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Criminal Procedure-Search Warrant Affidavits- Defendant May Have Inaccurate Statements Excised from Affadavit Unless Affiant Proves Reasonable Belief in Truth of Such Information- Probable Cause Tested from Remaining Truthful Information

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CRIMINAL PROCEDURE—SEARCH WARRANT AFFIDAVITS—DEFENDANT MAY HAVE INACCURATE STATEMENTS EXCISED FROM AFFIDAVIT UNLESS AFFIANT PROVES REASONABLE BELIEF IN TRUTH OF SUCH INFORMATION—PROBABLE CAUSE TESTED FROM REMAINING TRUTHFUL INFORMATION—*Theodor v. Superior Court,* 8 Cal. 3d 77, 501 P.2d 234, 104 Cal. Rptr. 226 (1972).

Michael Paul Theodor was arrested after entering a house which police had been searching pursuant to a search warrant. Keys found in his possession were used to unlock a room believed to contain contraband, and large quantities of marijuana and LSD were in fact found. He was charged with possession and possession for sale of marijuana and restricted dangerous drugs in violation of the California Health and Safety Code.[1] At a combined preliminary hearing and hearing to suppress evidence under Penal Code section 1538.5(f),[2] Theodor sought to challenge the veracity of the affidavits given in support of the search warrant by a police officer and an undisclosed informant who had been arrested for possession of narcotics allegedly purchased from Theodor.[3] He also sought to discover the identity of the informant and to quash the warrant on the ground that the issuing magistrate had improperly relied on unreported oral testimony. The motions to quash and to compel disclosure were denied. The magistrate also refused to allow Theodor to question witnesses for the purpose of controverting facts stated in the affidavits. Theodor was held to answer in the superior court where his motions to suppress under Penal Code sections 995 and 1538.5(i)[4] were again denied. The California Supreme Court took

1. CAL. HEALTH & SAFETY CODE ANN. §§ 11530, 11530.5, 11910-11 (West Supp. 1971), *repealed,* ch. 1407, §§ 2, 4, [1972] Cal. Stat. —.

2. CAL. PEN. CODE § 1538.5(f) (West 1972). Section 1538.5 entitles a defendant to a pre-trial hearing for the purpose of moving to suppress evidence and for presenting evidence in support of the motion. Under subdivision (f), the motion may be made and evidence presented at the preliminary hearing in the case of a felony offense initiated by complaint.

3. The informant had been arrested by a federal marshall at Los Angeles International Airport with two and a half bricks of marijuana and a quantity of LSD in his possession. Theodor v. Superior Court, 8 Cal. 3d 77, 83, 501 P.2d 234, 238, 104 Cal. Rptr. 226, 230 (1972).

4. CAL. PEN. CODE § 995 (West 1972) provides, *inter alia,* that the information must be set aside if the defendant has been committed without probable cause.

Section 1538.5(i) entitles a defendant held to answer for a felony in superior court to a hearing *de novo* on his motion to suppress.

the case on Theodor's petition for a writ of mandate or prohibition under sections 1538.5(i) and 999a.[5]

In granting the writ of prohibition, the supreme court addressed itself to three issues raised by the petitioner: (1) whether the issuing magistrate's partial reliance on unrecorded oral testimony violated Penal Code section 1526(b),[6] (2) whether petitioner was entitled to disclosure of the informant's identity and (3) whether petitioner should have been permitted to call witnesses for the purpose of controverting facts stated in the affidavits. The court held that the magistrate had properly relied on written affidavits under section 1526(a)[7] and that oral testimony taken *in addition* thereto was superflous and thus not subject to the requirements of subdivision 1526(b), which provides for oral testimony taken *in lieu* of written affidavits.[8] The court found that petitioner was entitled to disclosure of the identity of the informant since the latter was a potential material witness on the issue of petitioner's guilt or innocence.[9] Although the court reserved judgment as to whether Theodor, on the facts shown, was entitled to a hearing into the veracity of the affidavits,[10] it did reaffirm the right of a defendant in California to go behind the face of the affidavit, and enunciated for the first time the standard of accuracy to which the affidavit would be held.[11]

In ordering disclosure of the identity of the informant, the court reiterated that disclosure is required when the defendant has shown that the informer may be a material witness on the issue of guilt or

5. CAL. PEN. CODE § 999a (West 1972) provides for interlocutory review of the denial of the section 995 motion to set aside the information for lack of probable cause.

