

HILLSBOROUGH, SS.
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

Case Nos. 216-2022-CR-00020
216-2022-CR-00577

**STATE'S MOTION TO PRECLUDE THE TESTIMONY OF PROPOSED DEFENSE
WITNESS RICHARD GURECKI**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and respectfully requests that this Honorable Court preclude defense witness Richard Gurecki from testifying at the upcoming hearing on the pending motions to suppress, scheduled for September 28, 2022. As grounds therefore, the State submits as follows:

FACTS

1. One of the pending motions to suppress in the above-captioned cases, filed on or about August 18, 2022, is the defendant's Motion to Suppress Re: Search of Phone Seized from the Defendant on December 31, 2021 (cited herein as "Def.'s Mot.").

2. One of the specific challenges that motion raises to the previously obtained warrant to search the phone in question is the scope of the search authorized by the warrant. The defendant noted that the search warrant application included information that "data can be edited

For the reasons stated on the record at the hearing on September 28, 2022, the motion is GRANTED.



Honorable Amy B. Messer
October 5, 2022

Clerk's Notice of Decision
Document Sent to Parties
on 10/11/2022

and recovered deleted items may not have correct dates and times.” (Def.’s Mot. ¶ 33.)¹ The defendant then went on to assert that, “the affiant asserts no special knowledge or training to support the general assertion of alterations of data, nor of the capability of the phone itself or [the defendant], himself, to make such changes.” (*Id.*) The defendant thereafter noted that he may seek to present expert testimony to establish that the assertion is not valid. (*Id.*)

3. On Wednesday, September 21, 2022, undersigned counsel was notified via email by Attorney Smith, counsel for the defendant, that she expected to call Richard Gurecki at the September 28 hearing to testify regarding whether a search of any and all contents of a phone is necessary to obtain messages from a specific time period. Attorney Smith attached Mr. Gurecki’s CV to the email and said she expected he would have a summary of his opinion by September 23.

4. On September 22, Attorney Smith sent another email with an updated CV for Mr. Gurecki, as well as a summary of his anticipated testimony at trial. Attorney Smith wrote specifically that Mr. Gurecki’s anticipated testimony is to rebut assertions in the affidavit regarding the need to examine any and all information on the phone. Attorney Smith also indicated that she assumed the affiant (Detective Michael Valenti, formerly of the Manchester Police Department) would be testifying regarding the foundation of his assertions in the affidavit.

5. The summary of Mr. Gurecki’s testimony as provided by Attorney Smith included the following two conclusions:

¹ The search warrant and application in question are attached to this motion. The complete relevant language from the affidavit reads, “While 12/27/2021 through 12/31/2021 is the relevant time period, metadata (such as dates and times) of data on an electronic device can be edited, and recovered deleted items may not have correct dates and times. As a result, searching the Device for only the time period of 12/27/2021 through 12/31/2021 may not uncover all evidence that actually corresponds to that time period. Therefore, it is asked that any and all information on the device be examined, which will allow investigators to determine through metadata, context, and the totality of their review whether specific data does or does not correspond to the time period of 12/27/2021 through 12/31/2021.” (Aff. ¶ 40.)

- a. “A forensic extraction and analysis that is limited in scope to a search within a specified timeframe on a mobile device is normally sufficient to thoroughly examine all the activity and events that occurred within that timeframe”; and
- b. “Any prior attempt to manipulate file dates on the mobile device before a seizure would likely show clear evidence of such behavior during the forensic examination and allow for justification of a broader search of the device.”

ARGUMENT

6. The Court must preclude Mr. Gurecki’s testimony because the defendant has not met the standard for an evidentiary challenge to the search warrant application.

7. The affidavit supporting a search warrant is generally given a presumption of validity. *See State v. Grimshaw*, 128 N.H. 431, 435 (1986); *see also State v. Zwicker*, 151 N.H. 179, 185 (2004) (“[courts] assign great deference to the magistrate’s determination of probable cause, and do not invalidate a warrant by interpreting the evidence submitted in a hypertechnical sense.”). “[T]he rule under article 19 is that a defendant is entitled to be heard in attacking a facially valid warrant only after a preliminary showing that in demonstrating probable cause for issuing the warrant, the police made knowing or reckless misstatements that were material in the sense of being necessary for the finding of probable cause.” *State v. Valenzuela*, 130 N.H. 175, 191 (1987); *see also Franks v. Delaware*, 438 U.S. 154 (1978). If a misrepresentation is not material, or if the misrepresentation was not made intentionally or recklessly, then in both of those instances suppression is not required. *State v. Stem*, 150 N.H. 705, 711 (2004). Further, reckless or intentional misrepresentations of material facts made by someone other than the affiant do not invalidate a warrant so long as the affiant's reliance on those statements was reasonable. *State v. Jaroma*, 137 N.H. 143, 147-48 (1993).

