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2
3 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**
4
5 **FOR THE COUNTY OF LINCOLN**

6 **STATE OF OREGON,**

7 Plaintiff,

8 vs.

9 **JACK EDWARD SIGLER,**

10 Defendant

Case No: 20CR67214

**MEMORANDUM IN SUPPORT OF
MOTION TO CONTROVERT SEARCH
WARRANTS**

DEFENSE MOTION #14C

11
12 ORS 133.693 allows challenges to the good faith, accuracy, and truthfulness of specific
13 averments contained in the affidavits when law enforcement sought the search warrants in this
14 case. ORS 133.693 provides:

15 “(1) Subject to the provisions of subsection (2) of this section, in any proceeding on a
16 motion to suppress evidence the moving party shall be entitled to contest, by cross-
17 examination or offering evidence, the good faith, accuracy and truthfulness of the affiant
with respect to the evidence presented to establish probable cause for search or seizure.

18 “(2) If the evidence sought to be suppressed was seized by authority of a search warrant,
19 the moving party shall be allowed to contest the good faith, accuracy and truthfulness of
20 the affiant as to the evidence presented before the issuing authority only upon
21 supplementary motion, supported by affidavit, setting forth substantial basis for
questioning such good faith, accuracy and truthfulness.”

22 Mr. Sigler contends law enforcement lacked sufficient probable cause to support a
23 lawful basis in support of the warrants to search. Mr. Sigler further contends law enforcement
24 lacked sufficient probable cause and no exception to the warrant requirement to arrest him in
25 his home. And finally, any probable cause relied on by the arresting officers was the product of

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27 PAGE 1 OF 11 MEMORANDUM IN SUPPORT OF MOTION TO CONTROVERT SEARCH WARRANTS
28 DEFENSE MOTION #14C

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1 illegally obtained statements, consent, and unreasonable searches. As such, the evidence seized
2 was also a result of the initial unlawful arrest, the unreasonable searches, and the illegally
3 obtained statements, so that the physical items, DNA samples, his consent to search his
4 residence, and any statements, must be suppressed.

5
6 **I. STATUTORY AND CONSTITUTIONAL RIGHT TO CONTEST THE GOOD**
7 **FAITH AND ACCURACY OF A WARRANT AFFIDAVIT**

8 Under ORS 133.693(2), the moving party can contest the good faith, accuracy and truthfulness
9 of the affiant as to the evidence presented to establish probable cause before the issuing
10 authority.

11
12 Article I, §9 of the Oregon Constitution protects “the privacy to which one has a *right*.”
13 *State v. Campbell*, 306 Or 157, 164, 759 P2d 1040 (1988)(emphasis in original). The Oregon
14 Courts have consistently recognized a citizens' right to privacy and freedom from unwanted
15 scrutiny. *Campbell*, 306 Or 157 at 164 (1988) (use of tracking devices to obtain surveillance
16 without a warrant is an unlawful search). The police searches in this case include searches with
17 and without a warrant of Mr. Sigler’s person and his residence. These are the types of
18 government action that impose a significant impact on an Oregon state citizen's right to be free
19 from unwanted scrutiny. *See generally Campbell*, 306 Or at 164; *State v. Nagel*, 320 Or 24,
20 P2d 451 (1994); *Nelson v. Lane County*, 304 Or 97 (1987).

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22
23 The underlying purpose of suppression in Oregon is to deny the state the use of
24 evidence that it would not have secured if its officers had not violated the individual’s rights.
25 When an individual's right to be free from unwanted scrutiny is violated by an officer's illegal
26 actions, the remedy is exclusion of the evidence. *See State v. Davis*, 295 Or 227 at 236 (1983);

1 *State v. Meyer*, 120 Or App 319 (1993). Suppression of the evidence is the remedy even where
2 a search warrant is obtained *after* the illegality, where the warrant is based upon the illegal
3 conduct or the "fruits" of such illegal conduct. *Meyer*, 120 Or App at 332.