Section 1538.5(i) allows interlocutory supreme court review by petition for writ of mandate or prohibition after the motion to suppress has been denied.

6. CAL. PEN. CODE § 1526(b) (West 1972) provides:

> In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement *under oath which shall be recorded and transcribed.* The transcribed statement shall be deemed to be an affidavit for the purpose of this chapter. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. (Emphasis added).

7. CAL. PEN. CODE § 1526(a) (West 1972) provides:

> The magistrate may, before issuing the warrant, examine on oath the person seeking the warrant and any witnesses he may produce, and must take his affidavit or their affidavits in writing, and cause same to be subscribed by the party or parties making same.

8. 8 Cal. 3d at 86-87, 501 P.2d at 240-41, 104 Cal. Rptr. at 231-33; *see* note 6 *supra.*

9. 8 Cal. 3d at 88-90, 501 P.2d at 241-43, 104 Cal. Rptr. at 233-35, *citing, e.g.,* Price v. Superior Court, 1 Cal. 3d 836, 842, 463 P.2d 721, 724-25, 83 Cal. Rptr. 369, 372-73 (1970).

10. 8 Cal. 3d at 103-04, 501 P.2d at 252-53, 104 Cal. Rptr. at 244-45.

11. *Id.* at 95-101, 501 P.2d at 247-51, 104 Cal. Rptr. at 239-43.

innocence, but not when the defendant's object is merely to attack the existence of probable cause for the issuance of the warrant.[12] The court found that petitioner had met his burden of showing " 'a reasonable possibility that the anonymous informant . . . could give evidence on the issue of guilt which might result in [petitioner's] exoneration.' "[13] Once that burden has been met, the prosecution must disclose the identity of the informant or incur a dismissal of the case.[14]

The court also considered petitioner's claim that he was entitled to disclosure of the informant's identity for the purpose of questioning the validity of the informant's arrest. It acknowledged that a defendant has the right under *People v. Martin*[15] to attack the validity of the search or arrest of another where relevant.[16] Since the court required disclosure of the identity of the informant as a potential material witness, however, it declined to decide whether the vicarious exclusionary rule would provide another ground for disclosure.[17] Nonetheless, the court left little doubt as to what its answer to that question will be, stating:

> It is obvious that the policy of deterring unlawful police conduct cannot be effectuated by means of the vicarious exclusionary rule if the defendant is barred from learning the identity of the witness who was illegally arrested or searched.[18]

Ostensibly, this sweeping dictum could foreshadow the granting of an absolute right to disclosure whenever an arrestee is used as an informant.[19]

12. *Id.* at 88, 501 P.2d at 241, 104 Cal. Rptr. at 233, *citing* People v. Keener, 55 Cal. 2d 714, 723, 361 P.2d 587, 592, 12 Cal. Rptr. 859, 864 (1961).

13. 8 Cal. 3d at 88-90, 501 P.2d at 241-43, 104 Cal. Rptr. at 233-35, *quoting* People v. Garcia, 67 Cal. 2d 830, 840, 434 P.2d 366, 372, 64 Cal. Rptr. 110, 116 (1967).

14. 8 Cal. 3d at 88, 501 P.2d at 241, 104 Cal. Rptr. at 233 (citations omitted). In the recent case of People v. Goliday, 8 Cal. 3d 771, 779-81, 505 P.2d 537, 542-46, 106 Cal. Rptr. 113, 119-21 (1973), the court extended the material witness rule to require that the police obtain from any informant who may be a material witness sufficient identification so as to facilitate his location by the defense after disclosure. That requirement had previously been imposed with respect to *regular* or *paid* informants in Eleazer v. Superior Court, 1 Cal. 3d 847, 851-53 & n.10, 464 P.2d 42, 45-46 & n.10, 83 Cal. Rptr. 586, 589-90 & n.10 (1970).

15. 45 Cal. 2d 755, 290 P.2d 855 (1955).

