Appendix – Exhibit A

SUPREME COURT OF MISSOURI
en banc

STATE OF MISSOURI, Appellant,	)	
v.	)	No. SC95719
PHILLIP DOUGLASS, Respondent,	)	
and	)	
JENNIFER M. GAULTER, Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
The Honorable Robert M. Schieber, Judge

The state appeals from the circuit court's order sustaining the defendants' motions to suppress all evidence seized pursuant to a warrant authorizing search of a residence for stolen items. The state admits an officer submitted a prepared search warrant form, which was then executed by a circuit judge, authorizing a search for any deceased human fetus or corpse despite the fact the officer knew no probable cause existed for such provision. The state contends that, regardless of the lack of probable cause, the circuit court should have applied the severance doctrine to redact any invalid portion of the warrant and suppress only the evidence seized pursuant to the invalid portion.

When portions of a search warrant fail to satisfy the Fourth Amendment warrant requirements, the severance doctrine can be applied to redact the invalid portions of the warrant and permit evidence seized pursuant to the valid portions of the warrant to be admitted into evidence. The severance doctrine requires examination of all provisions in the search warrant and determination of the constitutional validity of each provision.

When examined in its entirety, the invalid portions of the search warrant in this case so contaminate the whole warrant that they cannot be redacted pursuant to the severance doctrine. In addition to the corpse clause, another provision of the warrant lacks probable cause in that there are no facts in the search warrant application or affidavit establishing the likelihood that any individuals with outstanding arrest warrants would be found on the premises. Four other provisions of the warrant are so lacking in particularity that they permit search of the residence for evidence of any crime or offense. The complete lack of probable cause and particularity in the invalid portions of the warrant created a general warrant authorizing a broad and invasive search of the residence. The severance doctrine cannot be used to save a general warrant. Accordingly, the circuit court properly applied the exclusionary rule to suppress all evidence seized. The circuit court's order is affirmed.

Factual and Procedural Background[1]

In 2013, M.G. met Jennifer Gaulter and Phillip Douglass at the Argosy Casino, Hotel & Spa. The group went to Mr. Douglass and Ms. Gaulter's hotel room for drinks, but M.G. left after she felt pressured to have sex with the couple. M.G. called her boyfriend, who picked her up and took her back to her apartment.

The next morning, M.G. locked her apartment and went to work. While at work, she received a text message from Ms. Gaulter informing her she had left her handbag with her keys in the hotel room. M.G. agreed that Ms. Gaulter should leave the handbag at the hotel's front desk so M.G. could pick up the handbag after work. She later received another text from Ms. Gaulter inquiring whether she was at home or working. M.G. replied she was still at work and would call Ms. Gaulter after work.

When M.G. returned home around 6:10 p.m., she found her apartment in disarray and several items of property missing. There were no signs of forced entry. She immediately called the hotel to check if her handbag and keys were still there. The hotel staff informed her the handbag was there. At M.G.'s request, the hotel staff looked in the handbag for her keys but did not find them. M.G. sent a text message to Ms. Gaulter about the missing keys and the theft. Ms. Gaulter did not respond. Around 7:30 p.m., M.G. reported the theft to the police. She estimated approximately $10,000 worth of her belongings had been stolen.

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[1] The facts are taken from the search warrant affidavit and application and the probable cause statement attached to the arrest warrant.

When M.G. arrived at the hotel to pick up her handbag, a hotel staff member told her someone had already picked up the bag. Police investigated and found Mr. Douglass and Ms. Gaulter's home address in Blue Springs. M.G. identified the couple from photographs the police found on the Internet.

Subsequent to this investigation, Detective Darold Estes, a 20-year veteran of the Kansas City police department, applied for a search warrant. His affidavit stated that, based on the above facts, there was probable cause to search Mr. Douglass and Ms. Gaulter's residence and to seize specific items believed to have been stolen.

Along with his application and affidavit, Detective Estes submitted a prepared form for the search warrant to be executed by the judge. On the search warrant form, Detective Estes checked a box stating, based on information provided in the affidavit, there was probable cause to search and seize any "[d]eceased human fetus or corpse, or part thereof." The warrant then went on to list several items believed to be stolen from M.G.

The Kansas City police department conducted a search of the residence that evening.[2] No one was home. The police seized a laptop and laptop case, a red purse containing various small items, a Coach purse, and a bracelet. M.G. confirmed all the property seized from the residence had been stolen from her apartment. Mr. Douglass and Ms. Gaulter were arrested and subsequently charged by indictment with burglary in

[2] Blue Springs police conducted a knock and announce on Mr. Douglass and Ms. Gaulter's residence. Blue Springs police then secured the residence before releasing it to the Kansas City police department.

the second degree, section 569.170,[3] and felony stealing, section 570.030, RSMo Supp. 2013.[4]

Mr. Douglass and Ms. Gaulter each filed a motion to suppress asserting the search warrant was invalid because the police did not have probable cause to search for a deceased human fetus or corpse, or part thereof.[5] At a consolidated suppression hearing on the motions, Detective Estes testified he checked the corpse clause because, if a corpse was found during the search, he would be required to obtain a "piggyback warrant" – by checking the box, he was just saving the police from having to stop the search to obtain an additional search warrant if a corpse was found. On cross-examination, Detective Estes admitted there was no probable cause a human corpse would be found during the search.

Following the hearing, the state submitted additional suggestions in opposition to the motions to suppress arguing the good-faith exception to the exclusionary rule applied because the error was caused by the judge's failure to correct the prepared warrant form. The state further contended the good-faith exception applied because the officers

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[3] Unless otherwise noted, all statutory citations are to RSMo 2000.

[4] In light of this Court's decision in *State v. Bazell*, 497 S.W.3d 263, 266-67 (Mo. banc 2016), the felony stealing offenses charged against Mr. Douglass and Ms. Gaulter would be misdemeanor offenses.

[5] In their motions to suppress, Mr. Douglass and Ms. Gaulter also asserted the search warrant was invalid because the police failed to leave a return receipt for the search warrant at the residence as ordered by the circuit court. They withdrew this claim prior to the suppression hearing after the state submitted the return receipt for the search. They further asserted the warrant was improperly executed because the Kansas City police department did not have statutory authority to execute a warrant for a residence located in Blue Springs. Such issue, however, need not be addressed given the Court's disposition of the appeal.

conducting the search reasonably relied on the constitutional validity of the warrant and did not expand the search beyond a search for the stolen items.

The circuit court sustained the motions to suppress, finding the good-faith exception to the exclusionary rule did not apply because Detective Estes intentionally checked the corpse clause box and thereby knowingly gave a false statement to the circuit court. The circuit court further concluded the warrant was invalid because it allowed officers to knowingly bypass the particularity requirement by checking boxes to search for items for which no probable cause existed, thereby rendering it, in essence, a general search warrant. The circuit court held the exclusionary rule was appropriate to deter intentional police misconduct and ordered the suppression of all evidence seized. Pursuant to section 547.200.1(3),[6] the state appealed the circuit court's order. This Court granted transfer after opinion by the court of appeals. Mo. Const. art. V, sec. 10.

Standard of Review

Any ruling "on a motion to suppress must be supported by substantial evidence." *State v. Johnson*, 354 S.W.3d 627, 631 (Mo. banc 2011). This Court reviews the facts and reasonable inferences therefrom favorably to the circuit court's ruling and disregards contrary evidence and inferences. *Id.* at 631-32. Whether a search is "permissible and whether the exclusionary rule applies to the evidence seized" are questions of law reviewed *de novo*. *Id.* at 632. This Court is "primarily concerned with the correctness of

[6] Section 547.200.1(3) provides: "An appeal may be taken by the state through the prosecuting or circuit attorney from any order or judgment the substantive effect of which results in . . . [s]uppressing evidence[.]"

the trial court's result, not the route the trial court took to reach that result, and the trial court's judgment must be affirmed if cognizable under any theory, regardless of whether the trial court's reasoning is wrong or insufficient." *State ex rel. Greitens v. Am. Tobacco Co.*, 509 S.W.3d 726, 736 (Mo. banc 2017) (internal quotation omitted).

The Severance Doctrine

The Fourth Amendment of the United States Constitution ensures against "unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Article I, section 15 of the Missouri Constitution provides coextensive protection against unreasonable searches and seizures. *See Johnson*, 354 S.W.3d at 630.

Missouri's General Assembly recognized these constitutional protections and enacted a statute providing a search warrant is invalid "[i]f it was issued without probable cause." Section 542.276.10(3), RSMo Supp. 2013. Likewise, a search warrant is invalid "[i]f it does not describe the person, place, or thing to be searched or the property, article, material, substance, or person to be seized with sufficient certainty." Section 542.276.10(5), RSMo Supp. 2013.

The circuit court concluded the warrant was invalid and suppressed all evidence seized because the warrant lacked probable cause and particularity in that Detective Estes intentionally checked the corpse clause of the search warrant form he prepared for the judge even though he knew the facts in his affidavit did not establish probable cause that a corpse or deceased fetus would be found. The state concedes there was no probable

cause to search for and seize a deceased fetus, corpse, or part thereof. Nevertheless, it asserts the circuit court erred by suppressing all evidence seized because the invalid portion of the warrant – the corpse clause – could be redacted pursuant to the "severance doctrine" and all items were seized under the valid portions of the warrant.

Generally, "all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in state court." *State v. Grayson*, 336 S.W.3d 138, 146 (Mo. banc 2011) (alteration in original) (internal quotation omitted). Suppression, therefore, is the ordinary remedy for searches conducted in violation of the Fourth Amendment. *Id.* at 146-47; *United States v. Sells*, 463 F.3d 1148, 1154 (10th Cir. 2006). To avoid the harsh realities of suppressing evidence under the exclusionary rule, however, most federal and state courts have adopted the "severance doctrine."[7] *See United States v. Riggs*, 690 F.2d 298, 300-01 (1st Cir. 1982); *see also Sells*, 463 F.3d at 1155 (noting that "every federal court to consider the issue has adopted the doctrine of severance").