4 In *Meyer, supra*, the Court held that:

5 “Because the police had no authority to open the box without a warrant, the
6 pictures seized should have been suppressed. Also, because the affidavit
7 supporting the warrant to search defendant's house for additional negatives or
8 prints was based on illegally obtained evidence, all evidence derived from that
9 search must be suppressed. *Id.* (Emphasis supplied.)

9 The heart of the “fruit of the poisonous tree” doctrine is that:

10 “[S]uppression of evidence that is the fruit of an unlawful search ‘restor[es] the
11 parties to their position as if the state's officers had remained within the limits of
12 their authority.’ *State v. Davis*, 295 Or 227, 237, 666 P2d 802 (1983). We
13 conclude that the trial court correctly suppressed the evidence. *State v. Williams*,
14 160 Or App 111 (1999).”

14 When a court reviews a magistrate's issuance of a warrant, the court hearing the motion
15 to controvert must review the affidavit for accuracy, truthfulness and good faith. *State v. Harp*,
16 299 Or 1, 697 P2d 548 (1985). If the court finds that the officer did not act in good faith, the
17 affidavit contained inaccuracies, the affidavit contained untruths or the affidavit omitted
18 evidence that would have been relevant to the magistrate making the initial determination
19 regarding probable cause, the court will perform surgery to extract the inaccuracies, untruths
20 and/or statements made in bad faith. *Harp*, 299 Or at 9. Once the court performs that surgery,
21 it evaluates the remaining portions of the affidavit to determine if the remaining portion
22 supports a finding of probable cause. *Id.*

25 Also, once a substantial basis for questioning the good faith, accuracy or truthfulness of
26 the affiant has been shown, the reviewing court no longer must grant the decision of the
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1 magistrate the deference that it ordinarily deserves. In *State v. Modrell-Lydall*, 128 Or App
2 372, 876 P2d 315 (1994), the Court of Appeals considered a statement relied on by the affiant
3 and concluded some of the information contained in the search warrant affidavit was wrong.
4 The affiant averred to information in the affidavit based on the personal knowledge of the
5 informant, whereas the informant had told the affiant that she knew the information only by
6 hearsay.

7
8 The *Modrell-Lydall* court held that the assertion of the inaccuracy established a
9 "substantial basis" under ORS 133.693 for questioning the good faith, truthfulness and/or
10 accuracy of the affiant, and the trial court's decision denying a hearing on those issues was
11 reversed.

12 After the inaccurate information is excised from the affidavit, the affidavit must be
13 reevaluated for probable cause in light of the controverting information. *Harp*, 299 Or at 10;
14 *Hermach, supra*; *State v. Miller*, 116 Or App 174, 179, 840 P2d 1329 (1992), *aff'd as modified*,
15 119 Or App 102 (1993)(requiring that officer's subjective belief that something subject to seizure
16 is in the place to be searched be objectively reasonable and holding that officer's good faith will
17 not save warrant if excision of untrue or inaccurate statements nullifies probable cause); *See also*,
18 *State v. Keeney*, 323 Or 309, 918 P2d 419 (1996).

19
20 Another important aspect of the *Harp* case is the express disapproval of an affiant
21 omitting facts known to the affiant that, had they been included in the affidavit, would have
22 altered substantially the relevant fact pattern. *Harp*, 299 Or at 9-11. Therefore, the omission of
23 significant facts cannot be "in good faith." *Id.* *See also, State v. Hermach*, 53 Or App 412, 632
24 P2d 466 (1981) (requiring full disclosure of facts by the affiant).