16. 8 Cal. 3d at 104, 501 P.2d at 254, 104 Cal. Rptr. at 246, *citing* People v. Martin, 45 Cal. 2d 755, 290 P.2d 855 (1955).

17. 8 Cal. 3d at 104-05, 501 P.2d at 254, 104 Cal. Rptr. at 246.

18. *Id.* at 104, 501 P.2d at 254, 104 Cal. Rptr. at 246.

19. In addition to the material witness rule and the vicarious exclusionary rule, an additional basis for disclosure meriting exploration is the defendant's right to attack the accuracy of the affidavit. If Theodor were not entitled to disclosure on any other ground, would he not be entitled to call the informant as a witness in his effort to

Theodor eliminates any doubt as to a defendant's right in California to attack the veracity of an affidavit given in support of a search warrant.[20] That right has been the subject of recent controversy.[21] Its advocacy is usually grounded on the Fourth Amendment prerequisite, established in *Aguilar v. Texas,*[22] of a neutral and objective magistrate for the warrant issuing process. False facts, it is argued, prevent the magistrate from fulfilling his neutral and objective function, and should therefore be disregarded in testing for probable cause as are conclusional allegations under *Aguilar.*[23] The United States Supreme Court has not yet resolved this issue. In *Rugendorf v. United States,*[24] the Court specifically left the question open but was willing to assume *arguendo* that the challenge could be made. The federal courts are divided on the issue.[25]

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prove the inaccuracy? *See* Comment, *The Outwardly Sufficient Search Warrant Affidavit: What If It's False?*, 19 U.C.L.A.L. REV. 96, 136-38 (1971) [hereinafter cited as U.C.L.A. Comment]. *But cf.* the rule stated in the text accompanying note 12 *supra,* to the effect that disclosure is not required when the defendant is merely questioning the existence of probable cause for the issuance of the warrant.

A concomitant right to disclosure of the informant's identity in order to attack the veracity of the affidavit would be conditional upon defendant's meeting his threshold burden for a hearing under section 1538.5 to contest such veracity. See text accompanying notes 47 & 48 *infra.* The right to disclosure based on the vicarious exclusionary rule, by contrast, could not logically require any initial showing except that the informant was an arrestee.

20. 8 Cal. 3d at 94-95, 501 P.2d at 246-47, 104 Cal. Rptr. at 238-39.

21. *See* U.C.L.A. Comment, *supra* note 19, at 103-11; Kipperman, *Inaccurate Search Warrant Affidavits as a Ground for Suppressing Evidence,* 84 HARV. L. REV. 825 (1971); Mascolo, *Impeaching the Credibility of Affidavits for Search Warrants: Piercing the Presumption of Validity,* 44 CONN. B.J. 9 (1970); Note, *Testing the Factual Basis for a Search Warrant,* 67 COLUM. L. REV. 1529 (1967).

22. 378 U.S. 108, 111 (1964).

23. 8 Cal. 3d at 90-91 n.6, 501 P.2d at 243-44 n.6, 104 Cal. Rptr. at 235 n.6, *citing* U.C.L.A. Comment, *supra* note 19, at 108.

24. 376 U.S. 528, 531-32 (1964).

25. *See* United States v. Roth, 391 F.2d 507, 509 (7th Cir. 1967) (allowing challenge); United States v. Gianaris, 25 F.R.D. 194, 195 (D.D.C. 1960) (challenge refused). FED. R. CRIM. P. 41(e) provides in part:

> A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that: (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described on its face, or (4) *there was not probable cause for believing the existence of the grounds on which the warrant was issued,* or (5) the warrant was illegally executed . . . . (Emphasis added).

A few of the federal cases allowing the challenge invoke Rule 41(e) specifically. United States v. Freeman, 358 F.2d 459, 463 n.4 (2d Cir. 1966); King v. United States, 282 F.2d 398, 400 & n.4 (4th Cir. 1960). It is unclear whether these cases rely upon subdivision (4) or are treating affidavit inaccuracy as a sixth and separate ground under the rule. *See* 3 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 673, at 106 (1969). Proposed amendments to Rules 41 and 12(b)(3) would combine all

Only a minority of states allow the challenge.[26]