8. The New Hampshire Supreme Court has given a clear decision tree for Courts to follow in deciding whether a claim of material misrepresentations invalidates part or all of a search warrant. “Whether an affidavit contains a misrepresentation and whether the misrepresentation was material are questions of law.” *State v. Stem*, 150 N.H. at 710–11. If found to be material, the second question is “[w]hether the misrepresentation was recklessly or intentionally made is a question of fact.” *Id.* This instructs the Court to first make a determination based on the four corners of the affidavit and any submitted supporting information whether there were any misrepresentations, and then if they were material. If the Court finds that misrepresentations were made, and they were material, only then does a Court move to decide as a question of fact whether the misrepresentations were made intentionally or recklessly. *Id.*

9. The defendant’s motion is written as a challenge to the probable cause of the affidavit submitted in support of the search warrant. The defendant noted that the assertion that data can be edited and recovered deleted items may not have correct dates and time “fails to provide probable cause” for a search beyond the relevant time period. (Def.’s Mot. ¶ 33.) The defendant also stated that there was no probable cause in the affidavit to support that the phone in question was capable of permitting data manipulation, that the affidavit did not include any special knowledge or training to support the assertion, and that the affidavit did not suggest that the defendant was likely to alter the data on the phone. (*Id.*) Each of these challenges is to the sufficiency of the affidavit, and would be typical challenges raised in a “four corners” review of the affidavit.

10. Only briefly did the defendant mention in his motion that he “may seek to present expert testimony to establish that the assertion is not valid.” (*Id.*) However, the defendant’s

desire does not trump the constitutional rule as expressed in *Valenzuela*. 130 N.H. at 191. The defendant has not met his burden to make a preliminary showing that “in demonstrating probable cause for issuing the warrant, the police made knowing or reckless misstatements that were material in the sense of being necessary for the finding of probable cause.” *Id.* Therefore, the defendant’s very recently expressed intent to call Mr. Gurecki to rebut assertions in the affidavit regarding the need to examine any and all information on the phone is without constitutional basis. Likewise, the defendant’s assumption that Det. Valenti would be testifying regarding the foundation of his assertions in the affidavit is misplaced; the State has not subpoenaed and does not intend to call Det. Valenti when the defendant has not raised a proper challenge to the affidavit. The defendant has made nothing more than a four-corners argument, and it is the State’s position that the four corners of the affidavit provide sufficient probable cause for the resulting warrant. Following the framework set by the Supreme Court, only if this Court determines as a matter of law that there was a misrepresentation and the misrepresentation was material should the Court provide notice to both parties so that then an evidentiary hearing may be scheduled to decide whether the misrepresentation was intentionally or recklessly made.

11. To the extent that the defendant attempts to argue that he has made the requisite preliminary showing, it is the State’s position that the assertion in question was neither a knowing or reckless misstatement, nor was it material in the sense of being necessary for the finding of probable cause.

12. The challenged assertion is as follows: “[M]etadata (such as dates and times) of data on an electronic device can be edited, and recovered deleted items may not have correct dates and times. As a result, searching the Device for only the time period of 12/27/2021 through 12/31/2021 may not uncover all evidence that actually corresponds to that time period.” (Aff. ¶

40.) This is not a knowingly or reckless misstatement, as many various jurisdictions—including the New Hampshire Supreme Court—have recognized the readily transformative capabilities of digital information and how that reality impacts a review of search warrants. *See, e.g., State v. Page*, 172 N.H. 46, 54–55 (2019); *United States v. Schesso*, 730 F.3d 1040, 1046 (9th Cir. 2013) (“The government was faced with the challenge of searching for digital data that was not limited to a specific, known file or set of files. The government had no way of knowing which or how many illicit files there might be or where they might be stored, or of describing the items to be seized in a more precise manner. . . . We have repeatedly found equally broad searches constitutional on similar or less evidence.”); *United States v. Christie*, 717 F.3d 1156, 1166 (10th Cir. 2013) (“Computer files can be misnamed by accident, disguised by intention, or hidden altogether, leaving investigators at a loss to know ex ante what sort of search will prove sufficient to ferret out the evidence they legitimately seek.”); *United States v. Crespo-Rios*, 645 F.3d 37, 43 (1st Cir. 2011) (“[S]uffixes or extensions of file names, which generally indicate file types, may be manipulated to disguise the true file types”); *United States v. Williams*, 592 F.3d 511, 522 (4th Cir. 2010) (“To be effective, such a search could not be limited to reviewing only the files’ designation or labeling, because the designation or labeling of files on a computer can easily be manipulated to hide their substance.”); *United States v. Highbarger*, 380 F. Appx. 127, 130 (3rd Cir. 2010) (“Suspects can easily hide information by mislabeling files, and, therefore, law enforcement officials are not required to accept a suspect’s designation of what is contained in a particular file.”); *United States v. Hill*, 459 F.3d 966, 978 (9th Cir. 2006) (“Computer records are extremely susceptible to tampering, hiding, or destruction, whether deliberate or inadvertent. Images can be hidden in all manner of files, even word processing documents and spreadsheets. Criminals will do all they can to conceal contraband, including the simple

