DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. 2nd Ave., Durango, CO 81301 Phone Number : (970) 247-2304 Plaintiff: PEOPLE OF THE STATE OF COLORADO Defendant: MARK ALLEN REDWINE	DATE FILED: August 1, 2019 COURT USE ONLY
	Case Number: 17CR343

ORDER REGARDING MOTIONS TO SUPPRESS THE RESULTS OF VARIOUS SEARCHES AUTHORIZED BY SEARCH WARRANT (D-84, D-85, D-86, D-87, D-88, D-89, D-90, D-91, D-92, D-95, D-96, D-97, and D-100)

The defendant is charged with murder in the second degree and child abuse resulting in death in relation to the death of the defendant's thirteen-year-old son, Dylan. During the investigation, law enforcement obtained various search warrants that authorized the search for evidence in this case. The lead investigatory agency was the La Plata County Sheriff's Office, (hereinafter "LPCSO"). The defendant has filed motions to suppress, D-84 through D-92, D-95, D-96, D-97, and D-100, challenging the issuance of the search warrants. Because the motions to suppress and the responses thereto contain similar arguments, and the resolution of all of these motions rely upon the same law, the Court will rule upon all of the motions to suppress the results of search warrants in one order.

Both the Fourth Amendment to the United States Constitution and Article II, Section 7 of the Colorado Constitution protect persons against unreasonable searches and seizures. Any warrant issued by a court authorizing the search of a location must be supported by probable

cause that is established through the contents of an affidavit, the truth of which has been verified by oath or affirmation. *People v. Kazmierski*, 25 P.3d 1207, 1211 (Colo. 2001). Probable cause is established when the affidavit supporting the issuance of the warrant alleges facts ". . . to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched." *People v. Quintana*, 785 P.2d 934, 937 (Colo. 1990). When reviewing an affidavit to determine if it establishes probable cause, a reviewing court should not concern itself with ". . . hypertechnical interpretations or rigid legal rules." *People v. Altman*, 960 P.2d 1164, 1167 (Colo. 1998). The court should analyze an affidavit in support of a search warrant ". . . in a common sense fashion," and decide if ". . . the affidavit establishes a fair probability that contraband or evidence of crime will be found." *People v. Hakel*, 870 P.2d 1224, 1228 (Colo. 1994), citations omitted.

Even if an affidavit does not establish probable cause that would support the issuance of a search warrant, CRS 16-3-308 creates a statutory good faith exception in situations where a warrant has been obtained, but the warrant is invalid due to a lack of probable cause articulated in the affidavit supporting the issuance of the search warrant. This exception presumes that the officer who conducted a search pursuant to such a warrant acted reasonably by relying upon the warrant that had been issued by a judicial officer. The statute requires that in such situations, that the court not suppress evidence obtained as a result of the search ". . .unless the warrant was obtained through intentional and material misrepresentation." CRS 16-3-308(4)(b). The existence of a search warrant is prima facie evidence that the law enforcement officer is acting in good faith. See *People v. Kazmierski*, 25 P.3d 1207, 1213 (Colo. 2001).

With the exception of D-100, all the motions to suppress the various search warrants also request the Court suppress any "fruits" of the searches. In the context of a search warrant, the

"fruits" of the search consist of evidence derivatively discovered as a result of evidence directly obtained by the search. The defendant has not identified any evidence obtained by law enforcement, the discovery of which was the consequence of the searches authorized by the search warrants issued in this case. The Court therefore declines to issue any orders regarding the fruits as to any of the searches which the Court may suppress.

Analysis of the Motions to Suppress

D-84 Motion to Suppress the Search of Defendant's Email Account

In D-84, the defense moves to suppress the results of the search of the defendant's e-mail account identified as . The defense argues that the affidavit in support of the issuance of the search warrant is insufficient to establish probable cause justifying the issuance of search warrant 14SW30. The Court agrees. The affidavit in 14SW30 is a bare bones affidavit which does not explain why LPCSO believed evidence contained in the defendant's e-mail account would be material information in a subsequent criminal prosecution. If an affidavit supporting a search warrant is so lacking in evidence to establish probable cause that no reasonable officer could believe that the warrant was supported by probable cause, the presumption that an officer acted in good faith in relying upon the warrant to authorize a search is rebutted. *People v. Hagos*, 250 P.3d 596, 618 (Colo. App. 2009), as modified on denial of reh'g (Feb. 18, 2010).

In this case, the Court finds that the affidavit in support of 14SW30 is so deficient in its factual allegations that the good faith exception does not apply and suppresses the results of the search pursuant to 14SW30. However, because neither party raised CRS 16-3-308 in their motion or response, and considering the need to resolve this issue expeditiously due to the fast approaching trial date, the Court will give the prosecution ten days from the issuance of this

order to file a motion to reconsider this order if they have a good faith argument that would justify the Court's reconsideration of this order suppressing the results of 14SW30. The defendant shall have ten days to respond to any motion to reconsider this order.

