IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

23-02935-CF-D
522023CF002935000APC

STATE OF FLORIDA

v. MURDER IN THE FIRST DEGREE

TOMASZ ROMAN KOSOWSKI
PID: 312109281

MEMORANDUM OF LAW IN RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS SEARCH WARRANT OF 511 SEAVIEW DRIVE

Comes now, BRUCE BARTLETT, State Attorney for the Sixth Judicial Circuit of the State of Florida, by and through his undersigned Assistant State Attorney, and hereby files its Memorandum of Law in Response to Defendant's Motion to Suppress, to wit:

1. On March 23, 2023, Largo Police Department Detective Colin M. Bolton electronically submitted via CloudGavel an Affidavit for Search Warrant to search the residence located at 511 Seaview Drive.
2. On March 23, 2023, Judge Philip J. Federico, Circuit Court Judge of the Sixth Judicial Circuit signed the Warrant.
3. The direction of the search warrant authorized the search "TO ANY OFFICER OF THE TARPON SPRINGS POLICE DEPARTMENT AND THE PINELLAS COUNTY SHERIFF'S OFFICE.

4. On March 23, 2023, at around 2300 hours, Tarpon Springs Police Department made entry into the home located at 511 Seaview Drive.
5. An officer from Tarpon Springs Police Department read the Search Warrant to the residence.
6. Tarpon Police Department has a contract with the Pinellas County Sheriff's Office to provide forensic processing.
7. Tarpon Springs Police Department searched the residence located at 511 Seaview Drive, Tarpon Springs, Florida.
8. Pinellas County Sheriff's Office forensic department processed the residence and collected evidence.
9. Members of the Largo Police Department were present at the residence, but did not conduct the search or seizure of evidence. They merely provided assistance.
10. Law Enforcement did not enter onto the protected space of 511 Seaview Drive at any point prior to the execution of the Search Warrant.
11. Affiant Bolton's pedigree was included in the Affidavit for Search Warrant.
12. Defendant's bases for suppression include the following:
    a. Law enforcement made unlawful entry onto 511 Seaview prior to the search warrant,
    b. the Affiant did not provide a sufficient pedigree,
    c. the warrant fails to allege that a crime that was

committed,

d. the warrant contains material omissions that vitiate probable cause,

e. violation of law enforcement officer's own rules in serving the warrant, and

f. the lack of probable cause to support issuance of the search warrant.

For the below stated reasons the undersigned requests this Court deny Defendant's Motion to Suppress.

STANDARD OF REVIEW FOR TRIAL COURT

This Trial Court reviewing a probable cause affidavit in a suppression motion should examine the four corners of the document. Pagan v. State, 830 So.2d 792,806 (Fla. 2002). This Court should examine to see if the four corners of the document establish probable cause that evidence of a crime will be located inside the residence. Id. *quoting* Illinois v. Gates, 462 U.S. 213 (1983).

Errors resulting from mere negligence or mistake will not vitiate probable cause as established in the four corners of the document. Franks v. Delaware, 438 U.S. 154, 171 (1978).

Material Omissions of facts can further be challenged, but omissions are permitted in a search warrant. The Florida Supreme Court stated: "Some omissions may be "intentional" but also reasonable in the sense that they exclude material police in good

faith believed to be marginal, extraneous, or cumulative." Johnson v. State, 660 So.2d 648,656 (Fla. 1995). In the process of establishing probable cause, an Affiant can eliminate unnecessary information "Such an exclusion is a valid and necessary part of the warrant process." Id.

Whether the omissions are material and were made with the intent to deceive or with reckless disregard of whether such information should be revealed to a magistrate is the proper analysis to determine if a warrant runs afoul of Franks. Pagan at 807. If the Court finds the errors are a product of deliberate falsehood or reckless disregard for the truth, the reviewing trial court should excise the errors from the probable cause affidavit. Id. When the Court has excised those errors, then the Court would analyze the remaining information and determine if probable cause still existed. Id. Material omissions can be considered by this Court should the Court find that the omissions, if added, would vitiate probable cause, and the omissions were a result of reckless disregard for the truth or deliberate falsehood. Johnson v. State, 660 So.2d 648 (Fla. 1995). Omissions from negligence or mistake cannot be considered in analyzing whether probable cause still exists. If this Court finds a reckless disregard for the truth or a deliberate falsehood was responsible for the material omissions then the Court would add the omitted material and determine if the added material vitiated probable cause. Thorp v.

State, 777 So.2d 385, 391 (Fla. 2000).