expedient of changing the names and extensions of files to disguise their content from the casual observer. Forcing police to limit their searches to files that the suspect has labeled in a particular way would be much like saying police may not seize a plastic bag containing a powdery white substance if it is labeled ‘flour’ or ‘talcum powder.’ There is no way to know what is in a file without examining its contents, just as there is no sure way of separating talcum from cocaine except by testing it.”) (internal quotation marks and citations omitted); *United States v. Loera*, 59 F. Supp. 3d 1089, 1152 (D. N.M. 2014) (“Usernames, passwords, electronic mail transmissions, or attachments to hijacked electronic mail transmissions could be saved in the form of electronic mail files [e.g., .msg, .dbx, .eml, and .mbox extensions], word processing files [e.g., .doc, .docx, .wpd, .rtf, .txt, and .wps extensions], spreadsheet files [e.g., .xls or .xlsx extensions], database files [e.g., .accdb, .mdb, .ldb, and .wdb extensions], internet files [e.g., .html, .mhtml, .xml extensions], or image files [e.g., .jpg, .bmp, .gif, and .tiff extensions], to name just a few.”); *United States v. Nazemzadeh*, 2013 U.S. Dist. LEXIS 18983 (S.D. Cal. Feb. 12, 2013), at *13-*14 (“Computer records are extremely susceptible to tampering, hiding, or destruction, whether deliberate or inadvertent. They are easy to disguise or rename, and were we to limit the warrant to such a specific search protocol, much evidence could escape discovery simply because of [a person] labeling of the files documenting his criminal activity. The government should not be required to trust the suspect’s self-labeling when executing a warrant.”) (internal quotation marks and citations omitted); *United States v. Harding*, 273 F. Supp. 2d 411, 424 (S.D.N.Y. 2003) (“Files containing graphical images may be assigned file extensions, including ‘TXT,’ that typically are assigned to text files. Files containing text may be assigned file extensions, including ‘JPG’ or ‘GIF,’ that typically are given to graphical image files.”); *United States v. Triumph Capital Group*, 211 F.R.D. 31, 47 (D. Conn. 2002) (“Computer searches . . . cannot be

limited to precise, specific steps or only one permissible method. Directories and files can be encrypted, hidden or misleadingly titled, stored in unusual formats, and commingled with unrelated and innocuous files that have no relation to the crimes under investigation. Descriptive file names or file extensions such as ‘.jpg’ cannot be relied on to determine the type of file because a computer user can save a file with any name or extension he chooses.”); *United States v. Gray*, 78 F. Supp. 2d 524, 527 n.5 (E.D. Va. 1999) (“[C]omputer files can be misleadingly labeled, particularly if the owner of those files is trying to conceal illegal materials”).²

13. Furthermore, even assuming *arguendo* that the challenged assertion is a knowingly or reckless misstatement, it was not material in the sense of being necessary for the finding of probable cause. What the defendant has failed to note in his motion is that paragraph 42 of the affidavit provided a detailed recitation of how probable causes exists to search various types of data on the phone. For instance, specifically referring to text and MMS messages, the affidavit noted that, “any text or MMS message . . . on the Device will be valuable evidence tending to prove ownership, possession, custody, and control of the Device.” (Aff. ¶ 42(d) (emphasis added).) It is clear why a statement like is true and why it transcends any possible temporal restriction: if there was a message sent from the phone on December 26, that read, “this

² Although many of the above-cited cases address search warrants for computers rather than cellular telephones, the analysis should be the same given the similarities in those devices. As the United States Supreme Court has recognized:

The term “cell phone” is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

One of the most notable distinguishing features of modern cell phones is their immense storage capacity. . . .

The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos. . . . Cell phones couple that capacity with the ability to store many different types of information: Even the most basic phones that sell for less than \$20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book, and so on.

Riley v. California, 573 U.S. 373, 393–94 (2014).

is john doe,” that would certainly be relevant evidence of the ownership of the phone even though it fell outside of the December 27–31 window. Likewise, if there was a message sent from the phone on December 26 that read, “this is adam,” that would be similarly relevant evidence. Evidence of ownership, possession, custody, and/or control of the phone is plainly something that is the proper subject of a search warrant. Therefore, since there is an independent basis within the same search warrant affidavit to search beyond the December 27–31 window, the challenged assertion was not material in the sense of being necessary for the finding of probable cause even assuming *arguendo* that it was a knowing or reckless misstatement.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Preclude defense witness Richard Gurecki from testifying at the upcoming hearing on the pending motions to suppress scheduled for September 28, 2022; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

Date: September 24, 2022

/s/ Jesse O’Neill
Jesse O’Neill, NH Bar No. 20723
Senior Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was sent to counsel for the defendant via the electronic case filing system.

/s/ Jesse O'Neill

Jesse O'Neill

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
https://www.courts.nh.gov

PROBABLE CAUSE STATEMENT FOR SEARCH WARRANT

I, Detective Michael Valenti declare under penalty of perjury:
(Name of officer)

1. I am employed by: Manchester Police Department
(Describe position, assignment, office, etc.)

2. I have information, based upon (Describe source, facts indicating reliability and credibility of source and nature of information. If based on personal knowledge, so state). Use page 2 if more space is needed

See Attachment A

See page 2 for more information

3. Based upon the foregoing reliable information there is probable cause to believe that the property hereinafter described

Contains the crime of indirect criminal contempt
(Has been stolen, etc.)

and may be found in the possession of See attachment A-1
(Identify)

at premises located at See attachment A-1
(Specify)

4. The property I intend to seize as a result of the issuance of a Search Warrant is the following:
See attachment B

Wherefore, I request that the court issue a warrant and order of seizure, authorizing the search of the above persons and /or premises and directing that if such property or evidence or any part thereof be found that it be seized and brought before the court; together with such other and further relief that the court may deem proper.

