22CR003712

Flores, Raul

2 of 6

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FILED:08/16/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

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District Attorney
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Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	CASE NO. 21F-02402-A & 21F-02402 -B
vs.	~~[PROPOSED]~~ ORDER SEALING PUBLIC RECORDS
PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendant.	

Based upon the foregoing Affidavit and Request, IT IS HEREBY ORDERED that:

1. The People's Motion To Exclude Testimony Regarding August 12, 2021 Disclosures and the Affidavit in support of the Motion To Exclude Testimony Regarding August 12, 2021 Disclosures are sealed and lodged with the Court;

2. No other sealing is ordered pursuant to the People's request; and

3. Defense Counsel for Paul Ruben Flores, Robert M. Sanger and his office and Defense Counsel for Ruben Ricardo Flores, Harold V. Mesick and his office are permitted to view the sealed records.

Dated: August 16, 2021

Craig Van Rooyen

THE HONORABLE CRAIG B. VAN ROOYEN
JUDGE OF THE SUPERIOR COURT

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8/16/2021 3:30 PM
SAN LUIS OBISPO SUPERIOR COURT
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Deputy Clerk

SANGER SWYSEN & DUNKLE
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Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

PROOF OF SERVICE OF: NOTICE OF MOTION AND MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE (PENAL CODE SECTION 1424); MEMORANDUM OF POINTS AND AUTHORITIES

Hon. Craig B. Van Rooyen

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY	FOR COURT USE ONLY
ROBERT M. SANGER, SBN 058214 SANGER SWYSEN & DUNKLE 222 E. CARRILLO STREET SUITE 300 SANTA BARBARA CA 93101 805-962-4887 ATTORNEY FOR: DEFENDANT	
SAN LUIS OBISPO SUPERIOR, SAN LUIS OBISPO COURT - CENTRAL 1035 PALM ST., RM 385 SAN LUIS OBISPO, CA 93408	
PLAINTIFF/PETITIONER: THE STATE OF CALIFORNIA DEFENDANT/RESPONDENT: PAUL RUBEN FLORES	CASE NUMBER: **21F-02402-A**
PROOF OF SERVICE OF SUMMONS	REF NO. OR FILE NO.: **C39499/FLORES**

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of the:

NOTICE OF MOTION AND MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE (PENAL CODE 1424); MEMORANDUM OF POINTS AND AUTHORITIES

3. a. Party served:

OFFICE OF THE ATTORNEY GENERAL

b. Person served:

JANE DOE (REFUSED TO GIVE NAME)
AGE: 27 HEIGHT 5'9 WEIGHT: 140 HAIR: BLK SEX: F RACE: HISP

Title:

FRONT OFFICE CLERK

4. Address where party was served:

300 S. SPRING ST.
#1700
LOS ANGELES CA 90013

5. I served the party

a. BY PERSONAL SERVICE. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party
(1) ON: 08/11/21 (2) AT: 12:59 PM

6 The "Notice to the Person Served" was completed as follows:

PLAINTIFF/PETITIONER:	THE STATE OF CALIFORNIA	CASE NUMBER:
DEFENDANT/RESPONDENT:	PAUL RUBEN FLORES	21F-02402-A

on behalf of : OFFICE OF THE ATTORNEY GENERAL

under other: A public entity (CCP 416.50)

7. **Person who served papers**
   a. Name: BUD A. KOOGLE
   b. Address: P.O. 91985 LONG BEACH, CA 90809
   c. Telephone Number: 562/595-1337
   d. The fee for service was: 79.10
   e. I am:
      (3) registered California process server:
         (i) Employee or independent contractor.
         (ii) Registration No.: 2018298656 Expires: 08/02/21
         (iii) County: LOS ANGELES
8. **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

08/12/21

BUD A. KOOGLE

SIGNAL ATTORNEY SERVICE, INC., LOS ANGELES CO. REG# 4943, EXPIRES

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8/16/2021 3:30 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SANGER SWYSEN & DUNKLE
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Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

PROOF OF SERVICE OF: 1) NOTICE OF MOTION AND MOTION FOR PEACE OFFICER PERSONNEL RECORDS, PRIOR COMPLAINTS AND BRADY MATERIAL; MEMORANDUM OF POINTS AND AUTHORITIES; AND 2) [PROPOSED] ORDER

Hon. Craig B. Van Rooyen

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of San Luis Obispo. My business address is P.O. Box 3246 San Luis Obispo, CA 93403.

On August 16, 2021, I served the foregoing documents entitled:

1) NOTICE OF MOTION AND MOTION FOR PEACE OFFICER PERSONNEL RECORDS, PRIOR COMPLAINTS AND BRADY MATERIAL; MEMORANDUM OF POINTS AND AUTHORITIES;
2) [PROPOSED] ORDER

on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

____ **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

_X_ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed August 16, 2021, at Santa Barbara, California.

