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 TOYOTA COROLLA

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 a Toyota Corolla, which began on March 25, 2023. The evidence to be suppressed specifically includes, but is not limited to, all items retrieved from the vehicle, including two phones and information therein, and all observations made by law enforcement during the searches of the vehicle. 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 seized and searched the Defendant's Toyota Corolla in the course of the instant case.

The Alleged Facts Set Out in the Search Warrant Affidavit

2. The affidavit that was later submitted in support of the search warrant largely copied facts from an affidavit for a search warrant of Dr. Kosowski's residence at 511 Seaview Drive. That search warrant is the subject of a separate motion to suppress. The affidavit at issue in this motion added facts derived from the execution of the search warrant at 511 Seaview Drive.

3. 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.

4. The affidavit 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.

5. 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.

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

7. 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.

8. 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.

9. 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.

10. 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."

11. 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]

12. 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

[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.

he was there due to a power outage. She claimed that the man left in a 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."

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

14. 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.

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

16. 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.

17. The affidavit went on to allege that surveillance footage showed a red sedan "consistent with a Toyota Corolla" leaving the area of 511 Seaview Drive on March 21, 2023, at 4:48 P.M. A nearby homeowner identified that car as belonging to her neighbor "Tom." The sedan then returned three minutes later at 4:51 P.M. and left again seven minutes after that, at 4:58 P.M.

18. Later in the affidavit, the affiant stated that, in the surveillance videos, the Corolla sedan *did not* appear to be sagging from any large loads in the trunk.

19. The affidavit set out that a red Toyota Corolla is registered to Dr. Kosowski.

20. On March 23, 2023, the search warrant referenced above was executed at 511 Seaview Drive. During that search, a grey Toyota Tundra was located in the garage of the residence. The affidavit for the search of the Corolla alleged that "a red liquid substance" was found inside the truck's bed. The affiant alleged that the substance was consistent with blood and that he was told by a forensic specialist that the substance tested presumptively positive for blood. The affidavit later stated that the affiant had been advised that "areas of possible blood were located on the floor of the garage of the residence. It stated that the affiant spoke with PCSO forensic supervisor Kristen Stropes who advised "the garage floor was tested with Luminol

and had a positive reaction." The affidavit did not state where, in how many locations, and/or in how large of an area the Luminol showed a positive reaction.

21. The affidavit did not state, as discussed in greater detail below, that Dr. Kosowski was a surgeon and that his work clogs were found to have the presence of blood not belonging to Dr. Kosowski.

22. In addition, the affidavit similarly failed to reference that Dr. Kosowski is a known hunter.

23. The affidavit next stated that "[t]hrough further forensic processing, areas of possible blood were located and tested positive through presumptive testing." Again, the affidavit made no mention of how many areas of possible blood were located, where those areas were, or how large any of those areas were. The affidavit did not even state whether those areas were separate and distinct from the area that was Luminol tested.

24. The affidavit then opined that those unidentified areas of suspected blood "could be consistent with an area of blood being cleaned off the garage floor" or "could also be consistent with blood saturated items being transferred from the grey Toyota Tundra to another vehicle (Toyota Corolla)." The affidavit did not mention that law enforcement was aware of circumstances that could have caused any such blood to have been transferred from Dr. Kosowski's work clogs, from Det. Bolton's contaminated shoes, or from an animal carcass.

25. The affidavit acknowledged that a body was not located during the search of the residence, nor were the wagon, orange or red blanket, or clothing believed to have been worn by the person seen in the above-referenced surveillance videos.

The Purported Offense that the Affidavit Alleged to have been Committed

26. On March 25, 2023, law enforcement sought the search warrant for the Toyota Corolla registered to Dr. Kosowski.

27. By the time the search warrant was sought, Dr. Kosowski had been stopped by law enforcement in the Corolla at 34 West Orange Street, Tarpon Springs, Florida. He was then detained in custody from the time of that stop, approximately 3:19 P.M.