01/31/2022

Date


Signature of Officer

Detective Michael Valenti
Name of Officer

Signed under the penalty of perjury, the penalty for which may include a fine or imprisonment or both.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
https://www.courts.nh.gov
SEARCH WARRANT

Warrant Name: 634-Tracfone-01312022

To the sheriff, deputy sheriff, state police officer, constable, federal officer or police officer of any jurisdiction within the State of New Hampshire.

Proof by written statement under oath (supplemented by oral statements under oath) having been made this day by

Detective Michael Valenti

(Names of person or persons whose signed the statement under oath)

that there is probable cause for believing that

the crime of indirect criminal contempt has been committed

(Certain property which has been stolen, embezzled, or fraudulently obtained: OR is intended for use or has been used as the means of committing a crime: OR is contraband: OR is evidence of the crime to which probable cause upon which this search warrant is issued relates.)

may be found in the possession of See attachment A-1
(Identify)

at premises located at See attachment A-1
(Specify)

we therefore command you to make an immediate search of
Items contained within attachment B

and of the person of _____
(Any identifiable individuals with respect to whom probable cause has been established by the Probable Cause statement)

in the daytime only OR in the daytime or nighttime

For the following property:

See attachment B

(Describe property)

and if you find any such property or any part thereof to bring it and the person in whose possession it is found before Hillsborough Superior Court - North (court having jurisdiction)

1-31-22
Date


Signature of Judge

Judge Edward Tenney

Name of Judge

ATTACHMENT A-1

1. The property to be searched is a cell phone believed to belong to Kayla Montgomery (08/31/1990). The cell phone will herein be referred to as "the Device." The Device is a Tracfone Blu View 3, with the backing of the phone blue in color.
2. This warrant authorizes the forensic examination of the Device for the purpose of identifying the electronically stored data particularly described in Attachment B.

ATTACHMENT B

1. All records on the Device of the crime of indirect criminal contempt

- Telephone number;
- Electronic serial number, telephone number, and any other identifying numbers or accounts that may be stored within the Device or any memory or SIM cards which may be in the Device;
- Contact list, address book, calendar, schedule and date book entries;
- Text and MMS history (incoming, outgoing, sent, draft, deleted, saved/stored on the cell phone, SIM card and/or memory card);
- All information retrievable from the phone regarding mobile instant messages, message alerts, text messaging applications, chat logs, emails and attachments;
- All locally stored voice mail messages and greetings;
- Photographs (including camera photos) and videos (to include all formats of pictures or clips);
- Any information that is saved to the phone regarding any social networking sites or vendors;
- Any GPS data stored on the phone;
- Any records of call history and caller ID;
- Applications stored on the phone; and
- Documents, storage files, records, notepads, and other data.

2. As used above, the term "records" includes all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.

ATTACHMENT A

INTRODUCTION AND BACKGROUND

1. I am a Police Officer with the city of Manchester, NH and have been so since November 2009. I graduated from the New Hampshire Police Standards and Training Class 151 in January 2010. I have held the rank of Detective with the Manchester Police Department since November 2016. My duties and responsibilities as a Detective include the follow-up investigation of crimes that occur in Manchester, NH. I have conducted investigations of sexual assaults, homicides, robberies, assaults, burglaries, child pornography, and other serious crimes. I am currently assigned as a Detective in the Juvenile Investigative Unit.

2. I have received training from the Manchester Police Department in-house training academy and the New Hampshire Police Standards and Training Council full-time police academy. I have also attended numerous training courses covering many different aspects of investigations.

3. The information set forth below is based on information known to me personally through my own investigation and through my communications with other Manchester Police Officers. Additionally, I reviewed police reports prepared by Manchester Police Officers detailing their involvement in this investigation. This affidavit does not contain every fact known to me or other investigators. Rather, it contains material information relevant to determining whether there is sufficient probable cause to believe that the crime of indirect criminal contempt has been committed, and whether evidence of that crime will be found on the device to be examined.

IDENTIFICATION OF THE DEVICE TO BE EXAMINED

4. The property to be searched is a cell phone believed to belong to Kayla Montgomery (08/31/1990). The cell phone will herein be referred to as "the Device." The Device is a Tracfone Blu View 3, with the backing of the phone blue in color.

5. The applied-for warrant would authorize the forensic examination of the Device for the purpose of identifying electronically stored data particularly described in Attachment B.

PROBABLE CAUSE

6. On 11/18/2021, the Manchester Police Department received a call from a woman determined to be Crystal Sorey regarding her daughter H.M., 6/7/2014. Sorey reported that H.M., who was in the physical custody of Sorey's ex, was missing, and that she hadn't seen H.M. in over six months. Sorey identified her ex as Adam Michael Montgomery, 1/22/1990. An employee of the Manchester Police Department contacted DCYF and learned of previous addresses associated with Adam. Manchester Police Officers checked those addresses, but were unable to locate Adam or H.M.