1 In the affidavits at issue here, starting with the affidavit and warrant from December 6,
2 2020 (hereafter '12-6 Affidavit') facts were known by the law enforcement agents submitting
3 affidavits for Court authority that were not included in each subsequent affidavit. Over the course
4 of the investigation and during the next five days, the police obtained additional facts regarding
5 the sources of information, contrary information, and the unreliability of the information, and it
6 was not relayed to the Court. The affiants omitted the new facts that which, if known to the
7 issuing judge, would have made a difference in determining the sufficiency of the affidavit. In
8 this case investigation and in the '12-6' affidavit, the yet-to-be named informant's character was
9 given a favorable gloss. And facts are omitted concerning the '12-6' yet-to-be named informant's
10 knowledge of the circumstances and the contact with Breana Giles, with Jack Sigler, and the
11 events on the night of the homicide.
12

13
14 The affiant summarizes the state of the homicide investigation and why Jack Sigler was
15 identified. The '12-6' affiant states:

16 ...Giles had heard of the homicide and called Deputy Shinholster with the intent to give
17 her information regarding an individual who she knew to be involved in committing
18 burglaries in the Waldport, Oregon area. According to Giles, Jack Edward Sigler, had
19 recently been involved in burglaries...(page 3)

20 This affiant nor any subsequent affiant in any affidavit states that this information
21 Breana Giles provides is hearsay relayed by a third party. The third party was interviewed on
22 December 6, 2020 but the third party's name and how Ms. Giles became involved is not
23 provided in this '12-6' affidavit. Statutorily, this fundamental premise of the affidavit is flawed
24 because averment is based in whole or in part on hearsay, and when this is present the affiant
25 shall set forth facts bearing on any unnamed informant's reliability and shall disclose, as far as
26 possible, the means by which the information was obtained. ORS 133.545. The police knew
27

1 on December 6, 2020 that Breana Giles source of information was not firsthand. It is not
2 stated here. The police also knew on December 6, 2020 that her source of information was Jon
3 Vineyard. Jon Vineyard admitted to the police his criminal activity related to stolen items and
4 burglaries and that he took stolen items to Mr. Sigler. This is not contained in the affidavit.
5 This has critical bearing on the source of information and the probable cause analysis but it is
6 not provided to the magistrate on December 6, 2020. This information immediately shows an
7 interest on Mr. Vineyard's part but this is omitted from consideration.
8

9 The December 9, 2020 affidavit occurs next, (hereafter '12-9' Affidavit). The '12-9'
10 affiant now identifies a person by name, Jon Vineyard, creating the inference he is a named
11 citizen or named citizen informant coming forward with firsthand information regarding the
12 accused. Mr. Vineyard interviews multiple times with multiple officers. This is omitted from
13 the affidavit. It is omitted because Mr. Vineyard is visibly intoxicated and admits drug use is
14 the reason why he cannot recall the events he is being questioned about. Omitting this
15 information is proscribed under Oregon law. Each affiant did not explain or correct any
16 impression that Jon Vineyard was intoxicated and that his judgment and perception was
17 impaired when he was interviewed. *State v. Culley*, 198 Or.App. 366, 108 P.3d 1179 (Or. App.
18 2005).
19
20

21 One police report described the contact with Mr. Vineyard this way:

22 I observed Jonathan became very nervous and began sweating profusely, sweat pouring down
23 his face. I asked Jonathan what he was withholding, Jonathan told me he was high from using
24 methamphetamine.

25 Jon Vineyard admitted to smoking meth with Mr. Sigler, that he used the morning of at
26 least one interview date, either December 9, 2020 or December 10, 2020, and that he had
27

1 received money from Mr. Sigler to purchase meth. Mr. Vineyard's motive to protect his own
2 interest or his intoxication is not in the affidavits.

3 On and after December 6, 2020, Mr. Vineyard did not voluntarily come forward as a
4 concerned citizen in the community, he is an informant. Mr. Vineyard and his friend discussed
5 and agreed to meet with the police. Mr. Vineyard explained he did not want to be in the middle
6 of this investigation based on the information he had. This was not shared with the magistrate.
7

