IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CASE NO. 2023-CF-002935

STATE OF FLORIDA

vs.

TOMASZ ROMAN KOSOWSKI
_____/

MOTION TO SUPPRESS EVIDENCE ILLEGALLY OBTAINED FROM THE DEFENDANT'S RESIDENCE

Tomasz Roman Kosowski, by and through his undersigned counsel, pursuant to Rules 3.190(g) and 3.190(h) of the Florida Rules of Criminal Procedure, hereby moves this Honorable Court to suppress all evidence seized during and as a result of the search of the Defendant's residence at 511 Seaview Drive, Tarpon Springs, Florida, which began on March 23, 2023. The evidence to be suppressed specifically includes, but is not limited to, all items retrieved from Dr. Kosowski's residence and all observations made by law enforcement within that residence. As grounds therefore, the Defendant states as follows:

1. The Defendant's rights under the Amendments IV, V, and XIV of the United States Constitution and Article I, Section 12, of the Florida Constitution were violated when law enforcement unlawfully entered and searched the Defendant's residence at 511 Seaview Drive, Tarpon Springs, Florida, in the course of the instant case.

The Alleged Facts Set Out in the Search Warrant Affidavit

2. The events underlying the issuance of the search warrant began on March 21, 2023 at approximately 11:46 A.M., when Largo Police Department officers were called out to conduct a welfare check at The Blanchard Law Office.

3. The affidavit that was later submitted in support of the search warrant provided that Jake Blanchard, a bankruptcy attorney, reported that his employee, S.C., had been at work at his firm on March 21, 2023. S.C. purportedly went to the restroom between 9:30 and 10:00 AM that morning and did not return to his desk. S.C.'s keys, wallet, and phone remained in S.C.'s office and S.C.'s car remained in the parking lot.

4. Blanchard later reported to the detective that S.C. was scheduled to participate in a teleconference at 10:30 A.M. that morning in a pending civil case in which Dr. Kosowski was the plaintiff.

5. Dr. Kosowski logged in and attended the telephonic hearing. S.C. did not log in to the hearing.

6. At 2:33 P.M., S.C. was listed as a missing person via the Florida Crime Information Center and the National Crime Information Center.

7. The search warrant affidavit stated that security footage showed what appeared to be a gray Toyota Tundra enter the office building parking lot on March 21, 2023 at 08:32:52. A male wearing jeans, a long sleeved white T-shirt, with a

backpack, and wearing "what appeared to be gloves," entered the building carrying "a large box" on his shoulder. At approximately 8:37:26 that day, S.C. entered the building.

8. At approximately 9:50 A.M., an alarm sensor in the building logged an opening and closing of the door of S.C.'s office within the law firm.

9. The affidavit stated that security footage showed that, at 10:22:18, a male exited the building wearing jeans, a blue T-shirt, a backpack and a surgical mask. The male was "tugging and pulling at what appeared to be a small, heavy wagon that was on wheels" and which was covered by a red or orange blanket. The affidavit states that the male was out of view of the camera until approximately 11:05:15 hours, when he is seen repositioning the cart in the parking lot before again going out of the camera view. At approximately 11:15:37 hours, a person the affiant believed to be the same unknown male is seen wearing a grey shirt. The affidavit then states that "[a]t approximately 11:16:04 hours a crew cab truck, gray in color, was observed pulling forward from the parking spot."

10. During the course of the investigation, the affiant entered the men's restroom of the office building and purportedly "observed what appeared to be a red liquid smeared on the exterior of the men's restroom door" and "what appeared to be drops of a red liquid on the single toilet stall wall to the left of the single urinal." Smeared red liquid also allegedly was present on the exterior of the toilet bowl and on the

floor of the stall. The affiant claimed that the liquid appeared to be blood. The affidavit further claimed that the room smelled strongly of cleaning products and that "the red substance tested positive as blood." The affidavit did not state which red substances tested positive for blood, what testing was performed, whether the testing was a presumptive test, or the quantity of suspected blood found. The affidavit also does not reference any testing having been performed on the red liquids to connect them to S.C.[1]

11. The affidavit went on to allege that, on Tuesday March 14, 2023, Debra Henrichs, an employee of a veterinary clinic located in the office building where Blanchard Law is located, had entered a utility closet in a common area of the building. Upon entering the utility closet, Henrichs saw an unknown male dressed in jeans, a loose T-shirt, and wearing a surgical-type mask. The man told her that he was there due to a power outage. She claimed that the man left in truck that "was believed to a (sic) be a Toyota Tundra." The affidavit claimed Henrichs observed the truck to have a yellow license plate that she believed "was possibly from New Jersey."

