United States Court of Appeals, Ninth Circuit.

ESTATE OF Kevin BROWN, BY its successor in interest Rebecca BROWN; Rebecca Brown, successor in interest to the Estate of Kevin Brown, Plaintiffs-Appellees,

v.

Michael LAMBERT, an individual; Maura J. Mekenas-Parga, an individual, Defendants-Appellants.

No. 17-55930

Argued and Submitted November 8, 2018 Pasadena, CaliforniaFILED July 24, 2019

Attorneys and Law Firms

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Appeal from the United States District Court for the Southern District of California, Dana M. Sabraw, District Judge, Presiding, D.C. No. 3:15-cv-01583-DMS-WVG

Before: RAWLINSON, MELLOY,* and HURWITZ, Circuit Judges.

MEMORANDUM**

In this 42 U.S.C. § 1983 action, the successors of Kevin Brown, a deceased crime laboratory analyst, contend that two police officers illegally obtained and executed a warrant to search Brown's home in connection with a murder investigation. As relevant to this appeal, the operative complaint claims that Officer Michael Lambert obtained the search warrant through a deceptive affidavit, that Lambert and Officer Maura Mekenas-Parga knowingly executed an overbroad warrant, and that Officers Lambert and Mekenas-Parga seized items beyond the scope of the warrant. The district court denied the officers' summary judgment motion seeking qualified immunity, and this interlocutory appeal followed. We affirm in part and reverse in part.[1]

1. The district court properly found that Officer Lambert is not entitled to qualified immunity on the deception claim. The affidavit he submitted in support of the application for the warrant accurately represented that Brown's DNA was found during the crime laboratory's review of the murder victim's vaginal swab. But, it inaccurately stated that contamination was "not possible;" in fact, Lambert had been expressly warned by crime laboratory employees that contamination was likely because analysts at the time of the murder often used their own semen as a control when testing forensic evidence.

The district court found a genuine issue of disputed fact existed whether Officer Lambert deliberately or recklessly omitted this information from the affidavit submitted in support of the issuance of the warrant. Lambert claims that there is no such dispute, but we cannot review the district court's finding in this

interlocutory appeal. *See Eng v. Cooley*, 552 F.3d 1062, 1067 (9th Cir. 2009) ("A district court's determination that the parties' evidence presents genuine issues of material fact is categorically unreviewable on interlocutory appeal."). Rather, "for purposes of determining whether the alleged conduct violates clearly established law of which a reasonable person would have known, we assume the version of the material facts asserted by the non-moving party to be correct." *Schwenk v. Hartford*, 204 F.3d 1187, 1195 (9th Cir. 2000).

2. The issue properly before us on the deceptive affidavit claim is whether "the affidavit, once corrected and supplemented, would provide a magistrate with a substantial basis for concluding that probable cause existed." *United States v. Stanert*, 762 F.2d 775, 782 (9th Cir. 1985). A corrected affidavit would have informed the magistrate that the DNA evidence cited was unreliable and most likely present because of the testing regimen. Because probable cause to search Brown's home "depended *entirely* on the strength of [that] evidence," a corrected affidavit would not support a finding of probable cause. *Liston v. Cty. of Riverside*, 120 F.3d 965, 973–74 (9th Cir. 1997).

3. The district court also correctly determined that Officer Lambert is not entitled to qualified immunity on the claim for executing an overbroad warrant. The warrant was overbroad to the extent it authorized the seizure of "[a]ddress books, diaries/journals, handwritten in nature" from Brown's home. *See United States v. Spilotro*, 800 F.2d 959, 963–64 (9th Cir. 1986). *1001 And, because Officer Lambert "prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that [it] contained an adequate description of the things to

be seized." *Groh v. Ramirez*, 540 U.S. 551, 564, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004).

4. Officer Mekenas-Parga, however, is entitled to qualified immunity on the overbroad warrant claim. Because she did not assist in obtaining the warrant, she was entitled to rely on it unless it was "so facially overbroad as to preclude reasonable reliance." *United States v. Luk*, 859 F.2d 667, 678 (9th Cir. 1988). The warrant's overbreadth was not facially obvious. *Cf. United States v. Stubbs*, 873 F.2d 210, 212 (9th Cir. 1989) (finding a warrant "contain[ing] no reference to any criminal activity" and "describ[ing] broad classes of documents" plainly defective on its face).

5. As to the overbroad seizure claim, the district court correctly found neither officer entitled to qualified immunity. The seizure of recipes, family photo albums, and a note from Ronald and Nancy Reagan, among other items, plainly exceed the warrant's scope. *United States v. Tamura*, 694 F.2d 591, 595 (9th Cir. 1982) (explaining that the "wholesale seizure for later detailed examination of records not described in a warrant" violates the Fourth Amendment).[2]

AFFIRMED IN PART AND REVERSED IN PART.

Footnotes

*The Honorable Michael J. Melloy, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

**This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1The plaintiffs also asserted a wrongful death claim against Officer Lambert. The district court granted qualified immunity to Officer Lambert on a claim alleging wrongful retention of seized property.

2Because the wrongful death claim against Officer Lambert arises from the same constitutional violations as the other claims against him, the district court properly denied summary judgment on that claim.

United States District Court, S.D. California.

The ESTATE OF Kevin BROWN BY its successor in interest Rebecca BROWN, and Rebecca Brown, an individual, Plaintiffs,
v.
Michael LAMBERT, an individual, Maura Mekenas-Parga, an individual, and Does 2-50, Defendants.

Case No.: 15-cv-1583-DMS (WVG)

Signed June 27, 2017

Attorneys and Law Firms

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Keith W. Phillips, Catherine Ann Richardson, City of San Diego City Attorney's Office, San Diego, CA, for Defendants.

***SECOND AMENDED* ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND (2) GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Hon. Dana M. Sabraw, United States District Judge

This case stems from the 1984 murder of 14 year old Claire Hough. Claire's body was found in the early morning hours at Torrey Pines State Beach. She had been brutally beaten, strangled to death, and mutilated with a knife. The case was reopened after having gone

unsolved for decades. Through advancement in DNA technology the San Diego Police Department ("SDPD") Crime Lab was able to perform further tests in 2012. DNA from a convicted rapist, Ronald Tatro, was found in blood from the victim's clothing. In addition, a combined sperm fraction taken from a vaginal swab from the victim's body revealed trace amounts of semen from a second individual, Kevin Brown, who was a former longtime employee of the Crime Lab and employed by the Lab at the time of Claire's murder.

Plaintiffs claim Brown's DNA was present through an obvious case of cross contamination, likely due to now-outdated standards used in the Lab in the 1980s when swabs were air dried in the open and DNA science was not developed. Plaintiffs point out that it was common practice at that time for Lab employees to use their own semen samples or samples from their coworkers for testing reagents in the Lab and, as a result, several Lab employees believed the positive hit on Brown's DNA was due to cross contamination. Plaintiffs contend Defendant Michael Lambert obtained a warrant to search Brown's residence by misrepresenting and omitting these and other material facts in an affidavit submitted to a state judge in support of the application for a search warrant. Plaintiffs allege that after Defendants obtained the warrant, they engaged in a dragnet search of Brown's home and put extreme pressure on an emotionally fragile Brown, ultimately resulting in a number of constitutional violations and Brown's death by suicide.

Before the Court are Defendants' motion for summary judgment and Plaintiffs' motion for partial summary judgment. Defendants seek summary judgment on each of Plaintiffs' claims, while Plaintiffs seek partial summary judgment on two of their claims.

The motions came on for hearing on April 21, 2017. Eugene Iredale appeared and argued for Plaintiffs, and Catherine Richardson appeared and argued for Defendants.[1]

The Court issued its original Order on the parties' motions on May 25, 2017. In that Order, the Court denied Defendants' motion and granted in part and denied in part Plaintiffs' motion. Specifically, the Court granted Plaintiffs' motion on their third claim for unlawful seizure beyond the scope of the warrant and denied the motion on Plaintiffs' fourth claim.

Twelve days after the Order was issued, Defendants filed a Notice of Interlocutory Appeal. The following day, June 7, 2017, Plaintiffs filed an *ex parte* motion to certify the appeal as frivolous. The Court held a hearing on that motion on June 9, 2017, and at that hearing set a further briefing schedule on the motion. After those further briefs were submitted, the Court held another hearing during which Defendants agreed to withdraw their Notice of Appeal to allow the Court to address the important issues raised in the parties' supplemental briefs and discussed at the hearings. This order addresses those issues.

I.
BACKGROUND

Following the discovery of Claire's body, an autopsy was conducted by a pathologist from the San Diego County Coroner's Office. The pathologist concluded the cause of death was manual strangulation, and noted a deep laceration to Claire's throat, blunt force injuries to her face, and stab wounds to her chest and genitalia. Her entire left breast had been amputated, and her mouth was filled with sand.

Numerous items of evidence were collected from the scene, many of which were stained with blood. (Pls.' Opp'n to Defs.' Mot., Ex. 15, Evidence Screen at 3-4, 6-9.[2]) Other items of evidence were swabbed to detect the presence of semen. (*Id.* at 3, 6.) Vaginal, anal and oral swabs were also taken from the victim.[3] (*Id.* at 1.) The autopsy, which was performed the day after Claire's body was discovered, found "[n]o spermatozoa" on the oral, anal and vaginal smears taken from the victim. (Pls.' Opp'n to Defs.' Mot., Ex. 12 at 4.)

Following the initial investigation, no eyewitnesses were identified, few leads were developed, and Claire's case went cold for nearly two decades. The case was revisited several times by the SDPD Cold Case Team. Finally, in 2012 a Detective from the Cold Case Team submitted a lab request to reexamine the physical evidence in the case with the hope that new DNA technology would yield positive results. The Detective specifically requested the SDPD Crime Lab reexamine the vaginal swabs, a towel recovered from the scene and Claire's clothing.

Criminalist David Cornacchia conducted the DNA analysis of this evidence, along with other items of evidence from the case. (Pls.' Opp'n to Defs.' Mot, Ex. 25.) Non-sperm fractions of blood stains on Claire's jeans identified Tatro as a match. (*Id.* at 4.) Tatro was also identified as a possible contributor to non-sperm fraction stains on Claire's underwear. (*Id.* at 6.) In addition, DNA analysis of a sperm fraction of the combined vaginal swab extracts returned a hit to Brown.[4]

At the time of Claire's murder, Brown was thirty-two (32) years old, single, and worked as a criminalist in the SDPD Crime Lab. At that time, it was common practice for male criminalists working in

the Lab to use their own semen samples or samples from their male coworkers to test the reliability of reagents used in detecting the presence of acid phosphatase, an enzyme present at high levels in sperm, and in microscopic examinations to identify sperm. (Pls.' Opp'n to Defs.' Mot., Ex. 14 at 27; Ex. 18 at 15; Ex. 19 at 19; Ex. 20 at 14.)

Around the time Cornacchia reported the results of his DNA analysis, Defendant Lambert, a detective with the SDPD, began investigating Claire's murder. In the course of that investigation, Lambert read Claire's case file and discussed the case with numerous witnesses, including Cornacchia, John Simms, James Stam, Jennifer Shen and a number of other individuals who previously worked with Brown in the Crime Lab. Brown left the Crime Lab in 2002, after many years of service. (Defs.' Mot., Ex. T at 24.)

Simms tested some of the evidence from Claire's case shortly after the murder. At his deposition in this case, Simms testified he told Defendant Lambert there was a possibility he "could have done" something while "working on the evidence that might have resulted in possible contamination" of the evidence with Brown's semen sample, "that there was a possibility." (Pls.' Opp'n to Defs.' Mot., Ex. 14 at 76.) (*See also id.* at 87 (stating Simms told Lambert he had "concerns about a breach of protocol that [he] may have committed that might have led to possible contamination."))

Stam, one of Brown's former supervisors in the Crime Lab, also testified in his deposition in this case that he told Defendant Lambert he believed "contamination" was a more likely explanation as to why Brown's DNA was found on the evidence from the Hough case. (Pls.' Opp'n to Defs.' Mot., Ex 18 at 26.) He tried "to convince Detective Lambert that you need to

look at the contamination first. That needs to be the No. 1 thing. You need to eliminate that 100 percent and then maybe go on with the rest of it." (*Id.* at 30.)

It is unclear when Defendant Lambert had these conversations with Simms and Stam. However, Cornacchia testified at his deposition in this case that he informed Lambert about the male criminologists' practice of using their own semen samples no later than November 2013, before Lambert applied for the search warrant in this case. (Pls.' Opp'n to Defs.' Mot., Ex. 24 at 59) (stating no later than November 2013, Cornacchia "discussed with Detective Lambert issues concerning the presence of semen samples from analysts in the lab being something that happens.")

On January 3, 2014, Defendant Lambert applied for a search warrant for Brown's home, which Brown then shared with his wife Rebecca Brown and Rebecca's mother and brother. In the search warrant affidavit, Lambert recounted the facts surrounding Claire's murder and the initial investigation. (Defs.' Mot., Ex. C.) He also recounted the cold case investigations that began in 1996. He also went over DNA evidence and analysis, in general. Absent from the affidavit, however, was any discussion of the now-outdated lab practices in 1984, which were considerably different from 2012 practices when the DNA analysis in this case was conducted.

The affidavit then turned to the DNA analysis of the evidence in Claire's case, and explained that through that analysis, two suspects were identified. The first was Tatro. Lambert set out Tatro's criminal history prior to Claire's murder, which included convictions for rape and battery, and stated after Claire's murder, Tatro was also convicted of the attempted rape of a teenage girl in La Mesa, California.

Tatro was also a person of interest in the February 1984 murder of prostitute Carol Defleice.[5] The second suspect identified through the DNA analysis was Brown. As noted, Brown was identified through analysis of a combined sperm fraction (where DNA is extracted from sperm cells) from the vaginal swab taken from the victim.

In the affidavit, Lambert stated Brown was a former employee of the SDPD Crime Lab, but he failed to inform the judge of the male lab employees' practice of using their own semen samples or samples from their coworkers in testing reagents in the Lab. Rather than raising the possibility that the vaginal swab may have been contaminated in the Lab by Brown's semen sample, Lambert stated Jennifer Shen, then the manager of the Lab, stated, "BROWN had no access to the evidence in the HOUGH murder" and "that cross contamination is not possible." (Defs.' Mot., Ex. C at 17.) This statement was made despite numerous documented instances of contamination in the Crime Lab. (Pls.' Opp'n to Defs.' Mot. at 19-22) (listing twenty (20) instances of cross contamination). Lambert also failed to disclose to the judge that the autopsy analysis of the vaginal swab in 1984 was negative for sperm.

Defendant Lambert then recounted in the affidavit his investigation into Brown, which revealed that prior to getting married and while working in the Lab, Brown talked about going to strip clubs. Lambert also recounted Brown's nickname in the Lab was "Kinky," and other lurid stories about Brown from his coworkers. Lambert then concluded, based on the 2012 DNA analysis of the vaginal swab, that "Kevin BROWN had sexual intercourse with 14 year old Claire HOUGH." (*Id.* at 29.) Despite failing to find any evidence linking Tatro and Brown, the affidavit

identified Brown as a suspect in Claire's murder, together with Tatro.[6] Lambert stated, "I believe the sexual intercourse Brown had with Claire [ ] was not consensual and appears to be contemporaneous to the murder." (*Id.* at 30-31). Lambert's theory was that Brown and Tatro were "the perpetrators, acting in concert, in the commission of the sexual assault, mutilation, and murder of Claire HOUGH," (*id.* at 4), and stated the search warrant was an "attempt to obtain information to link" Brown and Tatro. (*Id.*) Lambert also sought the warrant "to find evidence that Kevin Brown is following this case, and another similar 1978 murder of a teenage girl Barbara NANTAIS." (*Id.* at 3.)