8 A named citizen informant is less reliable as a matter of law when that citizen provides
9 information in response to a police investigation, rather than on the citizen's own initiative. *See*
10 *generally State v. Montigue*, 288 Or. 359, 363-67, 605 P.2d 656 (1980) (discussing rationale for
11 deeming named citizen informant reliable when that citizen initiates a report of a crime to a law
12 enforcement agency). He was and remains central to the criminal investigation and has motives
13 and bias when talking to police. Mr. Vineyard disclosed he is truthful with authorities '50% of
14 the time.' All of this information is omitted from the background of Mr. Vineyard and was not
15 included in the application. This background would bear on whether the magistrate as a
16 reasonable, cautious person would have found probable cause to issue the warrant. If the
17 omitted facts had been known and correct inferences had been drawn from those facts, it would
18 detract from those stated in the affidavit and that demonstrates lack accuracy and good faith in
19 the applications.
20
21

22 The example referenced above of the affiants providing limited factual background in
23 one affidavit and later providing more factual background information that puts the best gloss
24 on the investigation can be seen by comparing the '12-6' Affidavit information to the '12-11'
25 information. Law enforcement purposely omits adverse information known to law enforcement
26

1 (as of December 6, 2020) and this disrupts the magistrate's inferences and probable cause
2 evaluation.

3 The '12-6' affiant sought Court authority to search Jack Sigler's bedroom and the
4 affiant creates the inference with the Court that Breana Giles is the source of information to
5 make the application. No other information is provided why she is reliable. This is because law
6 enforcement knew on December 6, 2020 that the source of information was actually Jon
7 Vineyard. Law enforcement knew on December 6, 2020 that Jon Vineyard was unreliable and
8 had a motive to lie and did lie about his participation in the events leading up to and on
9 December 6, 2020. Any new or additional information about Jon Vineyard is not provided to
10 the Court until the '12-9' and '12-11' Affidavits. In the meantime, since December 6, 2020
11 through December 11, 2020 multiple negative supplemental facts became known to law
12 enforcement.
13
14

15 This is the information (omitted from the '12-6' Affidavit) provided in the '12-9' and
16 '12-11' Affidavits in regard to this particular point:

17 December 6, 2020, I contacted Jonathan (Jon) Robert Vineyard (DOB -----) because he is
18 known to associate with Sigler. I know Jon from previous law enforcement contacts and I know
19 he has committed burglaries and thefts. Jon told me that Sigler had committed burglaries at 1680
20 S. Crestline Drive, #3, Waldport, Oregon[including the scene apartment]. Jon told me that
21 Sigler had in his possession approximately 30 swords, figurines and jewelry. Jon told me that
22 Sigler had gone into the apartment 5 or 6 times...
23 ['12-9' Affidavit page 2 line 31-35; '12-11' Affidavit page 3 line 1-6 DOB Omitted here]
24

25 By December 9, 2020 and by December 11, 2020, law enforcement observed Mr.
26 Vineyard to be visibly demonstrating signs of methamphetamine use when he is interviewed. Mr.
27 Vineyard admitted to using meth on the night in question and in the days following, including
28 the days he interviews with the police. This information is not provided to the magistrate. Mr.

1 Vineyard made a statement to another witness that he acted as a ‘lookout’. This fact is omitted
2 from the affidavits. This background is relevant and the affiants are aware of the facts and aware
3 the facts detract from the credibility of the sources cited by the affiants. The affidavits fail for
4 these reasons to state the requisite probable cause when reviewed with the correct inferences of
5 what the facts are.

6 **II. DEFENDANT’S MOTION TO CONTROVERT IS SUPPLEMENTED IN PART**
7 **BY THE MIRANDA MOTION TO SUPPRESS**

8 Defendant has filed a *Miranda* motion asserting that he was questioned in compelling
9 circumstances without a *Miranda* warning. An additional motion challenges the legality of the
10 questions and answers obtained after the defendant invoked. Law enforcement asked questions
11 post invocation and those answers are included in the affidavits. Those statements were recited
12 in the affidavit for the warrant of defendant’s residence as supportive of probable cause. If this
13 Court grants defendant’s *Miranda* motion, then defendant has a good faith basis to question the
14 accuracy and good faith averments contained in the affidavits cited above.
15

16 Mr. Sigler’s invocation is documented in the first minutes of the contact at his home.
17 Mr. Sigler asked for a lawyer, he was not provided an opportunity to communicate with a
18 lawyer, and the police continued to interrogate without interruption. Mr. Sigler’s invocation is a
19 critical and significant fact known to both Detective Dorsey and Officer Burke. The invocation
20 is omitted from every affidavit presented to the Court. Yet multiple statements that were made
21 by Jack Sigler are presented in the affidavit. This is not an accurate description of the relevant
22 fact pattern. This information was not presented to Judge Bachart.
23
24

25 Even the references to *Miranda* warnings do not appear in any affiant’s application for a
26 warrant until December 11, 2020.