Under the severance doctrine, any invalid portions of a search warrant are "redacted" or "severed" from the valid portions so long as the invalid portions can be meaningfully severed from the valid portions and have not created an impermissible general warrant. *United States v. Christine*, 687 F.2d 749, 754 (3d Cir. 1982). Evidence seized pursuant to the valid portions of the search warrant may then be admissible at trial. *Id.*

[7] Various courts have also interchangeably referred to this doctrine as the "severability doctrine" and the "redaction doctrine."

But the severance doctrine is not appropriate in every case.[8] *Sells*, 463 F.3d at 1155. Severance is appropriate under the doctrine ***only*** "if the valid portions of the warrant [are] sufficiently particularized, distinguishable from the invalid portions, and make up the greater part of the warrant." *Id.* (alteration in original) (internal quotation omitted). In *Sells*, the Tenth Circuit established a five-step test for determining whether to sever invalid portions of a search warrant that has since been followed by the majority of jurisdictions. *Id.* at 1151. Applying this five-step test, it becomes apparent that severance is not appropriate under the fact and circumstances of this case.

In applying the severance doctrine, the warrant ***must be considered in its entirety*** and the constitutional validity of each portion determined. *Id.* The search warrant, in its entirety, provided:

> Based on information provided in a verified application/affidavit, the Court finds probable cause to warrant a search for and/or seizure of the following:
>
> > ☐ Property, article, material or substance that constitutes evidence of the commission of a crime;

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[8] Mr. Douglass and Ms. Gaulter assert the severance doctrine cannot be applied in this case because Detective Estes acted in bad faith by intentionally checking the corpse clause despite knowing no probable cause existed for this provision. Although no court has so expressly held, several courts have suggested the severance doctrine is not applicable when an officer acts in bad faith in obtaining a search warrant. *See United States v. Pitts*, 173 F.3d 677, 681 n.5 (8th Cir. 1999); *United States v. Fitzgerald*, 724 F.2d 633, 637 (8th Cir. 1983); *United States v. Freeman*, 685 F.2d 942, 952 (5th Cir. 1982). Other courts have warned the severance doctrine should not be applied if the "overall tenor of the warrant or search smacks of . . . an abuse of the prospective availability of redaction," *Christine*, 687 F.2d at 759, or if officers "flagrant[ly] disregard the terms or grossly exceed the scope of the search warrant." *Sells*, 463 F.3d at 1162 (alteration in original) (internal quotation omitted). But this Court need not decide whether Detective Estes' misconduct prohibits application of the severance doctrine because, as explained herein, the severance doctrine cannot be used to cure the warrant's deficiencies in this case.

☐ Property that has been stolen or acquired in any manner declared an offense;

☐ Property for which possession is an offense under the laws of this state;

☐ Any person for whom a valid felony arrest warrant is outstanding;

☐ Deceased human fetus or corpse, or part thereof;

☐ Other (Specify – See Missouri Revised Statute Section 542.271)[.]

Of the six categories listed, Detective Estes checked the first five boxes.

The warrant also described the "person, place or thing to be searched" as Mr. Douglass and Ms. Gaulter's street address and described the physical appearance of the residence. The warrant then stated:

> The property, article, material, substance or person to be searched for and seized is described as follows:
>
> Coach purse that is silver with C's on it, a Coach purse with purple beading, Prada purse black in color, large Louis Vuitton bag
> Toshiba Satellite laptop limited edition silver with black swirls on it
> Vintage/costume jewelry several items had MG engraved on them
> Coach, Lv, Hermes, Bestie Sunglasses
> Passport and Social Security card ([M.G.])
> Social Security Card/Birth Certificate in son's name ([N.L.])
> Various bottles of perfume make up brushes and Clinique and Mary Kay make up sets
> Keys not belonging to property or vehicle at scene
> Any property readily and easily identifiable as stolen

Step One: Divide the Warrant into Categories of Items

The first step of the *Sells* test requires the warrant be divided into "individual phrases, clauses, paragraphs, or categories of items" in a "commonsense and realistic fashion, rather than a hypertechnical manner." *Id.* at 1155-56 (internal quotation

omitted). "[T]he proper division of any particular warrant must be determined on a case-by-case basis." *Id.* at 1156.

Here, the warrant should be divided into 13 categories:

(1) property, article, material or substance that constitutes evidence of the commission of a crime;

(2) property that has been stolen or acquired in any manner declared an offense;

(3) property for which possession is an offense under the laws of this state;

(4) any person for whom a valid felony arrest warrant is outstanding;

(5) deceased human fetus or corpse, or part thereof;

(6) Coach, Prada, and Louis Vuitton bags;

(7) Toshiba laptop;

(8) vintage/costume jewelry, some with MG engraved;

(9) Coach, Lv, Hermes, Bestie sunglasses;

(10) passport, social security cards, and birth certificates for M.G. and her son;

(11) perfume and makeup sets;

(12) keys not belonging to property or vehicles at the scene; and

(13) any property readily and easily identifiable as stolen.[9]

Step Two: Evaluate the Constitutional Validity of Each Category

Once the warrant is divided, the reviewing court "evaluate[s] the constitutionality of each individual part to determine whether some portion of the warrant satisfies the

[9] The dissenting opinion divides the warrant into only five categories – those set out as 1 through 5 above.

probable cause and particularity requirements of the Fourth Amendment." *Id.* at 1151. Mr. Douglass' and Ms. Gaulter's motions to suppress did not challenge the probable cause or particularity aspects of categories 1 through 4. But it is irrelevant whether Mr. Douglass and Ms. Gaulter expressly contested the constitutional validity of such categories. The ***state*** is requesting application of the severance doctrine. And application of the severance doctrine ***requires*** this Court to examine the search warrant ***in its entirety***. At ***the state's request***, the constitutional validity of ***each portion of the warrant*** must be examined by this Court.

The first three categories of the warrant expressly permitted the search for and seizure of: (1) "[p]roperty, article, material or substance that constitutes evidence of the commission of ***a*** crime"; (2) "[p]roperty that has been stolen or acquired in any manner declared ***an*** offense"; and (3) "[p]roperty for which possession is ***an*** offense under the laws of this state." (Emphasis added). Such language essentially mirrors subdivisions (1), (2) and (4) of section 542.271.1,[10] which enumerates the broad, generic categories for

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[10] Section 542.271 provides:

> 1. A warrant may be issued to search for and seize, or photograph, copy or record any of the following:
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> (1) Property, article, material, or substance that constitutes evidence of the commission of a criminal offense; or
>
> (2) Property which has been stolen or acquired in any other manner declared an offense by chapters 569 and 570; or
>
> (3) Property owned by any person furnishing public communications services to the general public subject to the regulations of the public service commission if such person has failed to remove the property within a

which a search warrant may be issued. Such categories place no limitations on the search and are devoid of any reference to the crimes related to M.G. No specificity as to the crime or property is provided in these first three categories.

"[T]he fourth amendment requires that the government describe the items to be seized with as much specificity as the government's knowledge and circumstances allow, and warrants are conclusively invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized." *Sells*, 463 F.3d at 1154 (internal quotation omitted). The particularity "requirement is met if the warrant's description enables the searcher to reasonably ascertain and identify the items to be seized." *State v. Tolen*, 304 S.W.3d 229, 232 (Mo. App. 2009). The broad, general statutory language of the first three categories does not include any distinguishing characteristics of the goods to be seized or provide any guidance to law enforcement as to the identity of the items to be seized. The first three categories, therefore, lack any particularity for purposes of the Fourth Amendment.

> reasonable time after receipt of a written notice from a peace officer stating that such property is being used as an instrumentality in the commission of an offense; or
>
> (4) Property for which possession is an offense under the law of this state; or
>
> (5) Property for which seizure is authorized or directed by any statute of this state; or
>
> (6) Property which has been used by the owner or used with his acquiescence or consent as a raw material or as an instrument to manufacture or produce any thing for which possession is an offense under the laws of this state.

The state suggests categories 1 through 3 described M.G.'s stolen property in general terms and then that property was more specifically described in categories 6 through 13. But the warrant authorizes a search for and seizure of property broadly described in categories 1 through 3 that is not limited by referencing any particular criminal offense and certainly not limited by reference to M.G. or her stolen property.

In *Sells*, the Tenth Circuit found a category of a warrant providing for "any other *related* fruits, instrumentalities and evidence of the crime" was sufficiently particular. 463 F.3d at 1157 (emphasis added). The Tenth Circuit acknowledged the category "ha[d] some characteristics of both a valid warrant provision and one that is too broad." *Id.* Nevertheless, the Tenth Circuit reasoned that, despite the catch-all nature of the provision referring only to "the crime," the category was valid because "the entire clause is limited by the word 'related,' which refers back to the previously enumerated provisions of the warrant." *Id.* Therefore, because the category expressly stated it related back to the previous provisions, the Tenth Circuit concluded the category was sufficiently particular to constitute a valid portion of the warrant. *Id.* at 1157-58.

Unlike the category in *Sells*, categories 1 through 3 do not include any language that would relate them to the sufficiently particular portions of the warrant listing M.G.'s stolen property items, nor is there anything in the first three categories that limits the search to items related to the alleged theft of M.G.'s property by Mr. Douglass and Ms. Gaulter. By failing to relate these categories to the theft of M.G.'s property, the warrant permitted officers to search for any property, article, material, or substance that

might constitute evidence of any crime or offense. Such categories are overly broad and, therefore, lack the particularity required under the Fourth Amendment.