The search warrant affidavit requested permission to seize ten (10) categories of evidence, including: (1) "Newspaper clippings or any other print news relating to the murders of Claire HOUGH and/or Barbara NANTAIS[,]" (2) "Address books, diaries/journals, hand written in nature[,]" (3) "San Diego Police Department Crime Case Reports and/or Arrest Reports relating to Sexual Assaults[,]" (4) "Magazine, videos, ... books photographs or other written or photographic evidence depicting or related to teenage or preteen pornography, rape, bondage, and sadomasochism[,]" (5) "Receipts for storage facilities including offsite storage, safety deposit boxes and 'cloud' storage[,]" and (6) "Photographs, disposable cameras, negatives, photographic film that relate to Claire HOUGH, Ronald TATRO, James ALT, or Barbara NANTAIS." (*Id.* at 2-3.) Lambert also requested permission to seize "Papers, documents and effects tending to show dominion and control" over the premises, (*id.* at 2), though it was well known the Browns lived in the home. (Pls.' Opp'n to Defs.' Mot.,

Ex. 27 at 91.) Lambert presented his affidavit in support of the warrant to a district attorney, who reviewed it and did not offer any changes or corrections. (Defs.' Mot., Ex. G at 117.) Based on Lambert's affidavit, the judge issued the warrant.

The warrant was executed six days later on January 9, 2014. On that day, prior to executing the warrant, the officers scheduled to participate in the search attended a meeting at police headquarters. (Pls.' Opp'n to Defs.' Mot., Ex. 27 at 95.) During that meeting, Lambert conducted a search warrant briefing during which he told the detectives he wanted them to seize every videotape in the house. (Pls.' Mot., Ex. 5 at 96.)

It is unclear what time the search began and what time it ended. It is also unclear how many officers were involved in the search.[7] However, the evidence reflects Defendant Lambert participated in the search as did Defendant Maura Mekenas-Parga, another SDPD Detective, (Pls.' Opp'n to Defs.' Mot., Ex. 27 at 95), and that they both made decisions about what items would be seized. (Pls.' Opp'n to Defs.' Mot., Ex. 29 at 44-45.) Defendant Mekenas-Parga testified at her deposition in this case that it was her understanding the warrant allowed for the seizure of all photographs the officers deemed as "possible evidence." (*Id.* at 53.) She also testified the warrant allowed the officers to seize "all VCR tapes." (Pls.' Mot., Ex. 4 at 78-79.) Mekenas-Parga testified her reading of the warrant allowed for seizure of "anything recording." (*Id.* at 80.) According to Mekenas-Parga, "any cell phone in the house could be seized," "any thumb drive in the house could be seized." (*Id.* at 84.) Mekenas-Parga also testified "any newspaper article, regardless of what it said or the date ... was legitimately subject to seizure[.]" (*Id.* at 113.) Notably, Mekenas-Parga did not

"review any of the items in" certain boxes "to see if they could be removed and left because they had nothing to do with anything permitted to be seized in the warrant[.]" (*Id.* at 89.) She also did not review any of the photo albums before they were removed from the house. (*Id.* at 91.)

In all, the officers seized fourteen (14) boxes from the Browns' home. (Defs.' Mot., Ex. O.) The items seized included: (1) "Papers Christmas Letter w/cabin info folder[,]" (2) "Binder 'chemical imbalance' mental health problems[,]" (3) Kevin Brown's SDPD badge, (4) seven boxes of photos, journals, books, photo albums, paperwork, (5) other loose photos and photo albums, (6) a "callback roster from June 1998 for" SDPD, (7) handwritten cards, (8) notebooks, (9) a drama program from Mater Dei dated March 1, 2013,[8] (10) a file folder titled, "Apple Products," (11) a file folder titled, "Business Folder," and (12) a file folder titled "Divorce Annulments[.]" (Defs.' Mot., Ex. E.) (*See also* Decl. of Rebecca Brown in Supp. of Pls.' Mot., Exs. A-B.)

Detective Lambert testified he completed his review of the evidence seized from the Browns' home approximately three months after the seizure, or in April 2014. (Defs.' Mot., Ex. G at 127.) None of the evidence he reviewed "had any probative value to prove that Kevin Brown had committed the" murder of Claire Hough. (*Id.*) Nevertheless, Lambert did not return the property to the Browns at that time. (*Id.*) Instead, Rebecca Brown began inquiring of Lambert about the return of their property. She specifically asked about her computer, which was returned to her two weeks thereafter. (Defs.' Mot., Ex. H at 126.) Approximately three months after that, she inquired of Lambert when the rest of their property would be

returned. (*Id.* at 127.) Lambert's response was, "it's all coming back soon[.]" (*Id.*)

After another month passed without the return of their property, Rebecca Brown again phoned Defendant Lambert to inquire. (Pls.' Opp'n to Defs.' Mot., Ex. 32 at 73.) As before, Lambert told her they would "be getting it all back soon." (*Id.*) The Browns believed that once their property was returned, "that it would be over." (*Id.* at 75.) Kevin Brown, in particular, was "fixated on the issue of the return of the property." (*Id.*) "He started putting a calendar in his closet in June when the detective said, it's coming back soon. So he would mark off each date until it was going to happen." (*Id.* at 76.)

After the search was conducted, and while the Browns were waiting for the return of their property, Kevin Brown began experiencing increased anxiety. (*Id.* at 43.) Brown first began suffering from anxiety disorder in high school. (*Id.* at 36.) His insomnia worsened. (*Id.*) Rebecca Brown testified that her husband was depressed. (*Id.* at 46.) "He had difficulty getting out of bed. He lost 25 pounds. His hands started shaking. He started looking older. He had me take him to Urgent Care a couple of times because he was anxious." (*Id.*) On September 26, 2014, Rebecca Brown came home from work and found her husband in bed. (*Id.* at 62.) She said he "was groggy. There was a bullet on the floor next to the bed, and he said he'd written me a letter." (*Id.* at 62-63.)

After the September 26, 2014 incident, Rebecca Brown's brother John Blakely removed all the guns from the Brown household because "it was clear to [him] that something bad was happening" with them. (Defs.' Mot., Ex. Q at 16.) That was the second time Mr. Blakely removed the guns from the house after the

search warrant was executed. (*Id.*) Mr. Blakely informed Defendant Lambert he had removed the guns from the house, and did so again after the incident on September 26, 2014. (*Id.*) Later that week, Lambert went to Rebecca Brown's workplace to conduct a welfare check on her. Brown testified that during that meeting, she told Lambert her husband "might kill himself." (*Id.* at 107.) Lambert denies Rebecca Brown shared that concern with him. (Defs.' Mot., Ex. G at 148.) Less than one month later, Kevin Brown committed suicide by hanging himself from a tree at Cuyamaca State Park. (Third Am. Compl. ("TAC") ¶ 244.)

On July 16, 2015, Rebecca Brown filed the present case on behalf of herself and Kevin Brown's Estate. A Second Amended Complaint ("SAC") filed on October 5, 2015, named only Lambert as a Defendant, and alleged claims for (1) execution of a warrant obtained in violation of *Franks v. Delaware*, (2) execution of an overbroad warrant, (3) seizure of property beyond the scope of the warrant, (4) wrongful detention of, and refusal to return, seized property, (5) wrongful death under 42 U.S.C. § 1983, and (6) deprivation of right of familial association. On June 8, 2016, Plaintiffs filed the TAC, which realleges the claims in the SAC and adds Maura Mekenas-Parga as a Defendant.

II.
DISCUSSION

As stated above, both sides move for summary judgment in this case. Plaintiffs move for partial summary judgment on claims three and four only, and

Defendants move for summary judgment on all of Plaintiffs' claims.

A. Legal Standard

Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party has the initial burden of demonstrating that summary judgment is proper. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The moving party must identify the pleadings, depositions, affidavits, or other evidence that it "believes demonstrates the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth." *S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

The burden then shifts to the opposing party to show that summary judgment is not appropriate. *Celotex*, 477 U.S. at 324. The opposing party's evidence is to be believed, and all justifiable inferences are to be drawn in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, to avoid summary judgment, the opposing party cannot rest solely on conclusory allegations. *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). Instead, it must designate specific facts showing there is a genuine issue for trial. *Id. See also Butler v. San Diego District Attorney's Office*, 370 F.3d 956, 958 (9th Cir. 2004) (stating if defendant produces enough evidence to require plaintiff to go beyond pleadings, plaintiff must counter by producing evidence of his own). More than a "metaphysical doubt"

is required to establish a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

B. *Franks* Claim

In their first claim, Plaintiffs allege Defendant Lambert violated their Fourth Amendment rights when he obtained the search warrant for the Brown home through the use of "false statements, and deliberate material omissions." (Third Am. Compl. ¶ 249.) This claim is based on *Franks v. Delaware*, 438 U.S. 154 (1978), wherein the Court "established a criminal defendant's right to an evidentiary hearing when he made a showing of deliberate or reckless disregard for the truth in a search warrant affidavit and demonstrated that but for the dishonesty, the affidavit would not support a finding of probable cause." *Liston v. County of Riverside*, 120 F.3d 965, 972 (9th Cir. 1997). Although this standard was established in a criminal context, it " 'also defines the scope of qualified immunity in civil rights actions.' " *Id.* (quoting *Branch v. Tunnell*, 937 F.2d 1382, 1387 (9th Cir. 1991)) (quotation marks omitted). To survive summary judgment on a *Franks* claim of judicial deception, a Section 1983 plaintiff must "(1) establish that the warrant affidavit contained misrepresentations or omissions material to the finding of probable cause, and (2) make a 'substantial showing' that the misrepresentations or omissions were made intentionally or with reckless disregard for the truth." *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1087 (9th Cir. 2011). "If these two requirements are met, the matter must go to trial." *Id.* (citing *Liston*, 120 F.3d at 973). *See also Hervey v. Estes*, 65 F.3d 784, 788-789 (9th

Cir. 1995) (stating to survive motion for summary judgment on the ground of qualified immunity plaintiff must make a substantial showing of deliberate falsehood or reckless disregard for the truth and establish that, "but for the dishonesty, the challenged action would not have occurred."). Defendants argue these elements are not met here, therefore they are entitled to summary judgment.

In support of this argument, Defendants address a number of alleged omissions and misrepresentations in Lambert's affidavit in support of the warrant. As for omissions, Defendants admit Lambert omitted that the autopsy report concluded "No spermatazoa noted" in the oral, anal and vaginal smears taken from the victim. (Pls.' Opp'n to Defs.' Mot., Ex. 12 at 4.) Defendants also do not deny Lambert failed to disclose that a few days after the autopsy, Simms analyzed vaginal swabs taken from the victim and, consistent with the autopsy results, found no evidence of sperm. (Pls.' Opp'n to Defs.' Mot, Ex. 14 at 44-52.) Lambert also failed to disclose that the pathologist performing the autopsy did not find any physical trauma consistent with rape, or make any findings that Claire was raped or engaged in sexual intercourse before her death. Defendants also do not deny that Lambert failed to disclose the information he received from Cornacchia that male analysts working in the SDPD crime lab, like Brown, used their own semen samples when testing reagents for acid phosphatase. (Pls.' Opp'n to Defs.' Mot., Ex. 24 at 59.) Lambert also failed to disclose that Stam, Brown's former supervisor, told Lambert he believed "contamination" was a "more likely explanation" as to why Brown's DNA was found on the victim's vaginal swab. (Pls.' Opp'n to Defs.' Mot., Ex. 18 at 26.)[9] Finally, Defendants admit Lambert omitted that despite a

lengthy investigation, there was no evidence of any connection between Brown and Tatro.

On the issue of misrepresentations, Defendants deny Lambert made any, but for the purpose of the present motion, the Court must construe the evidence in the light most favorable to Plaintiffs, and as so construed, there are at least three misrepresentations in the affidavit. The first is Lambert's statement that cross contamination was not possible. The second is the statement that Brown had no access to the evidence in the Hough case. The third is the statement that Brown had sexual intercourse with the victim.

In the affidavit, Lambert stated that SDPD Lab Manager Jennifer Shen informed him "that cross DNA contamination is not possible." (Defs.' Mot., Ex. C at 17) (emphasis in original). Despite this unequivocal statement, Shen testified she did not use "those words[,]" *i.e.*, say that cross contamination is not possible. (Pls.' Opp'n to Defs.' Mot., Ex. 22 at 136.) And contrary to the statement, Plaintiffs presented evidence of several documented instances of cross contamination by the Crime Lab. The statement that cross contamination is not possible is demonstrably false.

Next, Lambert's statement that Brown had no access to the evidence in this case created the impression that cross contamination was not possible. However, that statement is misleading given the evidence that lab employees' semen was present in the Lab and available for testing reagents even if the employee was not otherwise involved or participating in the particular investigation.

Finally, the statement that "Kevin BROWN had sexual intercourse with 14 year old Claire HOUGH[,]" (Defs.' Mot., Ex. C at 29), is a possible

misrepresentation. The problem with the statement is that it is couched in absolute terms when the evidentiary foundation for the statement is questionable. The autopsy report, which was not disclosed in the affidavit and "did not make any findings as to whether Hough was raped or engaged in sexual intercourse before her death[,]" (Defs.' Mot., Ex. I at 3), contradicted that statement. Moreover, cross contamination had yet to be ruled out. The categorical statement that Brown had sex with the victim, combined with the statements from Brown's prior co-workers that he used to frequent strip clubs and his nickname was "Kinky," painted a picture of Brown as sexually deviant. The statement is misleading because it failed to inform the magistrate about the possibility that Brown's DNA was linked to the case due to cross contamination.

Construing these omissions and misrepresentations in Plaintiffs' favor, Plaintiffs have made "a substantial showing of a deliberate falsehood or reckless disregard" for the truth. *Hervey*, 65 F.3d at 789. As discussed, the warrant affidavit states that "Brown had no access to the evidence in the [underlying case] and [ ] that cross DNA contamination is not possible." (Defs.' Mot., Ex. C at 17.) However, several instances of cross contamination have been documented by the Crime Lab, and the possibility (and reality) of cross contamination in crime labs is well known. The categorical statement that cross contamination is not possible is therefore obviously false and a reasonable magistrate viewing the affidavit would know that cross contamination can and does occur. But by stating Brown had no access to the evidence, the impression was created that cross contamination in this particular case was not possible.

The affidavit does state that "Cornacchia told [Lambert] San Diego Crime Lab employee's [sic] DNA profiles are uploaded into CODIS to identify potential cross contamination issues[,]" (*id.* at 17), but it omits critical information about how employee DNA samples, including semen and semen from Brown himself, were provided and present in the Lab for testing reagents even if the employee was not otherwise involved or participating in the particular investigation. Some facts are "required to [be presented in an affidavit] to prevent technically true statements in the affidavit from being misleading." *Liston*, 120 F.3d at 973. Such is the case with the statement that "Brown had no access to the evidence[,]" as that created a false impression that contamination was not possible. Similarly, the affidavit detailed how trace amounts of semen from Brown could be reconciled *with rape—e.g.*, failure to achieve full ejaculation, or low sperm count, (Defs.' Mot., Ex. C at 17), but the affidavit did not inform the magistrate about the possibility of trace amounts of Brown's semen being present due—not to sexual assault—but to cross contamination stemming from the presence of small amounts of semen in samples from Lab employees like Brown.[10]

In addition, several facts were omitted from the affidavit, all of which have to do directly or indirectly with the possibility of cross contamination: Lab employees, including Brown, provided their own semen samples at that time; Lab practices were relatively lax and more prone to contamination given the undeveloped state of DNA science at that time; several Lab employees believed cross contamination was "more likely" than the possibility that Brown was complicit in murder; trace amounts of Brown's semen was consistent with cross contamination due the presence of

his semen sample in the Lab; the pathologist who performed the autopsy did not find semen, nor did Simms, who analyzed a vaginal swab at the same time; the pathologist performing the autopsy did not note any physical trauma consistent with rape, or make any findings that the victim was raped or engaged in sexual intercourse before her death; and, there was no evidence linking Tatro and Brown. All of the evidence that was omitted from the affidavit tended to negate Lambert's theory that Brown was involved in Claire's murder. And all of the omitted facts were consistent with an innocent explanation for the DNA hit: cross contamination.