[1] As an example, the aforementioned red liquid smeared on the exterior of the men's restroom door was proven through forensic testing not to be blood. In addition, the P-trap from the sink in the bathroom of the office building was tested for the presence of blood. It tested negative for the presence of blood.

12. On March 23, 2023, the affiant was informed that a latent print on the interior surface of the utility closet room door was purportedly identified as being from Dr. Kosowski's left index finger.

13. The affidavit did not reference the 13 other latent prints found on the interior surface of the utility closet door nor the 169 other latent prints lifted from that and other areas of the building that were not identified to Dr. Kosowski's known prints.

14. The affidavit did, however, acknowledge that Dr. Kosowski had been present at the Blanchard Law Firm on January 26, 2023, to attend a deposition.

15. The affidavit additionally asserted that footage from a "FLOCK" camera showed a grey Tundra with an unregistered yellow New Jersey tag travelling in Tarpon Springs Florida at 11:51:32 on March 21, 2023 with what the detectives believed was a wagon covered by a red or orange blanket in its bed. Law enforcement later discovered surveillance footage from a motion activated camera at a residence that is located south of 511 Seaview Drive that is alleged to have shown the Tundra traveling south on March 21, 2023 at 07:51 A.M. and then travelling north at 11:58 A.M. purportedly "with the wagon and red/orange blanket" in the bed.

Law Enforcement's Unlawful Entry onto 511 Seaview Drive Prior to Obtaining a Search Warrant

16. On March 22, 2023, at approximately 6:00 P.M., approximately 30 hours prior to obtaining a search warrant, Largo Police Department Detective Lance Wagoner, per his police report, was involved in a neighborhood canvas in the area of 511 Seaview Drive, during which he "secures the residence." In his deposition, Det. Wagoner did not elaborate on what "securing the residence" meant, but did not deny going onto Dr. Kosowski's private property.

17. At 11:25 A.M. on March 23, 2023, approximately 12 hours prior to obtaining the search warrant, Detectives Colin Bolton (the affiant) and Jerry Hunt were at the front door of 511 Seaview Drive attempting to make contact with the owner, Dr. Kosowski. At that same time, Largo Police Detectives Steven Allred and Keith Wedin walked around the 511 Seaview Drive property, including walking into the backyard by way of an easement on the north side of the property. Detectives Bolton and Hunt's body warn cameras captured that activity. Detectives Allred and Wedin's body worn cameras were not activated during their searches.

18. After negative contact with the owner of 511 Seaview Drive, Detectives Bolton and Hunt turned off their body worn cameras and joined Detectives Allred and Wedin in surveilling the 511 Seaview Drive property. Detectives Bolton and Hunt walked into the 511 Seaview Drive backyard and took approximately 70 photographs of the property with Det. Bolton's iPhone.

19. The photographs taken by Detectives Bolton and Hunt show angles of the 511 Seaview Drive home and features of the backyard that could not been seen without being within the backyard of 511 Seaview Drive, on private property.

20. Detective Bolton had geolocation metadata turned off while taking those photographs, thus not allowing for GPS mapping to be used to determine the location where the photographs were taken. The detective's actions in doing so violate Largo Police Department evidence preservations guidelines.

21. None of the four detectives present at 511 Seaview Drive that morning had a hardcopy or a digital copy of the property map, nor did any of them use GPS devices while on scene to assist them in determining whether they were trespassing on private property or not. All the detectives present had the ability to record and document their search by means of the Axon camera application on their phones. They failed to do so.

22. Furthermore, none of the four Largo Police detectives were able to clearly articulate how they knew they passed from state park property adjacent to 511 Seaview Drive by referencing visual landmarks while they were searching and taking photographs on the property.

23. Specifically, Det. Bolton, the affiant and lead detective, whose iPhone was used to take the photographs of the backyard, could not recall in his deposition testimony any features of the terrain that allowed him to judge where he was.

24. For the remainder of the day, Largo Police officers remained on scene at 511 Seaview Drive, camping out in front of the home and setting up their "command bus" command station less than 200 feet from the home. Over 20 Largo Police personnel were stationed in front of 511 Seaview Drive by late afternoon, preventing anyone form accessing the house.

25. The affidavit submitted in support of the search warrant set out specific details of the features of the 511 Seaview Drive home, including information detailing features only from the rear of the home, which would not be visible from the publicly accessible curtilage that surrounds the home.

