

FEB 29 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARNULFO RICARDO MARTINEZ,

Defendant - Appellant.

No. 07-30132

D.C. No. CR-06-02119-WFN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior Judge, Presiding

Argued and Submitted January 7, 2008
Seattle, Washington

Before: KLEINFELD, TASHIMA, and TALLMAN, Circuit Judges.

The warrant to search Martinez's storage unit was valid. The magistrate had a substantial basis for finding probable cause and there was a reasonable nexus

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

between the activities supporting probable cause and the location to be searched.¹ The valid warrant was based on Martinez's two controlled buys of narcotics, a search of Martinez's home and person that uncovered narcotics and receipts for a storage unit in his name, and an experienced detective's opinion that the storage unit would have more drugs, contraband, and money (we need not and do not imply that special expertise would be required to find a likelihood of narcotics in the storage unit of a narcotics seller who had narcotics in his house).

The district court abused its discretion by denying Martinez's request to fire his retained counsel without further inquiry into his request. The first time Martinez brought up the issue, the judge encouraged him and his lawyer to work out the problem, and the second time the judge did not inquire and make findings. Indeed, the court apparently did not rule on the motion, assuming that it had ruled on the motion at the prior hearing. Without a definitive ruling, however, including a statement of the reasons for the ruling, we are unable effectively to review Martinez's claim of Sixth Amendment error.²

¹ United States v. Ocampo, 937 F.3d 485, 490 (9th Cir. 1991).

² See United States v. Gonzalez-Lopez, 126 S. Ct. 2557, 2561-63 (2006).

AFFIRM in part, VACATE the sentence and REMAND to the district court to engage in a proper inquiry into Martinez's motion and for resentencing.