The next category provides for the seizure of "[a]ny person for whom a valid felony arrest warrant is outstanding." But a review of the warrant application and supporting affidavit establishes no probable cause exists for this provision. Probable cause exists if, "given all the circumstances set forth in the affidavit[,] . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Neher*, 213 S.W.3d 44, 49 (Mo. banc 2007) (internal quotation omitted). In reviewing "whether probable cause exists, the appellate court may not look beyond the four corners of the warrant application and the supporting affidavits." *Id.*

There are no facts in the warrant application and supporting affidavit to establish probable cause that any individual with an outstanding felony arrest warrant would be found at Mr. Douglass and Ms. Gaulter's residence. Without such facts, the application and affidavit do not establish a fair probability that any individual with an outstanding felony warrant would be found on the premises. Category 4, therefore, is invalid because it is not supported by probable cause.[11]

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[11] The dissenting opinion suggests this Court should pay deference to the fact that, at the suppression hearing, counsel arguing on behalf of Mr. Douglass and Ms. Gaulter "conceded" probable cause existed for the outstanding arrest warrant provision. First, counsel actually stated: "I can understand that there *may have been* probable cause to believe that either of the listed subjects may have had warrants outstanding for them." (Emphasis added). Second, whether probable cause exists is a question of law that is reviewed *de novo* and cannot be conceded by a party. *State v. Hosier*, 454 S.W.3d 883, 891 (Mo. banc 2015). Again, in determining "whether probable cause exists, the appellate court may not look beyond the four corners of the warrant application and the

Likewise, category 5, the corpse clause, lacks probable cause. There are no facts in the search warrant application or supporting affidavit establishing a fair probability that a deceased human fetus, corpse, or part thereof would be found in the residence. Category 5, therefore, is also invalid for lack of probable cause.

In contrast, categories 6 through 12 list specific items believed to have been stolen from M.G.'s apartment. Given the facts and circumstances stated in the affidavit accompanying the warrant, there was a fair probability such items would be found at Mr. Douglass and Ms. Gaulter's residence. Additionally, the warrant provides distinguishing characteristics for each item. It follows that those categories satisfy the probable cause and particularity requirements for Fourth Amendment purposes.

Finally, category 13 permits the search for and seizure of "any property readily and easily identifiable as stolen." While there was probable cause to believe property stolen from M.G. would be found at Mr. Douglass and Ms. Gaulter's residence, broad, catch-all provisions like category 13 fail to meet the Fourth Amendment's particularity requirement. As explained in *United States v. LeBron*, 729 F.2d 533 (8th Cir. 1984), such a provision gives officers a general search authorization by failing to limit the search in any fashion to the crime at issue.

In *LeBron*, the Eighth Circuit concluded language authorizing a search of a residence for "other property, description unknown, for which there exists probable cause

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supporting affidavits." *Neher*, 213 S.W.3d at 49. Looking strictly at the warrant application and supporting affidavit, there is nothing that supports a finding of a fair probability that any individual with an outstanding felony arrest warrant would be found at Mr. Douglass and Ms. Gaulter's residence.

to believe it to be stolen" lacked the particularity required under the Fourth Amendment. *Id.* at 536-37. The Eighth Circuit acknowledged, "when it is impossible to describe the fruits of a crime, approval has been given to a description of a generic class of items." *Id.* at 536. Nevertheless, the Eighth Circuit reasoned the portion of the warrant allowing for the search of property believed to be stolen "is not descriptive at all" but rather "is simply conclusory language" that provides no guidelines to the officers executing the search warrant. *Id.* at 537. It further concluded such direction was a "general authorization" that "provide[d] no protection against subjecting a person's lawfully held property to a general search and seizure." *Id.*

Similarly, category 13 provides no guidelines for the officers as to what items might be easily or readily identifiable as stolen. Instead, it is merely conclusory language that lacks any specificity and is not limited to offenses related to M.G.'s property. Even under the Tenth Circuit's more liberal holding in *Sells*, there is nothing in category 13 that limits the catch-all nature of the category by relating it "back to the previously enumerated provisions of the warrant." 463 F.3d at 1157. Category 13, therefore, is also invalid for failing to satisfy the particularity requirement.

Step Three: Distinguish the Valid and Invalid Categories

The third step of the *Sells* test requires determination of whether the valid portions of the warrant are distinguishable from the invalid portions. *Id.* at 1158. If "each of the categories of items to be seized describes distinct subject matter in language not linked to language of other categories, and each valid category retains its significance when

isolated from [the] rest of the warrant, then the valid portions may be severed from the warrant." *Id.*

The valid portions of the warrant – categories 6 through 12 – are not linked to the language in other categories and retain their significance when isolated from the rest of the warrant. The valid portions of the warrant, therefore, are distinguishable from the invalid portions.

Step Four: Determine Whether the Valid or Invalid Portions Make up the Greater Part of the Warrant

Under the fourth step, it must be determined whether the valid portions make up the greater part of the warrant. *Id.* "Total suppression may still be required even where a part of the warrant is valid (and distinguishable) if the invalid portions so predominate the warrant that the warrant in essence authorizes a general exploratory rummaging in a person's belongings." *Id.* (internal quotation omitted). If the invalid portions predominate such as to create a general warrant, "application of the severance doctrine would defeat rather than effectuate the protections of the Fourth Amendment and the purpose of the exclusionary rule." *Id.*

In determining whether the valid portions make up the greater part of the warrant, courts consider "the number of valid versus invalid provisions." *Id.* at 1159. But a mere counting of the provisions is insufficient; rather, courts must also consider "the practical effect of those parts." *Id.* at 1160. Though there may be numerically fewer invalid portions of the warrant, those invalid portions "may be so broad and invasive that they contaminate the whole warrant." *Id.* Courts, therefore, must "employ a holistic test that

examines the qualitative as well as the quantitative aspects of the valid portions of the warrant relative to the invalid portions to determine whether the valid portions make up the greater part of the warrant." *Id.* at 1160 (internal quotation omitted).

Here, the valid portions of the warrant – categories 6 through 12 – are numerically greater than the invalid portions – categories 1 through 5 and 13. But consideration of the practical effect of the invalid portions of the warrant reveals them to be so broad and invasive that they contaminate the whole warrant.

The lack of probable cause and particularity in the invalid portions of the warrant turned it into the very thing the particularity requirement was created to prevent – a general warrant. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). A general warrant permits "a general, exploratory rummaging in a person's belongings." *Id.* By mirroring the language of section 542.271 – the statute enumerating the broad, general categories for which a search warrant can issue without any limitations – categories 1 through 5 effectively gave officers unfettered discretion to search the entire residence and seize any property they believed constituted evidence of the commission of ***any*** crime. The warrant, therefore, authorized a broad and invasive search of Mr. Douglass and Ms. Gaulter's residence despite the specificity of the items contained in the valid portions of the warrant.

In sum, it is not just the corpse clause that invalidates this warrant. Rather, it is the ***multiple*** invalid portions of the warrant – specifically categories 1 through 5 and 13 – that so contaminate the warrant as to render it a general warrant. The severance doctrine

cannot be used to save a general warrant and is, therefore, inappropriate in this case. *Sells*, 463 F.3d at 1158.

The state suggests no harm resulted from the broad parameters of the search warrant because the items contained in the valid portions, such as keys and identification, allowed for an extensive search of Mr. Douglass and Ms. Gaulter's residence and the items seized were those for which probable cause existed. But such argument has no relevance under the severance doctrine. Rather, it is just the opposite. The severance doctrine – which, again, the state requested be applied – rejects any notion that the extent of the actual search or the number of items seized somehow remedies otherwise invalid portions of a warrant. *Id.* at 1159. The severance doctrine focuses exclusively on the search warrant itself, not what items were actually seized pursuant to it. *Id.* Therefore, the fact that the only items seized were those stolen from M.G. has no bearing on whether severance is appropriate in this case.

The dissenting opinion, likewise, reasons Fourth Amendment jurisprudence would authorize the suppression of only evidence that was actually seized in reliance on the corpse clause. It concludes checking the corpse clause created merely the potential for a Fourth Amendment violation and the Supreme Court has "never held that potential, as opposed to actual, invasions of privacy constitute searches for purposes of the Fourth Amendment." *United States v. Karo*, 468 U.S. 705, 712 (1984).[12] But there is no question

[12] The statement in *Karo* that the Supreme Court has "never held that the potential, as opposed to actual, invasions of privacy constitute searches for purposes of the Fourth Amendment" cannot be read as a holding that the search of an individual's residence with

that an invasion of privacy occurred in this case because there was, in fact, a search of Mr. Douglass and Ms. Gaulter's residence. And although that search was made pursuant to a warrant, by the state's own admission, that warrant violated the Fourth Amendment because at least one provision was not supported by probable cause. It follows that the question in this case is not whether a Fourth Amendment violation occurred – it did. Rather, the issue is what is the appropriate remedy for that Fourth Amendment violation.

The dissenting opinion reasons total suppression is inappropriate because the corpse clause was the only invalid portion of the warrant and could be redacted pursuant to the severance doctrine. In reaching its conclusion, the dissenting opinion divides the warrant into five categories, one of which is the corpse clause, and reasons the other four checked categories do not violate the particularity requirement because the warrant form tracked the language in section 542.271 and the sentence preceding the categories expressly referenced the application for the search warrant.

First, the sentence in the search warrant preceding the list of broad, generic categories states: "Based on information provided in a verified application/affidavit." That statement merely notes the judge has considered the information in the application/affidavit. It does not incorporate the application/affidavit or say it is attached.

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a general search warrant is only a potential invasion of privacy. 468 U.S. at 712. The context of the statement in *Karo* was that there was only a potential invasion of the defendant's privacy by the transfer to the defendant of a can containing an unmonitored beeper. *Id.* at 712-13. The Supreme Court found such installation and transfer of the beeper did not constitute a search in violation of the Fourth Amendment. *Id.* at 713. The Supreme Court went on to hold, however, that the monitoring of the beeper by law enforcement officials without a search warrant, when the beeper was inside the defendant's residence, violated the defendant's Fourth Amendment rights. *Id.* at 714-18.

Next, the language of the broad, generic categories does not merely "track" the language in section 542.271; it essentially repeats it verbatim. Such categories can hardly be said to be sufficiently particularized to the search and seizure at hand when they simply mirror the language of a statute intended to enumerate the broad, generic categories for which a search warrant may be issued. While the dissenting opinion states invalidating these categories would call into question the constitutional validity of section 542.271, it does nothing of the sort. It is merely a recognition that, under the facts and circumstances of this case, such broad, generic categories without specification as to the crime or items to be seized do not satisfy the particularity requirement.