The Affidavit's Absence of any Information Concerning the Affiant's Qualifications

26. The affidavit set out that the affiant:

> …is a sworn law enforcement officer employed by the Largo Police Department. Your Affiant, Detective Colin Bolton, is currently employed as a sworn police officer for the city of Largo, and has been so employed since June 24, 2013. Your Affiant has attended the Police Academy through Hillsborough Community College. Your Affiant was assigned as a crime scene investigator in 2016. Your Affiant has been assigned as a detective in the Investigative Services Division at the Largo Police Department since March 2022. Your Affiant is currently assigned to the Crimes Against Persons section of that division.

The affidavit made no mention of what experience the affiant had, if any, in investigating homicide cases or in investigating reports of missing persons.

The Purported Offense that the Affidavit Alleged to have been Committed

27. On March 23, 2023, law enforcement sought a search warrant for 511 Seaview Drive, Tarpon Springs, Florida, a residence known to be owned by Dr. Kosowski.

28. As to the offense that was purportedly believed to be committed, the affidavit went on allege that the residence was:

> … under the care, custody, and control of Tomasz Kosowski, that the laws of the State of Florida, to wit:
>
> 782.04--First Degree Murder
>
> are being violated and/or property which constitutes evidence that said laws are being violated therein.

Pertinent Information that was Omitted from the Affidavit

29. A multitude of information critical to the investigation of the disappearance of S.C. was known or should have been known to law enforcement at the time of the search warrant affidavit but was nonetheless omitted.

30. For one, Blanchard knew S.C. to suffer from anxiety. He also knew S.C. to be a recovering alcoholic. He later testified that S.C. was receiving treatment for both conditions. On the day of S.C.'s disappearance, however, Blanchard had had conversations with S.C.'s husband and father in which he stated that S.C. might have disappeared as a result of relapsing into alcohol abuse. Blanchard provided that information to law enforcement. That alternative explanation for S.C.'s disappearance was omitted from the affidavit.

31. In addition, when law enforcement initially responded to Blanchard's 911 call, Blanchard was asked: "Can you think of anyone who would want to harm S.C." He initially responded that he could not think of anyone who would want to harm S.C. Later that day, law enforcement asked him if "there are any lawyers that maybe had issues with" S.C. Blanchard then brought up Dr. Kosowski's name. Blanchard reiterated that he knew S.C. and Dr. Kosowski had a problem, but that he "never expected any kind of physical violence." That information was omitted from the affidavit.

32. Furthermore, in his initial interview by law enforcement, S.C.'s husband, Michael Montgomery was asked by Det. Bolton if he could think of anyone who might have done something to S.C. Montgomery responded that "he could not think of anyone who could go to that extreme." That information was omitted from the affidavit.

33. With respect to the fingerprint that was allegedly identified from the utility closet door, the affidavit did not reference that it was only a partial print. More critically, the affidavit did not state that at least 169 other latent prints were lifted from the utility closet and from other areas in the office building. At least 65 of those latent prints were deemed "of value." The other latent prints included *at least 14 from the utility closet door* and at least 12 from the electrical box panel inside that closet – the panel the mysterious person was allegedly inspecting. At least five

latent print lifts were also taken from tissue paper that were believed to contain blood and which were located in the trashcan in the bathroom. None of those many other latent prints were identified as the prints of Dr. Kosowski. Moreover, three other positive matches were made to persons other than Dr. Kosowski, but were not investigated. All of that critical information was omitted from the affidavit.

34. In addition, witness Carole Celeste Bacher, on March 21, 2023, saw an unknown male with a goatee at 1501 S. Belcher at the time of S.C.'s disappearance. Det. Bolton and Det. Hunt testified in their depositions that the goateed man Mrs. Bacher observed is believed to be the same person of interest seen in surveillance videos who was pulling the wagon that was purported to contain S.C.'s body. On March 22, 2023, Largo Police Detective Amanda Gay showed Bacher a photopack that contained a photograph of Dr. Kosowski. Bacher *did not* identify Dr. Kosowski as the goateed man she saw. That exculpatory information was omitted entirely from the affidavit as was *any* mention of Carole Celeste Bacher.

35. In addition to the omission of Bacher's non-identification of Dr. Kosowski, the affidavit omitted critical information concerning the unreliability of Henrichs' purported observations. Detective Bolton, the lead detective and case agent on the case, saw Henrichs as an unreliable witness. He testified in his deposition that a photopack of suspects was never shown to Henrichs because the man she saw in the utility closet on March 14, 2023 wore a surgical mask. Bolton thereby believed that

it would be "highly unlikely that she could ID the person." That information was omitted from the affidavit.