The Affidavit Established Probable Cause for both the Commission Element and Nexus Elements

In the four corners of the affidavit, the Affiant established his belief that evidence of a crime of homicide would be found inside the residence located at 511 Seaview Drive.

> A search warrant must be based on probable cause supported by an affidavit. Art. I, § 12, Fla. Const. To establish probable cause, the affidavit must set forth two elements: (1) the commission element—that a particular person has committed a crime—and (2) the nexus element—that evidence relevant to the probable criminality is likely to be located at the place searched. State v. Vanderhors, 927 So.2d 1011 (Fla. 2d DCA 2006), citing Burnett v. State, 848 So.2d 1170, 1173 (Fla. 2d DCA 2003).

Probable cause according to the Fourth Amendment requires a showing that particular evidence of a particular crime will probably be found in a particular place. The probable cause determination is entrusted to the judgment of a neutral magistrate. And that determination simply asks whether a reasonably prudent person would think the allegation probable. Dunnavant v. State, 46 So. 2d 871, 874-75 (Fla. 1950). That the inquiry lacks specificity is by design. Probable cause is "incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." Maryland v. Pringle, 540 U.S. 366, 371, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003). The First District

Court of Appeal described probable cause as the following:

> Probable cause is not rigid nor is it a standard that is particularly difficult to meet—probable cause is a relatively low legal burden, "more than a bare suspicion but less than evidence that would justify a conviction." Probable Cause, Black's Law Dictionary (11th ed. 2019); see also Stacey v. Emery, 97 U.S. 642, 645, 24 L.Ed. 1035 (1878) (describing probable cause as "[a] reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in" believing the allegation). Law enforcement must convince a neutral arbiter that the evidence it has obtained is sufficient to conclude a person probably committed a crime and that evidence of a crime is probably in a particular place. This reasonably-prudent-person analysis is contextual and, by its nature, does not include exacting time limits. It is no math equation; it is an exercise of judgment. In this light, the appellate court's role, broadly considered, is to ensure a neutral magistrate gave meaningful review to test the basis of the oath and to ensure the warrant's limited scope. Malden v. State, 359 So.3d 442, 445 (Fla. 1st DCA 2023).

In the instant case, Affiant Bolton described at length the path taken by the Defendant's unregistered Toyota Tundra from 1501 S. Belcher to Defendant's home. This Tundra included in the bed a wagon. The same wagon observed being pulled out of the office suite at 1501 S. Belcher. By reviewing surveillance videos and tag readers, Detectives detailed how the same Tundra left 1501 S. Belcher and arrived at 511 Seaview Drive. The Tundra had a wagon in the bed that was covered with a blanket. A review of surveillance revealed the Toyota Tundra never left the Defendant's home. S.C.'s belongings including his phone, wallet, keys, and vehicle were all located at the location of the Blanchard law

firm. There is no video evidence of S.C. leaving the office suite at 1501 S Belcher by himself. Also described was Defendant's potential motive and the prior interactions with S.C. and the Defendant. At the date of the warrant, S.C. had not been located. A review of the totality of the evidence detailed in the warrant leads only to the conclusion that particular evidence of a particular crime will be found in the residence of Defendant located at 511 Seaview Dr.

The Affidavit did not mislead the Issuing Court, did not Omit critical facts, and did not rely on illegally obtained information.

If the challenge relates to omitted facts the court must examine whether the omissions were made with the intent to deceive or with reckless disregard of whether such information should be revealed to a magistrate. Pagan at 807. If the Court finds the errors are a product of deliberate falsehood or reckless disregard for the truth, the reviewing trial court should excise the errors from the probable cause affidavit. Id. When the Court has excised those errors, then the Court would analyze the remaining information and determine if probable cause still existed. Id. Material omissions can be considered by this Court should the Court find that the omissions, if added, would vitiate probable cause, and the omissions were a result of reckless disregard for the truth or deliberate falsehood. Johnson v. State, 660 So.2d 648

(Fla. 1995). Omissions from negligence or mistake cannot be considered in analyzing whether probable cause still exists. If this Court finds a reckless disregard for the truth or a deliberate falsehood was responsible for the material omissions then the Court would add the omitted material and determine if the added material vitiated probable cause. Thorp v. State, 777 So.2d 385, 391 (Fla. 2000). Defendant must show that the omissions are material and withheld by law enforcement with an intent to deceive prior to holding an evidentiary hearing on the issue. Johnson v. State, 660 So.2d 648 (Fla. 1995). The Court must determine: whether omitted material, if added to the affidavit, would have defeated probable cause, and the reviewing court must find that omission resulted from intentional or reckless police conduct that amounts to deception and if all requirements are met by moving party, then full evidentiary hearing will be ordered. Id. at 656.