Furthermore, to the extent the dissenting opinion relies on the search warrant application to cure the lack of the particularity, it overlooks an important detail. As the Supreme Court explains, most courts have held a warrant may be construed "with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, ***and*** if the supporting documentation accompanies the warrant." *Groh v. Ramirez*, 540 U.S. 551, 557-58 (2004) (emphasis added). The requirement that the application or affidavit accompany the warrant is not a perfunctory. "The presence of a search warrant serves a high function, and that high function is not necessarily vindicated when some other document, somewhere, says something about the objects of the search, but the contents of that document are neither known to the person whose home is being searched nor available for her inspection." *Id.* at 557 (internal citation omitted). Requiring a warrant to describe items with particularity "also assures the individual whose property is searched or seized of the lawful authority of the executing officer, his

need to search, and the limits of his power to search." *Id.* at 561 (internal quotation omitted).

Additionally, there is no evidence in the record that the application was attached to or otherwise accompanied the search warrant when the search warrant was served. It follows the search warrant application cannot cure the warrant's particularity deficiencies in this case.[13]

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[13] The dissenting opinion contends this Court's recognition that most courts have required the affidavit or application to accompany the search warrant to cure a warrant's lack of particularity is inconsistent with Supreme Court precedent. In doing so, the dissenting opinion points out that the Supreme Court in *Groh* did not expressly adopt a rule requiring incorporation and accompaniment of the affidavit or search warrant application; instead, the Supreme Court stated it "need not further explore the matter of incorporation" because "the warrant did not incorporate other documents by reference, nor did either the affidavit or the application . . . accompany the warrant." 540 U.S. at 558. The fact the Supreme Court did not definitively decide the issue in *Groh*, however, does not negate that the majority of jurisdictions addressing the issue of incorporation require the accompaniment of the affidavit or application before the affidavit or application can overcome the warrant's particularity deficiencies. *But see United States v. Hurwitz*, 459 F.3d 463, 471 (4th Cir. 2006); *Baranski v. Fifteen Unknown Agents of Bureau of Alcohol, Tobacco & Firearms*, 452 F.3d 433, 439 (6th Cir. 2006). Moreover, *Groh* is not inconsistent with the incorporation/accompanying approach. In fact, in rejecting the state's argument that no Fourth Amendment violation occurred because the scope of the search did not exceed the limits set forth in the application, the Supreme Court stated:

> But unless the particular items described in the affidavit are also set forth in the warrant itself *(or at least incorporated by reference, and the affidavit present at the search)*, there can be no written assurance that the Magistrate actually found probable cause to search for, and to seize, every item mentioned in the affidavit.

Groh, 540 U.S. at 560 (emphasis added). Even one of the sources relied on by the dissenting opinion goes as far as to say "it is clear that the [Supreme] Court in *Groh* has accepted and adopted the incorporation/accompanying approach, without specifically saying so, as the discussion of whether there was a valid with-warrant search is abruptly ended because there was neither incorporation nor accompaniment." 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 4.6(a) (5th ed. 2012).

The dissenting opinion further attempts to validate the first five broad, generic categories by reasoning accompaniment of the search warrant application is irrelevant because the most important thing for purposes of the particularity analysis is that the search warrant included the same list of detailed items included in the search warrant application.[14] Again, this Court does not take issue with the particularity of the detailed

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[14] In reasoning the accompaniment of the warrant application is of no consequence and the particularity analysis turns on the inclusion in the search warrant of the particularized items from the application, the dissenting opinion takes language from several opinions out of context. First, the dissenting opinion quotes *Groh* for the proposition that the particularity requirement of the Fourth Amendment may be satisfied regardless of whether the warrant application is attached to the search warrant if "the particular items described in the affidavit are also set forth in the warrant itself[.]" 540 U.S. at 560. But such statement was made in the context of explaining "*unless* the particular items described in the affidavit are also set forth in the warrant itself *(or at least incorporated by reference, and the affidavit present at the search)*," then there is no way to ensure the magistrate found probable cause for every item in the affidavit. *Id.* (emphasis added). The statement in *Groh*, therefore, simply sets forth the general principle that the items to be seized must be set forward in the warrant with particularity or at least by incorporation and accompaniment of the affidavit or application. The dissenting opinion further relies on *Bartholomew v. Pennsylvania*, 221 F.3d 425, 429-30 (3d Cir. 2000), for the proposition that there is no Fourth Amendment violation when "the list of items to be seized . . . appear[s] on the face of the warrant." But *Bartholomew* addressed whether a sealed affidavit must accompany the search warrant to cure the warrant's particularity deficiencies, and the Third Circuit held "where the list of items to be seized *does not appear* on the face of the warrant, sealing that list, even though it is 'incorporated' in the warrant, *would violate the Fourth Amendment.*" *Id.* at 430 (emphasis added). *Bartholomew*, therefore, is consistent with the requirement that the affidavit or application accompany the search warrant before incorporation can cure any particularity deficiencies in the warrant. Finally, the dissenting opinion quotes extensively from *United States v. Hamilton*, 591 F.3d 1017, 1027-28 (8th Cir. 2010). But much like *Groh*, the *Hamilton* court never reached the incorporation/accompanying issue because it concluded "even if the warrant failed to meet the particularity requirement of the Warrant Clause," the exclusionary rule should not be applied under the good-faith exception. *Id.* at 1027. Accordingly, the cases relied on by the dissenting opinion do not support the conclusion that it is of no consequence to a particularity analysis whether the search warrant application accompanied the search warrant.

items listed in categories 6 through 12. But those categories do not cure the lack of particularity in the first five categories and category 13. Accordingly, severance is not appropriate in this case.[15]

The Exclusionary Rule Was Appropriately Applied

In its second point, the state asserts the circuit court erred in suppressing all evidence seized because application of the exclusionary rule was unwarranted in that Detective Estes' purported misconduct in checking a box on the warrant was not the type of serious misconduct that should be deterred by the exclusion of otherwise lawfully seized evidence. Because this Court finds the search warrant to be a general warrant that violates the Fourth Amendment, it is not necessary for this Court to consider the legal effect or impact of Detective Estes' misconduct.

Again, generally "all evidence obtained by searches and seizures in violation of the Constitution . . . is inadmissible in state court." *Grayson*, 336 S.W.3d at 146 (alteration in the original) (internal quotation omitted). And "the only remedy for a general warrant is to suppress all evidence obtained thereby." *United States v. Yusuf*, 461 F.3d 374, 393 n.19 (3d Cir. 2006). Accordingly, the circuit court did not err in applying the exclusionary rule.

[15] Because the invalid portions of the search warrant predominate, it is unnecessary to reach the fifth step of the *Sells* test – severing the valid portions from the invalid portions and suppressing evidence accordingly. 463 F.3d at 1161.

Conclusion

The circuit court did not err in refusing to apply the severance doctrine. The invalid portions of the warrant predominate the valid portions such that they contaminated the whole warrant and turned it into a general warrant. The severance doctrine cannot be used to save a general warrant. The circuit court, therefore, properly suppressed all evidence seized. The circuit court's order is affirmed.

PATRICIA BREECKENRIDGE, JUDGE

Draper, Russell and Stith, JJ., concur;
Fischer, C.J., dissents in separate opinion
filed; Wilson, J., concurs in opinion of
Fischer, C.J. Powell, J., not participating.

SUPREME COURT OF MISSOURI
en banc

STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	
v.	)	No. SC95719
	)	
PHILLIP DOUGLASS,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
JENNIFER M. GAULTER,	)	
	)	
Respondent.	)	

DISSENTING OPINION

Detective Estes sought to search for and seize the following items:

> Coach Purse that is silver with C's on it; a Coach purse with purple beading; Prada purse black in color; larger Louis Vuitton bag; Toshiba Satellite laptop limited edition silver with black swirls on it; Vintage/costume jewelry several items had [M.G.] engraved on them; Coach, Lv, Hermes, Bestie Sunglasses; Passport and Social Security card [belonging to M.G.]; Social Security Card/Birth Certificate [belonging to M.G.'s son]; Various bottles of perfume make up brushes and Clinique and Mary Kay make up sets; Keys not belonging to property or vehicle at scene; and Any property readily and easily identifiable as stolen.

These items were expressly listed in both the "AFFIDAVIT/APPLICATION FOR SEARCH WARRANT" (hereinafter, "application for the search warrant"), and the

"Search Warrant" itself. Nothing in the application for the search warrant referenced a "Deceased human fetus or corpse, or part thereof[.]" The search warrant listed five specific categories, with a box next to each category to check if there was probable cause to search for the category. These five categories are found on every form search warrant. Such forms track the language contained in § 542.271, RSMo 2000. Importantly, preceding the five categories was an express reference to the application for the search warrant, which provided, "**Based on information provided in a verified application/affidavit**, the Court finds probable cause to warrant a search for and/or seizure of the following[.]" (Emphasis added). Then, the five specific categories were listed as follows:

> ☐ Property, article, material or substance that constitutes evidence of the commission of a crime;
>
> ☐ Property that has been stolen or acquired in any manner declared an offense;
>
> ☐ Property for which possession is an offense under the laws of this state;
>
> ☐ Any person for whom a valid felony arrest warrant is outstanding;
>
> ☐ Deceased human fetus or corpse, or part thereof[.]

The boxes next to all five categories were checked, and the search warrant was signed by the issuing judge. The fifth box should not have been checked because there was no information in the application for the search warrant to support a probable cause

finding for that category.[1] That then begs the question of whether the circuit court erred in suppressing **all** evidence seized when there was probable cause to search for most, but not all, of the categories described in the search warrant.

Whether a search is "permissible and whether the exclusionary rule applies to the evidence seized" are questions of law that are reviewed de novo. *State v. Johnson*, 354 S.W.3d 627, 632 (Mo. banc 2011).

"Whether the exclusionary sanction is appropriately imposed in a particular case . . . is an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *United States v. Leon*, 468 U.S. 897, 906 (1984) (internal quotation marks omitted). To be sure,

> [o]nly the former question is currently before us, and it must be resolved by weighing the costs and benefits of preventing the use in the prosecution's case in chief of inherently trustworthy tangible evidence obtained in reliance on a search warrant issued by a detached and neutral magistrate that ultimately is found to be [partially] defective.