The omissions of these facts make the representations in the affidavit discussed above misleading by "selectively included information bolstering probable cause, while omitting information that did not." *United States v. Jenkins*, 850 F.3d 1109, 1117 (9th Cir. 2017). Plaintiffs need not establish specific intent to deceive the issuing court. *Bravo*, 665 F.3d at 1083 (citation omitted). To survive summary judgment, Plaintiffs "need only make a substantial showing of a deliberate or reckless omission, not 'clear proof.' " *Id.* at 1087 (quoting *Liston*, 120 F.3d at 974). Drawing all inferences in Plaintiffs' favor, as the Court must at this stage of the proceedings, Plaintiffs have shown the affidavit was crafted to state facts to create a strong impression of guilt (that Brown acted in concert with Tatro to sexually assault, mutilate and murder the victim) by misrepresenting and omitting important facts. Based on the record presently before the Court, and construing the evidence in Plaintiffs' favor, Plaintiffs have made a substantial showing of deliberate falsehood or reckless disregard for the truth.

Having made that showing, it now falls to the Court to decide "whether the affidavit, once corrected and supplemented, establishes probable cause." *Bravo*, 665 F.3d at 1084 (citing *Ewing v. City of Stockton*, 588 F.3d 1218, 1224 (9th Cir. 2009)). *See also Butler v. Elle*, 281 F.3d 1014, 1024 (9th Cir. 2002) ("Materiality is for the court, state of mind is for the jury.") "If probable cause remains after amendment, then no constitutional error has occurred." *Bravo*, 665 F.3d at 1084.

The affidavit, once corrected and supplemented, lacks probable cause to search Brown's home. "Officers have probable cause for a search when 'the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.' " *United States v. Henderson*, 241 F.3d 638, 648 (9th Cir. 2000) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). Probable cause that Brown murdered the victim in concert with Tatro and that evidence of the crime would be found in the home rested squarely on the theory that Brown had sexual intercourse with, and raped, the victim. The affidavit declared as much, and did so on the strength of the DNA evidence. But the evidentiary value of the DNA evidence is highly suspect when all the facts are known. When, as here, lab employees themselves suspect contamination and urge elimination of that possibility before proceeding, a DNA "hit" quickly descends from extremely damning to highly questionable evidence, unless and until contamination can be ruled out. Other than the DNA evidence the affidavit here relies on lurid stories and a pejorative nickname to bolster probable cause. That, of course, is not sufficient to warrant a reasonable person to believe that the suspect committed rape and murder and that evidence of those crimes will be found in his

residence. A reasonable magistrate presented with all of the information would not have issued the warrant. *Liston*, 120 F.3d at 975.[11]

In light of these findings, Defendants are not entitled to summary judgment on Plaintiffs' first claim. At trial, Plaintiffs will have to convince a jury that Lambert deliberately or recklessly omitted the foregoing facts and included the misleading statements in the affidavit. *See Hervey*, 65 F.3d at 791. "That is a factual determination for the trier of fact." *Id.*

C. Overbroad Warrant

Plaintiffs' second claim alleges the search warrant was overbroad. In response to Defendants' motion, Plaintiffs identify Clauses 2, 5 and 7 as being overbroad. Clause 2 is the "dominion and control" clause, and it allowed for the seizure of "Papers, documents and effects tending to show dominion and control over said premises...." (Defs.' Mot., Ex. C at 2.) Clause 5 allowed for the seizure of "Address books, diaries/journals, hand written in nature." (*Id.* at 3.) Clause 7 allowed for the seizure of "Magazines, videos, electronic files, books, photographs or other written or photographic evidence depicting or related to teenage or preteen pornography, rape, bondage, and sadomasochism." (*Id.*) Defendants assert the warrant was not overbroad, and even if it was, they are entitled to qualified immunity.

"A warrant must particularly describe 'the place to be searched, and the person or things to be seized.' " *Ewing v. City of Stockton*, 588 F.3d 1218, 1228 (9th Cir. 2009) (quoting U.S. Const. amend. IV). This particularity "requirement is designed 'to prevent a general, exploratory rummaging in a person's

belongings.' " *Id.* (quoting *United States v. McClintock*, 748 F.2d 1278, 1282 (9th Cir. 1984)) (internal quotation marks omitted). The Ninth Circuit considers three factors in analyzing the breadth of a warrant:

> (1) whether probable cause existed to seize all items of a category described in the warrant; (2) whether the warrant set forth objective standards by which executing officers could differentiate items subject to seizure from those which were not; and (3) whether the government could have described the items more particularly in light of the information available ....

United States v. Flores, 802 F.3d 1028, 1044 (9th Cir. 2015), *cert. denied*, 137 S.Ct. 36 (2016), (quoting *United States v. Lei Shi*, 525 F.3d 709, 731-32 (9th Cir. 2008)). Here, Defendants assert the warrant was not overbroad, but they fail to show the Clauses identified above, particularly the open-ended Clause 5, were not overbroad as a matter of law. Indeed, they do not address these specific clauses at all, instead arguing generally that "[t]he warrant was specific as to the places to be searched and the items to be seized." (Mem. of P. & A. in Supp. of Defs.' Mot. at 17.) This generalized argument does not show Defendants are entitled to summary judgment on the ground the warrant was not overbroad.

Nor are Defendants entitled to summary judgment on the ground of qualified immunity. On this issue, Defendants raise two arguments. First, they suggest Lambert is entitled to qualified immunity because he presented his affidavit to his supervisor and a district attorney, and a judge then issued the warrant. (Mem. of P. & A. in Supp. of Defs.' Mot. at 16.) Given

the Court's discussion on Plaintiffs' first claim, however, Lambert is not entitled to qualified immunity on the claim that the warrant was overbroad. *See Groh v. Ramirez*, 540 U.S. 551, 564 (2004) ("Moreover, because petitioner himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that the warrant contained an adequate description of the things to be seized and was therefore valid.")[12]

Next, Defendants argue Defendant Mekenas-Parga is entitled to qualified immunity because she did not personally participate in the efforts to obtain the warrant. As an initial matter, this argument goes to Plaintiffs' substantive claim, not to the issue of qualified immunity. Nevertheless, the argument is not persuasive. There is no dispute Mekenas-Parga did not assist in obtaining the warrant, but Plaintiffs' claims against her are not based on the request for and the subsequent issuance of the warrant. Rather, they are based on her execution of the warrant, namely executing a warrant that was overbroad on its face and seizing documents that went beyond the scope of the warrant. Defendants have not shown Defendant Mekenas-Parga did not personally participate in those tasks. On the contrary, the evidence reflects she was involved in the execution of the warrant and made decisions about which items would be seized. (Pls.' Opp'n to Defs.' Mot., Ex. 27 at 95; Pls.' Opp'n to Defs.' Mot., Ex. 29 at 44-45.)

In their supplemental brief in opposition to Plaintiffs' *ex parte* motion to certify the appeal as frivolous, Defendants raise for the first time another argument in support of a finding that Mekenas-Parga is entitled to qualified immunity, namely, that she, like Lambert, was entitled to rely on the magistrate's

issuance of the warrant. (*See* Defs.' Supp. Br. in Opp'n to Pls.' *Ex Parte* Mot. to Certify Interlocutory Appeal as Frivolous at 9-10.) However, the Court agrees with Plaintiffs that officers who plan and lead a search, like Mekenas-Parga did in this case, " 'must actually read the warrant and satisfy themselves that they understand its scope and limitations, and that it is not defective in some obvious way.' " *KRL v. Estate of Moore*, 512 F.3d 1184, 1190 (9th Cir. 2007) (quoting *Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022, 1027 (9th Cir. 2001)). Thus, Defendants are not entitled to summary judgment on Plaintiffs' second claim.

D. Unlawful Seizure of Property Beyond the Scope of the Warrant

Plaintiffs' third claim alleges Defendants seized property beyond the scope of the warrant in violation of the Fourth Amendment.[13] Both Plaintiffs and Defendants move for summary judgment on this claim, with Plaintiffs arguing Defendants seized property beyond the scope of the warrant, and Defendants arguing to the contrary.[14]

"Because 'indiscriminate searches and seizures conducted under the authority of 'general warrants' were the immediate evils that motivated the framing and adopting of the Fourth Amendment,' that Amendment requires that the scope of every authorized search be particularly described." *Walter v. United States*, 447 U.S. 649, 657 (1980) (internal citations omitted). " '[I]f the scope of the search exceeds that permitted by the terms of a validly issued warrant ..., the subsequent seizure is unconstitutional without more.' " *Wilson v. Layne*, 526 U.S. 603, 611 (1999) (quoting *Horton v. California*, 496 U.S. 128, 140 (1990)).

See also United States v. Sedaghaty, 728 F.3d 885, 915 (9th Cir. 2014) (stating government's seizure of items beyond terms of warrant violates Fourth Amendment.)

> The Supreme Court has emphasized that "there are grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers" as opposed to physical objects, and that given the danger of coming across papers that are not authorized to be seized, "responsible officials, including judicial officials, must take care to assure that [searches] are conducted in a manner that minimizes unwarranted intrusions upon privacy."

Sedaghaty, 728 F.3d at 914 (quoting *Andresen v. Maryland*, 427 U.S. 463, 482 n.11 (1976)). *See also United States v. Rettig*, 589 F.2d 418, 422-23 (9th Cir. 1978) ("An examination of the books, papers, and personal possessions in a suspect's residence is an especially sensitive matter, calling for careful exercise of the magistrate's judicial supervision and control.")

Here, Defendants argue in their opposition to Plaintiffs' motion that the seizure of Plaintiffs' property is subject to the test set out in *Pacific Marine Center, Inc. v. Silva*, 809 F.Supp.2d 1266 (E.D. Cal. 2011). That test states, "[w]hen considering '[w]hether a search exceeds the scope of a search warrant,' the court must engage in 'an objective assessment of the circumstances surrounding the issuance of the warrant, the contents of the search warrant, and the circumstances of the search.' " *Id.* at 1280 (quoting *United States v. Hitchcock*, 286 F.3d 1064, 1071 (9th Cir.), *amended by* 298 F.3d 1021 (9th Cir. 2001)). The claim in this case, however, is not addressed to the scope of the *search.*

Indeed, Plaintiffs do not appear to dispute that Defendants were authorized to search the property that was ultimately seized in this case. Rather, the claim here concerns the actual *seizure* of Plaintiffs' property, and alleges the seizure went beyond the scope of the warrant. The test set out in *Pacific Marine*, therefore, does not apply here.

The law applicable to the claim asserted here is found in *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982). In that case, as here, the defendants "challenge[d] only the scope of the seizure." *Id.* at 595. There, "[w]hen the agents seized all Marubeni's records for the relevant time periods, they took large quantities of documents that were not described in the search warrant." *Id.* In response to the defendant's challenge to the seizure, "[t]he Government argue[d] that the seizure was reasonable because the documents were intermingled and it was difficult to separate the described documents from the irrelevant ones." *Id.* The Ninth Circuit was not persuaded. It stated: "It is highly doubtful whether the wholesale seizure by the Government of documents not mentioned in the warrant comported with the requirements of the fourth amendment. As a general rule, in searches made pursuant to warrants only the specifically enumerated items may be seized." *Id.* The court acknowledged "that all items in a set of files may be inspected during a search, provided that sufficiently specific guidelines for identifying the documents sought are provided in the search warrant and are followed by the officers conducting the search." *Id.* However, the court also stated, "the wholesale seizure for later detailed examination of records not described in a warrant is significantly more intrusive, and has been characterized as 'the kind of investigatory dragnet that the fourth

amendment was designed to prevent.' " *Id.* (quoting *United States v. Abrams*, 615 F.2d 541, 543 (1st Cir. 1980)). The court went on to state:

> In the comparatively rare instances where documents are so intermingled that they cannot feasibly be sorted on site, we suggest that the Government and law enforcement officials generally can avoid violating fourth amendment rights by sealing and holding the documents pending approval by a magistrate of a further search, in accordance with the procedures set forth in the American Law Institute's Model Code of Pre-Arraignment Procedure. If the need for transporting the documents is known to the officers prior to the search, they may apply for specific authorization for large-scale removal of material, which should be granted by the magistrate issuing the warrant only where on-site sorting is infeasible and no other practical alternative exists. *See United States v. Hillyard*, 677 F.2d 1336, 1340 (9th Cir. 1982). The essential safeguard required is that wholesale removal must be monitored by the judgment of a neutral, detached magistrate. In the absence of an exercise of such judgment prior to the seizure in the present case, it appears to us that the seizure, even though convenient under the circumstances, was unreasonable.

Id. at 595-96.

Here, there is no dispute about what Defendants seized, namely 14 boxes of documents, four large trash bags containing Plaintiffs' property, and a suitcase. (Defs.' Opp'n to Pls.' Mot. at 9.) Within these boxes and

trash bags were thousands of photographs and other items, including but not limited to: (1) Rebecca Brown's international driving permit, (2) a music folder for students, (3) Kevin Brown's mother's tax return from 2000, (4) a note from Ronald and Nancy Reagan, (5) a coaster from the Black Angus in Wiesbaden, Germany, (6) a copy of the Magna Carta, (7) a steamship ticket from 1932, (8) Rebecca Brown's report cards, (9) 45 singles of Perry Como, Bing Crosby and Barbara Streisand and (10) a recipe for fudge. (Pls.' Mot., Ex. 5 at 124-27.) There is no dispute these items were not subject to seizure pursuant to the warrant. (*Id.*)

Nevertheless, Defendants argue the seizure of any documents outside the scope of the warrant was reasonable because it would have been too time-consuming for the officers to "go through every paper, album, journal, videotape and photograph at the home." (Mem. of P. & A. in Supp. of Defs.' Mot. at 18.) This argument is similar to that made by the Government in *Tamura*, and like the Ninth Circuit in that case, this Court rejects it. As indicated in *Tamura* and *Hillyard*, the instances in which documents are "so intermingled that they cannot feasibly be sorted on site" are "comparatively rare" and "exceptional." *Tamura*, 694 F.2d at 595; *Hillyard*, 677 F.2d at 1340. Defendants have not shown this is one of those cases.

Indeed, the only evidence offered in support of Defendants' argument is the testimony of Rebecca Brown, who when asked if she had "any idea how long it would have taken someone to go through all those photos if they did it at the scene at your house," responded, "It would have taken hours." (Defs.' Mot., Ex. G at 119.) Notably, Defendants fail to provide any evidence of how many officers were involved in executing the warrant or how long it took those officers

to execute the warrant. And contrary to Defendants' assertion that it would have been too time-consuming to conduct a search of these documents prior to their seizure, it appears the officers executing the warrant did not make that attempt. Rather, Defendant Mekenas-Parga testified that when the officers came across a box of photographs, they did not "go through it." (Pls.' Opp'n to Defs.' Mot., Ex. 29 at 52-53.) Her feeling was "that there was no requirement of any review of anything before it was seized." (Pls.' Mot., Ex. 4 at 82.)

In this case, as in *Tamura*, the government agents responsible for the search "did not minimize intrusions on privacy, ... but instead seized papers and records beyond those the warrant authorized." *Sedaghaty*, 728 F.3d at 914-15. On the current record, the Court concludes the seizure of the property described above, as well as other similar property, went beyond the scope of the warrant, and was therefore unreasonable and a violation of Plaintiffs' Fourth Amendment rights.