In the instant case, none of the information omitted from the affidavit can be considered material omissions.

The challenge with omissions as stated by the Johnson Court:

> Such an exclusion is a valid and necessary part of the warrant process. Moreover, some omitted information is simply overlooked in the exigencies of the moment without intent to deceive or recklessness with respect to the truth. The State and the defense reasonably may disagree as to the import and effect of the large amount of information that necessarily will be omitted in the warrant process, since police routinely collect far more information than goes into the affidavit. Id.

The following is a list and analysis of the alleged omitted material:

1. **Celeste Bacher observed a person of interest.**

Affiant Bolton did not include any information provided by Celeste Bacher in the affidavit for probable cause. Celeste Bacher told law enforcement that she observed a man around 9:30 a.m. on March 21, 2023. He was wearing a "Jack Hannah" safari style shirt and had a goatee. She believed him to work for the veterinary office given his clothing. Celeste Bacher participated in a photopack related to her observations.

The information provided by Celeste Bacher did not include any information about the party *pulling the wagon containing the body of S.C. out of the lobby of 1501 S. Belcher Road*. However, when she observed Defendant's photo in the photo pack she said it was "maybe" or a "chance" it was the person she observed. Other people were eliminated except for one other person where she stated "in question" or a "chance."

An affidavit for search warrant is analyzed by the totality of all evidence presented in the affidavit.

Crucially, the information provided in the warrant included sworn statements that the person of interest pulling the wagon to Defendant's unregistered Toyota Tundra:

> Your Affiant continued reviewing surveillance video. At approximately 10:22:18 hours your Affiant observed a male wearing jeans, a blue short-sleeve shirt, a backpack, *white surgical mask* and hat exit the main entrance of the law firm.

Given that in the totality of the affidavit that the suspect was wearing a surgical mask, the information that Celeste Bacher observed a goateed man that was indicated in a photo-pack as *Maybe* or a *chance* that is in fact the Defendant is immaterial to the search warrant. This information is the information contemplated when the Johnson Court stated: "The State and the defense reasonably may disagree as to the import and effect of the large amount of information that necessarily will be omitted in the warrant process, since police routinely collect far more information than goes into the affidavit." The photo pack involving Defendant is arguably more probable cause to show Defendant was at 1501 S. Belcher Road on the day of the homicide than it is evidence tending to exculpate him.

Even if the omissions were found by this Court to be material information, Defendant has to prove that Affiant Bolton intended to deceive the Court by not including the information. In this case, there is no evidence that Affiant Bolton intended to deceive the Court. At best, if this were found to be material, he overlooked this information in the exigency of the moment. Moreover, were the Court to find this information material and that Affiant Bolton deceived the Court, then the information would

be added to the warrant and analyzed to see whether it would tend to vitiate probable cause. If added, this information would not vitiate the probable cause established in the remainder of the warrant.

2. S.C. suffered from anxiety and was a recovering alcoholic.

The disappearance of S.C. and the evidence leading to the conclusion that evidence related to his disappearance would be found at 511 Seaview Drive. Information about having diagnosed anxiety and having been a recovering alcoholic would have no materiality as it relates to his disappearance. The Search Warrant describes S.C.'s personal belongings being left behind including but not limited to his wallet, keys, cell phone, and his vehicle.

Additionally, at the time the warrant was submitted to Judge Federico, multiple witnesses expressed that S.C.'s anxiety and substance abuse was not an issue that would have led to his disappearance. In fact, Michael Montgomery, Jake Blanchard, and S.C.'s father, George Cozzi, all expressed concern that he was missing precisely because they did not believe he absconded due to a relapse, which hadn't been a problem for years, nor due to anxiety, which he had under control. George Cozzi described S.C.'s anxiety as when someone gets worked up or having too much going on, but not to the level of hospitalization. Michael Montgomery described S.C. as having no current serious issues relating to

anxiety or alcoholism and described the day of S.C.'s disappearance as a normal day. Michael stated S.C. was the opposite of impulsive.

The exclusion of the above information is consistent with the reasoning outlined in Johnson. Law enforcement cannot include everything in a search warrant.

Even if the omissions were found by this Court to be material omissions, Defendant has to prove that Affiant Bolton intended to deceive the Court by not including the information. If there is an intent to deceive then the Court would add the additional omitted material and determine if probable cause still existed. In the instant case, there is zero evidence to suggest anything other than police routinely collecting far more information than goes into the affidavit. However, even if the Court were to add the information about S.C.'s past struggles, in the totality of the case, it would not vitiate probable cause.