Id. at 906–07.[2]

The Supreme Court of the United States has "never held that potential, as opposed to actual, invasions of privacy constitute searches for purposes of the Fourth Amendment." *United States v. Karo*, 468 U.S. 705, 712 (1984). And, "[n]ot every

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[1] It remains unclear why the issuing judge struck through part of the search warrant he did not think was justified by the application for the search warrant but did not strike through the corpse category. *See* Ex. A ("AFFIDAVIT/APPLICATION FOR SEARCH WARRANT"); Ex. B ("SEARCH WARRANT").

[2] Even "[i]f a court finds a clause to be 'so lacking of indicia of probable cause' that an officer could not reasonably rely on its validity, the clause should be stricken and the remaining portions upheld, provided that the warrant as a whole is not unsupported by probable cause." Rosemarie A. Lynskey, *A Middle Ground Approach to the Exclusionary Remedy: Reconciling the Redaction Doctrine with* United States v. Leon, 41 Vand. L. Rev. 811, 836 (1988).

Fourth Amendment violation results in exclusion of the evidence obtained pursuant to a defective search warrant." *United States v. Hamilton*, 591 F.3d 1017, 1027 (8th Cir. 2010). Indeed, "[f]rom a policy perspective[,] a rule requiring blanket invalidation of overbroad warrants would seem ill advised." *United States v. Riggs*, 690 F.2d 298, 301 (1st Cir. 1982). A search warrant passes constitutional muster if there is: (1) probable cause to believe that the place to be searched will contain evidence of a crime; and (2) sufficient particularity of the description of the place to be searched and the items to be seized. U.S. Const. amend. IV; Mo. Const. art. I, sec. 15. It is undisputed the "corpse category" on the search warrant lacked probable cause. On the other hand, however, it is also undisputed probable cause **did** exist to support a search for the other categories identified in the search warrant. The items for those categories were further described in the search warrant as:

> Coach Purse that is silver with C's on it; a Coach purse with purple beading; Prada purse black in color; larger Louis Vuitton bag; Toshiba Satellite laptop limited edition silver with black swirls on it; Vintage/costume jewelry several items had [M.G.] engraved on them; Coach, Lv, Hermes, Bestie Sunglasses; Passport and Social Security card [belonging to M.G.]; Social Security Card/Birth Certificate [belonging to M.G.'s son]; Various bottles of perfume make up brushes and Clinique and Mary Kay make up sets; Keys not belonging to property or vehicle at scene; and Any property readily and easily identifiable as stolen.

It is also undisputed the description of these items satisfied the particularity requirement.[3] Therefore, only **part** of the search warrant—rather than **all** of it—was invalid.[4] When

[3] The principal opinion, however, concludes the last item—"Any property readily and easily identifiable as stolen"—does not satisfy the particularity requirement of the Fourth Amendment because it is "merely conclusory language that lacks any specificity and is not limited to the offenses related to M.G.'s property" and because nothing in this item "limits the catch-all nature

that is the case, a circuit court faced with a motion to suppress must consider the severability doctrine.[5]

Under this doctrine,

> [t]he infirmity of part of a warrant requires the suppression of evidence seized pursuant to that part of the warrant, but does not require the suppression of anything described in the valid portions of the warrant (or lawfully seized—on plain view grounds, for example—during . . . execution [of the valid portions]).

Sells, 463 F.3d at 1150 (internal quotation marks omitted). Courts "apply a multiple-step analysis to determine whether severability is applicable." *Id.* at 1151. First, the search warrant is divided "in a commonsense, practical manner into individual clauses, portions, paragraphs, or categories." *Id.* Then, "the constitutionality of each individual part [is evaluated] to determine whether some portion of the warrant satisfies the probable cause and particularity requirements of the Fourth Amendment." *Id.* "If no part of the warrant

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of the category by relating it back to the previously enumerated provisions of the warrant." Slip op. at 17 (internal quotation marks omitted). But what the principal opinion overlooks is the fact that this item came immediately after all of the specific items that were allegedly taken from M.G. Moreover, as discussed *infra*, under particularity analysis, the application for the search warrant was a part of the search warrant so the items "identifiable as stolen" were those in relation to the investigation of items allegedly taken from M.G.

[4] It is important to emphasize this appeal does not involve evidence seized pursuant to the search warrant's corpse category. Instead, this appeal concerns the suppression of evidence seized under the lawful authority of the other, valid categories of the search warrant.

[5] Indeed, "the interests safeguarded by the Fourth Amendment have been adequately served by the suppression of **only** that evidence seized by overreaching the warrant's [lawful] authorization." *United States v. Christine*, 687 F.2d 749, 757 (3d Cir. 1982) (emphasis added). "[This] practice . . . is fully consistent with the Fourth Amendment and should be utilized to salvage partially invalid warrants." *Id.* at 750–51. "The cost of suppressing all the evidence seized, including that seized pursuant to the valid portions of the warrant, is so great that the lesser benefits accruing to the interests served by the Fourth Amendment **cannot justify complete suppression.**" *Id.* at 758 (emphasis added). Federal circuit courts synonymously refer to the doctrine as "severability," "severance," "redaction," or "partial suppression." *United States v. Sells*, 463 F.3d 1148, 1151 n.1 (10th Cir. 2006) (listing cases).

particularly describes items to be seized for which there is probable cause, then severance does not apply, and all items seized by such a warrant should be suppressed." *Id.*

"If, however, at least a part of the warrant is sufficiently particularized and supported by probable cause," then a court must "determine whether the valid portions are distinguishable from the invalid portions." *Id.* "If the parts may be meaningfully severed, then [a court must] look to the warrant on its face to determine whether the valid portions make up 'the greater part of the warrant,' by examining both the quantitative and qualitative aspects of the valid portions relative to the invalid portion." *Id.* Ultimately,

> [i]f the valid portions make up "the greater part of the warrant," then we sever those portions, suppress the evidence seized pursuant to the portions that fail to meet the Fourth Amendment's warrant requirement, and admit all evidence seized pursuant to the valid portions or lawfully seized during execution of the valid portions.

Id.

The search warrant in this case can be easily divided into the following categories of evidence: (1) "Property, article, material or substance that constitutes evidence of the commission of a crime;" (2) "Property that has been stolen or acquired in any manner declared an offense;" (3) "Property for which possession is an offense under the laws of this state;" (4) "Any person for whom a valid felony arrest warrant is outstanding;"[6] and (5) "Deceased human fetus or corpse, or part thereof[.]"

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[6] The principal opinion asserts this category lacked probable cause. A probable cause determination "should be paid great deference by reviewing courts." *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (internal quotation marks omitted). But at the suppression hearing the defendants' counsel conceded there was probable cause for this category:

Next, each part of the search warrant is examined for both probable cause and particularity. There has been no challenge to either the probable cause or particularity aspects of the specific items that fall within categories 1 through 4, but the principal opinion suggests otherwise.

The other four checked categories, which are found on every form search warrant, do not violate the particularity requirement of the Fourth Amendment because the search warrant expressly referred back to the application for the search warrant, a fair reading of which indicates the investigation arose from M.G.'s reporting of property allegedly taken from her residence.[7] The form search warrant at issue tracked the language contained in § 542.271. Moreover, the preceding sentence to these five categories expressly referenced the specific items listed in the application for the search warrant. The express reference provided, **"Based on information provided in a verified application/affidavit**, the Court finds probable cause to warrant a search for and/or

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> [T]he fact that the check box is available on a form for human remains is somewhat frightening. There was no probable cause to believe that there had been any dead bodies or parts thereof at their house.
>
> I can understand that there may have been probable cause to believe that either of the listed subjects may have had warrants outstanding for them. I'm sure the officers did their due diligence and did a background check, records check before they went to execute this, **and that would justify perhaps the other check boxes on the search warrant.**

(Emphasis added).

[7] "It is universally recognized that the particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized, and that a description of property will be acceptable **if it is as specific as the circumstances and nature of activity under investigation permit.**" *United States v. Wuagneux*, 683 F.2d 1343, 1349 (11th Cir. 1982) (emphasis added). "The particularity requirement ensures that a search is confined in scope to particularly described **evidence relating to a specific crime for which there is demonstrated probable cause.**" *Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir. 1985) (emphasis added).

seizure of the following[.]" (Emphasis added). The application for the search warrant provided the description for the categories along with the description on the face of the search warrant.

The Fourth Amendment does not "prohibit[] a warrant from cross-referencing other documents." *Groh v. Ramirez*, 540 U.S. 551, 557 (2004). Indeed, "sufficient particularity to validate a warrant inadquately [sic] limited upon its face may be supplied by the attachment or incorporation by reference of the application for the warrant and the supporting affidavits." *State v. Holland*, 781 S.W.2d 808, 814 (Mo. App. 1989). Even the Tenth Circuit in *Sells* noted the affidavit there could not remedy the "warrant's lack of particularity because it was **neither incorporated by express reference in the warrant** nor attached to the warrant." 463 F.3d at 1157 n.6 (emphasis added).

With these considerations in mind, if the search warrant and its supporting document—the application for the search warrant—are viewed in a "commonsens[ical, consistent,] and realistic fashion[,]" *United States v. Ventresca*, 380 U.S. 102, 108 (1965), the search warrant's express reference to the application for the search warrant demonstrates that the nature of the warrant was not general at all. *See Doe v. Groody*, 361 F.3d 232, 248 (3d Cir. 2004) (Alito, J., dissenting) ("[T]he appropriateness of 'words of incorporation' is to be judged by the 'commonsense and realistic' standard that is generally to be used in interpreting warrants.").

To invalidate these four checked categories for lack of particularity would be to completely eliminate form warrants in general. This form search warrant tracked the language of § 542.271. Indeed, to invalidate these categories on that basis would be to

call into question the constitutional validity of § 542.271, which this Court prefers to avoid completely. *See, e.g., State v. Wade*, 421 S.W.3d 429, 432 (Mo. banc 2013) ("Statutes are presumed constitutional and will be found unconstitutional only if they clearly contravene a constitutional provision."). It is difficult to imagine what a compliant search warrant even looks like under the principal opinion's view.