28. As with the affidavit for the search warrant for the residence, the affidavit for the search warrant for the Corolla alleged that the offense of First Degree Murder was "being violated and/or property which constitutes evidence that said laws are being violated is located therein."

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

29. The affidavit set out that the affiant, Jerry Hunt, was "a law enforcement officer with the Largo Police Department." The affidavit made no mention of whatever experience the affiant had, if any, in investigating homicide cases or even in investigating crime scenes. The affidavit did not even state how long the affiant had been in law enforcement, what if any training he had undergone, or even what

division of the agency he worked in. The affidavit provided no basis whatsoever for the affiant's belief that the observations be made provided probable cause to believe evidence of an alleged First Degree Murder would be located within the Corolla.

Pertinent Information that was Omitted from the Affidavit

30. 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.

31. For one, law enforcement knew or should have known S.C. to suffer from anxiety based on information Blanchard provided. It also knew or should have known S.C. to be a recovering alcoholic. Blanchard later testified that S.C. was receiving treatment for both conditions. On the day of S.C.'s disappearance, however, Blanchard 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.

32. 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.

33. 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.

34. 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.[2]

35. 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 critical information was omitted entirely from the affidavit as was *any* mention of Carole Celeste Bacher.

36. In addition to 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 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

[2] 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.

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

37. 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.

38. 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.

39. 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.

40. 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.

41. In addition, as set forth above, the affidavit omitted critical details of the location(s), number of area(s), or size of the area(s) where presumptive blood was allegedly found during the search of the 511 Seaview Drive residence. It likewise made no mention of the presumptive freshness of the suspected blood. Based on the information in the four corners of the affidavit, the presumptive blood could have been two small droplets of dried blood that may or may not have been human blood.

42. That omitted information is critical because the affidavit also omitted Dr. Kosowski's profession. Law enforcement knew or certainly should have known by that time that Dr. Kosowski is a *surgeon*. Given his profession, he would have had contact with human blood on a regular basis. The nature of his profession provided a non-criminal reason why non-descript blood would have been located in his garage.[3] Dr. Kosowski's profession was, however, omitted from the affidavit.

43. Just the same, any person who, like the law enforcement officers, took one look inside Dr. Kosowski's garage would realize that Dr. Kosowski is a hunter. In plain sight within the garage at the time of the search were rifles, rifle ammunition, reloading tools, a hunting table stand, iron shooting target, hunting apparel, and a large meat freezer. Consequently, it would not be unlikely to find a small amount of animal blood in the garage or even in the Tundra truck bed.

44. In addition, the affidavit stated that the Affiant "spoke with PCSO Forensic Supervisor Stropes, who explained that the garage floor was tested with Luminol and had a positive reaction." Supervisor Stropes, in fact, was never at 511 Seaview Drive nor were any of her team members. It thus would have been impossible for Stropes to observe any Luminol testing of the garage floor. Certainly she could not testify to the distribution of the Luminol reaction nor to where additional blood was

[3] To be sure, when the search warrant of Dr. Kosowski's person was executed, blood not connected to the instant case was located on Dr. Kosowski's work clogs.

found with Luminol. The affiant acted irresponsibly in relying on the account of an alleged witness who was not actually present at the scene to observe the observations that she relayed, of which the distribution and amount of the post-Luminol blood testing is critical to the understanding its significance.

Fourth Amendment Violations That Occurred During the Execution of the Search Warrant

45. As referenced above, on March 25, 2023, Tarpon Springs Police Department conducted a felony stop at 34 West Orange Street in Tarpon Springs of a Toyota Corolla being driven by Dr. Kosowski as he was returning home from work in Miami. He was detained at 3:19 P.M. by TSPD and placed in the back of a TSPD cruiser, handcuffed.