3. Fingerprints located in closet located in close proximity to S.C.'s office.

In the totality of the circumstances of the instant case, the location of Defendant's fingerprints are material to a place where he did not belong, e.g. the closet located directly outside of the office of S.C. That other fingerprints were located in a closet and other areas of the building is immaterial to the inquiry of whether Defendant was authorized or should have been inside of the

closet. The law office was inside of a building that was open to guests, clients, and employees of the businesses contained therein. It would be unusual to not have hundreds of fingerprints in such a space. This the kind of information contemplated by the Court in Johnson. While the remaining one hundred plus prints are to be expected in various public places of the office building, Defendant's prints in a storage closet next to S.C.'s office are unexpected.

Even if the omissions were found by this Court material, Defendant has to prove that Bolton intended to deceive the Court by not including the information. There is zero evidence to suggest anything other than police routinely collecting far more information than goes into the affidavit. If the Court were to find an intent to deceive and materiality, the omissions would be added to the affidavit and then analyzed to determine whether probable cause was vitiated. The addition of the omitted information would not add or detract anything from the probable cause determination in the instant case.

4. Volume of Blood located in the bathroom at 1501 S Belcher Road

The search warrant affidavit pled the following information as it relates to the blood located in the bathroom at 1501 S. Belcher Rd

Your Affiant observed what appeared to be a red liquid

> smeared on the exterior of the men's restroom door. Your affiant observed what appeared to be drops of a red liquid on the single toilet stall wall to the left of the single urinal. In your affiants training and experience as a law enforcement officer, the liquid appeared to be blood. In your Affiant's training and experience, a similar red liquid, consistent with blood, was observed smeared on the exterior of the toilet bowl in the single stall. Your affiant observed what appeared to be a dark liquid on the floor of the single stall that appeared to have been dried smeared in a circular motion. Your affiant observed that the room smelled strongly of cleaning products. From the smell and the condition of the room it appeared attempts were made to clean up the liquid on the floor.

The Affiant further stated: "Your Affiant learned from PCSO Forensic Specialist A. Camacho that the red substance tested positive as blood." Never in the affidavit does the Affiant swear to any information misleading the Court. The Affiant very clearly states the information about his observations and makes no leaps as it relates to overstating the amount of blood located in the bathroom. Also, DNA processing had not occurred at this early stage of the litigation.

Amber Camacho is a supervisor of the Forensics processing unit and as a result would convey information on behalf of the other forensic examiners located on the scene. Nothing in the affidavit suggests anything other than her providing information to Affiant Bolton in her capacity as a supervisor. There is no misrepresentation or omissions of material facts relating to that info in the search warrant. Moreover, any suggestion of exaggeration about the blood evidence is misplaced. The

statements are observations of Affiant Bolton. His training outlined in the warrant includes prior assignment as a crime scene investigator and he has been employed since 2013 as a law enforcement officer. Nothing additional is required for his pedigree to establish he has knowledge and training to report observations.

Law enforcement did not trespass onto 511 Seaview Drive prior to the search warrant; even if they did no information acquired in such a manner was utilized in obtaining probable cause.

In this case law enforcement did not trespass on the property of Defendant. Members of Largo Police Department walked around the residence following easements that any reasonable person would follow. There were no postings as to trespassing. Photos taken by Affiant Bolton and members of Largo Police Department were from the neighbor's property. Affiant Bolton and members of the Largo Police Department took care not to enter the property of Defendant as evidenced in the photographs taken.

Affiant Bolton and members of Largo Police Department were permitted access to the neighbor's property and took photos and observed the back yard from a place where they had a legal right to be. Moreover, nothing was learned, nor was anything sworn to in the Affidavit for search warrant related to these observations.

In Sarantopoulos v. State, the Florida Supreme Court held that the purported civil trespass of officers in entering a

neighbor's yard without permission in order to peer over defendant's fence did not make a search illegal under Fourth Amendment or State Constitution since entry into neighbor's yard did not violate defendant's right to privacy. Sarnatopoulos v. State, 629 So.2d 121 (Fla 1993). In this case, Largo Police Officers had consent to enter the neighbor's property. Largo Police Officers walked along clearly delineated property lines and, at best, utilized the zoom functions as provided on their iPhones.

Law Enforcement did not repeatedly violate its own rules in conducting the search of the residence located at 511 Seaview Drive.