7. On 12/27/2021, DCYF notified the Manchester Police Department that they were unable to locate H.M. Consequently, the Manchester Police Department initiated an investigation into the whereabouts of H.M. Over the following days, members of the Manchester Police Department learned that H.M. had not been physically seen since October/November 2019. The child's biological mother, Crystal Sorey, 9/14/1990, who resides in MA notified authorities that she had not seen the child since around Easter of 2019 (approximately 4/21/2019). The child had been in the physical and legal custody of her biological father, Adam Montgomery pursuant to a Decision & Order from the Lawrence Juvenile Court, Docket No. 14CP0268LA, from Essex County, MA, dated 2/21/2019.

8. The case was subsequently assigned to Detective John Dunleavy of the Juvenile Division of the Manchester Police Department. During Detective Dunleavy's follow up with Crystal, she explained that she had lost custody of the child in July 2018 to the State of Massachusetts in part due to a substance abuse issue. Crystal said that both she and Adam had past issues with substance abuse.

9. Since then, Crystal has regained sobriety and unsuccessfully made attempts in throughout 2021 to locate Adam and H.M. Adam and his subsequent partner Kayla Montgomery, 8/31/1990, had blocked all communication from Crystal through phone numbers and social media applications. Crystal said over the years she made attempts to locate the child by contacting various schools, and driving by addresses associated with Adam, but was unable to make any progress.

10. Crystal said that she last saw H.M. during a FaceTime video call with Adam around Easter 2019. Crystal stated that Adam was visible in the background of the video call. Crystal recalled that H.M. seemed frightened, and believes that was the last time she actually saw her daughter.

11. Beginning on 12/27/2021, members of the Manchester Police Department actively made attempts to track down Adam and to talk to involved family members to establish the last time that H.M. was physically observed, and known to be safe. Officers and investigators were initially unable to make contact with Adam via phone. However, investigators were able to make contact with various family members including parties associated with Adam who reside in Florida.

12. On 12/30/2021, Detective Christopher Abele was able to make contact with Adam's brother, Michael Montgomery, 2/20/1992, who raised concern for H.M. 's welfare. Michael

recalled during his last physical contact with H.M. and Adam, he had concerns that Adam was physically abusive towards H.M. Michael recalled that Adam, was "super short" with the child, and he learned through other family members that Adam had given H.M. a black eye.

13. On 12/30/2021, Detective Abele also spoke with Adam's uncle, Kevin Montgomery, 05/27/1978, regarding concerns for H.M. Kevin said that he has not seen Adam or H.M. since late 2019. However, Kevin had first-hand knowledge of the child's eye injury from 2019. Kevin said that he returned to Manchester in July 2019 after a trip to Florida and observed H.M. with a black eye. Kevin notified DCYF after the fact with concern for the injury. DCYF records confirmed that Kevin did report the black eye to the agency. On 07/29/2019, MPD received a law enforcement letter from DCYF noting the allegation. Sgt. Bergeron then received a follow-up e-mail from DCYF indicating that no bruises or marks on the children were noted.

14. During his 12/30/2021 interview with Kevin, Detective Abele asked Kevin how H.M. sustained the injury to her eye. Kevin said that Adam told him that he had caused the injury to H.M. Adam told Kevin at the time, "I bashed her around this house." Adam explained that he had left H.M., who would have been 5 years old at the time, in charge of watching her infant brother while Adam was in the bathroom. Allegedly the younger brother started crying during that time. Adam told Kevin that he returned and found H.M. holding her hand over the child's mouth to stop him from crying. Adam told Kevin that he responded by striking H.M. in the face and causing the black eye. Kevin said he believed that Adam had relapsed on drugs during that time frame. Kevin recalled other forms of abusive discipline during that time frame that raised his concerns. Kevin recalled H.M. being spanked hard on the butt, H.M. being forced to stand in the corner for hours, and Adam ordering H.M. to scrub the toilet with her toothbrush.

15. On 12/31/2021, MPD received DCYF records regarding H.M. during this timeframe. The case notes indicated that as the Child Protective Service Worker arrived at the home on 07/29/2019, "[the] worker observed Adam. and [H.M.] getting into a vehicle (the) worker recognized [A]dam from prior contacts). They left and [the worker] approached the home" The notes state that the "worker briefly saw [H.M.] as she was leaving with her father. Th[e] worker did not observe any concerns."

16. Case notes from 8/7/2019 stated that a Child Protection worker physically viewed H.M. during a home visit. The case worker "observed [a] redmark to [H.M.'s] right. eye, and some faded bruising under the eyelid." Adam explained that the injury to H.M.'s eye by stating that "he had bought the children foam bats that they were playing with., He said that [one child] picked up his plastic lightsaber and swung it, hitting [H.M.] on the corner other eye, causing some bruising and some blood in her eye." Adam explained that Kevin's allegation was due to "a major falling out with Kevin and that Kevin is the one calling people and asking them to call in reports."

