
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARTURO MAGANA CHAVEZ,

Defendant.

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE**

Case No. 2:11-CR-384 DN

District Judge David Nuffer

Defendant Arturo Chavez has moved to suppress statements and evidence discovered as a result of officers' entry to the backyard of 154 Westwood Avenue. The government argues that this entry was proper under *Payton v. New York*¹ and *United States v. Gay*.² However, because (a) officers lacked a reasonable belief that Mr. Chavez lived at that address and (b) officers lacked a reasonable belief that Mr. Chavez was present in the home at that time, the entry into the backyard was not justified. Mr. Chavez's motion to suppress³ is GRANTED.

Procedural History

On May 4, 2011, a federal grand jury returned an Indictment against Arturo Magana Chavez for violating 18 U.S.C. § 922(g)(1) Felon in Possession of a Firearm.⁴ On August 24, 2012, Chavez filed a motion to suppress evidence.⁵ On September 26, 2012, an evidentiary

¹ 445 U.S. 573 (1980).

² 240 F.3d 1222 (10th Cir. 2001).

³ Doc. 49, filed August 24, 2012.

⁴ Court Docket (hereinafter "Ct. Doc.") 10.

⁵ Doc. 49.

hearing was held on the motion.⁶ On October 27, 2012, Chavez filed his memorandum in support of suppression.⁷ On November 16, 2012, the United States filed its response.⁸ On December 13, 2012, Chavez filed his reply.⁹ On January 16, 2013, the Court heard oral argument on the motion.¹⁰ The parties exchanged drafts of the proposed order and submitted them to the court on March 18, 2013.

FINDINGS OF FACT

In the late afternoon or early evening of April 27, 2011, Officer Brett Miller of the Taylorsville, Utah, Police Department met with a confidential informant who provided information about Arturo Chavez, the defendant in this case.¹¹ The informant claimed to be “very familiar” with Mr. Chavez, including the fact that Mr. Chavez was a fugitive.¹² The informant told Officer Miller that Mr. Chavez went by the gang-name “Wizard” and was a member of the “Diamond Street” gang.¹³ He also told Officer Miller that prior to April 27, 2011 law enforcement officials had attempted to serve an arrest warrant on Mr. Chavez at Mr. Chavez’s mother’s residence, but the record is silent about why they were unable to find him there—whether he was previously living there but moved or was just simply not there at the time.¹⁴

The informant also claimed to have information about Mr. Chavez’s living situation. He

⁶ Doc. 56.

⁷ Doc. 58.

⁸ Doc. 59.

⁹ Doc. 61.

¹⁰ Docs. 67, 68.

¹¹ Doc. 57, Suppression Hearing Transcript dated September 26, 2012 at 12, 28, 37 (hereinafter “Tr.”).

¹² Tr. 12-13.

¹³ Tr. 12-13.

¹⁴ Tr. 13, 37.

told Officer Miller that Mr. Chavez had been living in a vacant home located at 154 West Westwood Avenue (“Westwood home”) in Salt Lake City, Utah, for about a month.¹⁵ He informed Officer Miller the home was for sale by one of Mr. Chavez’s family members and described the home as a small home on the north side of the road with a “For Sale” sign in the front yard.¹⁶ He said the home was vacant because it did not have running water.¹⁷ Finally, the informant claimed that Mr. Chavez had been distributing narcotics out of the Westwood home and warned that Mr. Chavez was always armed with a handgun, even when he answered the door.¹⁸

Later that same evening, Officer Miller verified the existence of a fugitive named Arturo Chavez. He ran checks through the police database, confirmed that Mr. Chavez had an outstanding felony arrest warrant issued 8 months previous, and looked at his jail booking photograph.¹⁹ A listing of Mr. Chavez’s scars, marks, and tattoos revealed his tattoos “Wizard” and “DST,” consistent with Mr. Chavez’s gang name Wizard and Diamond Street affiliation the informant had reported.²⁰

Officer Miller did not further verify the information provided about Mr. Chavez’s residence. He made no effort to assess what other law enforcement officers had done to apprehend Mr. Chavez, why officers looked for him at his mother’s home, or why they had not found him there.²¹ He did not go to Mr. Chavez’s mother’s home to ask about his

¹⁵ Tr. 13.