36. With respect to the purported blood in the bathroom, all three of the initially responding law enforcement on scene testified in depositions that there was not a lot of blood in the bathroom. One of the investigating officers discussed that directly with Blanchard, specifically stating to him, "there's not a lot of blood in the bathroom." Photographs taken of the bathroom confirm that assessment. In addition, expert witness Chad Summerfield testified in his deposition that *no* DNA of Dr. Kosowski was found in the bathroom. Instead, only a smudge containing his DNA was found on the outside of the bathroom door. That smudge, moreover, was found *not* to be blood. The affidavit, however, led the issuing court to believe that purported blood was strewn throughout the bathroom.

37. Compounding on the misleading allegations concerning the volume of blood in the bathroom, the affidavit states that Forensic Specialist Amber Camacho informed the affiant that the "red substance" found in the bathroom tested positive for blood. Camacho's report, however, indicates that Camacho tested for blood in only one area of the bathroom – the sink's P-trap. As discussed below, the P-Trap tested negative for the presence of blood. It is unclear why other specialists directly involved in the testing of blood were not discussed in the affidavit. However, Camacho certainly should not have been misrepresented as a witness directly

involved in the testing. And, again, the affidavit clearly misled the issuing court to believe that purported blood was strewn throughout the bathroom.

38. Det. Bolton testified in his deposition that he came to believe that a "bloodletting event" occurred in the 1501 S. Belcher bathroom only after the bathroom was processed with Luminol. Luminol is well known to give a false positive result for the presence of blood when it is used on surfaces that were recently cleaned with household chemicals, particularly bleach. Several witnesses noted the smell of bleach on March 21, 2023. The search warrant affidavit omitted the fact that recently used bleach and other household chemicals can cause false positive Luminol results.

39. Furthermore, by the time of the search warrant affidavit, a sample from the "P-trap" of the sink in the bathroom was tested for the presence of blood. The test was negative for the presence of blood, indicating that the scene had not been recently cleaned. That critical information was omitted from the affidavit.

Violations of Law Enforcement's Own Rules for Executing the Search Warrant

40. On March 23, 2023, at 10:21 P.M., a search warrant was issued for the 511 Seaview Drive property.

41. Tarpon Springs Police Department SWAT members made entry into the home at 11:12 P.M. despite 20 Largo Police agents having been camped out in front of the home for at least six hours.

42. The SWAT team opened the garage door of the home prior to the search warrant being read.

43. The search warrant was read on scene by TSPD Detective John P. Melton at 11:38-11:45 P.M.

44. Assistant State Attorney Spadaro was on scene at 511 Seaview Drive and clearly articulated the rules of the search: since 511 Seaview Drive was in Tarpon Springs Police Department's jurisdiction, only TSPD was allowed to search the home and handle evidence; LPD could act solely in an advisory capacity. Lieutenant Christy Lomonaco, the scene commander for LPD, clearly articulated, "We, Largo, cannot open, touch or search anything."

45. Despite nearly all TSPD SWAT team members having active body worn cameras when they made entry into the 511 Seaview Drive home, no TSPD detectives or LPD detectives turned on their body worn cameras during the search, preventing examination of fidelity to their search rules.

46. However, the body worn camera of TSPD Detective John Melton was activated during an initial walkthrough conducted with LPD Detectives Bolton and Hunt of the 511 Seaview Drive garage area. In Det. Melton's BWC video, one can clearly observe Det. Bolton taking photographs of items of interest (at 1:35, 5:00, and 5:22) on his work-issued cellular phone at the direction of Det. Hunt. More significantly, Det. Bolton is seen searching within the Toyota Tundra cabin at 7:57.

47. Furthermore, by his own admission, LPD Detective Bolton handled evidence within 511 Seaview Drive during the search of the main floor, in violation of the jurisdictional rules outlined by the State. During his deposition, Det. Bolton was asked "Did you pick things up and look at them?" He replied, "I don't specifically recall, but I'm sure I did."

48. As discussed above, a grey 2016 Toyota Tundra was found parked inside the garage of the residence. A presumptive positive test result for blood was registered on the tailgate of the truck. Purported blood was also located on the floor of the garage.

49. Det. Bolton did not, however, wear shoe covers at the 1501 S. Belcher scene. Det. Bolton, moreover, used the sole of his shoes to open the entry door to the bathroom at 1501 S. Belcher and to open the stall door inside that bathroom.

