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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

**STATE OF IDAHO,**

**Plaintiff,**

**V.**

**BRYAN C. KOHBERGER,**

**Defendant.**

**CASE NUMBER CR01-24-31665**

**MOTION TO SUPPRESS AND  
MEMORANDUM IN SUPPORT**

**RE: ARREST WARRANT**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby submits the following Memorandum in support of his contemporaneously filed Motion for an Order suppressing all evidence gathered by law enforcement as a result of his arrest.

## ISSUES

- I. **This Court Should Apply Idaho’s Exclusionary Rule and Law to this Search.**
- II. **The Affidavit Submitted in Support of the Application for the Issued Search Warrant Recklessly or Intentionally Omitted Material Information. Mr. Kohberger has filed a motion for a Frank’s hearing and without repeating incorporates that challenge to this Search Warrant.**
- III. **The Affidavit Submitted in Support of the Application for the Issued Search Warrant Included Information that Must be Excised.**
  - a. **All information in the affidavit was gathered because of law enforcement’s unconstitutional use of Investigative Genetic Genealogy, and thus nothing in the warrant should remain.**
  - b. **Information about the client’s locations taken from his phone must also be excised due to being gathered from an invalid warrant.**

## FACTS

Due to the haphazard way in which law enforcement, including the prosecutor’s office, has kept and disclosed records in this matter, the following is a rough statement of facts as best the Defense can tell.

On December 28, 2022, Trooper Leri of Pennsylvania State Police became aware of the objective of arresting Mr. Kohberger via Moscow Police Cpl. Payne.

On December 29, 2022, at 4:44 PM EDT (1:44 PDT), a Magistrate in Pennsylvania issued a search warrant for 119 Lamsden Dr., Chestnut Hill Twp., Monroe County, the home of Mr. Kohberger’s parents.

On December 29, 2022, at 2:22 PM PDT, the Magistrate in this matter signed an arrest warrant for Mr. Kohberger in Latah County. The affidavit for the warrant was signed by Moscow Police Department Cpl. Payne.

The basic facts Cpl. Payne used to support the arrest are discussed in detail in a separately filed motion pursuant to *Franks v. Delaware* 438 U.S. 154 (1978). They are incorporated without repeating.

At 2:43 PM PDT on December 29, 2022, a criminal complaint and probable cause order were filed in this matter. At 10:00 PM EDT (7:00 PM PDT), Pennsylvania SWAT began preparations to arrest Mr. Kohberger. Despite days of constant FBI surveillance, Pennsylvania law enforcement did their own surveillance starting at 11:15 PM EDT (8:15 PM PDT). And despite the fact that days of constant FBI surveillance showed Mr. Kohberger was unarmed and tended to go for runs around his parents' neighborhood, police decided that forcefully entering Mr. Kohbergers' parents' home was the best option.

On December 30, 2022, at 1:14 AM EDT (10:14 PM PDT), Pennsylvania SWAT raided Mr. Kohberger's parents' home. During the raid, law enforcement broke the door of home, held the entire family at gunpoint, and seized Mr. Kohberger. Mr. Kohberger made statements to his arresting officers. He was transported to a police station in Stroudsburg, PA, and made statements during transport. At the station, Mr. Kohberger was processed during which police collected information about his person. Finally, during interrogation, before requesting an attorney, Mr. Kohberger made statements to interrogators from the Idaho State Police and the Moscow Police Department.

At 4:00 AM EDT on December 30, 2023, Pennsylvania State Police filed a criminal complaint against Mr. Kohberger.

