

Anne Taylor Law, PLLC
Anne C. Taylor, Attorney at Law
PO Box 2347
Coeur d'Alene, Idaho 83816
Phone: (208) 512-9611
iCourt Email: info@annetaylorlaw.com

Jay W. Logsdon, First District Public Defender
Idaho State Public Defender
1450 Northwest Blvd.
Coeur d'Alene, Idaho 83814
Phone: (208) 605-4575

Elisa G. Massoth, PLLC
Attorney at Law
P.O. Box 1003
Payette, Idaho 83661
Phone: (208) 642-3797; Fax: (208)642-3799

Assigned Attorney:

Anne C. Taylor, Attorney at Law, Bar Number: 5836
Jay W. Logsdon, First District Public Defender, Bar Number: 8759
Elisa G. Massoth, Attorney at Law, Bar Number: 5647

**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: PENNSYLVANIA SEARCH
WARRANT FOR WHITE HYUNDAI
ELANTRA BEARING VIN:
5NPDH4AE6FH579860**

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 entry into and search of Mr. Kohberger's vehicle.

ISSUES

- I. This Court Should Apply Idaho’s Exclusionary Rule and Law to this Search.**
- II. Pennsylvania Law Enforcement Violated Mr. Kohberger’s Fourth Amendment Rights by Entering and Searching His Vehicle without a Valid Warrant.**
- III. The Affidavit Submitted in Support of the Application for the Issued Search Warrant Recklessly or Intentionally Omitted Material Information.**
- IV. 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 has kept and disclosed records in this matter, the following are 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 Mr. Kohberger’s vehicle.

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 Payne used to support the search are described in a separately filed motion pursuant to *Franks v. Delaware* 438 U.S. 154 (1978). The facts and issues are incorporated herein without repeating them.

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 weeks 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 weeks 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. During the raid, law enforcement found Mr. Kohberger's vehicle in the garage, seized and later searched it.

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 search warrant for Mr. Kohberger's automobile and the necessary relief. Unlike the issue of arrest warrants, cases involving multi-state investigations have produced far less case law. In fact, the Defense could not find a precise case on point for the state of Idaho.

The issue, however, has received some attention in academia. Professor Kerr argued in his article for the Harvard Law Review that the jurisdiction where the crime occurred should control how the investigation is done, but that states and/or the federal government should provide some form of authorization to each other to participate in each other's criminal

investigations. *See*, Orin Kerr, *Cross-Enforcement of the Fourth Amendment*, 132 Harv. L. Rev. 471, 531 (2018). As it stands, there are at least five different approaches to this increasingly common situation *See*, Megan McGlynn, *Competing Exclusionary Rules in Multistate Investigations: Resolving Conflicts of State Search-and Seizure Law*, 127 Yale L. J. 406 (2017).

Fortunately for this Court, Idaho and Pennsylvania do not differ in their approaches to the enforcement of their Fourth Amendment analog provisions- both do not accept the good faith exception. *See*, *State v. Guzman*, 122 Idaho 981, 995 (1992); *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887, 888 (1991). Thus, this Court can likely afford to leave as an open question which forum's exclusionary rule applies. However, it is also clear from the grounding of the exclusionary rule in Art. I Sec. 17 that evidence obtained in violation of the constitution must be excluded. *See*, *Guzman*, at 992-93. Thus, Mr. Kohberger argues that the Idaho Constitution's exclusionary rule must apply, as its basis lies not only in deterring police misconduct, but because exclusion is constitutionally mandated and judicial integrity demands it.

However, it remains to be determined whether the actions of the FBI and Pennsylvania State Troops should be viewed through the lens of Article I, Section 17, or its analogues. It is not at all clear that whether a search should be judged by Idaho's standards of reasonableness, or that of Pennsylvania, or in the case of the FBI agents, by the Fourth Amendment.

As noted, Professor Kerr would have Idaho's reasonableness apply in that the FBI and the Pennsylvania State Troopers were acting under its authorization. *See*, Kerr, 132 Harv. L. Rev. at 531. This approach would also mesh well with older cases such as *U.S. v. Di Re*, 332 U.S. 581 (1948) (looking to the laws of the state where the defendant was arrested in the absence of a federal law permitting the arrest by a federal agent for a federal law violation), *Johnson v. U.S.*, 333 U.S. 10 (1948). It also goes along with the legal framework of agency. *See, generally*, Restatement (Third) of Agency (Am. Law. Inst. 2024). In this matter, Idaho authorities

requested assistance from the FBI and the Pennsylvania State Police. Thus, this Court should be required to apply Idaho search and seizure law to their actions in Pennsylvania.

However, this concept has its detractors. McGlynn argues that when the situs officer is performing the search they should only be held to upholding their own laws. McGlynn, 127 Yale L. J. at 447-48. While that position has merit as it does not require a situs officer to get a rundown of the differences between their law and the trial state's laws, it remains that the Idaho Constitution is not merely concerned with deterrence to officers who misbehave. Moreover, it is of concern that such a rule would permit forum shopping. After all, if Idaho's law enforcement may take advantage of laxer restrictions in a different state, they may simply pause their investigation until their suspect is in that new jurisdiction, or in the case of the FBI, state law enforcement could at any point, even within Idaho, call upon federal agents with the far laxer rules of the Fourth Amendment.

Finally, it must be said that there is very little daylight between the Idaho Constitution and the Pennsylvania Constitution. 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. Pennsylvania Law Enforcement Violated Mr. Kohberger's Fourth Amendment Rights by Entering and Searching His Vehicle without a Valid Warrant.

Police cannot search a vehicle within the curtilage of a home without a warrant. *Collins v. Virginia*, 584 U.S. ---, 138 S.Ct. 1663, 1674-75 (2018). Mr. Kohberger's vehicle was in his parents' garage, in a home where he was an overnight guest. Overnight guests have an expectation of privacy in the home where they stay. *See, Minnesota v. Olson*, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990). Therefore, he had an expectation of privacy in the contents of his vehicle and a warrant was required.

III. Pennsylvania Law Enforcement's search warrant lacked probable cause.

“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.

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.

V. 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 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 search his car. 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

Ingrid Batey, Deputy Attorney General – via Email: ingrid.batey@ag.idaho.gov