17. The case worker then spoke to H.M. directly. H.M. removed her glasses to show the case worker her injury. When asked what happened, the notes indicate that "she explained a similar version of what her dad told me, that [a child] swung his light saber and it hit her eye." The notes state that when asked if she felt safe in the home, H.M. said yes. When asked if she felt scared or sad, H.M. said no. When asked if her mom, dad, or anyone else hurt her recently or ever, H.M. said no.

18. On 12/28/2021, Detective Dunleavy spoke with Adam's wife, Kayla Montgomery. Kayla shares three younger children with Adam who are all presently accounted for. During Detective Dunleavy's follow up with Kayla, he asked about the last time she had physically seen

H.M. Kayla said that sometime in November or December of 2019, she saw H.M. One morning prior to going to work. Adam said that he was driving H.M. back to Crystal who was living in Lowell, MA at the time. Kayla said that she believed H.M. had been returned to Crystal. Kayla claimed she never saw, or heard about H.M. after that day. Kayla admitted that she had seen H.M. with a black eye in the past; however she explained that Adam told her that it was caused by one of their other children striking H.M. with a toy.

19. Kayla said she had not physically seen Adam since late October 2021, and had not spoken with him since around mid-November 2021. Kayla claimed Adam was living in a sober house, and had then left the area to live in Maine with another female.

20. On 12/31/2021, patrol officers were able to make contact with Adam and his new girlfriend Kelsey Small together sleeping in a vehicle in the area of Harvell Street in Manchester. Investigators including Detective Dunleavy, Detective Kozowyk, and Det. Riley responded to that location to speak with the couple.

21. Small claimed that she has been romantically involved with Adam for over a year. Small said that she is aware that Adam has three children from one mother, and another child from before that. However, Small said that Adam was not in touch with any child from his prior relationship. Small claimed that Adam has never talked about H.M., and she has no information on where she may be.

22. During detectives' roadside interview with Adam, he made some contradictory statements during their interaction which raised their suspicion and concern for H.M.'s well-being. Initially, Adam told Detective Dunleavy that H.M. was fine and he had seen her somewhat recently. However, as the conversation continued, Adam said that he had not seen H.M. since Crystal came to pick her up in Manchester, NH around Thanksgiving 2019. Adam

claimed he does not presently have an additional phone number, but he does have access to e-mail sporadically. Small informed Det. Dunleavey that Adam had recently lost his cell phone.

23. Detectives emphasized that their primary concern is locating H.M. and establishing that she is safe. Adam stopped answering questions multiple times and stated, "I have nothing else to say." During their interaction with Adam, detectives stressed their concern that H.M. had not been physically observed in over two years, and that they had concern for whether or not she was still alive. Adam did not exhibit much emotion or reaction to this. Adam said that he believed H.M. was in MA with her mother. Adam claimed he did not know why Crystal would say anything to the contrary. Similarly, he told detectives, "I have nothing else to say."

24. Detectives noted discrepancies between Adam's account that Crystal came up to Manchester to pick up H.M., and Kayla's account that Adam claimed he was driving the child down to MA. The most concerning discrepancy being that H.M.'s mother outright denied ever taking custody of H.M. from Adam at that time, or ever seeing H.M following the video chat in April 2019. The investigation revealed that in November 2019, Crystal lived at 39 Chapel Street #3 in Lowell, MA with her boyfriend, Joseph Eckert, 12/17/89. On 12/31/21, Joseph was interviewed and he stated that he was living with Crystal in 2019, and H.M. was not with Crystal at all from October 2019 to present. In fact, Joseph stated that he has never met H.M. in person. A review of DCYF involvements indicated that social workers had not viewed H.M. since 10/1/2019, during a home visit.

25. Not only have family members not seen H.M. since 2019, DCYF contacted the Manchester School District on 9/10/2021. A representative from the School District stated that H.M. was not registered in the District.

26. On 12/31/2021, Det. Dunleavy spoke with Kelsey Small's mother, Bessie Small 10/06/1970. She indicated that Kayla Montgomery had called Kelsey grandparents' house looking for Adam two days ago (12/29/2021). Kayla spoke to Kelsey's grandmother, Gloria Small. In talking to Gloria Small 04/12/1938, she confirmed that on 12/29/2021 at 12:06 p.m. a female (identified as Kayla) called her house on the landline from 603-600-1538. Gloria provided Kayla with Bessie's cell phone number. Kayla then called Bessie and stated she was Adam's wife and that there was an emergency with one of the children. Bessie and Kelsey began a verbal argument over Adam being married. Bessie then spoke to Kayla who blamed Kelsey for breaking up her and Adam's marriage. Bessie stated that Adam and Kelsey then left the residence in a blue 2006 Pontiac Grand Am.

27. On 12/31/2021, the 9th Circuit-Family Division-Manchester granted DCYF protective supervision of H.M. to DCYF from Adam, H.M.'s sole custodian. The order states specifically that Adam will cooperate with MPD and assist with locating H.M. Detective Riley served Adam with that order on 12/31/2021 at approximately 1610 hours however Adam refused to provide any information on the whereabouts of H.M. When given the Order by MPD and asked for information about H.M.'s whereabouts, Adam said words to the effect of, "Not talking to you," "I have nothing to say," and "If I'm not under arrest, I'm leaving."