In the instant case, Detective Colin Bolton of Largo Police Department attested as the affiant to probable cause in support of the issuance of a search warrant. Florida Statute 933.06 provides: "The judge must, before issuing the warrant, have the application of some person for said warrant duly sworn to and subscribed, and may receive further testimony from witnesses or supporting affidavits, or depositions in writing, to support the application." Florida Statute 933.06. Florida Statutes provide that *any person* provides duly sworn testimony in application for a search warrant and the issuing court reviews said application in the form of an affidavit. Crucially, the issuing Court cannot issue a warrant for an agency to search *Outside* of the Agency's

jurisdiction. In State v. Allen, the Second District Court of Appeals held that search of defendant's property, located outside of city police officer's jurisdiction, was not authorized by voluntary cooperation agreement between county sheriff's department and city police department. State v. Allen, 790 So.2d 1122 (Fla. 2d DCA 2001). In Allen, officers with Tampa PD developed probable cause to search a home located outside of their jurisdiction. The Second District Court of Appeals reasoned that the Circuit Court was without jurisdiction to authorize officers acting outside of their jurisdiction to execute a search warrant. Florida Statute 933.08 provides: "The search warrant SHALL in ALL cases be served by any officers mentioned in its direction, but by no other person except in aid of the officer requiring it, said officer being present and acting in its execution." Florida Statute 933.08. While Largo Police Department cannot execute the warrant outside of their jurisdiction, they can assist and act as advisors in the execution of said search warrant. The Florida Supreme Court stated: "We read the statute to allow the recruitment, by an authorized officer, of assistance in performing search-related tasks that are numerous, repetitive, or burdensome. The statute surely does not endorse the vacation of basic duties by the authorized officer." State v. Vargas, 667 So.2d 175, 177 (Fl. 1996). The executing agency must actively participate and not merely stand by. Id. at 176.

In the instant case, Tarpon Springs Police Department, was informed they had to serve the search warrant. As a result, they did. Detective Melton and Detective Miller with Tarpon Springs Police Department engaged in the search while assisted by members of the Largo Police Department, and while members of the Pinellas County Sheriff's Office forensic unit processed the scene and collected evidence. Detective Melton read the search warrant to the home and conducted the search. Assistants are permitted to assist and advise what may or may not be relevant. Both Tarpon Springs Police Department and the Largo Police Department utilize the Pinellas County Sheriff's Office forensic processing division in order to process crime scenes. Pinellas County Sheriff's office is included in the direction of the search warrant and was authorized to conduct the search.

> If the Court finds no probable cause in the four corners of the document the Good faith exception to the exclusionary rule applies under the circumstances of the issuance of the search warrant in the instant case.

Even if the Defendant's argument that probable cause was vitiated by material omissions, the good faith exception applies. State v. Rodriguez Lopez, 378 So.3d 691 (Fla.2d DCA 2024)

> If the affidavit in support of a search warrant fails to establish probable cause to support issuance of a warrant, the evidence seized pursuant to the warrant will nevertheless be admitted under the good faith exception to the exclusionary rule when a police officer has acted in an

> objectively reasonable manner, in objective good faith, and as a reasonably well-trained officer would act in seeking the warrant from a detached and neutral magistrate and thus has reasonably relied upon the warrant in executing a search within the warrant's terms and scope; conversely, suppression is required if the officer has acted dishonestly, recklessly, or under circumstances in which an objectively reasonable officer Gonsalvez v. State, 38 So.3d 226 at 227 (citing Pilieci v. State, 991 So.2d 883, 896 (Fla. 2d DCA 2008).

As stated above, the Affidavit established probable cause. However, even if this court finds it does not, there are no material omissions that mislead the court nor was the warrant deficient on its face that the executing officer cannot reasonably presume it to be valid. Rodriguez Lopez, 378 So.3d 691.

Conclusion

This Court should deny the Defendant’s Motion to Suppress the residential search warrant. The four corners of the document establish probable cause. Affiant Bolton made no material omissions in the Affidavit for Search warrant. The officers with Tarpon Springs Police Department, and the officers with Largo Police Department acted consistent within their jurisdiction in the execution of the search warrant.

WHEREFORE, the State of Florida moves this Honorable Court to deny the Defendant’s Motion to Suppress the Search Warrant of 511 Seaview Drive.

I HEREBY CERTIFY that a copy of the above has been furnished to Bjorn Esq Brunvand, Attorney, BRUNVAND WISE P A, 615 TURNER ST, CLEARWATER, FL 33756, bjorn@acquitter.com, by e-service or personal service or U.S. Mail this 25th day of February, 2025.

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