D-85 Motion to Suppress the Results of 14SW103

In D-85, the defense moves to suppress the results of the seizure from the defendant's home of the defendant's coffee table, large couch, and love seat pursuant to search warrant 14SW103. The defense argues that the affidavit in support of the issuance of the search warrant is insufficient to establish probable cause, justifying the issuance of search warrant 14SW103 in part, because the DNA analysis of the blood samples found on the coffee table cannot exclude the defendant or Dylan as contributors to the sample and the DNA analysis of the blood collected from under the living room rug cannot exclude Dylan's brother or Dylan as contributors to the sample. The affidavit in 14SW103 states that DNA analysis showed that Dylan's blood was present on the coffee table, the large couch, the love seat, and underneath the living room rug. The determination of probable cause must be based on facts contained "within the four corners of the affidavit" submitted in support of the search warrant. *People v. Gallegos*, 251 P.3d 1056, 1064 (Colo. 2011).

In this motion, the defense argument that the Court should suppress the results of this search is based upon factual allegations in the motion to suppress that are not contained in the affidavit supporting the search warrant, even though at the motions hearing held in December of 2018 the defense and prosecution agreed that the Court could rule upon the motions based upon the documents filed in each of the motions to suppress evidence obtained as the result of search warrants. The Court finds that based upon the "four corners of the affidavit" in support of 14SW103, probable cause exists to support the issuance of the search warrant. Even were the

Court to consider the factual allegations in D-85 in determining whether to suppress the results of 14SW103, the defense has only argued that the DNA analysis of two of the four samples contains a mixture of blood. If the Court were to excise from the affidavit those two locations, the affidavit would still allege that two locations searched in the defendant's house were found to have contained Dylan's blood. If, as alleged in the motion to suppress, the blood found under the living room rug was a mixture that contained Dylan's blood, it is reasonable to believe that the bottom of the rug directly above where the mixture was found could contain Dylan's blood. There has been no argument made that law enforcement intentionally misled the Court to obtain the warrant. The issue raised by the defense in the motion to suppress may be sufficient to preclude the Court from allowing the evidence to be introduced at trial, but it is not grounds to suppress the results of a validly issued search warrant. The Court therefore denies the motion to suppress D-85.

D-86 Motion to Suppress the Results of 12SW177, the Search of the Defendant's Home Conducted on November 29, 2012

In this motion, the defendant appears to challenge the issuance of search warrant 12SW177 because of a lack of probable cause articulated within the affidavit in support of the issuance of the search warrant and because the affidavit does not sufficiently identify the items to be seized.

Dylan was reported missing on November 19, 2012. Nine days later, Daniel Patterson of the La Plata County Sheriff's Office requested that 12SW177 be issued. Among other allegations in the six-and-one-half page single spaced affidavit executed to support 12SW177, the defendant told the LPCSO that the defendant picked up Dylan from the airport and took him to the defendant's house. Initially, Dylan was "stand offish" but the two started "Rough Housing" and watched a movie at the defendant's house until 9:30 or 10:00 PM when the

defendant went to bed. Aff., disc. pp. 1032-1033. Dylan remained awake when the defendant went to bed and Dylan eventually slept on the couch. During the movie, Dylan texted on his telephone and got on Facebook on a laptop computer. The defendant told law enforcement that he left Dylan asleep on the couch when he left the house around 7:30 AM.

When the defendant returned home at approximately 11:30 AM, the defendant found the television on, a bowl of cereal in the sink, and Dylan missing along with all of his belongings. Dylan would normally text his friends and family "throughout the day and into the late night or early morning hours." Aff., disc. p. 1034. Dylan always kept his cell phone charged throughout the night. An analysis of Dylan's telephone records revealed that once Dylan arrived in Durango until 8:01 PM, Dylan was actively sending and receiving texts on his cell phone. After 8:01 PM, no outgoing telephone calls or texts were sent from Dylan's phone and it appears that Dylan's telephone was turned off or disconnected at approximately 9:56 PM.

Dylan wanted to spend most of his time while visiting La Plata County with his friends and had planned to go to his friend Ryan Nava's house at 6:30 AM the next day. When Dylan did not appear in the morning, Ryan Nava made numerous attempts to contact Dylan but did not receive any response. The defendant stated that he believed Dylan walked to Vallecito Reservoir to go fishing. However, security cameras located along the only practical route of travel from the defendant's house from the time the defendant left his house until he returned showed that Dylan had not walked by the security cameras. The defendant told law enforcement that the afternoon of November 19, 2012, when Dylan was not at home, the defendant unsuccessfully tried to locate Dylan at a friend's house. Dylan's mother informed law enforcement the defendant texted her at 4:32 PM to see if she had heard from Dylan. Dylan's mother told law enforcement that it was unusual for the defendant to be concerned about Dylan's whereabouts

and that Dylan had been away from the defendant's custody for eight or more hours without any concern being exhibited by the defendant.