28. At the beginning of this interaction with Adam, he was pat frisked for officer safety. A cell phone was located on his person, which was given to Detective Dunleavy. Adam denied that the phone belonged to him, so Detective Dunleavy inquired with Kelsey Small as to the owner of the cell phone. Kelsey stated that the cell phone belonged to Adam. The phone was placed into airplane mode and was later logged into evidence.

29. Detective Pappalardo also provided Detective Dunleavy with information that while conducting surveillance on this date (12/31/21), he had observed Adam and Kayla have a face to face conversation outside of Families in Transition, 177 Lake Ave. On this same date (12/31/21) Detective Dunleavy walked back to that area and observed Adam and Kayla talking outside of the of the building.

30. On 01/07/22 during an interview with Det. Dunleavy, Kelsey Small stated that the only thing Adam had indicated to her is that Kayla said DCYF was coming to take the kids and that he needed to return to Manchester. She stated when they left Maine on 12/29/2021, they drove to Kayla's residence at Families in Transition in Manchester. Kelsey stated she stayed in the car as Adam and Kayla spoke outside of the vehicle. Kelsey indicated she could not hear the context of the conversation.

31. While conducting this investigation, officers determined that Adam Montgomery currently had a court order by conviction that stated he have no contact with Kayla Montgomery except as permitted by the family court.

32. On 01/28/22, I (Detective Michael Valenti) received a copy of the court order by conviction dated 03/19/21. The case number is 456-2021-CR-00667. The court order by conviction states that Adam Montgomery is to have no contact with Kayla Montgomery for a period of two years from this date, except as permitted by the family court.

33. On 01/28/22, I went to the Family Division of the 9th Circuit District Court where I spoke with Sue Soucy regarding Adam and Kayla Montgomery. I asked that she check to see if either Adam or Kayla currently have any cases or reasons as to communicate to each other regarding a Family Court matter. I was informed that neither Adam or Kayla Montgomery currently has any proceedings or cases within the Family Division of the Court.

34. In reviewing the case file, I observed a supplemental narrative completed by Det. Bergeron-Rosa regarding some electronic devices that had been sold by Kelsey Small at an ecoATM unit at the Walmart on Gold Street in Manchester. According to Det. Bergeron-Rosa's report, three of the devices had been sold on the afternoon of 12/30/2021. I learned that Det. Bergeron-Rosa had received from Mike Dobe, Loss Prevention at the Gold Street Walmart, the Walmart surveillance video from the time of those three sales.

35. On 01/28/2022, I (Det. M Valenti) reviewed the above surveillance and observed on 12/30/21 at 1:55 p.m., Adam Montgomery, Kayla Montgomery and Kelsey Small enter Walmart together. As an active participant in this investigation, I can positively identify each of these individuals on the video. After entering, Kelsey and Adam separated from Kayla, and it did not appear that they exited the store together.

36. On 01/27/2022, the Hillsborough County Department of Corrections forwarded a copy of mail sent from Kayla Montgomery to an individual identified as Tarah Hilbert. At the time, Kayla was an inmate at the Hillsborough County House of Corrections. Within the letter Kayla noted, "last phone I had before the cops took it was called a Bluview3 it was the 2nd cheapest I could get at Walmart." This is the style of phone that was seized off of Adam Montgomery's person on 12/31/2021. There is now a cause to believe that the phone seized on that date is in fact the phone that belongs to Kayla Montgomery.

TECHNICAL TERMS

37. Based on my experience, I use the following technical terms to convey the following meanings:

- a.) Cellular telephone: A Cellular telephone (or mobile telephone or cell phone) is a handheld wireless device used for voice and data communication through radio

signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A cellular telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, cellular telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Cellular telephones may also include global positioning system ("GPS") technology for determining the location of the device.

b.) IP Address: An Internet Protocol address (or simply "IP address") is a unique numeric address used by devices on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every device attached to the Internet computer must be assigned an IP address so that Internet traffic sent from and directed to that device may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some devices have static—that is, long-term—IP addresses, while other devices have dynamic—that is, frequently changed—IP addresses

c.) Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

38. Based on my knowledge and experience, I know that electronic devices can store information for long periods of time. Similarly, things that have been viewed via the Internet are typically stored for some period of time on the device. This information can sometimes be recovered with forensics tools.

39. The foregoing information provides probable cause that evidence of communication between Kayla Montgomery and Adam Montgomery for the period of 12/27/2021 through 12/31/2021 will be located on the device. In particular, Adam and Kayla were seen together at Walmart on 12/30/2021, and at Families in Transition on 12/31/2021, so it is probable that they coordinated their meetups using the phone, which was in Adam's possession. In addition, the mere fact that Adam has physical possession of a phone that likely belongs to Kayla means they must have met up in violation of the March 2021 court order, and it is probable that Adam had Kayla's phone so they could continue to communicate and meet up, since Adam said he didn't have a phone of his own.

40. While 12/27/2021 through 12/31/2021 is the relevant time period, metadata (such as dates and times) of data on an electronic device can be edited, and recovered deleted items may not have correct dates and times. As a result, searching the Device for only the time period of 12/27/2021 through 12/31/2021 may not uncover all evidence that actually corresponds to that time period. Therefore, it is asked that any and all information on the device be examined, which will allow investigators to determine through metadata, context, and their totality of their review whether specific data does or does not correspond to the time period of 12/27/2021 through 12/31/2021.