46. After Dr. Kosowski was detained, TSPD cleared the vehicle of personnel at 3:20 P.M. and Corporal Gibson of TSPD closed the driver's side door of the Corolla at 3:21 P.M.

47. Largo Police Detective Jerry Hunt then arrived on scene at 3:27 P.M. and confirmed that the vehicle was cleared by TSPD. TSPD Officer Brittney Rose told Det. Hunt that "we checked for people." At 3:28 P.M., Det. Hunt said, "find out the location of this so I can get going on a warrant."

48. At 3:33 P.M., LPD Detective Steven Allred told LPD Detective Colin Bolton, "We're going to want to glove up if we are going to pop the trunk." Bolton, the lead detective, put on gloves and opened the driver's side door and trunk of the Corolla

and began to search the contents within. In his deposition, Bolton noted that, on his arrival at the scene, TSPD personnel reported to him that they cleared the vehicle and confirmed that no persons other than Dr. Kosowski were in the vehicle. Det. Bolton acknowledged that the felony traffic stop occurred prior to his arrival on the scene.

49. Several LPD detectives then proceeded to search the Corolla. While gathered at the trunk, LPD Detective Lance Wagoner asked, "don't we need a search warrant for this?" Det. Bolton then indicated that he did not need a search warrant and proceeded to search the trunk of the Corolla. The detectives ultimately concluded that their search was met with negative results.

50. After LPD completed its search of the Corolla cabin and trunk, Det. Allred is seen closing the driver's side door and trunk of the car with an ungloved hand at 3:59 P.M., making it appear unsearched prior to forensic processing.

51. Det. Hunt confirmed with LPD Det. Wagoner that the vehicle was at 34 Orange Street for use in the warrant application. Det. Hunt then retired to a police vehicle to begin typing the warrant affidavit at 3:46 P.M. The search warrant affidavit was ultimately completed at 4:49 P.M., per Det. Hunt's deposition.

52. In his deposition, Det. Bolton denied opening the Corolla front door and trunk of the Corolla and searching within prior to obtaining the search warrant. He also denied remembering Det. Wagoner stating "should we get a search warrant…" at

the time Bolton opened the trunk. Of note, Det. Bolton never obtained permission from Dr. Kosowski to search the Corolla, as the search occurred prior to Bolton making first contact with Dr. Kosowski.

53. Sgt. Michael Vegenski, the leader of the LPD Investigative Services Divisions – Crimes Against Persons – and Det. Bolton's direct supervisor, testified in his deposition that it would be inappropriate to search a vehicle when a search warrant was being sought by law enforcement.

54. Det. Hunt gave a signed copy of the Corolla search warrant given to TSPD Officer Rose at 4:59 P.M. As Ofc. Rose begins to read the warrant for the vehicle, Specialist Robert Briggs from PCSO Forensics began to take photographs of the car. The search warrant is never read to Dr. Kosowski, nor is a copy of the warrant provided to him despite the fact that he was being detained approximately 50 feet away from the car. At 5:29 P.M., Specialist Briggs first opens the Corolla driver's side door to begin collection of evidence. At the direction of Detectives Allred and Hunt, 11 blind swab blood samples were collected and analyzed with phenolphthalein. All were negative for blood.

55. At 5:25 P.M., LPD Det. Hunt told TSPD Officer Rose, "We can help with directing, but we can't search because it's your jurisdiction," indicating LPD was aware they were within TSPD jurisdiction and that any search conducted by LPD would be unlawful.

56. Dr. Kosowski asked Det. Hunt for a copy of the Corolla search warrant at 12:19 A.M. on March 26, 2023. At that point, Dr. Koswoski was still at 34 W. Orange Street and had been detained for nine hours. Det. Hunt denied the request to provide a copy of the warrant. During his deposition, Det. Bolton testified that it is possible that Kosowski asked to examine a search warrant for the Corolla on several occasions at the scene that would not otherwise be captured on video.