The principal opinion's view is also inconsistent with Supreme Court precedent. The Supreme Court in *Groh* explained that the particularity requirement of the Fourth Amendment may be satisfied if "the particular items described in the affidavit are also set forth in the warrant itself[.]" 540 U.S. at 560. "What doomed the warrant in *Groh* was not the existence of a supporting affidavit that particularly described the items to be seized, but the failure of the warrant to cross-reference the affidavit at all." *Baranski v. Fifteen Unknown Agents of Bureau of Alcohol, Tobacco & Firearms*, 452 F.3d 433, 439 (6th Cir. 2006) (en banc). *See also* 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 4.6(a) (5th ed. 2012) (noting that *Groh* "covers . . . only" the situation in which the search warrant "'did not describe the items to be seized *at all*'") (quoting *Groh*, 540 U.S. at 558).

The preceding sentence to the five categories on the face of the search warrant adequately cross-references the application for the search warrant because "the particular items described in the [application for the search warrant] are also set forth in the warrant itself[.]" *Groh*, 540 U.S. at 560. *See also Bartholomew v. Pennsylvania*, 221 F.3d 425, 429–30 (3d Cir. 2000) (suggesting there is no Fourth Amendment violation when "the list of items to be seized . . . appear[s] on the face of the warrant").

Furthermore, to the extent the principal opinion "reads *Groh* as establishing a definitive two-part rule for validating a warrant by incorporation of a separate document[,]" *Groh* "establishes no such rule. Instead, *Groh* simply acknowledges the approach generally followed by the Courts of Appeals. Because neither requirement was satisfied in *Groh*, the Supreme Court declined to further consider the question of incorporation by reference." *United States v. Hurwitz*, 459 F.3d 463, 471 (4th Cir. 2006). *See also Groh*, 540 U.S. at 558 ("But in this case the warrant did not incorporate other documents by reference, nor did either the affidavit or the application (which had been placed under seal) accompany the warrant. Hence, we need not further explore the matter of incorporation.").

What is most important in this case for purposes of particularity analysis is that the face of the search warrant had, verbatim, the same list of detailed items the application for the search warrant provided. The fact that the record does not definitively indicate the application for the search warrant was either physically attached to the search warrant[8] or accompanied the search warrant at the time of the search, is of no consequence. Indeed, there is "nothing in the Constitution requiring that an officer possess or exhibit, at the time of the search, documents incorporated into a warrant as an additional safeguard for the particularity requirement." *Hurwitz*, 459 F.3d at 472–73. "The salient point is that *Groh* did not establish a one-size-fits-all requirement that affidavits must accompany all searches to prevent a lawfully authorized search from becoming a warrantless one."

[8] Notably, both the application for the search warrant and the search warrant were signed and dated August 29, 2013, at 3:04 P.M. *Compare* Ex. A, *with* Ex. B.

Baranski, 452 F.3d at 444. *See also Hamilton*, 591 F.3d at 1027 ("If the warrant in this case referred to the attached affidavit **for the explicit purpose of delineating the items to be seized** . . . we would be inclined to follow the reasoning of the Sixth Circuit in *Baranski* and conclude that **an affidavit incorporated into a warrant need not accompany the warrant to the search** for purposes of meeting the particularity requirement of the Warrant Clause.") (emphasis added).

> In any event, I reject the principal opinion's
>
> > reliance on *Groh*. The warrant in this case included a clear incorporation of the [application for the search warrant], which itself included an explicit list of items to be seized. The issuing judge signed both the warrant and the [application for the search warrant], demonstrating both that the circuit judge approved the search with reference to the affidavit and that the judge had the opportunity to limit the scope of the search.

Id. at 1028. It was also "objectively reasonable for an officer with [Detective Estes]'s knowledge and involvement in the warrant application process to rely on the warrant as incorporating the list of items to be seized from the [application for the search warrant]," even if the principal opinion concludes the "magic words" of incorporation were less than clear. *Id.* at 1029.

Accordingly, that leaves the validity of category 5, the corpse category. As noted above, there is no probable cause supporting category 5. Because most of the categories are supported by both probable cause and particularity, the next question is whether the valid portions—categories 1 through 4—are sufficiently distinguishable from the invalid portion—category 5.

Virtually all categories and items are clearly related to the theft crimes the defendants were accused of committing and eventually charged with. Likewise, the corpse category is clearly unrelated to any of the crimes the defendants allegedly committed. Nor have the defendants been charged with any homicide offense. "Where, as here, each of the categories of items to be seized describes distinct subject matter in language not linked to language of other categories, and each valid category retains its significance when isolated from rest of the warrant, then the valid portions may be severed from the warrant." *Sells*, 463 F.3d at 1158. Accordingly, the valid portions are easily distinguishable from the lone invalid portion.

The next question is whether the valid portions make up "the greater part of the warrant." If the invalid portions make up the greater part of the search warrant such that the warrant is, in essence, a general warrant, then severance is inapplicable. A general warrant is one that authorizes "a general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). A search warrant "cannot be invalidated as a general warrant [if] it does not vest the executing officers with unbridled discretion to conduct an exploratory rummaging . . . in search of criminal evidence." *Christine*, 687 F.2d at 753.

In conducting this analysis, courts focus "on the warrant itself rather than upon an analysis of the items actually seized during the search." *Sells*, 463 F.3d at 1159. "Certainly, the number of valid versus invalid provisions is one element in the analysis of which portion makes up the greater part of the warrant." *Id.* (internal quotation marks omitted). "However, merely counting parts, without any evaluation of the practical effect

of those parts, is an improperly 'hypertechnical' interpretation of the search authorized by the warrant." *Id.* at 1160; *see also Gates*, 462 U.S. at 236. "A warrant's invalid portions, though numerically fewer than the valid portions, may be so broad and invasive that they contaminate the whole warrant." *Sells*, 463 F.3d at 1160. "Common sense indicates that we must also evaluate the relative scope and invasiveness of the valid and invalid parts of the warrant." *Id.*

Here, both quantitative and qualitative assessments of the search warrant indicate that, when viewed, in toto, the valid portions make up the greater part of the search warrant and the corpse category was a de minimis aspect of the search warrant. In conducting the qualitative assessment,

> the court must assess the relative importance on the face of the warrant of the valid and invalid provisions, weigh the body of evidence that could have been seized pursuant to the invalid portions of the warrant against the body of evidence that could properly have been seized pursuant to the clauses that were sufficiently particularized, and consider such other factors as it deems appropriate in reaching a conclusion as to whether the valid portions comprise more than an insignificant or tangential part of the warrant.

United States v. Galpin, 720 F.3d 436, 450 (2d Cir. 2013). Moreover,

> Where a warrant authorizes the search of a residence, the physical dimensions of the evidence sought will naturally impose limitations on where an officer may pry: an officer could not properly look for a stolen flat-screen television by rummaging through the suspect's medicine cabinet, nor search for false tax documents by viewing the suspect's home video collection.

Id. at 447.

Here, the valid portions of the search warrant authorized a rather broad search in light of the nature of the items listed (e.g., jewelry, keys, identification). Though

certainly parts of a corpse might be small, a search for small parts of a corpse is unlikely to be broader than a search for small personal items like jewelry, keys, or identification. Accordingly, the corpse category neither constituted the greater part of the search warrant nor transformed the warrant into a general one. At most, its inclusion in the search warrant was de minimis compared to the valid portions of the warrant. *See, e.g., Sells*, 463 F.3d at 1160–61. The valid portions make up the greater part of the search warrant. *Id.* at 1160.

This analysis demonstrates the circuit court misapplied the law and should have severed the valid portions of the search warrant from the sole invalid portion—i.e., the corpse category—and not suppressed evidence seized pursuant to the valid portions.[9] "[I]t would be harsh medicine indeed if a warrant which was issued on probable cause and which did particularly describe certain items were to be invalidated in toto merely because the affiant and the magistrate erred in seeking and permitting a search for other items as well." *United States v. Cook*, 657 F.2d 730, 735 (5th Cir. 1981) (internal quotation marks omitted).

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[9] "The proponent of [a] motion [to suppress evidence] has the burden of establishing that his constitutional rights were violated by the challenged search or seizure[.]" *State v. Burkhardt*, 795 S.W.2d 399, 404 (Mo. banc 1990). "At a motion to suppress hearing, the State bears the burden of proving that the seizure was constitutionally proper." *State v. Pike*, 162 S.W.3d 464, 472 (Mo. banc 2005). Here, because the search was pursuant to a warrant, the defendants bore the burden of proving the search warrant invalid. And, they met their burden with respect to the corpse category. They failed, however, to demonstrate that the entire search warrant was invalid. Had the circuit court properly severed the search warrant, the defendants might have argued evidence was seized pursuant to the invalid portion of the search warrant, in which case the State would have borne the burden of demonstrating that the evidence sought to be admitted was seized pursuant to only the valid portion of the search warrant. However, because the circuit court erroneously found the search warrant invalid in its entirety, no such argument was made. Indeed, it is undisputed that none of the evidence sought to be suppressed had been seized under the invalid portion of the search warrant.

The general tenor of the circuit court's order suppressing all of the evidence from the search, and the crux of the defendants' argument on appeal, is that Detective Estes's alleged misconduct in presenting the issuing judge with a proposed search warrant—authorizing a search warrant with the corpse category even though there was no probable cause to support it—required invalidation of the entire warrant. There are two problems with this determination: (1) the severance or redaction cases are not concerned with the officer's motivation in procuring the search warrant; and (2) invalidation of the entire search warrant under these circumstances would be inconsistent with well-established approaches to dealing with officer misconduct in other warrant cases.