The La Plata County Search and Rescue team used dogs to determine if Dylan's scent was on the pillowcase upon which the defendant reported Dylan had slept. Despite the dogs identifying Dylan's scent on known pieces of Dylan's clothing, the dogs did not identify Dylan's scent on the pillowcase.

Considering all of the facts listed in the affidavit, including:

1. the lack of texting or contact with family or friends;

2. the failure of Dylan to go to Ryan Nava's house as planned the morning Dylan was reported missing;

3. the lack of texting to friends the night before Dylan disappeared despite the defendant's statements;

4. the lack of Dylan's scent on the pillowcase upon which the defendant said Dylan had slept;

5. the fact that the defendant was the last person reported to have seen Dylan: and,

6. the last reported location of Dylan was on the couch at the defendant's house,

the Court finds that the affidavit establishes a fair probability that evidence of a crime would be found in the search authorized by 12SW177. Even if the affidavit were slightly deficient in establishing probable cause, the affidavit is sufficient that the Court finds that law enforcement acted in good faith when conducting the search authorized by 12SW177.

The defendant also argues that the items sought by the warrant were not sufficiently identified in the warrant. Specifically, the defendant challenges the search for:

> [o]ther unknown clothing in the backpack indicative of a 13-year-old boy [sic.]

Evidence of Dylan Redwine to include DNA
Any evidence of a possible crime scene

D-86, p. 2. When reviewing an affidavit for probable cause, the Court is to review the statements in the affidavit and determine by a totality of the circumstances that the affidavit establishes probable cause to search for the items requested. See *People v. Scott*, 227 P.3d 894 (Colo. 2010), and *Illinois v. Gates*, 103 S. Ct. 2317 (1983). Looking at a totality of the circumstances listed in the warrant, it is reasonable to believe that finding Dylan's clothes and DNA in the house would be relevant evidence in a subsequent criminal prosecution. While "evidence of a possible crime scene" does not identify potential evidence with particularity, at the time law enforcement sought the warrant, they did not know what had happened to Dylan and it would have been difficult to impossible to presciently list all items of potentially relevant evidence that might have been found in the house. The term "[a]ny evidence of a possible crime scene" sufficiently identifies for law enforcement what is allowed to be seized and is not overly broad under the circumstances of this case.

The motion to suppress the results of 12SW177 is denied.

D-87 Motion to Suppress Search Warrant to Install a Pen Register on the Defendant's Phone, 12SW184

On December 5, 2012, Investigator Tonya Goldbricht of the LPCSO obtained a search warrant to install a pen register on the defendant's telephone to determine the telephone numbers of calls coming into the defendant's phone and to keep track of the general location of the defendant's cell phone. The affidavit in support of 12SW184 contains all of the information that is discussed in the Court's order regarding D-86 above and adds that Dylan did not like to fish, did not ". . . know how to tie a line or lure," 12SW184, disc. p. 1066, and would not have gone fishing, despite the defendant telling law enforcement that he initially believed that Dylan had

left the house the morning of November 19 to fish at Vallecito Reservoir. The affidavit also includes the details of the extensive efforts at finding Dylan from the time that he was reported missing until the date that Investigator Goldbricht requested the search warrant, and that the efforts to locate Dylan were fruitless.

The warrant was requested in order to track where the defendant went and who, if anyone, was in contact with the defendant in case the defendant had secreted Dylan from his mother and the defendant and/or a confederate were providing sustenance for Dylan. The warrant was also requested in the alternative that in case Dylan was deceased, that the defendant may have been "maintaining security" at the location where Dylan's body had been placed.

The Court finds that a common-sense review of all the circumstances listed in the affidavit establishes a fair probability that evidence of a crime would be found in the search authorized by 12SW184. The Court further finds that the affidavit in this search was sufficiently detailed such that law enforcement acted in good faith when relying upon the warrant issued in this case. The motion to suppress 12SW184 is denied.

D-88 Motion to Suppress the Results of a Search of the Defendant's Black Samsung Cell Phone and Blue Apple iPod Authorized by 12SW192

The defendant argues that the affidavit in this case does not establish probable cause to authorize the issuance of a search warrant of the Samsung cell phone and the iPod. When reviewing an affidavit for a search warrant, the issuing court must find that probable cause exists to believe that evidence will be located at the place searched. *People v. Quintana*, 785 P.2d 934, 937 (Colo. 1990). While the affidavit goes into great detail as to reasons to suspect that the defendant committed a crime against Dylan, the affidavit is devoid of any reason to believe that the search of the Samsung cell phone or the iPod would result in the discovery of relevant evidence in this case. As stated in the Court's order regarding D-84 above, when an affidavit

supporting a search warrant is so lacking in evidence to establish probable cause that no reasonable officer could believe that the warrant was supported by probable cause, the presumption that an officer acted in good faith in relying upon the warrant to authorize a search is rebutted. *People v. Hagos*, 250 P.3d 596, 618 (Colo. App. 2009), as modified on denial of reh'g (Feb. 18, 2010). As opposed to the affidavit in question in D-84, the affidavit supporting 12SW192 contains a significant amount of details as to reasons to suspect that the defendant committed a crime against Dylan. It is not appropriate to hold law enforcement officers to the same standard regarding their reasonable belief as to the existence of probable cause as the Court would hold an attorney with experience in criminal law.

