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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

**REPLY TO 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, Bryan C. Kohberger, by and through his attorneys of record, and submits the following Reply to the State's Objection to his Motion to Suppress Cell Phone/USB File and Memorandum in Support Re: Moscow Police Forensic Lab Warrant Dated January 9, 2023.

I. The Warrant was General, and the Affidavit was Not Incorporated into the Warrant or Served with the Warrants or on the Company that Searched the USB File.

The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 17 of the Idaho Constitution is virtually identical to the Fourth Amendment, except that “oath or affirmation” is termed “affidavit.”

The Supreme Court has acknowledged “that a court may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant.” *Groh v. Ramirez*, 540 U.S. 551, 557–58, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004). In *SDI Future*, the Ninth Circuit held that a statement on the face of the warrant noting “the supporting affidavit(s)” was sufficient as a suitable reference and incorporation. *U.S. v. SDI Future Health, Inc.*, 568 F.3d 684, 699–700 (9th Cir. 2009). The subject warrant contained no language that the affidavit was incorporated. In misguided fashion, the State asserts that there is no requirement for specific language and relies on *Adamcik v. State*, which upheld a warrant where “the opening paragraph of the warrant unambiguously referenced the affidavit and sworn testimony of Detective Sellers as the basis for the warrant.” 163 Idaho 114, 125 (Idaho S. Ct. 2017).

The Affidavit of Detective Lawrence Mowrey swears that he personally served the “warrant” at the Moscow Police Department Forensic Lab. See Exhibit A Cell Phone Memorandum, p. 27. Further, the receipt and inventory of the warrant indicates that entrance was by “Key-Computer Forensic Lab.” *Id.* at p. 28. Neither the affidavit nor the search warrant mention that the search would be conducted by a third-party. Rather, the search warrant was

directed to the Moscow Police Department Forensics Lab. *Id.* at pp. 24, 25, 27. While the supporting affidavit might have been “in-hand” during the search as asserted in the incorporated Apple Objection, there was no language incorporating the affidavit into the search warrant. Further, there was no language in either the search warrant or the supporting affidavit authorizing the search by a third-party. After the return of warrant was produced to the magistrate, an order issued allowing a third party search. *See* Motion Exhibit A, pg 32. There is no evidence that the third party received a copy of the Affidavit in Support of Search Warrant.

An affidavit is considered “to be part of a warrant, and therefore potential curative of any defects, ‘only if (1) the warrant expressly incorporated the affidavit by reference and (2) the affidavit either is attached physically to the warrant or at least accompanies the warrant while agents execute the search.’” *SDI Future Health Inc.*, at 699 (citing *United States v. Kow*, 58 F.3d 423, 429 n. 3 (9th Cir.1995)).

II. The Search Warrant Failed to Provide Specific Particularization of What to Search.

The Fourth Amendment requires particularity. “The particularity requirement’s objective is that those searches deemed necessary based on a probable cause determination by a magistrate should be as limited as possible.” *State v. Teal*, 145 Idaho 985, 991, 188 P.3d 927, 931 (2008). Even if the Affidavit of Search Warrant had been incorporated into the warrant, it could have described particularized items as opposed to the laundry list of the contents of the cell phone without designation of a duty to separate lawful items.

The particularity requirement means that a warrant must be “specific enough to enable the person conducting the search reasonably to identify the things authorized to be seized.” *U.S. v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986). Once the warrant is specific enough, there must still be a search that provides guidelines to “distinguish items used lawfully from those the government had probably cause to seize.” *Id.* at 964. Not only did the state extract the entire contents of Mr. Kohberger’s cell phone, it has taken no action to sort through that which is lawful or applies to the

charges. It has produced the warrant return without any reports indicating what it intends to use as evidence of “the crime to which the defendant was arrested: homicide.”

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

In response to the State’s arguments under “Defendant Has Not Demonstrated the Search Warrant Affidavits Contain Intentionally or Recklessly False Statements or Omissions,” Defendant refers the Court to and hereby incorporates “Defendant’s Reply in Support of Defendant’s Motion and Memorandum in Support for a *Franks* Hearing” and “Reply in Support of Motion to Suppress Genetic Information.”

CONCLUSION

Mr. Kohberger requests that this Court suppress all evidence obtained by police via the warrant that permitted them to search and extract the entire contents of Mr. Kohberger’s cell phone.

DATED this 19 day of December, 2024.

BY: /s/ Elisa G. Massoth
Elisa G. Massoth

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 19 day of December, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net

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