## **ARGUMENT**

### **I. This Court Should Apply Idaho's Exclusionary Rule and Law to this Search.**

The first question this Court must determine is whether there is a conflict of laws in this matter, i.e., whether Idaho law or Pennsylvanian law controls the validity of the arrest warrant for Mr. Kohberger. Pennsylvania courts require a warrant for a particular residence to go after a

person police are aware has an arrest warrant. *Commonwealth v. Romero*, 183 A.3d 364 (Pa. 2018). The need for a warrant for a fugitive from another State is codified in 42 Pa.C.S.A. §§ 9128, 9129. Without a Governor’s warrant, an officer can get a judicial warrant to permit entry into a home. *See* 42 Pa.C.S.A. § 9134. Without either type of warrant, an officer lacks this authority. *See* 42 Pa.C.S.A. § 9135. This understanding also comports with *Payton v. New York*, 445 U.S. 573, 602 (1980). State warrants have no extraterritorial effect. *State v. Bradley*, 106 Idaho 358, 360 (1983). The use of an out-of-state warrant is *ipso facto* a warrantless entry. *Id.* Thus, law enforcement in Pennsylvania could not rely on the existence of the Idaho arrest warrant to enter the home.<sup>1</sup>

Finally, it must be said that there is very little daylight between the Idaho Constitution and the Pennsylvania Constitution. Both apply exclusion to a failure to knock and announce. *See, State v. Rauch*, 99 Idaho 586, 592 (1978); *Commonwealth v. Frederick*, 124 A.3d 748, 755-56 (Pa. Super. Ct. 2015). If anything, Pennsylvania appears to have stricter warrant requirements for particularity. *Commonwealth v. Grossman*, 555 A.2d 896, 899-900 & n.3 (Pa. 1989).

## II. **The Affidavit Submitted in Support of the Application for the Issued Search Warrant Recklessly or Intentionally Omitted Material Information.**

“The Fourth Amendment states unambiguously that “no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” *Groh v. Ramirez*, 540 U.S. 551, 557 (2004) (quoting U.S. Const. Amend. IV.). ‘Probable cause’ exists when, given all the circumstances set forth in the affidavit, “there is a fair probability that contraband or evidence of a crime will be found *in a particular place.*” *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (emphasis added). Because “the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion” stands “[a]t the very core’ of the Fourth Amendment,” *Kyllo v. United States*, 533 U.S.

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<sup>1</sup> Note, there is an Idaho Court of Appeals decision, *State v. Branigh*, 155 Idaho 404 (Ct.App.2013), that seems to be counter to the holding in *Bradley*. The *Branigh* court, however, never mentions or analyzes *Bradley*, and does not appear to be aware of it. The holding in *Branigh* could not have overruled *Bradley*, and thus it remains governing law in this state.

27, 31, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)), [courts] have firmly established the “basic principle of Fourth Amendment law’ that searches and seizures inside a home without a warrant are presumptively unreasonable.”” *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S. Ct. 1284, 1290, 157 L. Ed. 2d 1068 (2004) (quoting *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)).

“For a search warrant to be valid, the judge issuing the warrant must rely on an affidavit or affidavits sworn to before the judge or by testimony under oath and recorded that establish the grounds for issuing the warrant.” *State v. Nunez*, 138 Idaho 636, 640, 67 P.3d 831, 835 (2003). “Any discrepancy between the items for which there was probable cause and their description in the search warrant requires suppression.” 23 C.J.S. *Criminal Procedure and Rights of Accused* § 887 (2022). “It is clear that the issuing Magistrate himself, if he is to fulfill the constitutionally mandated function of interposing an independent intelligence between the law enforcement officer and the citizen, must actually and in fact, draw the inferences from the evidence presented to him.” *People v. Potwora*, 48 N.Y.2d 91, 94, 397 N.E.2d 361, 363 (Ct. App. 1979). “It is for this reason that the courts have insisted that the full facts from which inferences might be drawn, and information necessary to determine their reliability, be placed before the issuing magistrate.” *Potwora*, 48 N.Y.2d at 94, 397 N.E.2d at 363.