57. Two phones that were the subject of later search warrants were found during the search. Additional items were found during the search that law enforcement believes to be relevant to include: areas of suspected blood, a ballistic vest and "a bag containing masks, a taser, brass knuckles, duct tape and intravenous sedatives with syringes."

58. The Corolla was then seized by PCSO and transported to a PCSO processing facility in violation of the search warrant.

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

59. 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.

60. Second, the affidavit failed to establish a nexus between the alleged crime and the Toyota Corolla.

61. Third, 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.

62. Fourth, law enforcement searched the Corolla prior to obtaining the search warrant and then took actions to conceal evidence of their warrantless search.

63. Fifth, LPD detectives knowingly and intentionally searched the Corolla while it was in TSPD jurisdiction.

64. Sixth, the warrant did not allow the vehicle to be transferred to a secondary location, other than Largo Police Department, for processing. The Corolla was, in fact, transferred to a PCSO facility for processing and has remained in law enforcement custody for the past two years.

65. For those reasons, the search of the Toyota Corolla violated Dr. Kosowski's rights 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 Corolla itself, two phones found therein, areas of suspected blood, a ballistic vest, and the bag containing masks, a taser, brass knuckles, duct

tape and intravenous sedatives with syringes. Dr. Kosowski further moves to suppress the results of any testing performed on any of that evidence and all observations made by law enforcement within that vehicle.

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).[4]

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).

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

As set forth in the corresponding motion to suppress the fruits of the search of the 511 Seaview Drive residence, 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.

As discussed in the corresponding motion, the search warrant affidavit failed to supply probable cause that S.C. was deceased. That fact remained so after two

[4] 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.

additional days of investigation and after the search of Dr. Kosowski's residence. Indeed, the absence of any competent evidence found during the search of the residence actually lessened whatever proof law enforcement might have had that a first degree murder was committed. For the reasons discussed more fully in the corresponding motion, the four corners of the affidavit provided no facts to back up the speculation that S.C. is deceased, or his purported death was the result of an act of Dr. Kosowski. Even with an additional two days of investigation and a search of Dr. Kosowski's home, law enforcement had no probable cause to support a lawful search of the Corolla.

In addition, and as with the affidavit for the search of the residence, the underlying affidavit utterly failed to provide any basis on which the affiant was qualified to render the opinions he rendered in the affidavit. While the lack of qualifications set out in the residence search warrant affidavit is troubling, the lack of information provided in the affidavit for the search of the Corolla was inexcusable. The affiant provided no information concerning his experience or training aside from merely stating that he was a police officer. Despite that, he went on to opine that evidence of a purported bodyless murder would be expected to be located in a car that was never seen anywhere in the vicinity of where the murder was committed. The affiant reached that opinion based on alleged presumptive positive tests for blood in areas that he provided essentially no details for. The

presence of blood, moreover, could otherwise be easily explained by the fact that Dr. Kosowski is a surgeon and a hunter. Based on the information contained in the four corners of the affidavit, the affiant had no basis to opine that a murder was committed or that evidence of any such mysterious murder would be found in the Corolla. *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 reasonable 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. That was the case when law enforcement prematurely sought a search warrant for the residence, and it remained so when law enforcement sought a search warrant for the Toyota Corolla two days later. Moreover, because the search of the residence violated Dr. Kosowski's rights to be free from unreasonable searches, any information derived by the police from the

search of the home cannot be used to support the issuance of a subsequent search warrant. *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Consequently, even if evidence found during the search of the residence might arguably have pushed past the probable cause threshold, any evidence derived from the home search could not be used to provide probable cause for the later vehicle.

B. <u>The Affidavit Further Failed to Satisfy the "Nexus Element.</u>"

Notwithstanding the failure to provide probable cause the commission element, the affidavit additionally failed to prove that evidence relevant to the purported murder was likely to be located in the Toyota Corolla. The affidavit established that the Corolla was never seen in the area where S.C. disappeared and where his suspected murder would have seemingly occurred. The only alleged connection it could have had was the fact that it was registered to Dr. Kosowski and was seen departing, returning, and redeparting from the area of his residence. The affidavit asserted that the Corolla was purportedly used to dispose of evidence. The facts provided in the affidavit bode against such a claim.