Notwithstanding this finding, Defendants argue they are still entitled to judgment on this claim on the basis of qualified immunity. As with Plaintiffs' second claim, Defendants argue here they are entitled to qualified immunity because they did not personally participate in the seizure. As stated above, that argument goes to the merits of Plaintiffs' claim, not whether Defendants are entitled to qualified immunity. In any case, that argument is refuted by the evidence, which reflects both Lambert and Mekenas-Parga participated in the execution of the warrant. (Defs.' Mot., Ex. D at 8; Ex. G at 95.) Contrary to Defendants' argument, they are not entitled to qualified immunity from this claim. *See Shamaeizadeh v. Cunigan*, 338

F.3d 535, 555 (6th Cir. 2003) ("The officers violated a clearly established constitutional right of which reasonable persons would have known—a right to be free of seizures beyond the scope of a warrant, in the absence of an exception to the warrant requirement such as the plain view doctrine."); *Demuth v. Fletcher*, No. 08-5093 (JRT/LIB), 2011 U.S. Dist. LEXIS 34638, at *32-36, 2011 WL 1298020 (D. Minn. March 31, 2011) (denying qualified immunity on Fourth Amendment claim where "[t]he most cursory review of the materials would have revealed the inappropriateness of seizing them. A reasonable fact-finder could conclude that when executing the warrant, defendants went beyond their scope and seized materials that had not been enumerated, which a reasonable officer would not have seized.") Rather, in light of the above, the Court grants Plaintiffs' motion for summary judgment on this claim.

E. Wrongful Detention of Seized Property

The next claim is that Defendant Lambert wrongfully detained Plaintiffs' illegally seized property in violation of the Fourth Amendment. As with the third claim for relief, both Plaintiffs and Defendants move for summary judgment on this claim.

As an initial matter, Defendants request that the Court dismiss this claim because it is not legally viable. (Defs.' Opp'n to Pls.' Mot. at 11.) They contend that to the extent Defendant Lambert's detention of Plaintiffs' property was wrongful, Plaintiffs' claim arises under the Due Process Clause rather than the Fourth Amendment. Although there is case law to support Defendants' argument, *see Fox v. Van Oosterum*, 176 F.3d 342, 351 (6th Cir. 1999) ("the Fourth Amendment protects an individual's interest in retaining possession

of property but not the interest in regaining possession of property."), there is also case law from the Ninth Circuit to support Plaintiffs' claim under the Fourth Amendment. *See Tamura*, 694 F.2d at 597 ("The Government's unnecessary delay in returning the master volumes appears to be an unreasonable and therefore unconstitutional manner of executing the warrant.") *See also Brewster v. Beck*, No. 15-55479, 2017 U.S. App. LEXIS 10971, at *6, 2017 WL 2662202 (9th Cir. June 21, 2017) (internal citations omitted) ("The Fourth Amendment doesn't become irrelevant once an initial seizure has run its course. A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force.") Therefore, the Court declines Defendants' invitation to dismiss this claim as improperly pleaded.

As this claim is pleaded under the Fourth Amendment, Plaintiffs can prevail on this claim only if they show Defendant Lambert's detention of Plaintiffs' property was unreasonable. Neither Plaintiffs nor Defendants provide the Court with any guidance on how that issue is to be determined, but it would appear to involve "a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Forrester v. City of San Diego*, 25 F.3d 804, 806 (9th Cir. 1994). *See also San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 971 (9th Cir. 2005) (quoting *Berger v. New York*, 388 U.S. 41, 70 (1967) (Stewart, J., concurring)) (" 'the standard of reasonableness embodied in the Fourth Amendment demands that the showing of justification match the degree of intrusion.' ") If that balancing test weighed in Plaintiffs' favor, then Plaintiffs will have shown a violation of the Fourth Amendment rights.

However, even if Plaintiffs made that showing, Defendants would be entitled to qualified immunity on this claim. Even though Defendants did not raise this argument initially, and despite Plaintiffs' notice of supplemental authority, (*see* Docket No. 87), there was no precedent as of November 2014, when Plaintiffs' property was returned to Rebecca Brown, that put Lambert on "clear notice" that his continued detention of Plaintiffs' property under the circumstances was a violation of Plaintiffs' Fourth Amendment rights. *S.B. v. County of San Diego*, No. 15-56848, 2017 U.S. App. LEXIS 8452, at *15, 2017 WL 1959984 (9th Cir. May 12, 2017). The cases Plaintiffs cite, *Tamura*, *United States v. Comprehensive Drug Testing*, 621 F.3d 1162, (9th Cir. 2010) (*en banc*), and *Brewster*, are factually distinguishable from this case, and thus not "sufficiently analogous" to give Lambert "fair notice that it was objectively unreasonable" for him to continue to detain Plaintiffs' property while he waited for (a) the District Attorney's office to review the evidence and make a decision whether to file charges against Brown, or (b) Plaintiffs to request an order from the court to release the property.[15] *S.B. v. County of San Diego*, 2017 U.S. App. LEXIS 8452, at *16, 2017 WL 1959984. Thus, Defendants are entitled to qualified immunity on this claim.

F. Wrongful Death

The next claim is for wrongful death against Defendant Lambert. In the Third Amended Complaint, Plaintiffs allege Lambert knew Brown "was deeply depressed and in danger of committing suicide" after he was accused of being involved in the death of Claire Hough. (TAC ¶¶ 288-91.) Plaintiffs allege Lambert

"elected to increase" the stress on Brown, and decided he would refuse to return the property seized from Plaintiffs' home "despite repeated requests to return the wrongfully seized items in order to create the highest possible level of stress on Kevin Brown." (*Id.* ¶ 299.) Plaintiffs allege "Lambert acted with knowledge that his refusal to return the seized property ... created a high risk that Kevin Brown would commit suicide, and that Kevin's suicide was a foreseeable result of his continued refusal to return the seized property." (*Id.* ¶ 300.)

Defendants are the only parties moving for summary judgment on this claim. They argue Plaintiffs' claim actually sounds in negligence, which is insufficient to support a claim under § 1983. They also assert there was no violation of Kevin Brown's constitutional rights, and even if there was, Plaintiffs cannot establish any alleged violation caused Brown's death. Finally, Defendants claim they are entitled to qualified immunity.

Although causation is an element of Plaintiffs' wrongful death claim, the claim is clearly pleaded as a § 1983 claim, not a claim for negligence. Thus, Defendants' first argument does not warrant judgment in their favor.

Defendants' second argument also fails to show Defendants are entitled to judgment as a matter of law. This argument goes to the first element of Plaintiffs' wrongful death claim, which requires Plaintiffs to prove there was a violation of their constitutional rights. *See Montano v. Orange Cnty., Tex.*, 842 F.3d 865, 882 (5th Cir. 2015) (quoting *Phillips ex rel. Phillips v. Monroe Cty., Miss.*, 311 F.3d 369, 374 (5th Cir. 2002)) (" '[A] plaintiff seeking to recover on a wrongful death claim under § 1983 must prove both the alleged constitutional

deprivation required by § 1983 and the causal link between the defendant's unconstitutional acts or omissions and the death of the victim, as required by the state's wrongful death statute.' ") Although Defendants argue there was no violation of Plaintiffs' constitutional rights, the above discussion with respect to Plaintiffs' third claim for seizure beyond the scope of the warrant refutes that argument. The presence of genuine issues of material fact on the *Franks* claim and the second claim for an overbroad warrant also leaves open the possibility that the jury will find other constitutional violations. Thus, Defendants are not entitled to summary judgment on the ground there was no constitutional violation here.

Defendants' third argument focuses on the element of causation. "To meet this causation requirement, the plaintiff must establish both causation-in-fact and proximate causation." *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008) Causation-in-fact is a factual determination, and proximate cause presents a mixed question of law and fact. *Id.* n.13.

Here, Defendants argue there is no evidence of proximate cause. (Mem. of P. & A. in Supp. of Defs.' Mot. at 23.) However, Rebecca Brown testified her husband was not suicidal before he became a target of the investigation into Claire Hough's murder. (Pls.' Opp'n to Defs.' Mot., Ex. 32 at 62.) She also testified he became suicidal after that time. (*Id.*) Rebecca Brown also testified she told Defendant Lambert she "was worried that maybe her husband would kill himself" after she found him "groggy" in bed with a bullet on the floor next to the bed and a handwritten note he had penned to her. (*Id.* at 62-63, 67-68.) Blakely, Rebecca's brother, also testified he twice informed Defendant

Lambert he removed all the firearms from the Browns' home because "it was clear to [him] that something bad was happening" with Kevin and Rebecca Brown. (Defs.' Mot., Ex. Q at 16.) Construed in Plaintiffs' favor, this evidence raises a genuine issue of material fact on the element of causation.

Defendants raise another argument on the element of causation, namely that Brown's suicide was an intervening, superseding cause of Plaintiffs' injury such that Defendant Lambert cannot be held liable for wrongful death. However, in *Castro v. County of Los Angeles*, 797 F.3d 654 (9th Cir. 2015), *cert. denied*, 137 S.Ct. 831 (2017), the Ninth Circuit stated "[a] corrections officer will be held legally responsible for an inmate's injuries if the officer's actions are a 'moving force' behind a series of events that ultimately lead to a foreseeable harm, *even if other intervening causes contributed to the harm.*" *Id.* at 667 (citing *Conn v. City of Reno*, 591 F.3d 1081, 1100 (9th Cir. 2010)) (emphasis added). The court added, "[i]f reasonable persons could differ over the question of foreseeability, that issue should be left to the jury." *Id.* (citing *Conn*, 591 F.3d at 1100). Here, there are numerous triable issues of material fact on the element of causation, which preclude entry of summary judgment.

Defendant's final argument on the wrongful death claim is Defendant Lambert is entitled to qualified immunity. Specifically, Defendants argue the right allegedly violated here was not clearly established. According to Defendants, that right was the "right to be free from investigation[.]" (Mem. of P. & A. in Supp. of Defs.' Mot. at 21.) However, that misstates the issue. The rights at issue here do not include the "right to be free from investigation." Indeed, Plaintiffs agree there is no such right. Rather,

the rights at issue here are Plaintiffs' rights under the Fourth Amendment, and with respect to those rights, "[t]he law regarding the permissible scope of a search where items in a warrant have been particularly described is hardly an uncertain and evolving area of the law." *Creamer v. Porter*, 754 F.2d 1311, 1319 (5th Cir. 1985). *See also Ellertson v. City of Mesa*, No. CV-15-00765-PHX-GMS, 2016 U.S. Dist. LEXIS 2366, at *11-12, 2016 WL 97538 (D. Ariz. Jan. 8, 2016). ("The scope of the right to search and seize property was defined by the warrant and exceeding that scope violates the clearly established rights of the Plaintiffs. This principle has been long established."). The same may be said of the rights at issue in Plaintiffs' first claim. *Bettin v. Maricopa County*, No. CIV 04-02980 PHX MEA, 2007 U.S. Dist. LEXIS 42979, at *54, 2007 WL 1713319 (D. Ariz. 2007) ("An officer who prepares a plainly invalid warrant that a reasonably competent officer should know was deficient is not entitled to immunity, despite the approval of the warrant by a magistrate.") Thus, Defendants are not entitled to qualified immunity from Plaintiffs' wrongful death claim.[16]

III.
CONCLUSION

For these reasons, Defendants' motion for summary judgment is granted in part and denied in part and Plaintiffs' motion for partial summary judgment is granted in part and denied in part. Specifically, the Court grants Defendants' motion on Plaintiffs' fourth claim for relief, grants Plaintiffs' motion on the third claim for relief and denies the remainder of the motions.[17]

IT IS SO ORDERED.

Footnotes

1After the motion was submitted, Defendants filed a Notice of Supplemental Authority in support of their motion, which the Court has considered. (*See* Docket No. 71.)

2The page number cited refers to the page number of the exhibit.

3There is a dispute about the number of vaginal swabs that were taken from the victim. In one report, Evidence Technician Randy Gibson reported receiving only one swab, but other reports document the presence of "swabs."

4A third individual, Mark Wilkinson, also was identified from a sperm fraction on Claire's underwear. Wilkinson was Claire's boyfriend but was eliminated as a suspect as he was not in San Diego at the time of the murder. He lived in Rhode Island. Claire also lived in Rhode Island, and was visiting her grandparents in San Diego at the time of her murder.

5There is no dispute about Tatro's criminal history, and it reflects a longstanding campaign of brutal violence against women. The 1974 rape involved Tatro luring a young woman into his car, placing her in the trunk and then raping her at knifepoint while threatening to kill her. (Pls.' Opp'n to Defs.' Mot., Ex. 26 at LAMBERT 004532-34.) The incident in La Mesa involved Mr. Tatro offering to help a 16 year old girl who was having car trouble, and once she was in his car, using a stun gun or some other electrical device to shock her. (*Id.* at LAMBERT 004310-11.) When Tatro was apprehended for that crime, (he was found naked in the back of his van with his wrists slit), the officers confiscated a

pornographic magazine depicting photos, stories and devices relating to bondage and sadomasochism as well as a blood stained paring-type knife. (*Id.* at LAMBERT 004321.)

6Tatro died in 2011, leaving Brown as the only suspect.

7At oral argument, Plaintiffs' counsel represented thirteen (13) officers may have participated in the execution of the warrant, but there is no evidence to that effect.

8Rebecca Brown is a high school teacher at Mater Dei High School.

9As mentioned above, there is a dispute about when Lambert had this conversation with Stam, namely whether the conversation occurred before or after Lambert submitted the application for the search warrant. Construing the facts in the light most favorable to Plaintiffs, the Court assumes this conversation took place before Lambert submitted his affidavit.

10Plaintiffs presented evidence of a significant discrepancy in the miniscule number of sperm cells found in the combined sperm fractions that resulted in the identification of Brown relative to a typical male ejaculate. According to Plaintiffs' expert, those fractions "would be roughly equivalent to 158 sperm cells, [when] ... [t]he average number of sperm cells in a typical ejaculate, for comparison purposes, ranges from 200,000,000 – 600,000,000." (Pls.' Opp'n to Defs.' Mot., Ex. 7 at 13.)

11Defendants point out that Brown made statements to law enforcement and others that they considered incriminating, including that he may have had sex with a girl visiting from out of town around the time of the murder who might have been named Claire. (Defs.' Mot., Ex. U at 3-6.) However, those statements were

made after the warrant issued and after the home was searched, and thus were *not* included in the warrant affidavit and not considered by the magistrate.

12Defendants also raise this argument in support of their request for summary judgment on Plaintiffs' third claim for relief. For the reasons stated above, the Court rejects the argument as against that claim, as well.

13At oral argument, Plaintiffs' counsel clarified this claim applies only to the seizure of physical items and objects, such as papers and photographs. It does not encompass the seizure of computers, cell phones or other types of electronic media and devices.

14As an initial matter, Defendants assert in conclusory fashion that Plaintiffs lack standing to challenge the seizure and retention of items that did not belong to either Kevin or Rebecca Brown. (*See* Mem. of P. & A. in Supp. of Defs.' Mot. at 19, 20.) Plaintiffs addressed this argument in their reply brief on their *ex parte* motion to certify Defendants' appeal as frivolous, but Defendants have not had an opportunity to respond to that argument. Absent further briefing from Defendants, the Court declines to resolve the issue here. Defendants should be prepared to address the issue prior to trial, however.

15California Penal Code § 1536 provides: "All property or things taken on a warrant must be retained by the officer in his custody, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property of things taken is triable." Cal. Penal Code § 1536.

16Defendants' request for summary judgment on Plaintiffs' sixth claim for deprivation of First and Fifth Amendment rights to intimate familial association is based on the same arguments presented on Plaintiffs'

fifth claim. For the reasons set out above, the Court rejects those arguments as against the sixth claim, as well.