> The test for good faith is "whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization," taking into account all of the circumstances surrounding the issuance of the warrant.

People v. Pacheco, 175 P.3d 91, 96 (Colo. 2006), citing *United States v. Leon*, 468 U.S. 897, 922–23 n. 23, 104 S. Ct. 3405, 82 L.Ed.2d 677 (1984).

The Court will therefore find that despite *Hagos*, the good faith exception contained in CRS 16-3-308 insulates the results of 12SW192 from suppression. However, because neither party raised CRS 16-3-308 in their motion or response, and considering the need to resolve this issue expeditiously due to the fast approaching trial date, the Court will give the defense ten days from the issuance of this order to file a motion to reconsider this order if they have a good faith argument that would justify the Court's reconsideration of this order denying suppression of 12SW192. The prosecution shall have ten days to respond to any motion to reconsider this order.

D-89 Motion to Suppress the Results of a Search of the Defendant's Area Rug Authorized by 14SW91

In D-89, the defendant moves to suppress the results of a search of an area rug authorized by 14SW91 arguing that the officer misled the Court by stating in the affidavit that DNA analysis of previous searches showed that Dylan's blood had been found on the coffee table, on the couch, on the loveseat and underneath the living room rug. The defendant argues in his motion that in reality, the DNA analysis of the coffee table and underneath the area rug showed that Dylan could not be excluded as a contributor to the DNA found at those two locations. The defendant also argues that the affidavit failed to mention that the phenolphthalein testing in the defendant's house is a presumptive test for the presence of blood and not a conclusive test, and that the failure to so inform the Court was misleading. Finally, the defendant argues that the term "any evidence of a possible crime scene" is overly broad.

The Court notes that the affidavit in support of the issuance of 14SW91 does not request a search for "any evidence of a possible crime scene." This motion is almost an identical motion to D-85. As stated in the Court's order of D-85 above:

> In this motion, the defense argument that the Court should suppress the results of this search is based upon factual allegations in the motion to suppress that are not contained in the affidavit supporting the search warrant, even though at the motions hearing held in December of 2018 the defense and prosecution agreed that the Court could rule upon the motions based upon the documents filed in each of the motions to suppress evidence obtained as the result of search warrants. The Court finds that based upon the "four corners of the affidavit" in support of [4SW91], probable cause exists to support the issuance of the search warrant. . .[T]he defense has only argued that the DNA analysis of two of the four samples contains a mixture of blood. Even if the Court was to excise from the affidavit those two locations, the affidavit would still allege that two locations searched in the defendant's house were found to have contained Dylan's blood.

If the defendant wished to present evidence that law enforcement misled the Court, the time to do so was at the motions hearings held in December of 2018. "There is a presumption of validity afforded to the affidavit submitted in support of the search warrant." *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008), citing *Franks v. Delaware,* 438 U.S. 154, 165, 98 S. Ct. 2674, 57 L.Ed.2d 667 (1978). Therefore, the appropriate procedure to follow when arguing that the affidavit misled the Court into issuing a search warrant is to file ". . . one or more affidavits reflecting a good faith basis for . . . [challenging the affidavit] and must identify the precise statements in the warrant affidavit that are being challenged." *Id.* The defense did not file any affidavit with the motion to suppress nor attempted to introduce any evidence during the motions hearings in December of 2018. Even if the Court was to accept the defendant's arguments and find that the affiant knowingly made untrue statements in the affidavit and replaced the disputed portions of the affidavit supporting 14SW91 to reflect that two of the four DNA tests could not exclude Dylan as a contributor and that phenolphthalein was only a presumptive test, the Court would still find that probable cause existed from the modified affidavit to authorize the seizure and testing of the area rug.

The Court denies D-89, the motion to suppress the results of a search of the defendant's area rug authorized by 14SW91.