The Lack of Probable Cause to Support the Issuance of the Warrant

50. Given the above facts, the search warrant was issued in the absence of probable cause to believe that the crime of First Degree Murder, or any other crime for that matter, was committed.

51. Second, as discussed in greater detail below, the affidavit omitted critical material facts that would have negated any purported probable cause that might have supported the issuance of the warrant.

52. Third, the affidavit included information that law enforcement could have only obtained from the unlawful entry onto the property of 511 Seaview Drive. Such information, of course, would have been obtained prior to the issuance of the search warrant and in the absence of any other lawful basis.

53. Fourth, law enforcement knowingly and intentionally searched the residence in violation of jurisdictional search rules.

54. For those reasons, the search of the 511 Seaview Drive property violated Dr. Kosowski's right to be free from unreasonable searches and seizures, as guaranteed under the United States and Florida Constitutions.

WHEREFORE, based on the forgoing, the Defendant moves this Honorable Court to grant this Motion and suppress all evidence obtained during the searches of Dr. Kosowski's residence and all subsequently obtained evidence that resulted from said unlawful searches. The evidence to be suppressed specifically includes, but is not limited to, the Toyota Tundra and the results of any testing performed thereon and all observations made by law enforcement within that residence.

MEMORANDUM OF LAW

"To establish probable cause, a supporting affidavit for issuance of a search warrant 'must satisfy two elements: first, that a particular person has committed a crime—the commission element, and second, that evidence relevant to the probable criminality is likely located at the place to be searched—the nexus element.'"

Sanchez v. State, 141 So. 3d 1281, 1284-85 (Fla. 2d DCA 2014) *quoting Burnett v. State*, 848 So. 2d 1170, 1173 (Fla. 2d DCA 2003); *citing State v. McGill*, 125 So. 3d 343, 348 (Fla. 5th DCA 2013). "'This determination must be made by examination of the four corners of the affidavit.'" *State v. Peltier*, 373 So. 3d 380, 384 (Fla. 2d DCA 2023) *quoting Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002). Evidence seized pursuant to a search warrant is subject to suppression if "the affidavit failed to establish probable cause to believe that evidence relevant to the probable criminality was likely located at the place to be searched." *Hicks v. State*, 292 So. 3d 486, 488 (Fla. 2d DCA 2020); *see also Chery v. State*, 331 So. 3d 799 (Fla. 2d DCA 2021); *Castro v. State*, 224 So. 3d 281 (Fla. 2d DCA 2017).

When law enforcement seeks the issuance of a search warrant, a neutral and detached magistrate must review the application for the search warrant to determine if it is supported by probable cause. *Coolidge v. New Hampshire*, 403 U.S. 443, 449, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Illinois v. Gates*, 462 U.S. 213, 239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

Because "reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause," the Supreme Court has provided for reviewing courts to accord "great deference" to the issuing court or magistrate's

determination. *United States v. Leon*, 468 U.S. 897, 914, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). Nonetheless, the Supreme Court has further stressed "[d]eference to the magistrate, however, is not boundless." *Id*. A reviewing court must not, therefore, "defer to a warrant based upon an affidavit that does not 'provide the magistrate with a substantial basis for determining the existence of probable cause.'" *Id.* at 915 *quoting Gates*, 462 U.S. at 239. Consequently, "even if the warrant application was supported by more than a 'bare bones' affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances or because the form of the warrant was improper in some respect." *Id. citing id* (internal citations omitted).[2]

When determining whether probable cause existed to support the issuance of a search warrant, the reviewing court must limit its determination to only the information contained in "the four corners of the affidavit." *Goesel v. State*, 305 So. 3d 821, 823-24 (Fla. 2d DCA 2020) *quoting Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

[2] In addition, as discussed in greater detail below, the Supreme Court has further held deference to a magistrate's finding of probable cause does not preclude any inquiry under *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), as to information that knowingly or recklessly omitted or falsified from a search warrant affidavit. *Leon*, 468 U.S. at 914.

A. The Affidavit Failed to Provide Probable Cause to Establish the Requisite "Commission Element."

The issuing court erroneously determined that the search warrant affidavit provided a substantial basis to provide probable cause to believe that the crime of First-Degree Murder had been committed. Indeed, the affidavit was insufficient to establish *any* crime was committed. At most, the affidavit provided probable cause of a mere missing persons scenario.

