penal Code unless otherwise stated.

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heard at the same time as the preliminary hearing. The Magistrate denied the motion to suppress and held the defendant to answer. (Preliminary Hearing Transcript (“Prelim. Tr.”) at pp. 311, 347-350.)

During the preliminary hearing, the prosecution introduced evidence and observations of police officers obtained during the unlawful search. Lieutenant Ortiz testified that the defective search warrant was served at 427 East Oak Avenue. (Prelim. Tr. at p. 61.) During the execution of the defective search warrant, Lt. Ortiz questioned Frank Sisneros who would occasionally stay at the residence. (Prelim. Tr. at pp. 61-62.) Lt. Ortiz questioned Mr. Sisneros about the defendant and children visiting at the residence. (Prelim. Tr. at pp. 62-64.)

Officer Gosvener testified that he was present at the search of 427 East Oak Avenue and observed a silver bed in the bedroom. (Prelim. Tr. at pp. 167-168.) Mr. Vasquez was arraigned on the Information on January 17, 2024.

ARGUMENT**I. DENIAL OF A MOTION TO SUPPRESS AT THE PRELIMINARY HEARING MAY BE REVIEWED AS PART OF A MOTION UNDER PENAL CODE SECTION 995**

When a motion to suppress under section 1538.5 is heard at the same time as the preliminary hearing and is denied, the defendant may seek review of the denial through section 995. (Pen. Code, § 1538.5, subd. (m).) In

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such cases, the reviewing court defers to “the magistrate’s express and implied findings of fact if supported by the substantial evidence.” (*People v. Tacardon* (2022) 14 Cal.5th 235,242 (*Tacardon*); *Illinois v. Gates* (1983) 462 U.S. 213, 238-239 (*Gates*).) The reviewing court also “independently assess[es] whether the challenged search or seizure violates the Fourth Amendment, applying federal constitutional standards.” (*Ibid.*)

**II. THE EVIDENCE OR OBSERVATIONS
OBTAINED AS A RESULT OF THE FACIALLY
INVALID SEARCH WARRANT SHOULD HAVE
BEEN SUPPRESSED****A. The Affidavit Did Not Provide Any Explanation
of Why the Premises Should Be Searched
or Any Probable Cause that Contraband or
Evidence of a Crime Would Be Found at the
Places Listed to Be Searched**

The express language of Fourth Amendment to the United States Constitution states: “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.*” (U.S. Const. Amend. IV, emphasis added; see also, Cal Const., art. I, § 13). As to the house, no cause at all, probable or otherwise, was stated in the affidavit. It simply was not there.

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An affidavit supporting a search warrant must contain facts establishing probable cause. (U.S. Const. Amend. IV; Cal Const., art. I, § 13; Pen. Code, § 1525.) The magistrate must then determine, “given all the circumstances set forth in the affidavit before him,” whether “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (*Illinois v. Gates* (1983) 462 U.S. 213, 238 (*Gates*); see also *People v. Garcia* (2003) 111 Cal.App.4th 715, 721 [stating that “[t]he affidavit must establish a nexus between the criminal activities and the place to be searched”].) In reviewing the sufficiency of the facts upon which the magistrate or judge based the probable cause determination, the court only considers the facts that appear within the ““four corners of the warrant affidavit.”” (*People v. Costello* (1988) 204 Cal. App.3d 431, 451, quoting *U.S. v. Rubio* (9th Cir. 1983) 727 F.2d 786, 795.) While deference is given to the magistrate’s determination of probable cause, “reviewing courts will not defer to a warrant based on an affidavit that does not ‘provide the magistrate with substantial basis for determining the existence of probable cause.’” (*United States v. Leon* (1984) 468 U.S. 897, 915 (*Leon*)).

Frazzini v. Superior Court,² cited by the prosecution in its Opposition, actually emphasizes the fact that the lack of any statement of cause to search this residence, is grounds for suppression. In *Frazzini* the affidavit in support of the search warrant made several specific allegations regarding the property to be searched and

2. *Frazzini, supra*, was decided in 1970, before the United States Supreme Court set forth the standard for determining probable cause to issue a warrant in *Gates, supra*, 462 U.S. 213.

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associated with the defendant, unlike this case where there was no indication who owned, resided in or otherwise was involved with this residence. It was simply listed as a place the officers wanted to search. It could have belonged to anyone.

In *Frizzini*, the court specifically stated that the officer had personally observed the defendant enter the particular cabin listed in the search warrant prior to requesting a search warrant. (*Id.* at p. 1011.) Furthermore, the affidavit stated evidence obtained from reliable informants and the personal observations of the police officer establishing that the defendant was involved in drug sales in the area. (*Ibid.*) Right before the defendant moved to the cabin, the officer personally observed the defendant at a motel meeting with a number of people who were known narcotics users. (*Ibid.*) The Court of Appeal held that the affidavit did not have to show that the cabin was defendant's residence or rental or that he had "exclusive possession of it." (*Id.* at p. 1013.) Instead, the Court held that the affidavit only had to include "facts from which it could be inferred that the defendant probably possessed such contraband and that defendant's connection with the cabin was such as to make it probable that the contraband could be found there." (*Id.* at pp. 1013-1014.)