D-90 Motion to Suppress the Results of a Search for AT&T Cell Phone Tower Information Authorized by 12SW195

The defendant has moved to suppress the results of 12SW195 that authorized AT&T to provide information regarding the telephone numbers of cell phones that used the tower closest to the defendant's house from 10:30 PM on the night before Dylan disappeared until 11:00 AM the following morning. The information was sought to determine the identities of people in the

area at the time Dylan was reported missing to attempt to develop a suspect and/or witnesses to Dylan's disappearance. Neither the motion to suppress nor the response thereto indicate what information was obtained as a result of 12SW195. The motion to suppress does not allege any facts or law that would give the defendant standing to suppress any or all of the information that does not relate to the defendant that was obtained as a result of 12SW195. The motion to suppress seems to be a somewhat generic motion repeating previous motions to suppress without any analysis of this particular search. The Court has reviewed the affidavit in support of the issuance of 12SW195 and finds that it states probable cause that is sufficient to authorize the search warrant to be issued. D-90, the defense motion to suppress the results of a search for AT&T cell phone tower information authorized by 12SW195, is denied.

D-91 and D-92 Motions to Suppress the Results of the Installation of Tracking Devices Placed Upon the Defendant's Trucks and the Extension of the Use of those Devices Authorized by 12SW178 and 13SW8

To avoid confusion, the Court notes that the defendant has not numbered D-91 and D-92 in the same order in which the search warrants were obtained. D-92 moves to suppress the original search warrant 12SW178 that authorized the installation of a tracking device on the defendant's truck. D-91 moves to suppress search warrant 13SW8 that extended the amount of time the tracking device was authorized to remain on the defendant's truck. The first warrant authorizing the installation of the tracking devices was obtained on November 28, 2012, nine days after Dylan was reported missing. The affidavit in support of 12SW178 contains the same allegations that are discussed in the Court's orders in D-86 and D-87 above. For the same reasons the Court found in ruling upon D-86 and D-87, the affidavit in support of 12SW178 includes facts that would lead a reasonable person to believe that the defendant was involved in

Dylan's disappearance. The affidavit gives alternative reasons for the issuance of the search warrant based on whether Dylan was alive or deceased at the time the warrant was issued. The affidavit states that the LPCSO had ". . . exhaust[ed] all other resources in the efforts to locate Dylan Redwine." Affidavit in support of 12SW178, disc. p. 1046. The Court finds that looking at all the facts and circumstances stated in the affidavit in support of 12SW178, that probable cause existed for the issuance of the warrant. Even if the affidavit in support of 12SW178 is in some manner deficient, the affidavit is sufficiently detailed for the Court to find pursuant to CRS 16-3-308 that the officers acted in good faith when relying upon the warrant.

The affidavit in support of 13SW8 is exactly the same as the typewritten portion of the affidavit in support of 12SW178 with the additional request that the tracking devices remain active for an additional period of 30 days in the event that Dylan's birthday would cause an emotional or sentimental reaction from the defendant that would lead them to Dylan or the location of Dylan's body. The Court finds that there is probable cause in the affidavit supporting the 30-day extension of the use of the tracking devices.

D-91 and D-92, the motions to suppress the results of the installation of tracking devices placed upon the defendant's trucks and the extension of the use of those devices authorized by 12SW178 and 13SW8, are denied.

D-95, D-96, and D-97 Motion to Suppress the Search of the Defendant's White Dodge Truck on March 20, 2014, (D-95) authorized by 14SW69; Motion to Suppress the Search of the Defendant's White Dodge Truck on February 10, 2014, (D-96); and Motion to Suppress the Search of the Defendant's White Dodge Truck on February 13, 2014, (D-97) authorized by 14SW31

In D-95, D-96, and D-97, the defense seeks to suppress the results of three searches of the defendant's white Dodge truck that were authorized by search warrants. The order of the motions is somewhat confusing as D-95, instead of challenging the first search, is a motion to

suppress the third alleged search, and D-97 challenges the first search. To confuse matters further, the prosecution, in its response to D-96, alleges that the LPCSO only obtained two search warrants for the defendant's white Dodge truck. The prosecution alleges that the LPCSO obtained the first warrant on February 10, 2014 but did not conduct that search until February 13, 2014. The Court presumes that the prosecution is correct and that defense counsel was confused regarding the number of searches involving the Dodge truck. Unless otherwise notified by the defendant of the need to do so, the Court will issue no orders regarding D-96.

Confusing matters still further, D-95 and D-97 refer to the installation of tracking devices in the Dodge truck. The Court has denied the motions to suppress evidence gained by the LPCSO because of those tracking devices in D-91 and D-92 above. The affidavits supporting the warrants authorizing the search of the defendant's white Dodge truck on February 13, 2014, and March 20, 2014, did not request that tracking devices be installed on the white Dodge truck. The Court assumes that defense counsel made an error cutting and pasting when drafting D-95 and D-97 and such error was not noticed when the motions were proofread. Unless otherwise notified by the defendant of the need to do so, the Court will issue no further orders regarding tracking devices.