1 After Sigler spoke with Deputy Shinholster, Trooper Severson and Deputy Honse, he
2 was detained and taken to City Hall in Waldport. Sigler was mirandized and
3 subsequently spoke with myself and Detective Urbigkeit. During our conversation,
4 Sigler was wearing black rain pants.
5 [’12-11’ Affidavit page 3 lines 33-36]

6 This averment on December 11, 2020 misrepresents the events of the December 6, 2020
7 exchange between the affiant, the police officers and the accused. It creates the inference Mr.
8 Sigler waived Miranda, he did not. The affiant completely omits the details of Mr. Sigler’s
9 request for counsel.

10 Here the accused challenges the admission of evidence obtained in all of the warranted
11 searches that were preceded by the illegalities framed and identified in written motions. The
12 burden shifts to the state to establish that the challenged evidence is untainted by the
13 illegalities. *State v. Dejong* 368 Or 640 (2021). The inclusion of Mr. Sigler's statements in the
14 search warrant affidavit contributed to the issuing judge's probable cause determination, and
15 this is used to establish the nexus to allow a search. A specific example in the December 9,
16 2020 Affidavit, is where the affiant states:

17
18 ...Sigler told me there was additional property in his room and in the garage that
19 he stole...(p3 line 21)

20 ...Sigler told me where the items were and gave me consent.. (p3 line 23)

21 ...I seized the following additional items pursuant to Sigler's consent: (p3 line 24)

22 (1) black Dell laptop 16" screen with a power cord with "Remy" label, (40)
23 \$1.00 color coins in a black USA sport bag, jewelry including (16) rings,
24 (1) necklace, (1) bracelet, cufflinks, (7) folding pocket knives, (2) silver
25 metal throwing stars, (19) assorted watches in a black Footjoy bag, (1)
26 nun-chucks, a coin collector book with (12) coins, (1) red Makowsky purse
27 with silver metal trim

1 The affiant omits that this entire exchange happens after the accused has asked for a
2 lawyer for this investigation. Mr. Sigler additionally invoked directly to the affiant, Abigail
3 Dorsey.

4 When a defendant seeks to suppress evidence discovered in a legally authorized search
5 on the basis of a prior illegality, the focus of the inquiry is not on the legality of the act
6 providing authority to search, it is on the effect that the prior illegality may have had on the
7 authorized search. This is because the magistrate's probable cause decision was the product of
8 the faulty information.
9

10
11
12 **CONCLUSION**

13 For the foregoing reasons, defendant respectfully asks this court to exclude the evidence
14 and statements obtained when the police obtained the warrants identified the Motion #14.
15

16 DATED: Friday, April 22, 2022.

17
18 /s/Steve Lindsey

19 Mark Sabitt, OSB #891155

20 Steve Lindsey, OSB #000745

21 Kristina Kayl, OSB #094031

22 Attorney for Jack Sigler
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******* CERTIFICATE OF SERVICE *******

I hereby certify that I caused to be served the MEMORANDUM IN SUPPORT OF MOTION TO CONTROVERT SEARCH WARRANTS (DEFENSE MOTION #14C) on the following person(s), in the following manner: by OJD File & Serve, by mailing (First-Class postage prepaid), by faxing; or by electronic mail, on the date subscribed below:

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4/22/2022

DATED: Friday, April 22, 2022.

/s/Jennifer Fashbaugh
Jennifer Fashbaugh
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