As set forth above, the affiant provided no basis in his training and experience to conclude that the Corolla might have been used to dispose of evidence based on the observation and evidence he collected. Nonetheless, the affidavit acknowledged that a body was not found in the search of the 511 Seaview Drive residence and that

the Corolla *did not* appear to be driving with what would have been a heavy load weighing down its trunk. To be sure, the affidavit alleged that the person dragging the wagon from the office building was struggling and straining to move the wagon – indicating it was likely heavy. The affidavit likewise acknowledged that no wagon or blankets were found in the search of the 511 Seaview Drive residence. Under the affiant's nexus theory, however, the Corolla would have been used to dispose of the heavy and bulky evidence that would have included a body, wagon, and blankets. That is despite the fact that the affidavit made no allegations of the Corolla appearing to be loaded down when it was seen in the surveillance footage. A Corolla is, furthermore, a relatively small car with a relatively small trunk. *See* https://www.toyota.com/corolla/. In addition, to whatever extent that affidavit would imply that the Corolla was used to load and/or dispose of evidence in the time frame it was seen departing, returning, and redeparting the residence, time would not have allowed any such acts to take place. The departing, returning, and redeparting all took place within ten minutes, far from sufficient time for one person to load/and dispose of a body and accompanying evidence.

It is worth noting that "[t]o satisfy the nexus element, the affidavit must establish the particular time when the illegal activity that is the subject of the warrant was observed." *Castro v. State*, 224 So. 3d 281, 285 (Fla. 2d DCA 2017) *citing State v. McGill*, 125 So. 3d 343, 348 (Fla. 5th DCA 2013). In the instant case, the affidavit

could not establish a particular time because it could not even establish that an illegal act occurred. Nonetheless, even assuming that it could establish that some illegal act might have occurred around the time of S.C.'s last sighting, that timing fails to establish any nexus to the Toyota Corolla. The Corolla was never seen anywhere in the vicinity of the alleged illegal act. Indeed, the Corolla was not seen *anywhere at all* within many hours of the alleged illegal act. From there, the subsequent search of the residence provided no evidence to fill in any of the time gaps or to otherwise connect the Corolla to the still speculative illegal acts that the affiant believed to have occurred.

The four corners of the affidavit failed to provide a sufficient nexus between the alleged criminal act and the Toyota Corolla. Furthermore, the affidavit's failure to provide such a nexus was compounded by the affiant's failure to provide any basis in his experience or training that would allow him to establish such a nexus even if the facts could have supported one. Under the circumstances, the affidavit entirely failed to satisfy the required nexus element.

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

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.)

As chronicled in the motion to suppress the search of the 511 Seaview Drive residence, the affidavit underlying that search warrant omitted a plethora of critical information that would have negated the trial court's finding of probable cause. That omitted information included 1) the absence of any significant volume of blood, 2) the observations of Celeste Bacher, 3) S.C.'s substance abuse history, 4) the plethora of latent fingerprints found in the areas of interest that did not match Dr. Kosowski, 5) evidence concerning the alleged clean-up of blood. The affidavit underlying the search warrant for the Toyota Corolla made the same critical omissions.