To begin, none of the severability doctrine cases discuss what role, if any, officer misconduct plays in the analysis. Instead, the courts have examined only the search warrant and accompanying affidavit—in this case, the application for the search warrant—to discern whether the search warrant met the constitutional requirements of probable cause and particularity or whether it appeared to be a general warrant. *See, e.g.*, *Sells*, 463 F.3d at 1159 ("The 'greater part of the warrant' analysis focuses on the warrant itself rather than upon an analysis of the items actually seized during the search."); *Christine*, 687 F.2d at 759–60 (noting that redaction was available to the court based solely upon a review of the search warrant and affidavit); *see also* LaFave, *supra*, § 3.7(d) ("If severability is proper . . . it would seem the rule would be more sensible if expressed not in terms of what was seized, but rather in terms of what search and seizure would have been permissible if the warrant had only named those items as to which probable cause was established.").

Despite some courts using the terms "pretext" and "bad faith," in describing when severance is inapplicable,[10] the courts were doing nothing more than employing the "greater part of the warrant" analysis. "[A]lthough articulated in varying forms, every court to adopt the severance doctrine has further limited its application to prohibit severance from saving a warrant that has been rendered a general warrant by nature of its invalid portions despite containing some valid portion." *Sells*, 463 F.3d at 1158. In deciding whether to apply the severance doctrine, courts are generally not concerned with **why** parts of a search warrant are invalid, only **if** they are. And to the extent that officer misconduct is relevant at all in the severance doctrine cases, the issue is subsumed within the "greater part of the warrant" analysis. If the invalid portions make up a "greater part of the warrant," resulting in a broader search than would otherwise have been authorized, the severability doctrine is inapplicable because the warrant has then been transformed into a prohibited general warrant. *See id.* at 1159 (characterizing language from *Aday v. Superior Court*, 362 P.2d 47, 52 (Cal. 1961), wherein the California Supreme Court "recognize[d] the danger that warrants might be obtained which are essentially general in character but as to minor items meet the requirements of particularity" and condemned "[s]uch an abuse of the warrant procedure" as an articulation of the "greater part of the warrant" analysis).

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[10] *See, e.g., United States v. Fitzgerald*, 724 F.2d 633, 636–37 (8th Cir. 1983) (en banc) ("[A]bsent a showing of pretext or bad faith on the part of the police or the prosecution, the invalidity of part of a search warrant does not require the suppression of all the evidence seized during its execution."); *Cook*, 657 F.2d at 735 n.6 (noting the absence of pretext to negate application of the severance doctrine).

While the severance doctrine presents the danger that

> [t]he police might be tempted to frame warrants in general terms, adding a few specific clauses in the hope that under the protection of those clauses they could engage in general rummaging through the premises and then contend that any incriminating evidence they recovered was found in plain view during the search for the particularly-described items[,] . . . careful administration of the rule will afford full protection to individual rights. First, magistrates must exercise vigilance to detect pretext and bad faith on the part of law enforcement officials. Second, courts should rigorously apply the exclusionary rule to evidence seized pursuant to the invalid portions of the warrant. Third, items not described in the sufficiently particular portions of the warrant will not be admissible unless it appears that (a) the police found the item in a place where one would reasonably have expected them to look in the process of searching for the objects described in the sufficiently particular portions of the warrant, (b) the police found the item before they found all the objects described in the sufficiently particular portions of the warrant (that is, before their lawful authority to search expired), and (c) the other requirements of the plain view rule—inadvertent discovery and probable cause to associate the item with criminal activity—are met.

Fitzgerald, 724 F.2d at 637. In short, the courts have not been concerned with **why** the invalid portions might have been included because, simply put, **if** the invalid portions rendered the search warrant, as a whole, a general warrant, the entire warrant will be deemed invalid, and the severance doctrine will be inapplicable.

The second problem with wholesale suppression in this context is that it would be inconsistent with other case law dealing with officer misconduct in either procuring or executing a search warrant.[11] In *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978), the Supreme Court addressed the remedy for officer misconduct in the procurement of a search warrant, either through intentional misrepresentation or intentional omissions in

[11] To reiterate, Detective Estes made no misrepresentation in his sworn application for the search warrant. Indeed, that document had no reference at all to the corpse category.

the supporting affidavit. But even when an officer intentionally makes factual misrepresentations to the warrant-issuing judge, the remedy is not automatic, wholesale suppression. Rather, a court must "set to one side" the "material that is the subject of the alleged falsity or reckless disregard" and determine whether "there remains sufficient content in the warrant affidavit to support a finding of probable cause[.]" *Franks*, 438 U.S. at 171–72. In other words, upon a finding that the affiant officer lied to the warrant-issuing judge, the remedy the court must apply is to redact the misrepresentation and then reevaluate whether the search warrant is still supported by probable cause.

Similarly, if officers engage in misconduct when executing a search warrant by exceeding its lawful scope, the remedy is not wholesale suppression of all evidence seized.[12] Rather, when

> law enforcement officers, acting pursuant to a valid warrant, seize an article whose seizure was not authorized and which does not fall within an exception to the warrant requirement[,] . . . [w]ithout exception[,] federal appellate courts have held that only that evidence which was seized illegally must be suppressed; the evidence seized pursuant to the warrant has always been admitted.

Christine, 687 F.2d at 757 (footnote omitted). In other words, courts exclude only that evidence seized as a result of misconduct and not any evidence seized under lawful authority.

In my view, wholesale suppression is not the appropriate remedy in this case when there was not a single misrepresentation made on the application for the search warrant—but rather, an inappropriate box checked on the proposed search warrant—when such a

[12] Nothing in the record suggests the officers exceeded the scope of the authorized search.

remedy has been rejected when addressing intentional misrepresentations in the supporting application for the search warrant, or a search that intentionally exceeds the lawful scope of the warrant. *See* Lynskey, *supra*, at 837 ("[E]ven if the court were to find that the officer recklessly or intentionally included falsehoods in the affidavit, redaction still would be appropriate to excise only those clauses authorized pursuant to the misinformation, provided that the warrant generally is based on truth.").

This is not to say Detective Estes' conduct—in presenting the issuing judge with a proposed search warrant with the corpse category checked even though it lacked probable cause—was excusable or justifiable. To be sure, there is no "law enforcement convenience" exception to the warrant requirement, and the issuing judge should have stricken the corpse category just like he did for the "no knock" category. Indeed, "[t]he Fourth Amendment dictates that a magistrate may not issue a warrant authorizing a search and seizure which exceeds the ambit of the probable cause showing made to him." *Christine*, 687 F.2d at 753. In short, there is simply no good reason to check a box on a proposed search warrant when the applicant knows there is no probable cause to support that category. And, in doing so, law enforcement gains nothing because even if the search warrant is severed, any evidence seized pursuant to the invalid portion of the warrant will be suppressed.

In my view, Fourth Amendment jurisprudence would only authorize suppressing evidence that was actually seized in reliance on the corpse category. Unless the officers conducting the search actually relied on the invalid portion of the search warrant in doing so, the search warrant—in the absence of redaction—created merely the potential for a

Fourth Amendment violation.[13] To reiterate, the Supreme Court has "never held that potential, as opposed to actual, invasions of privacy constitute searches for purposes of the Fourth Amendment." *Karo*, 468 U.S. at 712.

"If at the time of seizure, the executing officers were not intruding upon the individual's expectation of privacy more than was necessary to execute the valid portion of the warrant, the Fourth Amendment does not require suppression" of evidence obtained in reliance on the valid portions of the search warrant. *People v. Brown*, 749 N.E.2d 170, 176 (N.Y. 2001). Because only actual invasions of privacy constitute a Fourth Amendment violation, if the officers' search was limited to only those items identified in the search warrant that were supported by probable cause—and the officers did not rely upon the authority granted by the improperly checked box—then the defendants' privacy was not invaded and no Fourth Amendment violation occurred.

Suppression of only evidence obtained pursuant to the invalid portion of the search warrant would not offend the Fourth Amendment. *See United States v. Calandra*, 414 U.S. 338, 347 (1974) ("[E]vidence obtained in violation of the Fourth Amendment **cannot be used in a criminal proceeding against the victim of the illegal search and seizure.**") (emphasis added). Yet, in this case, it is difficult to imagine what evidence, if

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[13] The "facial invalidity of [a search] warrant" is a separate question from the "manner in which the officers conducted the search." *Baranski*, 452 F.3d at 443. *See also Hamilton*, 591 F.3d at 1025 ("Whether a warrant is properly issued, however, is a separate question from whether it is reasonably executed, which is governed by the Reasonableness Clause of the Fourth Amendment[.]"); *United States v. Basham*, 268 F.3d 1199, 1204 (10th Cir. 2001) (noting the reasonableness of the execution of a warrant "is an entirely different matter than the question of whether the warrant itself is valid"). "To say that a warrant satisfies the Warrant Clause upon issuance, however, by no means establishes that a search satisfies the Reasonableness Clause upon execution[.]" *Baranski*, 452 F.3d at 445.

any, the State could use against the defendants if the circuit court had overruled the motions to suppress when no evidence was obtained pursuant to the invalid portion of the search warrant.

Furthermore, if the evidence seized in reliance on the valid portions of the search warrant is not suppressed, all parties will receive a fair trial.

> Fairness can be assured by placing the State and the accused in the same positions they would have been in had the impermissible conduct not taken place. . . . [T]here is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings. In that situation, the State has gained no advantage at trial and the defendant has suffered no prejudice. Indeed, suppression of the evidence would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any police misconduct.

Nix v. Williams, 467 U.S. 431, 447 (1984).

In conclusion, the overall tenor of the circuit court's judgment suggests total suppression was its first impulse, not its last resort. *Cf. Hudson v. Michigan*, 547 U.S. 586, 591 (2006). Total suppression should be limited to situations in which "its remedial objectives are thought most efficaciously served." *Calandra*, 414 U.S. at 348. Indeed,

> Real deterrent value is a necessary condition for exclusion, but it is not a sufficient one. The analysis must also account for the substantial social costs generated by the rule. Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a last resort. For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.

Davis v. United States, 564 U.S. 229, 237 (2011) (internal citations and quotation marks omitted). The principal opinion would have M.G. (and her son) swallow the bitter pill of

total suppression even though checking the box on the corpse category on the search warrant was de minimis.