In reaching its decision to permit the challenge, the court in *Theodor* did not rely on the aforementioned constitutional grounds. Rather, it held that Penal Code sections 1539 and 1540[27] furnished statutory authority for attacking the factual basis of the affidavit.[28] Those statutes provide, respectively, for challenging the "grounds on which the warrant was issued"[29] and for the *return* of property seized upon erroneous grounds.[30] They had been interpreted to include affidavit accuracy among the challengeable grounds for the issuance of the warrant and to authorize suppression as well as the return of the seized property.[31] But section 1538.5,[32] adopted in 1967, provides specifically for suppression and enumerates specific grounds therefor, among which affidavit inaccuracy is not to be found.[33] The question thus arose as to whether

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grounds for suppression into one: "that the evidence was illegally obtained." 48 F.R.D. 553, 579, 627-28 (1970).

26. U.C.L.A. Comment, *supra* note 19, at 106 & n.40.

27. CAL. PEN. CODE §§ 1539-40 (West 1972).

28. 8 Cal. 3d at 90-95, 501 P.2d at 243-47, 104 Cal. Rptr. at 235-39.

29. Prior to its amendment at the time section 1538.5 was adopted, section 1539 read:

> *If the grounds on which the warrant was issued be controverted,* [the magistrate] must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty nine. CAL. PEN. CODE § 1539 (West 1967) (emphasis added).

Section 1539(a) now reads in relevant part:

> If a special hearing be held in the superior court pursuant to Section 1538.5, *or if the grounds on which the warrant was issued be controverted and a motion to return property be made (i) by a defendant on grounds not covered by Section 1538.5*; . . . the judge or magistrate must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated by a shorthand reporter in the manner prescribed in Section 869. CAL. PEN. CODE § 1539 (West 1972) (emphasis added).

30. CAL. PEN. CODE § 1540 (West 1972) provides:

> If it appears that the property taken is not the same as that described in the warrant, *or that there is no probable cause for believing the existence of the grounds on which the warrant was issued,* the magistrate must cause it to be restored to the person from whom it was taken. (Emphasis added).

31. 8 Cal. 3d at 92-93, 501 P.2d at 245, 104 Cal. Rptr. at 237 (citations omitted).

32. CAL. PEN. CODE § 1538.5 (West 1972).

33. Section 1538.5 provides in relevant part:

> (a) Grounds. A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:
>
> . . . .
>
> (2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; or (v) there was any other violation of federal or state constitutional standards. CAL. PEN. CODE § 1538.5(a) (West 1972).

The *Theodor* court could have held that factual inaccuracy in the affidavit would sufficiently undermine the probable cause analysis so as to bring it within the purview of

the adoption of section 1538.5 indicated legislative intent to limit the application of sections 1539 and 1540 to motions for the *return* of property and to eliminate affidavit inaccuracy as a ground for suppression. The court invoked the presumption that the legislature does not intend to overthrow established principles of law, absent a clear expression of intent to the contrary,[34] and cited a legislative committee report issued just prior to the adoption of section 1538.5 to support its conclusion that that section was merely intended to affect the timing of search and seizure motions and not to pre-empt the role previously played by sections 1539 and 1540.[35]

The court then turned for the first time to the question of the standard of accuracy to which affidavits in support of a search warrant should be held.[36] It adopted the same standard of reasonableness that is applied to the broader question of probable cause. That is, the affiant must have been reasonable in his belief that the facts stated in the affidavit were accurate.[37] The court drew support for such a standard from the fact that reasonableness is the test in the warrantless search or arrest situation, wherein a police officer must make the same factual judgments as would be reflected in an affidavit.[38]

In choosing a standard based on reasonableness, the court compromised between two more extreme and opposite alternatives: the first would require absolute material accuracy,[39] while the second would allow even unreasonable inaccuracy to stand absent a showing of bad faith.[40] The court reasoned that a standard based on good faith alone

section 1538.5(a) subdivision (2)(iii) (*cf.* FED. R. CRIM. P. 41(e)(4) discussed in note 25 *supra*) or that accuracy was constitutionally required under subdivision (2)(v) (see text accompanying notes 22 & 23 *supra*).

34. 8 Cal. 3d at 92, 501 P.2d at 245, 104 Cal. Rptr. at 237, *quoting* County of Los Angeles v. Frisbie, 19 Cal. 2d 634, 644, 122 P.2d 526, 532 (1942).