> First Degree Murder, of course, requires proof of:
>
> (1)(a) The unlawful killing of a human being:
> 1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;
> 2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any: [enumerated felonies a.-s.] or
> 3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the proximate cause of the death of the user: [enumerated controlled substances a.-i.]

Foster v. State, 258 So. 3d 1248, 1252 (Fla. 2018) *quoting* Fla. Stat. § 782.04.

Most critically, of those elements, the search warrant affidavit failed to supply probable cause that S.C. was deceased. The affidavit did not even allege that S.C. was deceased. The closest the affidavit came to making any such allegation was the conclusory claim made after the recitation of facts that "[b]ased on the above facts and circumstances and your affiants training and experience, there is probable cause to believe that crucial evidence, including the gray Toyota Tundra, related to [S.C.]'s

disappearance and suspected death are contained within the home." Even if that conclusory claim could be interpreted as an assertion that S.C. is deceased, the four corners of the affidavit provided no competent evidence to support any such conclusion. At best, the State's evidence presented a hypothesis that Dr. Kosowski purportedly murdered S.C. and disposed of the body with virtually no trace. The evidence also, however, supports numerous reasonable hypotheses of Dr. Kosowski's innocence and/or of S.C. having disappeared on his own accord.

The affidavit provided nothing, beyond mere speculation, to provide probable cause that S.C. is deceased. That is particularly true in light of the fact that the affidavit did not discuss an alleged murder weapon and did not present any theory whatsoever as to how S.C. might have allegedly been killed. In the end, the affidavit provided no facts to back up the speculation that S.C. is deceased.

Aside from the failure to present probable cause that S.C. is deceased; the affidavit likewise failed to provide probable cause to suggest that the alleged death was the result of an act of Dr. Kosowski. Any evidence pointing to Dr. Kosowski as a purported murderer of S.C. is wholly speculative. While evidence clearly linked Dr. Kosowski to S.C. and Blanchard Law, the link was the obvious result of the litigation that S.C. and Dr. Kosowski were in the midst of. Though, on one hand, the contentious nature of the litigation could arguably supply a motive for Dr. Kosowski allegedly wanting S.C. dead, it also provides an innocent explanation as

to why Dr. Kosowski would have allegedly been present at Blanchard Law on other occasions and why he would have allegedly been "aggressive" during the litigation. Motive, furthermore, is not among the elements of First Degree Murder. Even if the affidavit could have arguably supplied probable cause of a speculative motive, it did nothing to show probable cause that Dr. Kosowski committed the act that caused the death of S.C. To be sure, even to date, the State has presented no theory as to how S.C. purportedly died.

Aside from failing to supply probable cause for the existence of any of the material elements of First Degree Murder, the affidavit further failed to provide any basis on which the affiant was qualified to opine that a First Degree Murder was committed under the circumstances. Indeed, the affidavit made no mention of the affiant having any experience or training whatsoever in the investigation of homicides. *See Goesel*, 305 So. 3d at 824-25 (finding that a search warrant affidavit was insufficient to show probable cause for suspected possession of child pornography after reasoning, in part, that the issuing court erroneously relied on the affiant's assessment that an image was child pornography when the affidavit "did not demonstrate that [the affiant] had any training or expertise in identifying child pornography. *id.* at 824.) To whatever extent the facts set out in the affidavit might have gone towards providing probable cause that a First Degree Murder was

committed, the affidavit entirely failed to provide a basis on which the affiant could reasonably make such a determination from those facts.

In the end, based on the information contained in the four corners of the search warrant affidavit, the allegation that a First Degree Murder was committed was nothing more than unfounded speculation. Law enforcement prematurely sought a search warrant as a means of conducting a fishing expedition. Given the totality of the circumstances, the affidavit woefully failed to satisfy the requisite commission element.

B. <u>The Affidavit Misled the Issuing Court, Omitted Critical Facts that Would Have Negated the Existence of Probable Cause, and Relied on Illegally Obtained Information</u>

Pursuant to the landmark decision *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the trial court is required to hold an evidentiary hearing when a defendant "'makes a substantial preliminary showing that [(1)] the affiant knowingly or intentionally or with reckless disregard for the truth included a false statement [or omitted material facts] in the affidavit, and [(2)] that statement [or omitted fact] was necessary to the finding of probable cause.'" *Andrews v. State*, 390 So. 3d 221, 233 (Fla. 2d DCA 2024) (brackets in original) *quoting Pilieci v. State*, 991 So. 2d 883, 893 (Fla. 2d DCA 2008). In such instances, "[w]here an affidavit forms the actual basis of a warrant, the trial court has the duty to determine if the statements contained therein are, in fact, untrue. *Debord v. State*, 422 So. 2d 881,