In addition to those omissions, however, the search warrant for the Corolla omitted additional critical information concerning the suspected blood found in the garage of 511 Seaview Drive. For one, as set forth above, the affidavit omitted basically any information concerning the location, number or areas, size of areas, or freshness of the suspected blood. Most critically, however, the affidavit omitted the fact that Dr. Kosowski is employed as a surgeon. Given the nature of his profession, his employment would have provided a legitimate reason why what would seemingly be a minute amount of suspected blood would be located in his garage and on a vehicle parked therein. His hunting hobby provided another such legitimate reason to explain the presence of a minute amount of blood. When considered in

conjunction with the absence of details concerning the suspected blood in the garage, the omission of Dr. Kosowski's profession misled the issuing court into believing some undescribed amount of blood in the garage must have been from S.C. Reaching such a conclusion relied on a pyramiding of inferences drawn from the scant facts contained in the affidavit. While the four corners of the affidavit did not provide probable cause for such a conclusion, a consideration of the omitted facts clearly would have negated any purported probable cause that existed after the omissions. Given those omissions, combined with the omissions discussed in greater detail in the motion to suppress the fruits of the residence search, law enforcement recklessly or intentionally misled the issuing court.

D. Law Enforcement Acted in Bad Faith in Conducting a Search of the Corolla Prior to the Issuance of a Warrant and Outside of Largo Police Jurisdiction

Similar to the actions taken prior to the issuance of the 511 Seaview Drive search warrant, LPD detectives clearly acted in bad faith in conducting a warrantless search of the Corolla and in doing so while the Corolla was in TSPD's jurisdiction. Video footage shows that LPD detectives were aware that a search warrant would be needed to justify a search of the Corolla. The same footage further showed that LPD detectives were also aware that they could not search the vehicle because it was in TSPD jurisdiction. The video footage shows, however, that the detectives searched the Corolla anyhow. Moreover, the footage shows that the detectives took

steps to conceal the fact that they searched the Corolla, clearly indicating that they were acting in bad faith. From there, after the warrant was issued, law enforcement failed to provide Dr. Kosowski with a copy of the warrant despite his repeated requests for a copy. Again, compounding on the reasons set forth in the 511 Seaview Drive motion to suppress, the testimony of the respective officers must now be taken with great skepticism.

Furthermore, the same LPD detectives who trespassed on and violated the search rules in conducting the search of 511 Seaview Drive went on to further violate search rules in conducting the warrantless search of the Corolla in TSPD jurisdiction. That egregious conduct clearly violated Dr. Kosowski's Fourth Amendment right to be free from unreasonable searches.

From there, law enforcement further violated the explicit terms of the search warrant when it transported the Corolla to a PCSO facility for processing. The warrant stated, "if needed, the vehicle may be towed from the current location in front of 34 W. Orange St., Tarpon Springs, FL to *Largo Police Department* to be searched and processed." Law enforcement blatantly violated that directive and has admitted as such in deposition testimony. That clear violation of the terms of the search warrant further violated Dr. Kosowski's Fourth Amendment rights.

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, reasonable reliance on the 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). Just the same, as in this case, when a search warrant was issued as a result of a misleading or false affidavit, the good faith exception cannot 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 Toyota Corolla must now be suppressed.

Respectfully Submitted,

s/ *J. Jervis Wise*
J. JERVIS WISE
BRUNVAND WISE, P.A.
Florida Bar No. 0019181

s/ *Bjorn E. Brunvand*
BJORN E. BRUNVAND
BRUNVAND WISE, P.A.
Florida Bar No. 0831077

s/ *Debra B. Tuomey*
DEBRA B. TUOMEY
Debra B. Tuomey, LLC.
Florida Bar No. 497681

s/ *Amanda Powers Sellers*
AMANDA POWERS SELLERS
Amanda Powers Sellers, PA
Florida Bar No. 11643

s/ *Willengy Wicks Ramos*
WILLENGY W. RAMOS WICKS
BRUNVAND WISE, P.A.
Florida Bar No. 113598

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.

s/Jervis Wise

J. JERVIS WISE, ESQ.
BRUNVAND WISE, P.A.
615 Turner Street
Clearwater, Florida 33756
Telephone No. (727) 446-7505
Facsimile No. (727) 446-8147
Email: jervis@acquitter.com
Florida Bar No. 19181
Counsel for the Defendant