The first warrant to search the defendant's truck was issued on February 10, 2014, and executed on February 13, 2014. In D-97, the defendant argues that the affidavit in support of the warrant that authorized this search did not state with particularity the items to be seized. In that warrant, the LPCSO was authorized to search for any human remains or clothing believed to belong to Dylan. The Court finds this description to be sufficiently descriptive and does not authorize an "exploratory rummaging in a person's belongings" as complained of in paragraph 5 of D-97. According to the search warrant return attached to the affidavit and warrant concerning

14SW31, disc. p.1340, the LPCSO recovered a broom containing hair, hair from the driver's side floorboard, and fingernail clippings. The Court finds that the seizure of these items was consistent with the Court's authorization in 14SW31. The LPCSO also seized a folder with missing flyers, a fired shotgun shell, three unfired shotgun shells, a multi-tool, and a tire iron and jack stand.[1] The prosecution argues that the items seized may have contained trace evidence, including Dylan's DNA, and thus it was appropriate to seize these items as being in plain view. With the exception of the folder containing flyers, the Court agrees. The Court takes judicial notice from the prosecution's response to D-117 that Dylan's partial cranium was not recovered until November 2015 and thus, at the time of these searches, the LPCSO did not have any evidence to support any theory as to the cause of Dylan's death. The LPCSO certainly did not have any evidence to support its current theory that Dylan suffered blunt force trauma to his cranium either before or soon after he died. The Court therefore finds that at the time of the searches, it was reasonable for the LPCSO to seize the fired and unfired shotgun shells, multi-tool, tire iron, and jack. The Court, however, has not been provided any reason to believe that the folder containing the missing flyers contains any trace evidence and finds that such evidence is suppressed.

The Court finds that the affidavit in support of 14SW31 states reasons that would lead a reasonable person to believe that there was a fair probability that evidence of a crime would be found in the white Dodge truck. The Court realizes that the weakest element of the probable cause analysis is the fact that Dylan was reported missing in November of 2012 and the search in 14SW31 did not occur until February of 2014. However, the Court notes that the affidavit in

[1]D-97, which is the motion to suppress the search of February 13, 2014, complains that items other than those listed above were seized during that search. The return attached to 14SW31 does not list any other items as being seized, other than what is listed above. If any other items were seized on February 13, 2014, that were not listed in the return, the Court orders such items will be suppressed and not allowed as evidence in this case.

support of 14SW31 states that on April 23, 2013, the defendant was observed by Dylan's stepfather driving down Middle Mountain Road before the road was clear of snow and completely open to the location where Dylan's remains were later found. The defendant was reportedly "surprised" to be seen driving on Middle Mountain Road and sped down the road in an attempt to evade the stepfather.

Further investigation shortly thereafter revealed that although there was a locked gate across Middle Mountain Road, numerous tracks (both fresh and older) were observed going around the gate. This was before an abnormally small amount of Dylan's skeletal remains were located, Affidavit in support of 14SW31, disc. p. 1346., and some of Dylan's clothing was found in June of 2013 off of Middle Mountain Road past the locked gate. In July of 2013, the defendant was observed parked in his white Dodge truck near where a small amount of Dylan's skeletal remains were found because the defendant ". . .was there to be as close as he possibly could be to Dylan." Affidavit in support of 14SW31, disc. p. 1347. On August 5, 2013, a sock belonging to Dylan was recovered by the LPCSO in the yard outside of the defendant's house. Additionally, items of Dylan's clothing were discovered in the defendant's house on August 5, 2013, despite the defendant telling the LPCSO in November of 2012 that all of Dylan's clothing had disappeared when Dylan went missing. The white Dodge truck was not at the defendant's house on August 5, 2013, and the defendant would not tell the LPCSO where the Dodge was located. The LPCSO later was told by a confidential informant that the white Dodge truck had been secreted by the defendant in Chicago. LPCSO was not aware of the white Dodge truck's location until January of 2014. The affidavit also states that based upon the affiant's experience that persons who commit violent crimes often return to the scene to dispose, move, or secure evidentiary items and may keep souvenirs or mementos belonging to the victim. Based upon

this information in the affidavit in support of 14SW31, the Court finds that a fair probability existed that evidence relevant to this case would have been found in the defendant's white Dodge truck at the time the warrant was issued.

The second warrant to search the defendant's white Dodge truck was executed on March 20, 2014, pursuant to 14SW69. D-95 argues that the affidavit is based upon conclusions and suspect research and dog sniff evidence and does not meet the probable cause standard. The Court has previously found that the dog and dog handler referenced in the affidavit issued in support of 14SW69 are reliable in detecting the location of the highest concentration of the odor of decaying human remains, even after those human remains had been removed from the location searched for a significant period of time. See the Court's order regarding the admissibility of scent and cadaver detection dog evidence (D-36, D-37, D-38, D-39, D-40, and P-14) issued on July 16, 2019. The motion also alleges that more items were seized than were authorized by 14SW69. On March 20, 2014, the white Dodge truck was still in the possession of the LPCSO after the search of the truck in February. The text of the affidavit in support of 14SW69 is substantially the same as the affidavit used to support 14SW31 but also includes observations the affiant made while in the truck after receiving permission from the defendant to retrieve items for the defendant. The Court finds that the affidavit in support of 14SW69 contains sufficient factual allegations to find there was probable cause to search the truck a second time. The Court does not find the information used in the affidavit to be conclusory or to be speculative assertions.