35. 8 Cal. 3d at 94, 501 P.2d at 246, 104 Cal. Rptr. at 238.

36. Prior cases had dealt with procedural aspects of the motion under sections 1539 and 1540 and not with the standard of accuracy required under those sections. *See, e.g.*, People v. Butler, 64 Cal. 2d 842, 843-46, 415 P.2d 819, 820-22, 52 Cal. Rptr. 4, 5-7 (1966); People v. Keener, 55 Cal. 2d 714, 719-20, 361 P.2d 587, 589-90, 12 Cal. Rptr. 859, 861-62 (1961), *disapproved on other grounds in Butler.*

37. 8 Cal. 3d at 100-01, 501 P.2d at 251, 104 Cal. Rptr. at 243.

38. *Id.* at 99-100, 501 P.2d at 250-51, 104 Cal. Rptr. at 242-43, *citing* Hill v. California, 401 U.S. 797 (1971), *and* Brinegar v. United States, 338 U.S. 160 (1949).

39. *See, e.g.*, United States v. Nagle, 34 F.2d 952, 954 (N.D.N.Y. 1929). The requirement of absolute accuracy is advocated in U.C.L.A Comment, *supra* note 19, at 139-47.

40. *See, e.g.*, United States v. Bridges, 419 F.2d 963, 966-67 (8th Cir. 1969); United States v. Bowling, 351 F.2d 236, 241-42 (6th Cir. 1965), *cert. denied*, 383 U.S. 908 (1966); People v. Alfinito, 211 N.E.2d 644, 646 (N.Y. 1965).

would fail to deter police carelessness,[41] but concluded that exclusionary rules are not applicable so long as police conduct has been reasonable.[42]

Under the *Theodor* standard, the burden shifts to the prosecution to show reasonable error once the defendant has proven a factual inaccuracy.[43] Absent such a showing of reasonableness, *Theodor* requires that the inaccurate facts be excised from the affidavit and probable cause tested from the remaining information.[44] Thus, only erroneous facts which are indispensable to a finding of probable cause can ultimately vitiate the warrant.[45] The court specifically holds out the possibility, however, that the *knowing* use of *intentional* misstatements may vitiate the warrant, whether or not the excisement of the misinformation from the affidavit would defeat the finding of probable cause.[46]

As for a defendant's right to *inquire* into the accuracy of the affidavit by means of a hearing under section 1538.5, the court sets up an important condition precedent. The defendant has the threshold burden of showing "with some specificity, [his] reasons for contending that the affidavit is inaccurate."[47] The mere *allegation* of inaccuracy will not entitle him to call witnesses in the hope of discovering an error.[48]

Just what will entitle a defendant to a hearing into the accuracy of the affidavit is the crucial unanswered question. Petitioner Theodor pointed to discrepancies between his physical appearance and that of the alleged seller described in the affidavit to show that the informant could not have had him in mind.[49] He alleged, further, that coercion at the time of the informant's arrest had resulted in an erroneous if not fictitious account of the alleged drug purchase.[50] The mere fact that Theodor did not match the description of the seller in the affidavit would not impugn the description's accuracy if, in fact, the informant was describing someone else. Given a *showing* of coercion, the inference might arise that the informant was not describing any real person at all. But to base such an inference on the mere *allegation* of coercion would

41. 8 Cal. 3d at 98, 501 P.2d at 249, 104 Cal. Rptr. at 241, *citing* United States v. Freeman, 358 F.2d 459, 463 n.4 (2d Cir. 1966).
42. 8 Cal. 3d at 97, 501 P.2d at 248-49, 104 Cal. Rptr. at 240-41.
43. *Id.* at 101-02, 501 P.2d at 251, 104 Cal. Rptr. at 243-44.
44. *Id.* at 100-01, 501 P.2d at 251, 104 Cal. Rptr. at 243.
45. *Id.* at 101 n.14, 501 P.2d at 251 n.14, 104 Cal. Rptr. at 243 n.14.
46. *Id.*
47. *Id.* at 103, 501 P.2d at 252, 104 Cal. Rptr. at 244.
48. *Id., citing* United States v. Halsey, 257 F. Supp. 1002, 1005-06 (S.D.N.Y. 1966).
49. 8 Cal. 3d at 103, 501 P.2d at 253, 104 Cal. Rptr. at 245.
50. *Id.* at 103, 501 P.2d at 252-53, 104 Cal. Rptr. at 245.