17The parties have fully briefed the issue of whether Defendants' appeal of the Court's previous order is frivolous. Although this amended order changes the Court's ruling on Plaintiffs' fourth claim and amends the analysis of Plaintiffs' first claim, the Court expects Defendants will appeal this order. Should they do so, and should Plaintiffs file another motion to certify the appeal as frivolous, the Court would be inclined to deny that motion.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO

STATE OF CALIFORNIA,)	**AFFIDAVIT FOR SEARCH WARRANT**
(ss.	
COUNTY OF SAN DIEGO)	**No. _____**

I Michael LAMBERT, do on oath make complaint, say and depose the following on this 3rd day of January, 2014: that I have substantial probable cause to believe and I do believe that I have cause to search:

LOCATION, PROPERTY, AND/OR PERSON[S] TO BE SEARCHED

A. The premises and all parts therein, including all rooms, safes, storage areas, containers, surrounding grounds, trash areas, garages and outbuildings assigned to or part of the residence located at **263 Vista Del Mar Court, Chula Vista, California;** further described as two story, single family home. It has a beige stucco exterior, with a brown tile roof, with a green wood trim. The numbers "263" are in green numbers facing south on the wall to the right of the two car garage. The front door of the residence is brown and faces east;

and,

B. For the person known as Kevin BROWN further described as a white male, 61 years old, with a date of birth of 03-24-1952, SSN: 560-96-3002 being 6'4" in height, weighing 198 pound and believed to reside at the above residence;

C. A 2011 Ford pickup truck, **California License Plate 10925B1,** currently registered to Kevin and Rebecca BROWN.

D. A 2008 Honda Civic, **California License Plate 6ELE632,** currently registered to Kevin and Rebecca BROWN.

ITEMS TO BE SEIZED

For the following property, to wit:

1. From Kevin Brown referenced in section B above: A blood sample drawn by a medical professional in a medically approved manner and/or mouths swabs for samples of skin/human cells, to be used for DNA testing; and

2. Papers, documents and effects tending to show dominion and control over said premises, including keys, lease, rental, or mortgage agreements, utility bills, canceled mail, prescription bottles, fingerprints, clothing, photographs, photographic negatives, image disks, memory sticks, undeveloped film, homemade videotapes, digital images handwritings, documents and effects bearing a form of identification such as a person's name, photograph, Social Security number or driver's license number; and to intercept incoming phone calls, either landline or cellular, during execution of the warrant, to view any video tapes seized

pursuant to the warrant.

3. To seize, view and forensically examine any computing or data processing devices, including cellular telephones capable of storing images, smart phones and tablet devices and associated peripheral equipment such as Computer or data processing devices and associated peripheral equipment such as computer units, keyboards, central processing units, external drives and/or external storage (flash/thumb drives), tape and/or disk, terminals and/or video display units and/or other receiving devices and peripheral equipments such as printers, automatic dialers, modems, acoustic couplers, associated telephone sets, and any other controlling device(s), any computer or data processing software and the device(s) on which such software is stored such as hard disks, floppy disks, JAZ disks, ZIP disks, integral RAM or ROM units, cassette tapes, magnetic tape reels, any other permanent or transient storage devices, any computing or data processing literature, printed or otherwise, and all manuals for the operation of the computer and software, together with all handwritten notes or printed material describing the operation of the computer, and confidential password lists to enter secured files; and in addition to seizing, forensically examine the listed items for evidence of monitoring the progress of the investigation of the murders of Claire HOUGH and/or Barbara NANTAIS and anything relating to the name Ronald C. TATRO or James ALT; to include e-mail, Internet history, documents, journals, deleted files or any other evidence related to the murders of Claire

HOUGH and/or Barbara NANTAIS and anything relating to the names Ronald C. TATRO or James ALT and anything relating to the items describe in item 7 (seven) listed below in this warrant; Photographs, social security number, or driver's license number which tend to show dominion and control over said computer, cellular telephone, smart phone or tablet device; and to have those devices forensically examined.

3. Newspaper clippings or any other print news relating to the murders of Claire HOUGH and/or Barbara NANTAIS.
4. Address books, diaries/joumals, hand written in nature.
5. San Diego Police Department Crime Case Reports and/or Arrest Reports relating to Sexual Assaults.
6. Magazine, videos, electronic files, books, photographs or other written or photographic evidence depicting or related to teenage or preteen pornography, rape, bondage, and sadomasochism.
7. Receipts for storage facilities including offsite storage, safety deposit boxes and "cloud" storage.
8. Photographs, disposable cameras, negatives, photographic film that relate to Claire HOUGH, Ronald TATRO, James ALT, or Barbara NANTAIS.
9. A straw or cloth, long handled handbag belonging to HOUGH.

SUMMARY OF SEARCH WARRANT REQUEST

I am requesting the above listed items to be seized in an attempt to find evidence of Kevin BROWNS involvement in file 1984 murder of Claire HOUGH, or his knowledge of co-conspirator Ronald TATRO and TATRO'S involvement in the murder of Claire HOUGH. I seek to find evidence that Kevin BROWN is following this case, and another similar 1978 murder of a teenage girl Barbara NANTAIS.

AFFIANT'S QUALIFICATIONS

I am a peace officer employed by the San Diego Police Department (SDPD) and have been so employed for about 24 years. I have been a detective for 19 years, and I am currently assigned to the Homicide Unit and have been so for 9 years, 11 months. During my career as a police officer, I have taken part in the investigation of over 250 violent crimes, including robberies, kidnapping, extortion, witness intimidation, drive-by shootings, assaults with deadly weapons, violent sexual assaults, attempted murder, and homicides. While in the Police Academy and subsequent formal training, I received training in the investigation of assault with deadly weapons, attempted murder investigation, and homicide investigation. I have attended a 40 hour Homicide Investigation course. Throughout the course of my investigations, I have spoken with numerous victims, witnesses, and suspects of said crimes. Through these discussions as well as through discussions with other detectives, I have learned the manner and methods employed by persons involved in these types of crimes.

INTRODUCTION

This case involves the 1984 murder of 14 year old Claire HOUGH. She was found on Torrey Pines State Beach. HOUGH had been strangled to death, sexually assaulted, and mutilated.

The case has been investigated several times over the course of nearly 30 years and in November of 2012, two male suspects were identified via DNA results. Kevin BROWN'S sperm was found on vaginal swabs collected from HOUGH at autopsy and Ronald TATRO'S blood and DNA was found on HOUGH'S clothing.

This warrant is an attempt to obtain information to link BROWN and TATRO as the perpetrators, acting in concert, in the commission of the sexual assault, mutilation, and murder of *Claire HOUGH.*

PROBABLE CAUSE

During the course of my duties, I read the San Diego Police Homicide case file of Claire HOUGH in its entirety (San Diego Police Case number 84-059427). The case file includes, but is not limited to, San Diego Police patrol officer reports, San Diego Police investigator reports, San Diego Police Crime Lab reports, San Diego Police diagrams, photographs and San Diego County Medical Examiner reports. I have learned the following information based upon my discussions with the named witnesses or by having read the reports of or talked with other SDPD officers who have spoken directly with the named witness. All references to dates refer to the current calendar year unless otherwise stated and all law enforcement officers referred to are from the San Diego Police Department

unless otherwise noted.

INITIAL INVESTIGATION 1984

According to a report written by San Diego Police Officer K. WELLBORN, #2034, dated August 24, 1984, Claire HOUGH'S dead body was discovered on the beach, between Lifeguard Towers 4 and 5, at Torrey Pines State Beach by local can collector Wallace WHEELER, on Friday, August 24, 1984, at approximately 0430 hours. Upon his discovery, WHEELER walked to a Circle K convenience store located at 2302 Mount Carmel Road, San Diego, CA (now Carmel Valley Road) to report his findings. The Circle K is slightly less than one mile from the murder scene. Responding Officer WELLBORN, met with WHEELER at the Circle K and WHEELER directed them to the location of HOUGH'S body. Upon viewing HOUGH'S body he found HOUGH had no carotid pulse. There were red stains around the collar of HOUGH'S shirt that appeared to be blood and she was lying on a white towel. WELLBORN also made note of a plastic radio and a pair of shoes next to her body. Officer WELLBORN believed HOUGH had been murdered.

According to a report completed by Detective R. A. CAREY, #1143, on August 24, 1984, SDPD Homicide Detectives and the San Diego Police Crime Lab responded to the homicide scene, located at Torrey Pines State Beach, on the beach/sand, between Lifeguard Towers #4 and #5, at what was then referred to as the "South Bridge". According to Detective CAREY, the body of HOUGH (14 years old) was found lying on her side. HOUGH was wearing Levi's, a pink long sleeve shirt, a blue bandana tied around her hair,

and she was found lying on a blood soaked towel. Her pants were unbuttoned and unzipped, but pulled up. Her panties were on, but rolled down below her buttocks and her "Levi" jeans were tom at the zipper down the seam. HOUGH'S jeans were tom from the bottom of the zipper to the inseam of the crotch area. Her throat had been cut and there were visible blunt force trauma injuries to her face.

According to a report completed by San Diego Police Evidence Technician Randy E. Gibson #8617 (dated on August 28, 1984) he arrived on Torrey Pines State Beach at 0720 hours and he began taking photographs and collecting evidence. A total of 32 items of evidence are listed in his initial report. These items were impounded on property tag 325557. Gibson lists the following items as some of the evidence he impounded on property tag 325557:

- AM/FM Cassette tape recorder found on the towel HOUGH was laying on
- (1) Pair of sandals found on the towel Hough was laying on
- (1) Towel that HOUGH was laying on
- (1) Pack of Marlbough cigarettes found on the towel HOUGH was lying on
- (1) Matchbook with the name "Circle K" on it was found on the towel HOUGH was lying on
- Numerous cigarette butts were found in the general area of HOUGH'S body

According to a Medical Examiners report completed by Dr. M.A. Clark, HOUGH'S body was removed from the crime scene on August 24, 1984 and transported to the San Diego County Medical

Examiner's office for the purpose of an autopsy. The autopsy was conducted on August 25, 1984.

MA. CLARK, M.D., Pathologist for the San Diego County Coroner's Office conducted the autopsy. According to Dr. CLARK's report dated September 5, 1984, Dr. Clark concluded that the cause of death was manual strangulation. HOUGH'S injuries included a deep laceration to her throat, there was evidence of blunt force injuries to her face, her entire left breast had been amputated, there was a laceration to the vagina and her mouth was filled with sand.

According to San Diego Police Crime Lab Evidence Technician Randy E. Gibson's initial report (dated August 28, 1984) he was present at the autopsy on August 24, 1984 at 1015 hours. While at the autopsy he took custody of several items, including the following, and impounded them on property tag 325557;

- (1) Pair of blue jeans, brand name "Levis." In the report Gibson wrote: "This item has red stains and it should be noted that the seam below the zipper has been ripped for a length of approximately 3 inches."
- (1) Pink bandana that has been used for a belt, In the report Gibson wrote: "This item is tied in a knot and has been cut. This item also has red stains."
- (1) Pair of white panties with blue hearts. In the report Gibson wrote: "This item has red stains."
- (1) Pink blouse, brand name "Jean Pierre." In

the report Gibson wrote: This item has red stains and a small cut or tear over the left breast pocket

- (1) Vaginal swab

On the same morning of the discovery of HOUGH'S body, her: grandparents reported her missing (San Diego Police Department Missing Person Case Number 84-059190). HOUGH'S grandfather, Samuel HOUGH, was the last person to see her at home about 9 p.m. on Thursday, August 23, 1984, just before he went to bed. On Friday, August 24, 1984, at about 9 a.m, her grandparents checked and discovered her missing. The officers were informed HOUGH was visiting from the state of Rhode Island and was set to return home on August 28, 1984.

According to a report dated August 27, 1984 completed by San Diego Police Homicide Investigator R.D. Jordan #1490 he went to Samuel and Margaret HOUGH'S home on August 25, 1984 with an autopsy photo of the young girl found on the beach. Samuel and Margaret HOUGH viewed the photograph and were able to positively identify the homicide victim as Claire HOUGH.

SDPD Homicide Investigators began interviewing friends, family members, and potential witnesses.

According to a report dated August 30, 1984 by San Diego Police Detective Gil Padillo, #1716, he went to the Circle K on August 24, 1984 and interviewed employee, Terri VANDERHOFF. VANDERHOFF was the Circle K employee working the evening before HOUGH'S body was discovered on the beach. The Circle K is around the coma: from HOUGH'S grandparent's home and was along the route to the

beach where she was ultimately found murdered. VANDRHOFF stated she recalled a white female, approximately 20 years old, 5'7" tall, weighing about 115 pounds, wearing a short sleeved pink top and Levis jeans, coming into the store between 8:30 p.m. to 9:00 p.m. According to Detective Padillo's report the clothing described by VANDERHOFF was similar to the clothing worn by HOUGH when her body was discovered. VANDERHOFF additionally described HOUGH as carrying a straw type handbag. VANDERHOFF recalled HOUGH purchased a pack of Marlboro Lights cigarettes and requesting a book of matches. VANDERHOFF stated HOUGH appeared to be alone and that she did not see HOUGH get into a vehicle after she exited the store.

According to a report dated September 14, 1984, by San Diego Police Detective R.D. Jordan he interviewed Francesca HOLLAND on September 13, 1984. HOLLAND is an acquaintance of Samuel and Margaret HOUGH. HOLLAND stated she met Claire HOUGH one time on the Tuesday prior to the murder (Tuesday, August 23, 1984). Claire HOUGH'S grandmother arranged for the girls to spend the day together because Claire HOUGH complained about being lonely. Claire HOUGH'S grandmother dropped Claire HOUGH off at HOLLAND'S house. Claire HOUGH told HOLLAND that she was the first person she met since coming to San Diego. Claire HOUGH complained about not meeting anyone in San Diego. HOLLAND said Claire HOUGH appeared and acted older than her age and that she was very outgoing. HOLLAND stated Claire HOUGH admitted to liking marijuana and that she liked to smoke it outside and look at nature the way it is suppose to be looked at. This was the only time HOLLAND was with Claire

HOUGH. HOLLAND provided no additional information during this interview.

According to a report dated September 4, 1984 completed by San Diego Police Detective Gil PADILLO, Detective PADILLO interviewed James PEEBLAS and Charles JOHNSON on August 30, 1984. Both men were together on the beach the night before HOUGH'S body was found. Both men stated there was a group of young people hanging out near the bridge at about 9:30 p.m. Both men stated the group was males and females, between 15-20 years old. They could provide no additional descriptions and the group was never indentified.

According to a report dated September 4, 1984 completed by Detective Gil PADILLO, Detective PADILLO interviewed Gregory FEDERICO on August 30, 1984. FEDERICO told Detective PADILLO that on August 23, 1984 he was near Lifeguard Tower #4 when a black male or white male with a dark complexion, 6 feet tall, 28-30 years old approached him. FEDERICO noticed the man had a knife in the front of his waistband and was acting strangely. FEDERICO could provide no additional details.

According to a report dated, August 31, 1984, completed by San Diego Police Detective R. CAREY, Detective CAREY interviewed James LUCE. LUCE told Detective CAREY that he was on the beach at the same time as FEDERICO and noticed nothing unusual the night before HOUGH'S body was found. LUCE told Detective CAREY about a black male with the knife, but believed it was a different night than FEDERICO recalled. According to the report the description of the black male was similar to the one provided by FEDERICO and the black male remains

unidentified.

Following the initial investigation, no eyewitnesses were identified, few leads were developed, and the case went cold. This was primarily due to a lack of witnesses, the very limited DNA technology available at the time, and the initial inability to develop a DNA profile from biological evidence collected from the crime scene and at autopsy.