Finally, “[a] criminal defendant may challenge the veracity of an affidavit used to obtain a search warrant.” *State v. Peterson*, 133 Idaho 44, 47, 981 P.2d 1154, 1157 (Ct. App. 1999). Upon a preliminary showing of a warrant’s deficiency, the defendant must prove, by a preponderance of the evidence, “that intentional or reckless falsehoods were included in the warrant affidavit and were material to the magistrate’s finding of probable cause, or that material exculpatory information was deliberately or recklessly omitted.” *Peterson*, 133 Idaho at 47, 981 P.2d at 1157. “An omission of exculpatory facts is “material” only if there is a substantial probability that, had the omitted information been presented, it would have altered the magistrate’s determination of

probable cause.” *Id.* “Whether an omission was intentional or reckless might be inferred, in part, from the relative importance of the information and its exculpatory power.” *Id.*, 133 Idaho at 48, 981. P.2d at 1158.

The challenge pursuant to this section of the motion is separately laid out in Mr. Kohberger’s motion for hearing under *Franks v. Delaware* 438 U.S. 154 (1978) The motion and proffer are incorporated but not repeated herein.

### **III. The Affidavit Submitted in Support of the Application for the Issued Search Warrant Included Information that Must be Excised.**

Where information in a warrant was obtained via a violation of the constitution, Idaho courts excise that information. *See, e.g., State v. Johnson*, 110 Idaho 516, 526 (1986); *State v. Bunting*, 142 Idaho 908 (Ct.App.2006); *State v. Buterbaugh*, 138 Idaho 96, 101 (Ct. App.2002).

- a. **All information in the affidavit was gathered because of law enforcement’s unconstitutional use of Investigative Genetic Genealogy (IGG), and thus nothing in the warrant should remain.**

Mr. Kohberger has argued in a separate Motion that the genetic genealogy investigation in this matter was done in violation of the constitution. Additionally, he has argued there would be no investigation into him without that original constitutional violation. It is not that the results of the IGG sped up the investigation. Instead, they focused the investigation on Mr. Kohberger, a person whose only connection to the case was his mode of transportation and the shape of his eyebrows, two identifications of little to no value, as previously argued. As the Idaho Supreme Court has explained, while the initial burden in showing a factual nexus between the illegality and the evidence, the State must show it would have been discovered anyway. *State v. Maahs*, 171 Idaho 738, 752 (2022). The State cannot make this showing. Without IGG, there is no case, no request for his phone records, surveillance of his parents’ home, no DNA taken from the garbage

out front. Because the IGG analysis is the origin of this matter, everything in the affidavit should be excised.

- b. **Information about the client's locations taken from his phone must also be excised due to being gathered from an invalid warrant.**

Separately, the information gathered via the warrant for Mr. Kohberger's AT&T account and the pen trap and trace device warrant should be excised for the reasons set out in those warrants.

### CONCLUSION

Mr. Kohberger requests this Court suppress all evidence obtained by police via the warrant that permitted them to arrest Mr. Kohberger. As explained above, law enforcement failed to knock and announce before raiding the home, and the warrant lacked probable cause as written, given its heavy reliance on conclusions reached by law enforcement without the details necessary for the magistrate to draw its own conclusions, and because the warrant omitted exculpatory information and information that put into question the reliability of the facts upon which it relies, and finally because the affidavit relied on evidence gained in violation of the constitution, all in violation of the Fourth Amendment and Art. I Sec. 17.

DATED this   13   day of November, 2024.



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JAY WESTON LOGSDON  
FIRST DISTRICT PUBLIC DEFENDER



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ANNE C. TAYLOR  
ANNE TAYLOR LAW, PLLC

## CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 14 day of November, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)

Elisa Massoth – via Email: [legalassistant@kmrs.net](mailto:legalassistant@kmrs.net)

Jay Logsdon – via Email: [Jay.Logsdon@spd.idaho.gov](mailto:Jay.Logsdon@spd.idaho.gov)

Jeffery Nye, Deputy Attorney General – via Email: [Jeff.nye@ag.idaho.gov](mailto:Jeff.nye@ag.idaho.gov)

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