

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR., ISB No. 2613
PROSECUTING ATTORNEY
ASHLEY S. JENNINGS, ISB No. 8491
SENIOR DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
522 S. Adams Street, Ste. 211
Moscow, ID 83843
Phone: (208) 883-2246
paservice@latahcountyid.gov

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

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER,
Defendant.

Case No. CR01-24-31665

STATE'S OBJECTION TO
DEFENDANT'S MOTION TO
SUPPRESS CELL PHONE/USB
FILE AND MEMORANDUM
IN SUPPORT

RE: MOSCOW POLICE
FORENSIC LAB WARRANT
DATED JANUARY 9, 2023

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney and respectfully responds to "Defendant's Motion to Suppress Cell Phone/USB File and Memorandum in Support Re: Moscow Police Forensic Lab Warrant Dated January 9, 2023" filed on November 13, 2024.¹

FACTS

¹ Defendant's filing refers to a "contemporaneously filed Motion for an Order suppressing all evidence gathered by law enforcement from its search of the Seagate 2TB External USB Drive with Serial Number #NA87T1GN." However, the State is not aware of a separate "contemporaneous" filing, so the State's response is only to the contents of the Defendant's singular "Motion to Suppress and Memorandum in Support."

Regarding the Defendant's represented "FACTS," the State respectfully refers the Court to the Defendant's Exhibit A filed in support of his instant motion as opposed to relying on the Defendant's subjective summary and interpretation that begins on Page 2 of his brief.

ARGUMENTS

I. DEFENDANT HAS NOT DEMONSTRATED THE SEARCH WARRANT AFFIDAVITS CONTAIN INTENTIONALLY OR RECKLESSLY FALSE STATEMENTS OR OMISSIONS.

The Defendant next addresses its *Franks* argument. The State incorporates its argument and pleadings on the *Franks* issue at this point as opposed to restating the same.

II. IGG

The Defendant raises its objections to the IGG (Investigative Genetic Genealogy) and, again, the State incorporates the State's arguments in response to the Defendant's separate IGG Motion as opposed to restating them here.

III. THE SEARCH WARRANT INCORPORATED THE AFFIDAVIT FOR SEARCH WARRANT AND EXHIBIT A BY REFERENCE

The Defendant next asserts that "The Search Warrants Fails to Command Law Enforcement to Search the USB Drive." The State incorporates the "State's Objection to Defendant's Motion to Suppress and Memorandum in Support Re: Apple Account Federal Grand Jury Subpoena and Search Warrant dated August 1, 2023" as opposed to restating them here.

IV. THE CELL PHONE/USB FILE WARRANT WAS NOT A GENERAL WARRANT

For the Court's convenience, the State incorporates its analysis in "State's Objection to Defendant's Motion to Suppress and Memorandum in Support Re: Apple Account Federal Grand Jury Subpoena and Search Warrant dated August 1, 2023" and "State's Objection to Defendant's

Motion to Suppress and Memorandum in Support Re: AT&T First Warrant” regarding the applicable case law to apply for Fourth Amendment analysis as opposed to restating the same.

As applied to the Seagate 2TB External USB Drive search warrant, Idaho allows a search warrant affidavit to support the particularity requirement when the warrant references the affidavit for probable cause. *Adamcik v. State*, 163 Idaho 114, 124-25, 408 P.3d 474, 484-85 (2017). There are no magic words for reference. As stated above, the Warrant specifically referenced the Search Warrant Affidavit (and incorporated Exhibit A) with the words “Proof, upon oath, this day showing probable cause.” When the Seagate 2TB External USB Drive Search Warrant is considered along with the Affidavit for Probable Cause and the 20-page Exhibit A, the warrants are sufficiently particular and valid. In fact, Forensic Detective Lawrence Mowery set forth why he believed the Defendant’s cell phone would contain evidence of the crime.

While the Seagate 2TB External USB Drive Search Warrant was broadly worded regarding each category of digital evidence listed, the Search Warrant Affidavit and appended Exhibit provide the particularity necessary to satisfy the three-factor test set forth in *Teal*. See *State v. Teal*, 145 Idaho 985, 989, 188 P.3d 927, 931 (Ct. App. 2008).

First, probable cause existed to seize all items of a particular type described in the warrant. The specific USB Drive with identifying serial number was listed the scope was expressly limited to the November 13, 2022, homicides at 1122 King Road, Moscow, Idaho.

Second, the warrant set out objective standards by which executing officers could differentiate items subject to seizure from those that were not. The seizure of items was limited to the crime for which the Defendant was arrested: homicide(s) of Madison Mogen, Kaylee Goncalves, Xana Kernodle, and Ethan Chapin at 1122 King Road, Moscow, Idaho and for the

following types of evidence: communications, written/text communications, contacts, location information, internet history/bookmarks, written and audio notes; and indicia.

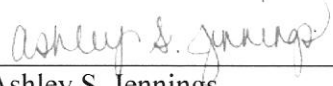
Third, the government was not able to describe the items more particularly considering the information available to it at the time the warrant was issued. Detective Mowery was seeking evidence that could be in multiple formats and areas, and considering electronic data can be stored anywhere, it was impossible for Detective Mowery to narrow down in advance the cell phone areas that should be searched. As a result, if the Court employs a “commonsense and realistic” approach and not the “hyper technical” approach the Defense is suggesting; the Court should find the Seagate 2TB External USB Drive Search Warrant passes the *Teal* test and is sufficiently particular. *See Wheeler v. State*, 135 A.3d 282, (Del. 206) (quoting *U.S. v. Christine*, 687 F2d 749, 69 A.L.R. Fed. 503 (3d Cir. 1982).

In summary, given the circumstances of this case, the Seagate 2TB External USB Drive Search Warrant and its respective Affidavit and Exhibit A are as particular as can reasonably be expected. Unlike general exploratory warrants, the Seagate 2TB External USB Drive Search Warrant allowed the searcher to “reasonably ascertain and identify the things which are authorized to be seized.” *See Teal* at 992, 188 P.3d at 924. Thus, suppression is not warranted.

CONCLUSION

Based on the above, the State respectfully requests that the Court deny “Defendant’s Motion to Suppress Cell Phone/USB File and Memorandum in Support Re: Moscow Police Forensic Lab Warrant Dated January 9, 2023”

RESPECTFULLY SUBMITTED this 6th day of December 2024.



Ashley S. Jennings
Senior Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS CELL PHONE/USB FILE AND MEMORANDUM IN SUPPORT RE: MOSCOW POLICE FORENSIC LAB WARRANT DATED JANUARY 9, 2023 were served on the following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 2347
Coeur D Alene, ID 83816
info@annetaylorlaw.com

- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 6th day of December 2024.