41. As further described in Attachment B, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how the Device was used, the purpose of its use, who used it, and when. There is probable cause to believe that this forensic electronic evidence might be on the Device because:

- a) Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Forensic evidence on a device can also indicate who has used or controlled the device. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence.
- b) A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.
- c) The process of identifying the exact electronically stored information on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

- d) Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.

42. In particular, there is probable cause to believe that the following data from the Device will either be evidence of the crimes under investigation or will be necessary to fully understand any evidence on the Device and the Device itself:

- a) The telephone number of the device;
- b) Electronic serial number, telephone number, and any other identifying numbers or accounts that may be stored within the Device or any memory or SIM cards that may be within the device – this information will help investigators further confirm the identity of who owned, possessed, and/or controlled the devices;
- c) Contact list, address book, calendar, schedule and date book entries – by reviewing this information investigator will be able to identify who the person possessing the Device believed they were communicating with, and it is also valuable evidence tending to prove ownership, possession, custody and control of the Device. This information will help investigators identify other witnesses and the person possessing the Device by connecting names with particular phone numbers and/or other contact aliases;
- d) Text and MMS history (incoming, outgoing, sent, draft, deleted, saved/stored on the Device, SIM card and/or memory card) – text and MMS messaging is often resorted to by criminals because they can communicate instantaneously with the recipient without allowing anyone to overhear their communications. Any text or MMS message, incoming, outgoing, sent, draft, deleted, saved/stored on the Device, will be

valuable evidence tending to prove ownership, possession, custody and control of the Device. Deleted texts and MMS messages will be part of what investigators attempt to recover when examining the Device to determine whether any deleted message would be relevant to the crime under investigation. These messages are also where investigators will likely find evidence of communication between Adam and Kayla;

- e) All information retrievable from the Device regarding mobile instant messages, message alerts, messaging applications, chat logs, emails and attachments – this information will have the same probable evidentiary value as text/MMS messaging. Much like text messages, these messenger programs/applications allow instantaneous communications with a recipient without allowing anyone to overhear the communications. Today people often utilize messaging applications to communicate rather than text messaging because these programs offer transmission via Wi-Fi, thus, adding a level of secrecy to the communications because these programs also avoid detection/record logs maintained by cell carriers. This data is also valuable evidence tending to prove ownership, possession, custody and control of the Device.
- f) All locally stored voicemail messages and greetings as this data is valuable evidence tending to prove ownership, possession, custody and control of the Device;
- g) Photographs (including camera photos) and videos (to include all formats of pictures or clips) as this data is valuable and often indispensable evidence tending to prove ownership, possession, custody and control of the Device. This data also often times has unintentionally created documents that is, it is data created as a byproduct of taking a digital photograph or video on today's devices. For example, embedded within photos and videos on cell phones is data that can identify the time and location

where those photographs or videos were created. Such evidence can assist investigating officers in documenting an accurate timeline of events and can work to place the person possessing the Device at or near locations where relevant events occurred;

- h) Any information that is saved to the phones regarding any social networking sites or vendors as this data is valuable evidence tending to prove ownership, possession, custody and control of the Device. This data, much like photographs and videos on a phone, also often times has unintentionally created data embedded within it. Analysis of this data can help investigators identify the time and location where certain postings were read/posted/deleted;
- i) Any GPS data or frequently visited locations stored on the Device as this is valuable and relevant data that can assist investigators in creating a course of travel and a timeline of events, this data is also valuable evidence tending to prove ownership, possession, custody and control of the Device;
- j) Any records of call history and caller ID as this data that is unintentionally logged and is also valuable evidence tending to prove ownership, possession, custody and control of the Device;
- k) Applications installed on the Device as this information is helpful for investigators to determine where relevant third-party records might be located, indeed, today more than ever a thorough examination of the Device's applications will give investigators an idea of where other relevant evidence could be stored or located as more of the functionality of modern devices is run on these applications through servers that are

accessed through Wi-Fi or cellular data, and it is also valuable evidence tending to prove ownership, possession, custody and control of the Device;

- 1) All documents, storage files, records, notepads, and other data, as to ensure a sound and thorough search of the digital evidence on the Device it is important to look at the data contained in documents and files that are contained on the Device, which often provides context necessary to understand other data on a device, furthermore, this data is also valuable evidence tending to prove ownership, possession, custody, and control of the Device.

43. Based on the foregoing, the warrant I am applying for would permit the seizure and search of the Device as well as the examination of the Device consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the device to human inspection in order to determine whether it is evidence described by the warrant.

44. I request to seize and subsequently search the above identified Device and to transfer it to a secured law enforcement location where its contents may be forensically examined in a manner best suited for the retrieval and preservation of all evidence.

CONCLUSION

45. I submit that this affidavit supports probable cause for a search warrant authorizing the seizure and search of the Device as well as the examination of the Device, described above, to seek the items described in Attachment B with a date range of 12/27/2021 through 12/31/2021.

DATED: January 31, 2022



Detective Michael Valenti
Manchester Police Department