¹⁶ Tr. 13.

¹⁷ Tr. 14.

¹⁸ Tr. 14.

¹⁹ Tr. 14.

²⁰ Tr. 14.

²¹ Tr. 13, 15, 37–38.

whereabouts.²² Although the arrest warrant listed an address of 1525 West 500 North,²³ Officer Miller did not go to that house.²⁴ Nor did he realize that the address listed on the warrant was not the home of Mr. Chavez's mother.²⁵ Officer Miller made no efforts to determine who actually owned the Westwood home or whether that person was a relative of Chavez.²⁶

The same night Officer Miller spoke with the informant, Officer Miller drove to the Westwood home shortly after midnight.²⁷ Westwood Ave. is a dead-end street that travels west from West Temple St. at about 2000 South and ends with a circle.²⁸ Officer Miller drove past the Westwood home and said he recognized it by the "For Sale" sign in the front yard.²⁹ The lights in the home were off and there was a car parked in the driveway alongside of the home, with the back towards the home and the front facing the street.³⁰ Officer Miller turned around at the end of the street to go back out towards West Temple.³¹ Officer Miller then saw another vehicle arrive at the home and back into the driveway.³² As he passed the house again, he did not see the driver, although the driver's door was now left open, but he did see a female passenger getting out of the car.³³ It appeared that whoever had operated the vehicle had

²² Tr. 37–38.

²³ Gov't Ex 1.

²⁴ See Tr. 37, 59; Gov't Ex. 1.

²⁵ Tr. 37–38.

²⁶ Tr. 39.

²⁷ Tr. 16.

²⁸ Tr. 16.

²⁹ Tr. 16.

³⁰ This fact was not clarified in the hearing but in later discussions between the United States Attorney and Defense Counsel, docket no. 72, lodged May 2, 2013.

³¹ Tr. 16.

³² Tr. 16-17; Gov't Ex. 2b at 4.

³³ Tr. 17–18. The female was later identified as Jennifer Crew. (Tr. 53.)

immediately exited and was out of Officer Miller's view.³⁴ The female passenger was unknown at the time but later identified as Jennifer Crew.³⁵

Officer Miller ran the license plate and learned the car was registered to Jenny Lopez at 154 West Westwood Avenue.³⁶ Officer Miller conducted a history check on Ms. Lopez and found she had "documentation" with a person named Christopher Gonzales.³⁷ Officer Miller did not explain what documentation he saw or how Ms. Lopez was connected to Mr. Gonzales. He did, however, determine that at some point, Mr. Gonzales had previously been a resident of that house and was related to Mr. Chavez.³⁸ Additionally, Officer Miller was also able to confirm that Christopher Gonzalez is Chavez's relative.³⁹

Despite Officer Miller's apparent belief that his inquiry adequately verified the informant's claim that this home belonged to a relative of Mr. Chavez, Officer Miller, in fact, did not verify either who owned the home or whether the owner was related to Mr. Chavez. Those facts would have been consistent with the informant's statements. He only knew that a prior *resident* of the home was related to Mr. Chavez, and that the registered *owner of the car* that appeared had "documentation" with Mr. Chavez. These facts were unrelated to the informant's statements. Officer Miller admitted that none of the information he had learned that day gave him reason to believe Mr. Chavez was in the house at that time.⁴⁰

³⁴ Tr. at 17-18.

³⁵ Tr. at 53.

³⁶ Tr. 19.

³⁷ Tr. 20.

³⁸ Tr. 43.

³⁹ Tr. at 20, 43.

⁴⁰ Tr. 43.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.