No search return was attached to the copy of 14SW69 that was filed with the Court. The warrant specifically authorized the collection of hair samples from inside the truck, the collection of human remains, and/or clothing and personal items believed to belong to Dylan. By crossing

out the request to seize computer evidence and media storage devices, including cell phones, the Court denied LPCSO's request to be allowed to seize these items. To the extent these items were seized in the execution of 14SW69, the Court suppresses these items and orders that they cannot be used as evidence in this case. The prosecution argues that the items seized were items specifically authorized by the warrant or were items upon which Dylan's DNA and other trace evidence of Dylan could be found. Using the items listed in paragraph 7 of D-95, the Court finds that the following items were not authorized to be seized by 14SW69:

1. the key to the Dodge truck;
2. the Kelin K95 stun gun;
3. the pink flash drive;
4. the small yellow notebook;
5. the small blue notebook;
6. the medium notebook;
7. the envelope containing receipts;
8. the bag of miscellaneous audio cables, earbuds, Sandisk memory card and adapter; and, envelopes containing receipts.

The Court has not been provided any valid reason to believe the eight items above contain trace evidence of Dylan's remains or when they were observed during the second search of the truck to be obvious evidence that could be seized pursuant to the plain view doctrine. The eight items above are suppressed and cannot be used in the trial of the defendant.

The Court finds that the warrant specifically authorized the seizure of Dylan's debit card, Dylan's itinerary, the joint bank statements for both the defendant and Dylan, and the bags containing miscellaneous items and biological material. Paragraph 7 of D-97 also states that a multi-tool was recovered from the truck. The Court notes that a multi-tool was seized from the truck during the February 13, 2014, search. If an additional multi-tool was seized by the LPCSO on March 20, 2014, the Court finds that its seizure was permitted as potentially containing trace evidence of Dylan.

For the foregoing reasons, the Court denies D-97 (the search of February 13, 2014, authorized by 14SW31) with the exception that the folder containing the missing flyers is suppressed. As to D-95 (the search of March 20, 2017, authorized by 14SW69), the Court suppresses the evidence listed in items 1 through 8 above and denies the remainder of D-95.

D-100 Motion to Suppress the Results of a Search of the Defendant's Work Truck Pursuant to Warrants Issued in the State of Utah (1708571) and the State of Colorado (17SW343B)

The defendant moves to suppress evidence obtained in this case that was gathered by the defendant's employer, CR England Trucking, after the defendant was arrested from his work truck in Bellingham, Washington. The defendant was arrested pursuant to an arrest warrant issued by this Court after the defendant was indicted in this case. Upon being arrested, the defendant gave consent for the local police department to search his work truck. The Court has already ruled in its order denying the defendant's motion to suppress that search, D-83, that the consent to search was given knowingly, intelligently, and voluntarily and did not suppress the results of that search. At the evidentiary hearing on D-83[2], Officer Craig Johnson of the Bellingham Police Department testified that upon the arrest of the defendant, Officer Johnson asked the defendant if he could provide any assistance as to who the Bellingham Police Department should release the truck and if there was anything in the truck that the defendant wished the police to obtain so that it could remain with the defendant. The defendant requested Officer Johnson retrieve several items from his work truck. After searching the truck for the requested items, Officer Johnson returned to the defendant and asked him the location of several items he had been unable to find. Officer Johnson also asked the defendant about other items he

[2]Although the evidence presented at the motion hearing regarding D-83 contains information outside the four corners of the affidavit in support of 17SW343B, the Court is including this evidence to explain the Court's findings regarding the defendant's standing to suppress the results of 17SW343B.

observed in the truck that had some value and asked the defendant if he wanted him to retrieve those items in addition to the items originally requested. Officer Johnson testified that he retrieved all of the items the defendant requested, and the truck and its remaining contents were released to CR England, the defendant's employer. According to the affidavit in support of 17SW343B, Alisa Buchanan, who worked at the legal department for CR England Trucking, had removed the defendant's personal belongings from the truck and was storing the property at their office in Salt Lake City, Utah. Ms. Buchanan had earlier informed the LPCSO that it was the normal policy of CR England to remove the property of former employees from their work trucks and store the property for several months for the former employee.