There is simply nothing stated here to tie anyone to the house. The affidavit does not contain any information showing that the defendant was connected to the residence listed to be searched. Unlike in *Frizzini*, the affidavit does not state any personal observations by the officer or

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statements by reliable informants establishing that the defendant was connected to the places to be searched. (*See, Frazzini, supra*, 7 Cal.App.3d at pp. 1011-1014.)

Therefore, the affidavit does not contain any facts establishing that there was any probability let alone a “fair probability” that evidence of a crime would be found at the places to be searched. (*Gates, supra*, 462 U.S. at p. 238.)

B. The Good Faith Exception Does Not Apply

Under the good faith exception to the exclusionary rule, evidence will not be suppressed if the officer’s reliance on the warrant and the magistrate’s probable cause determination is “objectively reasonable.” (*Leon, supra*, 468 U.S. at pp. 922-923.) However, an officer does not “manifest objective good faith in relying on a warrant based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its , existence entirely unreasonable.’” (*Leon, supra*, 468 U.S. at p. 923, quoting *Brown v. Illinois* (1975) 422 U.S. 590, 610-611 (conc. opn. of Powell, J.).) The prosecution has the burden of establishing the officer’s reliance was objectively reasonable. (*People v. Willis* (2002) 28 Cal.4th 22, 32.)

Here, no officer, even a rookie who just graduated from POST training, could believe in good faith that you can list a property and legitimately expect a warrant to be issued where no cause relating to the place to be searched was included in the warrant affidavit. The Jack of any information in the affidavit connecting defendant, the alleged victims or the alleged offenses to the places

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listed to be searched is so blatant that an officer could not manifest objective good faith in relying on the warrant. (See *Leon*, *supra*, 468 U.S. at p. 923.) As set forth above, the affidavit does not contain any facts establishing that there was any probability let alone a “fair probability” that evidence of a crime would be found at the places to be searched. (*Gates*, *supra*, 462 U.S. at p. 238.)

Therefore, the good faith exception does not apply and the evidence obtained as a result of the invalid search warrant should have been suppressed. Furthermore, without the information obtained as a result of the preliminary hearing that should have been suppressed, there was no probable cause to hold the defendant to answer. (Pen. Code, § 995, subd. (a)(2)(B).)

CONCLUSION

For the foregoing reasons, the Motion to Suppress pursuant to Penal Code section 1538.5 should have been granted and Defendant respectfully requests that the Court set aside the Information.

Dated: March 18, 2024 Respectfully submitted,
SANGER LAW FIRM, P.C.

By: /s/ Robert M. Sanger
Robert M. Sanger
Attorneys for Defendant
Jorge Vasquez

**APPENDIX F — TRANSCRIPT EXCERPT IN
THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
TULARE, DATED SEPTEMBER 17, 2024**

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

DEPARTMENT 10 HON. NATHAN LEEDY, JUDGE

NO. VCF 413074
PC 995 MOTION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

JORGE VASQUEZ,

Defendant.

Visalia, California

September 17, 2024

REPORTER'S TRANSCRIPT

(Pages 1 - 19)

* * *

[9]THE COURT: In my view, this case is almost on all fours with Bell. These two situations are very similar and very different from the Hernandez situation. Those are the two cases that – that I found that illustrate two

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different types of situations, the Hernandez situation being where police officers conduct an investigation. They get all the information they can, and that information is simply insufficient to establish probable cause.

The Bell situation is one where the police conduct an investigation, come up with all their information but then leave out some important information in their affidavit in support of their request for a search warrant.

It's the same type of occurrence in this case as what happened in Bell, to wit, there is probable cause, obviously, to believe that a crime was committed, but the police neglect to put information in the affidavit that links the address they want to search to his criminal activity. They don't put in the affidavit that they established the 427 Oak address was linked to Mr. Vasquez here. That's the same thing that happened in Bell.

Also, like Bell, this is a situation where it's not contended that the officers did not have [10]information linking the defendant to that address; rather, it's simply a mistake of some sort.

The – the evidence I have in front of me again is that it's not seriously contended here that this was not the defendant's address or that the police did not know that, that they didn't gather that information during their investigation. This was an omission by the police. The warrant should not have been signed without that information in there, but nonetheless, based on the Bell case, I find that this is a situation where the Leon good faith exception does apply.

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The relevant portion of the Bell case that I have considered to support this is Pages 1055 through 1056 where they talk about the good faith exception, and they talk about the type of routine information omitted in this case that should not result in suppression of evidence.

The relevant quote here is in Bell at 1056, I believe. It says, “No one suggests that the subject residence was not the Bells’ home, neither is there anything to suggest the fact of their residence was either a secret or not readily determinable. The tone of the affidavit clearly indicated the officer’s conclusion that the subject residence was the Bells’ home. While linking the Bells to the location to be [11]searched is obviously not a mere technicality. It is in most cases of this nature a routine matter. We note that the most obvious and routine things are those easiest to forget and their absence least noticeable. The affidavit was complete in every other respect. We simply cannot say given the omission made that the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.”

I reach the same conclusion here. So the motion to quash the warrant is respectfully denied.