COLD CASE REVISITED

Throughout the years this case was revisited by various San Diego Police Department Cold Case Homicide Detectives. On March 15, 1996, San Diego Police Department Lieutenant Jim COLLINS (now retired) authored a letter to Mary Ellen O'TOOLE of the FBI Academy's Investigative Support Unit to request assistance in obtaining a possible suspect profile. The letter helps establish the circumstances of Claire HOUGH'S visit to San Diego, a clearer timeline of Claire HOUGH'S time in San Diego, and information to provide a better understanding of who Claire was.

Lieutenant Jim COLLINS wrote in the letter that the information contained within it was obtained via interviews conducted with Claire HOUGH'S parents, Samuel and Penelope HOUGH, Claire HOUGH'S grandmother, Margaret HOUGH (now deceased) and Claire HOUGH'S best friend, Kimberly JAMER (maiden name BROCK) and was obtained about 12 years after Claire HOUGH'S murder. The following is some of the information documented in the letter:

- Claire HOUGH arrived in San Diego about ten days prior to her demise. She travelled to San

Diego with her older brother Matthew HOUGH and her best friend Kimberly JAMER.

- After several days Matthew HOUGH left his grandparents home and spent the remainder of his vacation with other family members in northern California.
- Kim JAMER and Claire HOUGH were inseparable while in San Diego.
- Tuesday, August 21, 1984, JAMER returned home to the state of Rhode Island; Two days before Claire last seen alive. According to Claire HOUGH'S grandmother, Claire HOUGH talked about wanting to go home early, because she was bored after JAMER returned to Rhode Island. Claire HOUGH complained about not having anyone to talk to because she had not met anyone while in San Diego.
- Thursday, August 23, 1984, Claire HOUGH and her grandparents had gone to the zoo in the morning and returned to their home during the mid-afternoon. According to HOUGH'S grandparents, Claire then went to the beach alone. HOUGH'S grandparents stated Claire went to the beach almost every day while in San Diego. Claire HOUGH returned from the beach at about 8:30 p.m. and she talked with her grandparents for a short time before going to her room, presumably for bed. Claire HOUGH'S grandmother returned home from a meeting at about 9:30 p.m. and saw that the door to Claire HOUGH'S room was closed and she assumed Claire HOUGH was in bed. The following morning, Claire HOUGH'S grandparents discovered she was not at the home and they

contacted police to file a missing person's report.

Lieutenant Collins wrote information regarding Claire HOUGH and her lifestyle in this letter. Lieutenant Collins wrote Claire HOUGH was sexually active with boyfriends prior to her murder; however, both JAMER and Claire HOUGH'S parents believed Claire HOUGH would not have a sexual encounter with anyone whom she didn't have an established relationship. Lieutenant Collins wrote it was common for Claire HOUGH to go out alone to the bay area near her home in Rhode Island at night to listen to music; however, both JAMER and Claire HOUGH'S parents believed Claire HOUGH would never go out to meet an unknown person alone on the beach.

Lieutenant Collins wrote that while in San Diego JAMER and Claire HOUGH went to the beach daily. They would lie on the sand close to the bridge. The bridge provided shade to keep cool.

In the letter, Lieutenant Collins also made reference to the 1978 murder of 15 year old, Barbara NANTAIS, a female who was killed a short distance away from where Claire HOUGH'S body was found (San Diego Police Department Case Number 78-57316). NANTAIS was found nude and murdered on the same beach as HOUGH. According to the case file NANTAIS died of manual strangulation and her right nipple was almost completely severed off.

This concluded the information in the letter.

The murder case of Claire HOUGH remained cold for a lengthy period of time. The San Diego Police Department Cold Case Team routinely reviewed this case for new leads including the review of the evidence for potential updated procedures and advancements in DNA testing.

DNA

I learned after talking with SDPD Lab Criminalist David CORNACCHIA, #8815, that DNA is short for deoxyribonucleic acid. DNA molecules are contained within human cells and hold the genetic 'coding' that makes each of us individually distinctive (except identical twins). DNA technology is capable of distinguishing between human beings to an extent that typically the probability of random person having the same profile as the questioned profile is many times greater than the population of the planet.

On November 22, 2013 San Diego Police Criminalist David Comacchia #8815 told me there are several ways current DNA testing can provide information:

1. Male vs. Female: DNA testing has the ability to distinguish male from female DNA.
2. Blood: DNA can be extracted from blood and is considered a Non Sperm Fraction source.
3. Sperm Fraction: DNA is extracted from sperm cells.
4. Non Sperm Fraction (Human Cells): DNA testing has the ability to identify a person through human cells. These cells can be from either a male or a female.

According to Criminalist Cornacchia, during the DNA testing process, he first identifies if enough DNA is available for testing. Once he deems the amount; sufficient, he develops a "profile." The "profile" consists of 16 individual and unique markers of an individual (except identical twins). Criminalist Cornacchia explained he then uploads all 16 markers of the

unknown individual into the Combined DNA Index System, also known as CODIS. CODIS is a local, State, and National database that contains DNA profiles from criminal offenders, crime scenes, and missing persons. Uploading a profile to CODIS, allows profiles already identified by crime laboratories to be compared to profiles uploaded by other local, State, and Federal law enforcement agencies thus linking individuals to crimes scenes or identifying individuals.

COLD CASE INVESTIGATION 2012 TO CURRENT

In July of 2012, San Diego Police Detective L. RYDALCH #3787 (now retired) was assigned to the San Diego Police Department Cold Case Team. He submitted a new lab request to once again examine physical evidence in the case, with the hopes that new DNA technology would yield positive results. He requested the San Diego Police Crime Laboratory to examine the following items collected and impounded during the initial investigation in this case for DNA belonging to someone other than Claire HOUGH:

- Vaginal Swabs
- Towel
- Claire HOUGH'S Clothing

In November of 2012, Criminalist CORNACCHIA completed the examination of the above listed evidence. According to CORNACCHIA the first step is to develop a DNA profile for Claire HOUGH. CORNACCHIA stated this is done in order to separate HOUGH'S known DNA profile from the unknown DNA profile.

According to David CORNACCHIA'S report dated NOVEMBER 30, 2012, he identified three (3) unknown male DNA profiles on the following four items of evidence:

1. Non Sperm Fraction: Blood stains on Claire HOUGH'S "Levi's" jeans
2. Non Sperm Fraction: Zipper flap of Claire HOUGH'S tom "Levi's" jeans
3. Sperm Fraction: Crotch of Claire HOUGH' S underwear underneath her panty liner
4. Sperm Fraction: Claire HOUGH'S vaginal swabs

RONALD TATRO: DNA FOUND ON HOUGH'S iN TWO LOCATIONS

During Criminalist CORNACCHIA'S examination of the above listed items he determined numerous stains on the blue jeans worn by Claire HOUGH were blood. CORNACCHIA examined the samples of the blood (#1 Non Sperm Fraction from above) for DNA from and he developed an unknown male profile. CORNACCHIA then uploaded the unknown male profile into the California Combined DNA Index System (CODIS) database for comparison. The system compared this unknown male profile to others in CODIS and identified the profile as belonging to Ronald Clyde TATRO, California Criminal Identification Number A07234886.

According to CORNACCHIA'S report dated November 30, 2012, he also developed an unknown male profile from another area of area of HOUGH'S pants. This DNA (#2 - Non Sperm Fraction from above) was

found in the area of the tom zipper of HOUGH'S "Levis" jeans. This area is significant because according to a crime lab report written by San Diego Police Evidence Technician Randy E. Gibson #8617 (dated on August 28, 1984) HOUGH'S pants were tom from the area of the zipper, down the seam about 3 inches. Criminalist CORNACCHIA uploaded the DNA found by the zipper into the Combined DNA Index System (CODIS) database for comparison. The system compared this unknown male profile to others in CODIS and identified the profile as belonging to Ronald Clyde TATRO, California Criminal Identification Number A.07234886.

Myself and San Diego Police Detective Lori Adams #5295 conducted research and criminal history inquiries into Ronald TATRO. We learned the following:

- According to TATRO'S California Criminal Identification Information he was 40 years old at the time of Claire HOUGH'S murder.
- According to his California and Arkansas Criminal Identification Information, and San Diego Sex Registrant files TATRO was on parole, at the time of the HOUGH murder, for a 1974 First Degree rape conviction in Hot Springs, Arkansas.
- According to an email confirmation dated November 26, 2012, from Angie FENLEY, of the City of Hot Springs Arkansas Human Resources Department, TATRO was a Hot Springs, Arkansas Police Officer from April 1971 to July 1972.
- According to TATRO'S Indianan Criminal

Information he was arrested and convicted in Plainfield, Illinois for battery in May 1974.

- According to TATRO'S California Criminal Information he was arrested and convicted in June 1985 for attempted rape in La Mesa, California.

In conducting research into Ronald TATRO, Detective ADAMS discovered that TATRO was a parson of interest in the February 1984 San Diego murder of prostitute Carole DEFLEICE, however, he was not charged with the murder of DEFLEICE and that case remains unsolved.

According to the Arkansas Court Transcripts dated March 31, 1975, TATRO pled guilty to rape in the 1st degree in Hot Springs. TATRO was initially sentenced to 40 years in prison for this conviction. Upon reading the court transcripts, Detective ADAMS learned that TATRO admitted during this hearing that he enticed a female store clerk out of the store under the guise of helping him with his disabled vehicle. Once outside, TATRO admitted he hit the female over the head, put her in the trunk of the car, and drove to a secluded area where he raped her at knifepoint.

According to an email received on November 29, 2012, from the Arkansas Department of Corrections, TATRO served seven years in prison and was paroled to San Diego, California on April 1, 1982.

According to Ronald TATRO'S California Criminal Information he was sentenced to three years in prison for a 1985 conviction for attempted rape of a teenage girl in La Mesa, California. Upon reviewing the 1985 District Attorney file and the crime reports completed by the La Mesa Police Department (L.M.P.D. Case Number 85-3989), dated June 25, 1985,

San Diego Police Detective ADAMS learned that TATRO picked up a teenage girl who was having car trouble and offered her a ride. Once inside his van, TATRO attempted to subdue the teenage girl with a stun gun. The girl fought back and screamed. TATRO allowed her to exit the van. TATRO was arrested for this case on June 25, 1985.

According to the State of Tennessee Office of Vital Records, Ronald TATRO is now deceased. He died on August 25, 2011 in Hawkins County, Tennessee,

MARK WILKINSON: SPERM DNA FOUND ON HOUGH'S UNDERWEAR UNDERNEATH A PANTY LINER

According to: Criminalist CORNNACHIA when examining the underwear worn by Claire HOUGH, he identified another unknown male's DNA from a sperm fraction present on the crotch area of the underwear, underneath a panty liner. According to CORNNACHIA the only DNA on the panty liner belongs to Claire HOUGH. CORNNACHIA told me, the amount of DNA found was minimal. He stated sperm cells can remain on clothing even after being washed. I believed the sperm fraction discovered could have been from Claire HOUGH'S most recent hometown boyfriend. I learned, after re-interviewing Claire HOUGH'S best friend JAMER, that Claire HOUGH'S boyfriend at the time of her murder was Mark WILKINSON and he resided in Rhode Island at the time of the murder. According to JAMER, WILKINSON did not travel to San Diego with Claire HOUGH.

I learned from Kim JAMER that WILKINSON'S birthday was 10-17-1965. I conducted a

search for WILKINSON in an attempt to locate him. During this search, utilizing CLEAR, a Public Records database, I learned WILKINSON was deceased. He died on May 7, 2009. After learning of WILKINSON'S death, I spoke to CORNACCHIA and inquired as to which family member of WILKINSON I should attempt to collect DNA from in order to identify the unknown male's DNA. I was informed I should attempt to collect WILKINSON'S mother's DNA.

After conducting a search, I learned Mark WILKINSON'S mother, Dorothy WILKINSON, was currently residing in Pasadena, Texas with her Daughter Julia LAVERY. I made telephone contact with LAVERY where I requested she speak to her mother and explained I wanted to collect her DNA to compare to the DNA in this case. I soon after received a call from LAVERY and was informed her mother was willing to submit a sample.

I then called the Pasadena Police Department's Cold Case Homicide Unit and spoke to Detective Ed ROGGE. He agreed to meet with Dorothy WILKINSON, collect a DNA swab and mail that swab to me in San Diego. On October 14, 2013, Detective ROGGE met with Julia LAVERY and Dorothy WILKINSON. He presented WILKINSON with Consent to Collect DNA Sample form. WILKINSON signed the form and her daughter LAVERY signed as a witness to the collection. The swab was collected my Detective ROGGE and it was shipped to me via FedEx. After receiving the swabs, I submitted a lab request to CORNACCHIA to process the swab and compare the developed profile to the unknown male DNA on Claire HOUGH'S underwear. I was notified by David CORNACCHIA on October 31, 2013, that WILKINSON'S DNA matched the unknown sperm

fraction from Claire HOUGH'S underwear underneath the panty liner.

KEVIN BROWN: SPERM DNA FOUND IN HOUGH'S VAGINA

According to Criminalist CORNACCHIA'S report dated November 30, 2012, he also conducted DNA testing on the vaginal swab collected from Claire HOUGH at the time of her autopsy. CORNACCHIA reported that he developed an unknown male profile from the sperm fractions collected from the swabs. CORNACCHIA uploaded this unknown male profile into the local CODIS database and a match to a profile of an individual named Kevin BROWN was identified. According to CORNACCHIA'S report, BROWN is a former San Diego Police Department Laboratory employee. CORNACCHIA told me that Kevin BROWN'S DNA profile is in the local CODIS database because of his employment in the crime lab. CORNACCHIA told me San Diego Crime lab employee's DNA profiles are uploaded into CODIS to identify potential cross contamination issues.

According to CORNACCHIA, the number of sperm cells present on the swabs was low. I was informed by CORNACCHIA there were several reasons for theses low numbers.

1. One reason, the cell may have degraded over time, meaning they may have been deposited inside HOUGH 24 to 48 hours prior to her murder.
2. Another a reason for the low numbers may be BROWN failed to achieve a full ejaculation inside HOUGH, making the discharge likely

contemporaneous to the incident

3. A third reason is BROWN could have a low sperm count, accounting for the lower numbers, also making the discharge likely contemporaneous to the incident.

Upon discovering BROWN'S DNA from the sperm fractions on the vaginal swabs, a thorough inspection of the lab case files and records pertaining to this case was conducted by San Diego Police Department Lab Manager Jennifer SHEN, #8180. SHEN advised that BROWN had no known contact with the evidence relating to this case and was never assigned to work with any evidence relating to this investigation.

Upon identifying BROWN'S DNA in this case a meeting occurred between Lab supervision personnel and Cold Case Investigators. Cold Case Investigators were informed by San Diego Police Department Lab Manager, Jennifer SHEN, BROWN had no access to the evidence in the HOUGH murder and stated that cross DNA contamination is not possible. During this meeting Lab Supervisor Patrick O'DONNELL stated he remembered BROWN had a reputation of unusual behavior during the time of his employment. I determined additional follow up interviews needed to be conducted with former and current co-workers of Kevin BROWNS at the San Diego Police Department Lab.

2013 COLD CASE INVESTIGATION

San Diego Police D/Sergeant F. HOERMAN #3618 contacted the San Diego Police Department Payroll and Human Resources Unit. Sergeant

HOERMAN learned that Kevin BROWN was employed as a Criminalist for the San Diego Police Department from 1982 through 2002. Sergeant HOERMAN obtained BROWN'S application of employment from the Human Resources Department. From this application I learned his date of birth is March 24, 1952, his California Driver's License number is E0064068 and his social security number is 560-96-3002. Sergeant HOERMAN obtained several of BROWN'S employee photos, which were taken over the 20 years of his employment with the police department.

According to the Human Resources records obtained by Sergeant HOERMAN, I learned Kevin BROWN lists Rebecca BROWN as his spouse.