Because the warrant issued was not a general warrant and no evidence whatsoever was discovered or seized based on the corpse category, the circuit court misapplied the law in suppressing all evidence seized, and its order should be reversed.

Zel M. Fischer, Chief Justice

EXHIBIT A

AFFIDAVIT / APPLICATION FOR SEARCH WARRANT PP CRN 13-60372 P26

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

I, Det. Daroid Estes affiant and applicant herein, being duly sworn, appears now before the undersigned Judge authorized to issue Warrants in criminal cases and makes this Affidavit and Application in support of the issuance of a Search Warrant, to seize and Search the following described person, place or thing:

The residence at 1003 NW B Street, Blue Springs, Jackson County, Missouri is a single-family dwelling that is painted yellow and has brown trim, as well as, a brown composite shingle roof. The address numbers of "1003" are cleared marked in brown numbering on the east side of the front door of the residence. The address of 1003 NW B Street, Blue Springs, Jackson County, Missouri is the second residence west of NW 10th Street, and on the north side of NW B Street. To include: any garage/storage/out buildings on the property.

And to there seize and search, photograph or copy, and make return thereof, according to law, the following property or things:

Coach Purse that is silver with C's on it, a Coach purse with purple beading, Prada purse black in color, larger Louis Vuitton bag
Toshiba Satellite laptop limited edition silver with black swirls on it
Vintage/costume jewelry several items had MG engraved on them
Coach, Lv, Hermes, Bestie Sunglasses
Passport and Social Security card (Melissa Garris)
Social Security Card/ Birth Certificate in her son's name (Nikoli Lipp)
Various bottles of perfume make up brushes and Clinique and Mary Kay make up sets
Keys not belonging to property or vehicle at scene
Any property readily and easily identifiable as stolen

Affiant and Applicant being duly sworn deposes and states that he has Probable Cause to believe that the above listed property to be seized and searched, photographed or copied, is now located upon said described person place or thing based upon the following facts, to-wit: (and additional sheet(s) if needed)

On 8-21-2013 the victim Melissa Garris responded to 777 Argosy Casino Parkway #426 in Riverside Missouri to meet a friend named Jen (later identified as Jennifer Gaulter, W/F, 11-17-1977). She said she went to the hotel room #426 with Jen and her husband Phil (later identified to be Phillip Douglass, W/M, 7-19-1982). The victim stated they had drinks and things became uncomfortable when she felt she was being pressured into a three way sex act and she called her boyfriend to pick her up. The victim left with her boyfriend and went to her residence located at 500 E. 3rd Street #332 in Kansas City, Jackson County, Missouri.

On 8-22-2013 at 09:50 AM, she left for work leaving her house locked and secured. The victim stated while at work she received a text from Jen saying that she had left a bag in the hotel room and that she would leave it for her at the front desk. The victim said she would pick up the bag after she got

FORM 2648 P.D. (10-2009)

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off from work. The victim said she received another text from Jen asking her if she was at home or working. She replied to the text saying she was still at work and would call her when she gets off. The victim said when she got off of work at 6:10 PM she observed that her apartment had been broken into and approximately $10,000.00 worth of her belongings listed above had been stolen. The door had no damage and she immediately called the Argosy Hotel, and asked if her bag which contained her house keys was still at the front desk. The victim said the front desk told her the bag was still there. She had them look in her bag for her keys, which they did, and she was told the keys were not in the bag. The victim began texting Jen about the theft and the missing keys. Jen stopped replying to her.

The victim called Police and made a report about the incident. She then drove to the Argosy to retrieve her bag. The victim said the Hotel staff told her the purse had been picked up. The victim said she can't get a response from Jen anymore. The victim said the phone number she had been texting Jen was 816-267-0420. The phone number responded on an internet search to Phillip Douglass and Jennifer Gaulter at 1003 NW B Street in Blue Springs, Jackson County, Missouri. The detective pulled pictures associated with the phone number from the internet. A picture of Jennifer Gaulter and Phillip Douglass was found on an entry on Craigslist and the pictures were shown to the victim who said it was Jenn and Phil. She stated that Jenn and Phil had possession of her keys and no one else had access to enter and remove her property.

Hotel Staff at the Argosy Casino confirmed to Det. Estes that room #426 had been rented to Phillip Douglass and Jennifer Gaulter and they were aware that a bag had been left at the front desk for the victim.

A search of Jackson County Tax records shows that 1003 NW B Street, Blue Springs, Jackson County, Missouri 64015 responds to both Jennifer Gaulter and Phillip Douglass.

In the Affiants experience as a law enforcement officer, it is typical for stolen items like those reported stolen by the victim to be taken to the offender(s)' home or residence.

45429
Assistant Prosecutor

Det. [illegible] #4077
Affiant and Applicant

Subscribed and Sworn to me this 29th Day of August, 2013.

at the hour of 7:24 (AM/PM)

JUDGE

EXHIBIT A

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EXHIBIT B

IN THE CIRCUIT C~RT OF COUNTY, MISSOUP~

P24

Judge or Division: W. Baus Pickerell	Case Number: 13-60372
Name and Title of Person Making Application: Det. Darold Estes #4077	

ORIGINAL RECORDS RECEIVED SEP 0 4 2013 (Date/Time)

Search Warrant

State of Missouri to any Peace Officer in Missouri:

Based on information provided in a verified application/affidavit, the Court finds probable cause to warrant a search for and/or seizure of the following:

- ☒ Property, article, material or substance that constitutes evidence of the commission of a crime;
- ☒ Property that has been stolen or acquired in any manner declared an offense;
- ☒ Property for which possession is an offense under the laws of this state;
- ☒ Any person for whom a valid felony arrest warrant is outstanding;
- ☒ Deceased human fetus or corpse, or part thereof;
- ☐ Other (Specify – See Missouri Revised Statute Section 542.271)

You are commanded to search, seize, and photograph or copy, as applicable, the person, place, or thing described below. Photographs or copies of the seized property, article, materials, substance, or person shall be filed with the Court within 10 days.

☐ ~~Furthermore, entry into the residence may be made without knocking and announcing the presence of law enforcement and their purpose due to safety concerns enumerated in the affidavit of the search warrant. (Not authorized unless initialed by a judge.)~~ WBP 8/29/13

The person, place or thing to be searched is described as follows:

The residence at 1003 NW B Street, Blue Springs, Jackson County, Missouri is a single-family dwelling that is painted yellow and has brown trim, as well as, a brown composite shingle roof. The address numbers of "1003" are cleared marked in brown numbering on the east side of the front door of the residence. The address of 1003 NW B Street, Blue Springs, Jackson County, Missouri is the second residence west of NW 10th Street, and on the north side of NW B Street. To include: any garage/storage/out buildings on the property.

The property, article, material, substance or person to be searched for and seized is described as follows:

Coach Purse that is silver with C's on it, a Coach purse with purple beading, Prada purse black in color, larger Louis Vuitton bag
Toshiba Satellite laptop limited edition silver with black swirls on it
Vintage/costume jewelry several items had MG engraved on them
Coach, Lv, Hermes, Bestie Sunglasses
Passport and Social Security card (Melissa Garris)
Social Security Card/ Birth Certificate in son's name (Nikoli Lipp)
Various bottles of perfume make up brushes and Clinique and Mary Kay make up sets
Keys not belonging to property or vehicle at scene
Any property readily and easily identifiable as stolen

8/29/13 at 3:04pm — Date and Time

W. Baus Pickerell — Judge

This warrant is issued by: ☒ hard-copy ☐ facsimile ☐ other electronic means:

Directions to Officer: Make a complete and accurate written inventory of any property seized pursuant to this warrant. When possible, complete the inventory in the presence of the person from whose possession this property is taken, and give a receipt for the property, as well as copy of this warrant to that person. If no person is found in possession of the property, leave the receipt and warrant copy in the premises searched. Immediately deliver photographs or copies of the seized property, article, materials, substance, or person, the written inventory, and the warrant return to this Court.

542.271-542.286 RSMo

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Appendix – Exhibit B

IN THE SUPREME COURT OF MISSOURI

OPINION RELEASE

January SESSION, 2018

COURT EN BANC

No. SC95719

State of Missouri,

Appellant,

vs.

Phillip Douglass,

Respondent,

and

Jennifer M. Gaulter,

Respondent.

APPEAL FROM:

Original Proceeding in

Circuit Court of Jackson County

or

_____.

Date opinion filed February 13, 2018.

****

Appellant's Motion for Rehearing overruled 5/1/18.

DATE MAILED: 5/1/18 Opinion release sheet mailedto Thomson Reuters.

No. SC95719

Jackson County Circuit Court Case No. 1316-CR03008-01 and 1316-CR03009-01

In the Supreme Court of Missouri

May Session, 2018

State of Missouri, Appellant,

v. APPEALS FROM THE CIRCUIT COURT OF JACKSON COUNTY

Phillip Douglass, Respondent, and Jennifer M. Gaulter, Respondent.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered, be in all things affirmed, and stand in full force and effect in conformity with the opinion of this Court herein delivered.

(Opinion filed.)

STATE OF MISSOURI-Sct.

I, BETSY AUBUCHON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session thereof, 2018, and on the 13th day of February 2018, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 1st day of May 2018.

Betsy AuBuchon

Clerk

Cynthia L. Hulen

Deputy Clerk

SEAL OF THE SUPREME COURT OF MISSOURI

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

BETSY AUBUCHON
CLERK

TELEPHONE
(573) 751-4144

May 1, 2018

Mr. Shaun J. Mackelprang via e-filing system
Office of Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102

In Re: State of Missouri, Appellant, vs. Phillip Douglass, Respondent, and Jennifer M. Gaulter, Respondent.
Missouri Supreme Court No. SC95719

Dear Mr. Mackelprang:

Please be advised Appellant's motion for rehearing was overruled on this date.

Powell, J., not participating.

Very truly yours,

BETSY AUBUCHON

cc:
Mr. John R. Humphrey via e-filing system
Ms. Clayton E. Gillette via e-filing system