882 (Fla. 2d DCA 1982). "When faced with a challenge to a search warrant affidavit that allegedly omits relevant facts or contains false statements, the trial court must discern (1) whether the affiant acted 'with intent to deceive or with reckless disregard of whether such information should have been revealed to the magistrate' and (2) whether the omitted or false statements, if properly included or excluded, would have defeated probable cause." *Andrews*, 390 So. 3d at 233-34 *quoting Pagan v. State*, 830 So. 2d 792, 807 (Fla. 2002). The omission of facts or inclusion of false information must be more than an innocent mistake – the acts must be committed intentionally or recklessly. *Id.* When an affidavit implies a fact that the affiant knows or should know is not true, the implication is at least recklessly false. *State v. Marrow*, 459 So. 2d 321, 322 (Fla. 3d DCA 1984) (holding that "where, as here, the affiant clearly implied that the critical conversation discussed in the affidavit was between the confidential informant and him, even though the affiant did not expressly state that he 'personally' spoke to or interviewed the informant, the affiant's statement is at least recklessly false.)

In the instant case, the affidavit omitted a plethora of critical information that would have negated the trial court's finding of probable cause. With those critical omissions, combined with misleading statements concerning the volume of suspected blood in the law office restroom, the affidavit was written to recklessly or intentionally deceive the issuing court. Among the most critical of the information

that was omitted was Carole Celeste Bacher's observation of the suspected person of interest, that is, the person who was pulling the wagon, but who Bacher *did not* identify as Dr. Kosowski.

Among the additional information the affidavit omitted was the S.C.'s mental health and substance abuse history. Those factors provided viable reasons why S.C. may not have abruptly left and not been seen or heard from for a period of approximately 48 hours. Mr. Blanchard even initially speculated that those factors may have been the cause of S.C.'s disappearance. Those facts were particularly relevant given the short time in which S.C. had been missing by the time the search warrant was sought. Had the issuing court been aware of those critical facts, it would not have found probable cause to believe a First Degree Murder could have been committed, particularly given the applicable time frame.

In addition, the affidavit omitted crucial facts concerning evidence collected in the restroom of the office building. Perhaps most notably, the affidavit alerted the court to an AFIS match made to one partial latent print found on the office closet door but failed to mention the dozens of other latent lifts that were collected in that closet, as well as in other areas of the office building. Indeed, at least 169 other latent prints were lifted from the utility closet and from other areas in the office building. At least 65 of those latent prints were deemed "of value." The other latent prints included *at least 14 from the utility closet door* and at least 12 from the

electrical box panel inside that closet – the panel the mysterious person was allegedly inspecting. None of those many other latent prints were matched to Dr. Kosowski. Of those prints, matches were made to at least three people who had no reason to be in the closet, Edward Jarzembowski, Dennis Carrion, Patrick Atkinson. All of that critical information was omitted from the affidavit.

Moreover, with respect to the one partial print that was found on the door, the fingerprint examiner who made that match no longer works in law enforcement or in the forensics field. She confirmed in her deposition that she cannot testify to the quality of that one print because she is no longer a print examiner and does not have her notes from the work she performed in this case. The search warrant affidavit states that the affiant was informed by "Lt. Focade of the PCSO AFIS Division that a latent print, identified as Tomasz Koswoski's left index finger, was found on the interior portion of the utility closet door." Lt. Focade, however, knew nothing about the latent print evidence or its qualify and was not qualified to give any such opinion. Under the circumstances, the results and reliability of the purported latent print match cannot be verified.

In addition, the affidavit was authored to lead its reader to believe a large volume of blood was observed through the bathroom in the office building. The facts did not support any such implication. As stated above, several initially responding law enforcement officers noted that there was *not* a lot of blood in the

restroom. Moreover, while the affidavit implied that blood was purportedly cleaned up within the restroom, testing of a sample taken from the restroom's sink's "P-trap" was negative for the presence of blood. Had blood been cleaned within the bathroom, it would defy logic for the P-trap in the bathroom's one drain line to have been devoid of blood. Those pertinent facts were, however, omitted from the affidavit. Again, had that information been included as it should have been, the issuing court would not have made a finding of probable cause.

As set forth above, probable cause did not exist to satisfy the commission element. However, even assuming that it did, the inclusion of the relevant omitted information and the excision of the false and misleading information certainly would nullify whatever arguable probable cause the initial affidavit might have supplied.