Sergeant HOERMAN obtained copies of BROWN'S timecard for the weeks near the date of Claire HOUGH'S murder. Timecard records indicate BROWN worked 40 hours the week of the murder including eight hours on Thursday, August 23, 1984 and eight hours on Friday, August 24, 1984. It also revealed that BROWN took three hours of vacation time on Monday, August 27, 1984.

During my investigation, I determined it would be beneficial to speak with Kimberly JAMER in an effort to determine a clear time line of events while Claire HOUGH was alive, to identify potential new witnesses and to better understand who Claire HOUGH was. On March 19, 2013. I called and spoke with JAMER. Her current residence and phone number are in Minnesota. I explained I was an investigator assigned to the murder of her friend Claire HOUGH. I verified some information regarding her trip to San Diego, California with Claire HOUGH and informed her I wanted to speak to her in person.

JAMER agreed to meet with me and told me she was happy that the police department had not forgotten about her friend's murder.

On May 3, 2013, I met with JAMER at her home in Minnesota. I explained the purpose of my interview was to determine what she and Claire HOUGH did while in San Diego together. I also explained that I needed to find out if they met anyone, particularly males, during this time. JAMER told me the only people they met were some young males and females who were near their same age. JAMER stated they met them while on the beach and it was mostly in passing. They never socialized with them other than short, non-specific conversations.

JAMER stated they never met any older men, nor would they have been interested in talking with older men. I presented JAMER with photographs of both Kevin BROWN and Ronald TATRO. These photographs were taken of BROWN and TATRO around the same time of Claire HOUGH'S murder and therefore depicted them as they would have looked during that time. Kevin BROWN was 32 years old and Ronald TATRO was 41 years old at the time of Claire HOUGH'S murder. I asked if she recalled seeing either man. She stated they never met them and if they had, they would have nothing to do with them because they were too old. I also presented a photograph of a van TATRO was known to drive during the time when the homicide occurred. JAMER stated she does not recall ever seeing that van.

I told JAMER I understood Claire HOUGH to be sexually active and asked if there was any way she would have had sex with either of the men in the photos. JAMER informed me Claire HOUGH would have never been attracted to either man and she would

have never cheated on her boyfriend Mark WILKINSON. JAMER was confident Claire HOUGH would have told her if she cheated on her boyfriend, because they shared everything together.

While reviewing original reports regarding this homicide, I read an interview of Francesca HOLLAND conducted on September 13, 1984 by Detective R. D. JORDAN. The report indicates HOLLAND spent a portion of Tuesday, August 21, 1984 with Claire HOUGH. This was the Tuesday prior to Claire HOUGH'S murder. After reviewing this report, I decided HOLLAND should be re-interviewed to confirm details of their time together. The report was not clear as to if they met with anyone else during this visit or what time the visit ended.

On July 10, 2013, I met with HOLLAND (married name MORRIS) in her home to ask additional follow up questions to her first interview. HOLLAND told me she met Claire HOUGH through her then boyfriend, Ben HOUGH. Ben HOUGH was related to the HOUGH family and he requested HOLLAND spend the day with Claire HOUGH because CLAIRE was bored and homesick. HOLLAND told me she spent the day with Claire HOUGH (August 21, 1984) and they went to Sea Grove Park and Flower Hill Shopping Center (both in the Del Mar area of San Diego) to hang out. Claire HOUGH told HOLLAND she was upset she hadn't met anyone in San Diego since her arrival. Claire HOUGH told HOLLAND she was bored staying at her grandparent's house. According to HOLLAND, they spent the better part of the afternoon together having lunch and talking. HOLLAND estimates they were together from late morning through late afternoon, until about 5 p.m. After visiting together, each of the girls went their own way home. Claire HOUGH and

HOLLAND had no further contact after this day.

INTERVIEWS OF SAN DIEGO POLICE LAB EMPLOYEES

I began conducting interviews with lab employees who worked with and around Kevin BROWN. I began by first interviewing Patrick O'DONNELL on February 19, 2013. O'DONNELL stated he recalled working around BROWN and knew BROWN had the reputation of frequenting the local strip clubs. O'DONNELL further stated BROWN was known to boast about going to the clubs. O'DONNELL stated he never associated with BROWN outside of work and stated BROWN'S reputation was only rumor to him. O'DONNELL suggested I speak to other lab employees who worked around BROWN and referred me to current lab employees Bill LOZNYCKY, Gene LA CHIMIA, and retired lab employee Annette PEER.

I met with LA CHIMIA on February 21, 2013. LA CHIMIA stated he remembers BROWN because they worked together in the Narcotics Lab. LA CHIMIA started working for the San Diego Police Department in 1987. BROWN was already working in the lab. LA CHIMIA stated he recalled BROWN'S reputation. He told me he recalled BROWN often talking about going to the strip clubs. LA CHIMIA stated BROWN bragged about it to everyone. LA CHIMIA stated he recalled a time when BROWN talked about getting involved in a photo shoot at one of the local strip clubs that was raided by the San Diego Police Department Vice Unit. LA CHIMIA told me he never learned of what happened with that raid and that BROWN continued working for the police department

for several years later. LA CHIMIA stated he recalled BROWN eventually getting married, but did not recall the year. He stated BROWN never bragged about going to the strip club after he got married.

On March 12, 2013, I interviewed current lab employee, Bill LOZNYCKY regarding BROWN. He stated he recalled working in the lab with BROWN. He recalled BROWN'S nickname was 'Kinky'. LOZNYCKY said he knew BROWN was from the New Mexico area. He too recalled BROWN'S reputation as being a regular patron of the local strip clubs. He stated BROWN bragged to him many times about his visits. LOZNYCKY said he knew BROWN to be into pornography, but nothing illegal. LOZNYCKY stated he remembered when BROWN spoke of a raid conducted by Vice at a local club, but could not provide details. He stated BROWN could have only been boasting about the event. LOZNYCKY said BROWN often talked about wanting to do nude photography, but never knew if BROWN ever pursued it.

On March 13, 2013, I interviewed retired Police Detective Joe LEHR about BROWN because LEHR was assigned to the Vice Unit in the 1980's. LEHR stated he never knew of a raid where any police employee was contacted at photo shoots involving strippers. He did however recall being approached once about BROWN by an attractive Asian female San Diego Police Department Records employee who was in her mid-twenties. She came to LEHR and told <u>him</u> BROWN had asked if she would be willing to pose for nude photographs. She refused, but told LEHR she was very uncomfortable with the proposition. LEHR agreed to ask BROWN to stop approaching her. A few days later, LEHR saw BROWN in the Police Headquarters gym. LEHR asked BROWN to stop

approaching female employees and asking to photograph them. BROWN agreed and LEHR never again heard about BROWN requesting to photograph female employees. LEHR did not recall the female employee's name and thinks the female no longer works for the police department.

On October 22, 2013, I interviewed retired lab employee Annette PEER. PEER was hired in 1982 and began working in the Serology Unit. She told me she very much recalled working with BROWN. PEER stated that during the summer of 1984 she was working in the lab on lower level cases, but soon after started working sexual assault cases. At the time, DNA science was in its infancy and basically the best the crime lab could do was to identify what type of blood was present.

PEER told me that she and BROWN worked in the same part of the lab. They had a desk in the area known as 'criminalist row.' It was an open bay area where everyone working that section of the lab could see everyone else. PEER said that she was in the same room as BROWN; however, her workstation was at the other end of the room. In the center of the room, were exam tables and each criminalist had their own exam table assigned. Lab employees were not authorized to keep copies of crime reports at their work stations.

PEER told me during the summer of 1984 BROWN was not working sexual assault cases. She recalls this because she was assigned to a three person rotation working sexual assaults and to the best of her knowledge BROWN was not assigned to that rotation.

PEER told me as part of their assignment lab analysts reviewed the crime reports that coincided with the lab work requested by the detectives. Reviewing the report better prepares the analyst for the type of work to be done and how best conduct their testing.

PEER describes crime reports completed by police officers were at the time sometimes written with a bit of humor laced in the narrative. She did not know if the writings were meant to be interpreted as odd or funny or if it just sounded that way to the reader. When a narrative seemed odd or humorous to the lab employee, they would read it out loud to the others in lab. PEER stated she didn't recall anyone reading out loud any 'gross cases' to the group of lab employees.

PEER stated she had a specific event regarding BROWN that has always stood out in her mind. PEER recalled a time when she and BROWN were the only two people in the lab. BROWN called out to PEER and asked her if she wanted to hear a case. PEER thinking it was going to be a funny case agreed. BROWN reached into his desk drawer and pulled out a report and began reading out loud. PEER said it was a violent sexual assault case and while listening to the case, was wondering when the humor was going to come out. As BROWN read the case out loud, it just kept getting worse.

PEER recalled the case involved a male suspect and two female victims. She recalled the male was armed with some sort of weapon and he forced the women to another location where he assaulted them. She stated the armed man forced the women to also perform sex acts on each other. The male eventually joined in and sexually assaulted the females.

PEER recalled the story as sounding like a really bad porn novel. She stated there was nothing funny about the report and that it was very violent. PEER said the power the man was displaying over the women was very clear.

At some point, PEER asked BROWN why he read that report to her. She said it wasn't funny at all.

PEER said BROWN became nervous when confronted.

PEER became concerned that BROWN even saved a report like that in his desk especially became BROWN was not working sexual assaults at that time and analysts were not allowed to keep reports at their desk. PEER surmised BROWN worked the case either before she was assigned to work sexual assaults or that he came across the case and saved a copy for himself. PEER said reports were kept in a central filing system not at an analyst's desk. PEER stated a report like the one he read to her that day would have never been read out loud to the lab group as a whole. PEER, stated after that day she viewed BROWN as "creepy" and she was not comfortable around him. PEER said she felt like he waited for her to be alone for the opportunity to read her the report.

PEER told me she recalled, around the time the lab started moving into the new headquarters building located at 1401 Broadway, an incident in which BROWN brought a pornographic movie to work. According to PEER, BROWN invited several of the male lab employees into the mezzanine area of the old headquarters building to watch the movie. PEER told me she recalled Bill LOZNYCKY was one of the lab employees who saw the movie. She further stated LOZNYCKY commented that the movie was sick and was beyond a normal pornographic movie. On November 19, 2013, I asked LOZNYCKY about watching this movie. LOZNYCKY stated he did not watch a pornographic movie with BROWN at work and denied knowing anything about it.

PEER stated she recalled another incident that occurred sometime after 1986, where BROWN was busted by the Vice Unit for taking nude photographs. PEER said the rumor was all over the lab, but she

wasn't sure what, if anything was done by supervision.

PEER said she recalled a time when BROWN was pulled of doing casework in the Serology Unit. PEER said she didn't know if it was because of his reputation or poor work performance. PEER believed BROWN left the department by the choice either quitting or being terminated.

According to PEER the lab started doing DNA casework in 1992. PEER and O'DONNELL were the originating members of the newly formed DNA division of the lab. Several years later, the lab started collecting lab employees DNA swabs and placing them in the local CODIS database in order to deal with cross contamination issues.

PEER mentioned a friend of hers, Debbie BURGER, a retired San Diego Police Detective, saw BROWN walk out of the F Street Bookstore. BROWN was walking out of the book store during normal working hours, dressed in a suit, holding a briefcase, and his zipper was down. PEER said BURGER made a comment to BROWN and he seemed flustered at being seen. PEER directed me to contact BURGER to get the story first hand.

On October 25, 2013, I met with retired Police Detective Debbie BURGER. I met her in the Homicide Unit office to conduct my interview.

BURGER stated she started working for the San Diego Police Department's Crime Lab in February of 1989. She was a Crime Scene Specialist and worked around BROWN during that time. She recalled BROWN as someone that would 'lurk around' the Crime Scene Specialist area, an area he was not assigned to work. She said he would just quietly come in and next thing you knew he was standing over you. BURGER said she was never comfortable around him

and she tried to avoid him. BURGER stated she heard of his reputation, but had no firsthand knowledge.

In November of 1994, BURGER began working as a sworn Police Officer for the San Diego Police Department. In 1997, she was assigned to Central Division. Her assigned patrol area was the downtown area The patrol division was eventually relocated out of police headquarters into the new Central Division station in 1998/1999. While assigned to the patrol division, BURGER was required to wear a San Diego Police Officer uniform and drive a marked San Diego Police vehicle.

During this time, BURGER was assigned to work the downtown area of San Diego and worked with a P.E.R.T. Clinician (Psychiatric Evaluation Response Team). BURGER recalled being parked near the entrance of the F Street Adult Bookstore, either writing a report or working on her computer inside her marked patrol car. She looked up toward the entrance of the bookstore and saw BROWN walking out of the front door. She noticed BROWN dressed in a suit and holding a briefcase. She recalled it was near the lunch hour. BURGER stated she quickly noticed BROWN'S pants zipper was down. BURGER called out to BROWN and asked what he was doing. BROWN stated he was on his way back to work from court. BURGER stated BROWN looked embarrassed and red-faced. BURGER never said anything to BROWN about his zipper being down. This concluded my interview of BURGER.

MEDIA COVERAGE

The murder of Claire BOUGH often been compared in the news media to the murder of 15 year

old Barbara NANTAIS. NANTAIS was murdered on August 13, 1978 at Torrey Pines State Beach near lifeguard tower #7. Similarly to the HOUGH murder, NANTAIS was a teenager who was visiting San Diego, she was found nude, strangled, beaten and her breast was mutilated (her nipple on her right breast was nearly completely removed). NANTAIS was sexually assaulted and her cause of death was strangulation. In the NANTAIS case, her boyfriend, James ALT, was on the beach with her at the time of the murder. He sustained significant life threatening injuries to his head. ALT survived his injuries, but has no memory of what happened to cause Barbara's death. ALT is a vocal advocate of Barbara's, frequently giving interviews to various news stations in the hope it will generate a new lead and identify who killed Barbara.

The similarities in both cases, as well as the vocalization of James ALT, continues to draw attention in the local and national news media. I conducted online searches regarding the murder of Barbara NANTAIS. I watched a Channel 7/39 San Diego news video dated May 2013 regarding the murder of Barbara NANTAIS. The Channel 7/39 San Diego new story included the similarities in the Claire HOUGH murder. The story suggested the cases may have been perpetrated by the same individual.

During my online search I found a February 2013 story in The Huffington Post titled "Barbara Nantais and Claire Hough Cold Cases Reopened with San Diego Police Ordering DNA Tests." Attached to the story on the website, is a video from a local San Diego KFMB news personality in which James ALT is interviewed about the murder of Barbara NANTAIS. The news personality references the Claire HOUGH murder and states the cases "may or may not be

related."

I located an online video titled "San Diego's Most Wanted The FBI Files" dated August 25, 2012. This video references the NANTAIS case and the Claire HOUGH case stating they "may or may not" be related. James ALT gives an interview in which he gives his opinion that the cases are related. To date there is no definitive evidence linking these cases.

On November 23, 2013, I "Google searched" "Barbara Nantais." I noticed immediately that both Barbara NANTAIS'S photo and Claire HOUGH'S photo appears. There were numerous media related articles regarding both murders.

CONFIRMATION OF BROWN'S RESIDENCE AND VEHICLES

I conducted records inquiries into Kevin BROWN. His California Driver's License lists his home address as 263 Vista Del Mar Court, Chula Vista, California as of February 13, 2010. BROWN'S California Drivers License lists him as male, brown hair, brown eyes, 6 feet 4 inches in height and 198 pounds. I conducted a driver's license inquiry and obtained his California Driver's License photo dated September 13, 2005. I conducted a Department of Motor Vehicles inquiry and learned BROWN has two vehicles registered to him: a 2011 Ford pickup truck, California License Plate 10925B1 and a 2008 Honda Civic, California License Plate 6ELE632.

I also conducted records inquiries on Rebecca BROWN, Kevin BROWN'S wife. I conducted a driver's license inquiry and learned her driver's license number is E0703571 and I also obtained her driver's license photo dated February 15, 2006.