Among the items removed by CR England were two 3x5 spiral notebooks, several Post-It notes attached to the notebooks, and a small clipboard containing handwritten notes. Ms. Buchanan informed the LPCSO that the LPCSO needed to see these items, as they contain references to Dylan. The affidavit in support of search warrant 1708571 issued in Utah also states that the LPCSO had received information from a confidential informant that the confidential informant had observed notebooks and notes in the defendant's work truck that contained writings about Dylan.

The defendant argues that he has standing to challenge the search, that the warrants[3] are insufficient in their determination of probable cause, that the affidavits do not explain how the confidential informant's information is reliable, that the affidavits don't particularly describe the place to be searched or the items to be seized, and that there is no evidentiary nexus to the place being searched and the criminal activity alleged. The prosecution's response argues that the

[3]The prosecution only filed as an exhibit to their response to D-100 the affidavit in support of the issuance of search warrant 1708571 and not the actual search warrant issued in Utah. Because both the defense and prosecution state in their motion and response that a Utah judge issued search warrant 1708571, the Court is going to accept the parties' assertion that the search warrant was issued.

defendant gave consent to search the truck and did not revoke that consent and that the two search warrants issued in this matter are sufficient to justify the seizure of the notebooks and notes.

A defendant has no standing to challenge a search unless the defendant has a legitimate expectation of privacy in the location searched or item(s) seized. *People v. Sotelo*, 336 P.3d 188, 192 (Colo. 2014). The Court is to look at a totality of the circumstances in making this determination, *People v. Galvadon*, 103 P.3d 923, 930 (Colo. 2005). "The only person who can assert the right is a person with a possessory or proprietary interest in the property or premises searched." *Perez v. People*, 231 P.3d 957, 960 (Colo. 2010) citing *Rakas v. Illinois*, 439 U.S. 128, 134, 99 S. Ct. 421, 58 L.Ed.2d 387 (1978). Based upon all the facts in this case, the Court finds that the work truck did not belong to the defendant and the defendant abandoned any proprietary interest he had in the notebooks and notes when he had two separate opportunities at the time of his arrest to request the notebooks and notes be retrieved by Officer Johnson and he failed to do so. The Court finds the defendant has no standing to challenge the seizure of these items.

Even if the defendant has standing to challenge the search, the Court finds the affidavit supporting the issuance of the Utah search warrant contains sufficient allegations to establish probable cause to issue the search warrant. The Court finds that the truth of the statement of the confidential informant was confirmed by the statements of Ms. Buchanan. Were the Court to excise the allegations of the confidential informant from the affidavit in support of search warrant 1708571, there is still probable cause established by the affidavit in support of search warrant 1708571.

The Court finds merit in the defendant's argument that the affidavit supporting 17SW343B did not establish probable cause to authorize the search. The Court finds that the undersigned erred in issuing search warrant 17SW343B because the affidavit did not contain any factual allegations establishing probable cause that the defendant was connected to any crimes in relation to Dylan. Even though 17SW343B was issued in error, the defects in 13SW343B do not vitiate the fact that Utah search warrant 1708571 is a valid search warrant and sufficient authorization for the seizure of the items complained of in D-100. The Court also finds that it was reasonable for the LPCSO to rely upon both search warrants 1708571 and 17SW343B, and the good faith exception contained in CRS 16-3-308 also insulates the notebooks and notes from being suppressed.

D-100, the motion to suppress search warrants 1708571 and 17SW343B, is denied.

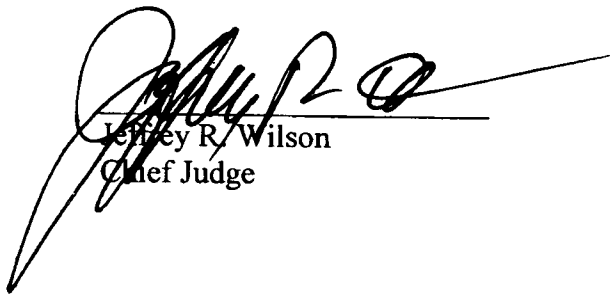
Orders Regarding D-84, D-85, D-86, D-87, D-88, D-89, D-89, D-90, D-91, D-92, D-95, D-96, D-97, and D-100

For the foregoing reasons, the Court grants D-84 in its entirety. The Court grants D-97 to the extent that the folder containing missing flyers was seized from the defendant's Dodge truck. The remainder of D-97 is denied. The Court grants D-95 as to the seizure of the key to the Dodge truck; the Kelin K95 stun gun; the pink flash drive; the small yellow notebook; the small blue notebook; the medium notebook; the envelope containing receipts; and the bag of miscellaneous audio cables, earbuds, Sandisk memory card and adapter; and, envelopes containing receipts. The remainder of D-95 is denied.

The Court denies D-85, D-86, D-87, D-88, D-89, D-90, D-91, D-92, and D-100 in their entirety.

As stated above, the Court is issuing no orders regarding D-96.

Done and signed this 1st day of August, 2019.



Jeffrey R. Wilson
Chief Judge