C. Law Enforcement Acted in Bad Faith by Trespassing on Dr. Kosowski's Property in an Effort to Obtain Evidence in Support of a Search Warrant Application, Much Like it Did in Seeking a Search Warrant for the Toyota Corolla

As set forth in the body of the motion, law enforcement clearly trespassed onto Dr. Kosowski's private property in its attempts to collect evidence in support of a search warrant application. It, likewise, made no reasonable efforts whatsoever to attempt to determine if it was in fact entering onto Dr. Kosowski's property prior to obtaining a search warrant. The photographs that law enforcement took of Dr. Kosowski's home prior to the issuance of the search warrant clearly indicate that law enforcement was on the constitutionally protected areas of 511 Seaview Drive at the

time various pictures were taken. Law enforcement, moreover, took steps to conceal its illegal acts by turning off body worn cameras and by disabling location data on the phone that took the photographs. Law enforcement's actions in doing so clearly indicated that law enforcement knew it was acting in bad faith in obtaining information concerning the 511 Seaview Drive property in its fruitless efforts to attempt to obtain information to support a search warrant application. The same LPD detectives who conducted a warrantless search in TSPD jurisdiction of the Toyota Corolla were responsible for trespassing and violating search rules at 511 Seaview, demonstrating persistent law enforcement misconduct. That egregious conduct clearly violated Dr. Kosowski's Fourth Amendment right to be free from unreasonable searches.

D. <u>Law Enforcement Repeatedly Violated its Own Rules in Conducting the Search</u>

Moreover, once the search warrant was obtained, law enforcement then persistently violated its own agency rules as well as the rules of the search that the State clearly articulated prior to the commencement of the search. Law enforcement acted in bad faith in doing so. The testimony of the respective officers must now be taken with great skepticism.

Under the circumstances, law enforcement jumped to a baseless conclusion in alleging a First Degree Murder had been committed when S.C. had allegedly been missing for only approximately 48 hours. Under this cloud of great skepticism, in

seeking a search warrant for Dr. Kosowski's home, law enforcement recklessly and/or intentionally omitted critical facts that were inconsistent with its speculative theory. It likewise recklessly or intentionally misled the court with respect to the evidence collected at the scene of S.C.'s last known appearance. It then recklessly or intentionally trespassed on Dr. Kosowski's property to make observations of his home. It thereafter recklessly or intentionally violated jurisdictional search rules. Had the court been fully and properly advised of these material facts of the investigation it would have clearly seen that law enforcement jumped to baseless conclusions after just 48 hours and that no probable existed to believe a First Degree Murder had been committed.

E. The Good Faith Exception to the Exclusionary Rule is Inapplicable Under the Circumstances

Under the good faith exception to the exclusionary rule, even when a search warrant is found to be invalid, evidence obtained in good faith through reasonable reliance on an invalid or defective search warrant may still be admissible in certain circumstances. *Leon*, *supra*, 468 U.S. 897. The Supreme Court held in *Leon*, for instance, that the Government would not be barred from using evidence that was obtained from a faulty search warrant "by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause." *Id.* at 900, 905 (emphasis added).

The *Leon* good faith exception cannot apply in the instant case, however, because, as set forth above, the affidavit failed to supply probable cause that a crime was committed. When "the supporting affidavit fails to establish probable cause to justify a search, Florida courts refuse to apply the good faith exception." *Garcia v. State*, 872 So .2d 326, 330 (Fla. 2d DCA 2004) *citing Getreu v. State*, 578 So. 2d 412 (Fla. 2d DCA 1991); *Bonilla v. State*, 579 So. 2d 802 (Fla. 5th DCA 1991). Similarly, as in this case, when a search warrant is issued based on a misleading or false affidavit, the good faith exception does not apply. *Thorp v. State*, 777 So. 2d 385, 393 n.11 (Fla. 2000) *citing Leon*, 468 U.S. at 923; *State v. Van Pieterson*, 550 So. 2d 1162, 1165 (Fla. 1st DCA 1989). For those reasons, any and all evidence obtained as result of the search warrant for 511 Seaview Drive must now be suppressed, including evidence obtained from the subsequent search of the Toyota Corolla, the cell tower warrants for the two phones found in the Corolla, the searches of the two Miami residences, the cellular tower data, and the financial records warrants.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by email to the Office of the State Attorney, Sixth Judicial Circuit of Florida, at SA6eservice@co.pinellas.fl.us on this 3rd day of February 2025.

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