Over the last two weeks I requested the assistance of undercover San Diego Police Detectives to conduct a surveillance of BROWN's home and vehicles. The purpose was to confirm BROWN is maintaining the Chula Vista home as his residence and to confirm the vehicles he currently drives.

I provided California Driver's License photographs of Kevin Brown and Rebecca BROWN along with their home address (previously listed) and vehicle information (previously listed) to Detectives H. HOYTE, #4745, D. GLAZEWSKI, #4596 and M. ESTRELLA, #5109 Detectives HOYTE, GLAZEWSKI and ESTRELLA informed me in a reports dated November 6th and 7th, 2013, that they have observed Kevin BROWN and his wife Rebecca BROWN, come and go from the Chula Vista home on multiple occasions.

Two vehicles have been observed as being at the home on a regular basis. A silver Honda Civic, California License Number 6ELE632 and a black Ford pickup truck, California License Number 10925B1. Both vehicles are currently registered to Kevin and Rebecca BROWN. Additionally, surveillance teams have seen Kevin BROWN driving the black pickup truck on several occasions. Detective Martha GASCA, #5584, also observed BROWN driving the Ford pickup truck during her surveillance of BROWN'S residence.

MEDICAL EXAMINER'S AUTOPSY INTERPRETATION AND OPINIONS

On December 11, 2013, I along with other members of the San Diego Police Department Homicide/Cold Case Team met with Doctor Glen WAGNER, the Chief Medical Examiner of the County

of San Diego. The meeting with Doctor WAGNER was conducted in a conference room inside the Medical Examiner's Office building, located at 5570 Overland Avenue, San Diego.

The purpose of the meeting was to solicit the expertise of Dr. WAGNER with the interpretation of a portion of the Autopsy Report, specifically the Toxicology Report Section, dated September 18, 1984. During the autopsy vaginal swabs were collected and examined by the M.E.'s Office. These swabs were separate from the swab collected and examined by the San Diego Police Department.

The Toxicology Report indicates the acid phosphatase present on the vaginal swab collected were 37 in I.U. (International Units). Acid phosphatase is an enzyme present in seminal fluid and sperm and is also present in other fluid sources in both men and women. Dr. WAGNER stated he was 'reasonably certain' that the acid phosphatase present was from a male individual. He also stated that add phosphatase markers lower than SO m I.U. is unreliable.

Dr. WAGNER indicated the low level of add phosphatase could be from pre-ejaculation or an incomplete ejaculation. He further stated there are known sexual assault cases documented, where the male suspect fully ejaculated inside the female victim and the acid phosphatase numbers were still low at the time of collection. Dr. WAGNER went on to say that acid phosphatase testing is no longer conducted because of the advancements in DNA technology which is considered more accurate and reliable.

Dr. WAGNER further stated there is nothing to dispute that the sex between BROWN and HOUGH could have occurred at the time of HOUGH'S death and that according to the totality of the case, BROWN

cannot be excluded as a suspect in HOUGH'S murder.

OPINIONS AND CONCLUSIONS

Since there are no identified eyewitnesses to the murder of Claire HOUGH the investigation focused on the available evidence. DNA from three (3) males was identified on items of evidence: two (2) on Claire HOUGH'S clothing and one (1) one on the vaginal swabs taken at autopsy. The two males on her clothing are Ronald TATRO and MARK WILKENSON and both are deceased.

MARK WILKINSON

Mark WILKINSON'S DNA was found only on the crotch area of Claire HOUGH'S panties underneath a panty liner. It is important to note WILKENSON'S DNA was NOT found on the panty liner nor was it found on her vaginal swabs. Additionally, WILKENSON was not known to be in San Diego at the time of Claire HOUGH'S murder. According to San Diego Police Criminalist CORNNACHIA, the level of DNA found was minimal and the DNA could have been deposited on the panties for some time and even survived being washed. It is my opinion that the DNA of WILKENSON was most likely deposited before Claire HOUGH came to San Diego.

SUSPECT: RONALD TATRO

HOUGH'S "Levi's" jeans were tom from the bottom of the zipper to the crotch seam indicating the jeans were forcefully removed. TATRO'S DNA was found on her "Levi's" jeans near the zipper flap.

TATRO'S DNA also was found on the outside of Claire's pants from blood stains. A thorough investigation revealed TATRO was on parole for rape at the time of Claire HOUGH'S murder. Records from 1984 on TATRO existed in his sex registrant file with the San Diego Police Department and in the 1984 unsolved homicide of Carole Defliece, During the Defliece case, TATRO was investigated as a potential suspect (he was never charged and at this point no evidence suggests he is responsible). San Diego Police Detectives conducted a 4th waiver search of his home and van on September 7, 1984, two weeks after Claire HOUGH was murdered. During that search, they took lineup quality photos, which I used to show JAMER.

During my subsequent investigation into TATRO, Detective ADAMS obtained records from the La Mesa, California case for which TATRO was convicted of attempted rape. In a September 16, 1985, Probation Report, written by Probation Officer Jane CHIANESE, TATRO admitted to utilizing the services of prostitutes.

Based on TATRO'S blood being present on Claire's pants, the fact a sharp object was used to sever her breast, TATRO'S violent history against women and his DNA (Blood) being present on the tom portion near the crotch area of her jeans indicating they were forcibly removed, I believe TATRO was present during the murder of Claire HOUGH. Ronald TATRO is now deceased and to my knowledge he was never interviewed regarding his involvement in this case.

SUSPECT: KEVIN BROWN

During the autopsy swabs were taken from HOUGH'S vagina. Kevin BROWN'S DNA was found

on those swabs. The DNA found was in the form of sperm. This indicates Kevin BROWN had sexual intercourse with 14 year old Claire HOUGH.

Kevin BROWN'S DNA was NOT found on Claire HOUGH'S panty liner, in fact the only DNA on the panty liner was Claire HOUGH'S, This would indicate that Claire HOUGH did not become vertical after the sexual intercourse with BROWN because, if she did, there would most likely be spillage from the seminal fluid from inside her vagina onto the panty liner.

According to Clair HOUGH'S best friend, JAMER, Claire HOUGH was faithful to her boyfriend and it would have not been her character to consensually have sex with someone other than him, Additionally, she stated Claire HOUGH was not attracted to older men and would never have had consensual sex with an older man. Also, the photograph of BROWN presented to JAMER was a photocopy of BROWN'S San Diego Police Department Identification photo around the timeframe of the murder. JAMER stated she never saw the man in the photograph while in San Diego and went on to say HOUGH would have never been attracted to a man that age.

JAMER stated Claire HOUGH would not have consensual sex with someone she had just recently met, JAMER told me when she was with Claire HOUGH in San Diego they did not meet anyone, including males. JAMER left San Diego three days before Claire HOUGH was found murdered. After JAMER. left, HOLLAND, and Claire's Grandmother told law enforcement that CLAIRE HOUGH was lonely and complained she didn't meet any new friends.

On Thursday, August 23, 1984, the day before Claire HOUGH was found murdered she spent the day

with her grandparents at the zoo and went to the beach alone in the evening. After returning home at approximately 8:30 p.m. she socialized with her grandparents before going to her room at approximately 9:00 p.m. There is no indication Claire HOUGH had a negative experience at the beach or at another time while in San Diego.

On the Thursday night of her murder Claire HOUGH was last seen by a Circle K employee between 8:30 p.m. and 9:30 p.m. She purchased cigarettes and other items. She appeared to be alone and there was no indication she was under duress or scared.

Based on the above mentioned facts, particularly the violent manner in which HOUGH'S "Levi" jeans were torn, indicating they were forcibly removed, and BROWN'S sperm in her vagina and not on her panty liner, I believe the sexual intercourse BROWN had with Claire HOUGH was not consensual and appears to be contemporaneous to the murder. Furthermore, I think it is unlikely that HOUGH was raped on either Tuesday or Wednesday night by BROWN, then walks alone, in the darkness of night to the beach and is murdered by TATRO.

I also believe this, in part, because I believe it is not likely that Claire HOUGH is raped by BROWN and then on the same night, and in a separate unrelated incident, is murdered by TATRO.

The murder of Claire HOUGH was a highly publicized murder in San Diego. It was in the newspapers and in the nightly television news reports. Included in the various news coverages, were photographs of Claire HOUGH and video of the crime scene. The news coverage continued throughout the 29 years this case has been unsolved including print, news broadcasts, and online coverage. In those 29 years,

there is no indication that Kevin BROWN came forward to advise the police department that he knew Claire HOUGH, or had sexual intercourse with her.

BROWN'S knowledge of DNA and how it is used to identify crimes is extensive due to his previous position in the San Diego Police Crime Lab. I believe he is following the progress in the Claire HOUGH case, the progress of the Barbara NANTAIS case via internet searches, print media. It is also; likely BROWN is monitoring and keeping up on current DNA techniques; via on line sources, technical manuals, and other law enforcement correspondences in order to prepare for an eventual break in this case.

I submit that the requested blood and/or saliva samples are clearly necessary for analysis for probable cause purposes as well as evidentiary purposes. Such samples may also be used for analysis using more traditional scientific techniques. Samples taken from the suspect as described will be compared against that found on the victim. In removing the blood and other samples from the suspect, I will use medically accepted practices, utilize the services of a trained person in drawing the blood, and use the least amount of force necessary to collect the described evidence.

The DNA evidence I am seeking can be used to exclude suspects from the crime as well as help identify the perpetrator.

Furthermore, my training and experience indicates persons in control of premises leave evidence of their identification such as fingerprints and handwritings, which are subject to expert identification, routinely in the normal course of living within their premises. Also, clothing, photographs, canceled mail and the like are routinely maintained in a person's premises as necessary and incident to

maintaining such premises. In addition, by answering phone calls at the premises while the search warrant is being executed, I expect to talk with persons who are familiar with the persons in control of the premises and will so testify. Such callers and described dominion and control evidence is vital to proving control over the described property to be seized.

I believe BROWN and TATRO possibly met while traveling in similar circles. BROWN was open with fellow lab employees regarding the frequency in which he patronized the local strip club. It is commonly known among law enforcement, many times stripper often engage in prostitution.

In the September 16, 1985, Probation Report, written by Probation Officer Jane CHIANESE, TATRO admitted to utilizing the services of prostitutes.

I believe it is possible BROWN may have kept in contact with TATRO and may have even kept TATRO informed of the Police Department's progress or lack of progress in this investigation. I believe this information can be ascertained, via BROWN'S computers, digital storage media, and cellular devices. I also believe there may be hand-written records that predate the use of personal computers and other electronic devices where this information can also be found. Since Ronald TATRO died in August of 2011, I believe some of the contacts between Kevin BROWN and Ronald TATRO could be stored on older cell phones, computers, cameras, negatives, film and storage media devices that are no longer being used.

I believe, based on past practices, BROWN may still be keeping older, graphic San Diego Police Department Sexual Assault Crime Case Reports or even reports relating to this homicide investigation.

SPECIAL MASTER REQUEST

On December 17, 2013, I learned John M, Blakely, the brother in law of Kevin Brown, is living in the residence which is the subject of this search warrant. Mr. Blakely is an attorney and is currently listing this residence as his place of business with the State Bar of California. Accordingly, I believe a Special Master should be appointed by this Court pursuant to Penal Code Section 1524 (c)(1) to conduct the search of the residence. I intend to comply with the provisions of Section 1524(c) and 1524(e) as well as all other laws during the execution of the search warrant.

SEALING REQUEST

Pursuant to People v. Hobbs (1994) 7 Cal.4th 948, I respectfully request this affidavit and search warrant be sealed pending further order of court. Without sealing, the affidavit and search warrant will become a matter of public record within ten days (Penal Code section 1534(a)). The sealing requested herein, however, is not based on denying discovery to the defendants when and if they are charged, but is being requested to merely prohibit public disclosure which could surely undermine the continuing investigation herein. Much of the information that is contained in this affidavit has not been made public and has not been made available to the media. Putting this information out in the public domain, will jeopardize the investigation by advising the public of the information being sought. Doing so could cause the suspect to dispose of evidence that he is otherwise keeping while under the belief that he is not under suspicion. Additionally, should BROWN not be charged at the

conclusion of this investigation and this information be released to the public, his reputation could be permanently damaged. There is no other way, but for sealing the entire affidavit and search warrant, to ensure that all the information regarding the investigation remain private.

Therefore, based on my training and experience and the above facts, I believe that I have substantial cause to believe the above described property, or a portion thereof, will be at the above described premises when the warrant is served.

Based on the aforementioned information and investigation, I believe that grounds for the issuance of a search warrant exist as set forth in Penal Code 1524.

I the affiant, hereby pray that a search warrant be issued for the seizure of said property, or any part thereof, from said premise, good cause being shown therefore, and that the same be brought before this magistrate or retained subject to the order of this Court. Additionally, 1 also request any receipt and inventory of evidence taken by the Special Master which may belong to John M. Blakely, be delivered to the Court pursuant to Penal Code Section 1524(c)(2), and the evidence seized pursuant to the warrant be sealed by the Special Master and held by me and/or any other designated peace officer subject to further order of Court pursuant to Penal Code Section 1536.

This affidavit has been reviewed for legal sufficiency by Deputy District Attorney Andrea FRESHWATER.

Given under my hand and dated this 3rd day of January, 2014.

_____

Michael Lambert – Affiant

Subscribed and sworn to before me
this ___ day of January, 2014,
at _____ a.m./p.m.

_____
Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO

STATE OF CALIFORNIA,)	**ORDER TO SEAL AFFIDAVIT AND SEARCH WARRANT**
(ss.	
COUNTY OF SAN DIEGO)	

I have read and considered the **AFFIDAVIT FOR SEARCH WARRANT.**

Pursuant to California Rules of Court 2.550(d), the court expressly finds that

1. There exists an overriding interest that overcomes the right of public access to the record;
2. The overriding interest supports sealing the record;
3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
4. The proposed sealing is narrowly tailored; and
5. No less restrictive means exists to achieve the overriding interest.

GOOD CAUSE appearing therefore, IT IS HEREBY ORDERED that the AFFIDAVIT AND SEARCH WARRANT be sealed pending further order of court

DATED: _____.

_____
Judge of the Superior Court

IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STATE OF CALIFORNIA,)

(ss.

COUNTY OF SAN DIEGO)

AFFIDAVIT FOR UNSEALING SEARCH WARRANT

No. 45973

I, Paul Rorrison, ID# 4305, do on oath, say the following on this 31st day of October, 2014: that I am a peace officer employed by the San Diego Police Department (SDPD).

I am assigned as lieutenant for the Cold Case Homicide Unit. As such, I am familiar with the investigation into the murder of Claire Hough. As part of the investigation, on January 3rd, 2014 a new warrant was obtained to search the premises located at 263 Vista Del Mar Court, Chula Vista, California. (Warrant number 45973) This warrant included the provision for the appointment of a special master.

At that time, reasons existed to request the warrant be sealed pending further court order. That request was granted. The reasons for sealing the warrant no longer exist and your affiant is requesting the warrant be unsealed at this time.

I declare under the penalty of perjury that the foregoing is true. Executed in San Diego County, California, on this 31st day of October, 2014

_____

Paul Rorrison, #4305

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

STATE OF CALIFORNIA,)	**ORDER TO UNSEAL AFFIDAVIT FOR**
(ss.	**SEARCH WARRANT 45973**
COUNTY OF SAN DIEGO)	

I have read and considered the AFFIDAVIT FOR UNSEALING OF SEARCH WARRANT 45973. Pursuant to California Rules of Court 241.1 (d), the court expressly finds that:

1. There no longer exists an overriding interest that overcomes the right of public access to the record.

GOOD CAUSE appearing therefore, IT IS HEREBY ORDERED that the AFFIDAVIT be unsealed.

DATED _____.

_____
Judge of the Superior Court