be to invest *that* allegation with a potency which the court specifically denied to the naked allegation of inaccuracy itself;[51] the naked allegation of coercion would entitle the defendant to a hearing, at least whenever the affidavit contained the description of an unaccounted for suspect. The court declined to address itself fully to this issue on the theory that the required disclosure of the informant's identity might obviate the problem.[52]

The court suggested, additionally, that a showing of coercion would increase the burden on the prosecution to show that the police were reasonable in relying on any misinformation received from the informant.[53] The very presence of coercion, however, could often obviate the need to show any specific inaccuracy in the description or elsewhere, since, as the court noted earlier in its opinion, "an affidavit may be inaccurate because of the failure to *include* information which might otherwise negate a finding of probable cause."[54] The presence of coercion might negate the finding required under *Aguilar* that the informant is reliable.[55] Thus proof of coercion could constitute a *prima facie* showing of inaccuracy *and* of unreasonableness. Furthermore, if omission of the fact of coercion is itself an inaccuracy, a specific offer of reasons for contending the informant was coerced should satisfy *Theodor's* threshold burden, independent of any inference of an erroneous description.

One other issue is left unresolved by the court in *Theodor.* If an alleged erroneous fact is such that its excisement from the affidavit would clearly not defeat the finding of probable cause, will the defendant nonetheless be entitled, upon offer of proof of the existence of the erroneous fact, to a hearing into the accuracy of the affidavit *as a whole*?[56] In its original opinion, the court had assigned to the

51. The court stressed the requirement that the defendant offer *specific reasons* for contending that the affidavit is inaccurate. *Id.* at 103, 501 P.2d at 252, 104 Cal. Rptr. at 243.

52. *Id.* at 103-04, 501 P.2d at 253, 104 Cal. Rptr. at 245. Presumedly, if Theodor, after disclosure, can offer specific reasons for contending that the informant was coerced, this will be sufficient to raise the inference of inaccuracy and satisfy the threshold burden. See text accompanying notes 53-55 *infra.*

53. 8 Cal. 3d at 103, 501 P.2d at 253, 104 Cal. Rptr. at 245.

54. *Id.* at 96 n.11, 501 P.2d at 247 n.11, 104 Cal. Rptr. at 239 n.11.

55. Aguilar v. Texas, 378 U.S. 108, 114 (1964).

56. Nowhere in its opinion does the court indicate that the scope of the section 1538.5 hearing is to be limited to the proof of the specific inaccuracy charged. Were the inquiry to be so limited, there would then be no purpose for a hearing which could not foreseeably benefit the defendant, *viz.*, where the alleged inaccuracy is immaterial to the finding of probable cause.

defendant the burden of showing a *material* error and, thus, the threshold burden of offering specific reasons for believing that the affidavit might be *materially* inaccurate.[57] In a subsequent modification, the court deleted all references to materiality.[58] This would appear to expose the entire affidavit to scrutiny at a section 1538.5 hearing upon defendant's offer to prove even the most minute and immaterial factual error.

Nevertheless, the adoption of a standard for affidavit accuracy based on "reasonable belief" will endanger only the most carelessly or deceitfully procured search warrants. By limiting a defendant's right to a hearing into affidavit accuracy, moreover, the court necessarily precludes the testing of every affidavit. Ultimately, it is the scope of the threshold burden, as much as the standard of accuracy itself, which will reveal the vulnerability of inaccurate search warrant affidavits in California.

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57. Theodor v. Superior Court, 8 Adv. Cal. 3d 77 (1972); L.A. DAILY J. APP. REP., Oct. 16, 1972, at 16.

58. Theodor v. Superior Court, 8 Adv. Cal. 3d 348a (1972). *Compare* the sources cited in note 57 *supra with* Theodor v. Superior Court, 8 Cal. 3d 77, 501 P.2d 234, 104 Cal. Rptr. 226 (1972).