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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: SEARCH WARRANT FOR MR.
KOHBERGER'S PERSON**

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 the search of Mr. Kohberger's person in the Latah County Jail.

ISSUES

- I. The Affidavit Submitted in Support of the Application for the Issued Search Warrant Recklessly or Intentionally Omitted Material Information.**
- II. 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 gathered about Mr. Kohberger via previous invalid warrants must also be excised.**

FACTS

Due to the haphazard way in which law enforcement has kept and disclosed records in this matter, the following is the 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., Chestnuthill 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 Detective Payne

The basic facts Detective Payne used to support the search were:

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 attacking Mr. Kohberger within his parents' home was the best option.

On December 30, 2022, at 1:14 AM EDT (10:14 PM PDT), Pennsylvania SWAT and federal agents raided Mr. Kohberger's parents' home. Mr. Kohberger was arrested.

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

On January 4, 2023, Mr. Kohberger was flown to the Latah County Jail.

On January 5, 2023, Sgt. Blaker requested a search warrant for Mr. Kohberger's person, relying upon the same facts articulated above for the warrants used in Pennsylvania. Later that day, Mr. Kohberger's person was searched, pictures of his body, his fingerprints and a DNA swab taken, by members of Idaho and federal law enforcement at the Latah County Jail.

ARGUMENT

I. 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).

“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.

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

II. 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, 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 gathered about Mr. Kohberger via previous invalid warrants must also be excised.**

Separately, the information gathered via the various other warrants 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 search his person. As explained above, this 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.



JAY WESTON LOGSDON
FIRST DISTRICT PUBLIC DEFENDER



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
Elisa Massoth – via Email: legalassistant@kmrs.net
Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov
Jeffery Nye, Deputy Attorney General – via Email: Jeff.nye@ag.idaho.gov
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