Ramona Messina

SERVICE LIST

Office of County Counsel
1055 Monterey St., # D320
San Luis Obispo, CA 93408-1003

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Attorneys for Defendant
Paul Ruben Flores

ELECTRONICALLY
FILED
8/17/2021 7:04 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

MEMORANDUM RE SEALING OF DOCUMENTS FILED

Date: August 18, 2021
Time: 9:00 a.m.
Dept.: 5

Hon. Craig B. Van Rooyen

MEMORANDUM OF POINTS AND AUTHORITIES

Filed concurrently herewith is the Supplemental Declaration of Robert M. Sanger Regarding Pending Motions and Status of Discovery. It was the practice prior to the commencement of the preliminary hearing due to the protective order for counsel to file motions and other documents conditionally under seal subject to an application to file under seal. Counsel for Paul Flores does not believe that there is a basis to file the above-referenced document under seal and, therefore, will not file an application to file under

seal. However, the Court has indicated that it would assess whether filings should be sealed prior to making them public.

Dated: August 17, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On August 17, 2021, I served the foregoing document entitled: **MEMORANDUM RE SEALING OF DOCUMENTS FILED** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

_X_ **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed August 17, 2021, at Santa Barbara, California.

Jake Swanson

Jake Swanson

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Electronically
FILED:08/18/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE

Date: August 25, 2021
Time: 9:00 a.m.
Dept: 5
Judge: The Honorable Craig Van Rooyen

The Office of the Attorney General hereby submits the following opposition to Defendant Flores' motion to disqualify the San Luis Obispo County District Attorney's Office.

INTRODUCTION

Defendant contends that the elected San Luis Obispo County District Attorney, every division of his office, and his entire staff of prosecutors, must be recused because several members of the prosecution team, including Deputy District Attorney Chris Peuvrelle, have shown support for the victim, Kristin Smart, by wearing articles of clothing containing the color purple during the preliminary hearing. (Flores Mot. at 6-7.)

The Attorney General opposes recusal because defendant has failed to demonstrate any conflict of interest, i.e., a reasonable possibility that the San Luis Obispo County District Attorney's Office ("SLODA") in its entirety might not exercise (or has not exercised) discretionary functions in an evenhanded manner, and certainly has not established that any conflict alleged is so grave as to render it unlikely he will receive fair treatment, as required by Penal Code[1] section 1424.

I. RECUSAL IS PERMITTED IN ONLY A NARROW CATEGORY OF CASES

A. Defendant Must Show a Conflict of Interest So Serious As to Render It Unlikely He Will Receive a Fair Trial

The standards governing a recusal motion are well settled. Section 1424 provides that a motion to recuse a district attorney or an entire prosecutorial agency "may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial." Section 1424 establishes a two-part test: The first part asks whether there is a conflict of interest. A "conflict" exists "whenever the circumstances of a case evidence a reasonable possibility that the District Attorney's office may not exercise its discretionary function in an evenhanded manner." (*People v. Conner* (1983) 34 Cal.3d 141, 148; see also *People v. Gamache* (2010) 48 Cal.4th 347, 362; *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711, 713; *People v. Vasquez* (2006) 39 Cal.4th 47, 56; *People v. Snow* (2003) 30

[1] All further statutory references are to the Penal Code unless otherwise specified.

Cal.4th 43, 86-87; *Hambarian v. Superior Court* (2002) 27 Cal.4th 826, 833; *People v. Millwee* (1998) 18 Cal.4th 96, 122-124; *People v. Eubanks* (1996) 14 Cal.4th 580, 592.)

If such a conflict is shown, the second step then asks: "Was this conflict so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings?" (*Conner*, *supra*, 34 Cal.3d at p. 147.) Thus, while a "conflict" exists whenever there is a "reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner," the conflict is disabling only if it is "so grave as to render it unlikely that defendant will receive fair treatment." (*Eubanks*, *supra*, 14 Cal.4th at p. 594, citations omitted; accord, *Gamache*, *supra*, 48 Cal.4th at p. 363.)

Put another way, even if a court determines there is a "'reasonable possibility' that a District Attorney's Office might not exercise, or might not have already exercised, its discretionary function in an evenhanded manner," "such a determination would satisfy only the first part of the two-part test outlined in *Eubanks* and *Hambarian*," and recusal must nevertheless be denied unless the defendant has also made a competent showing that "prosecution by that office would render fair treatment unlikely." (*Snow*, *supra*, 30 Cal.4th at p. 86.) "[T]he two parts of the test are to some extent continuous rather than discrete, as many factors relevant to the overarching inquiry may be framed in terms of their effect on the existence of a conflict or its gravity." (*Haraguchi*, *supra*, 43 Cal.4th at p. 718, fn. 13.)

Section 1424 was enacted in response to the substantial increase in unnecessary prosecutorial recusals allowed under the prior, abrogated "appearance of conflict" standard of *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255. (See *Vasquez*, *supra*, 39 Cal.4th at pp. 58-59; *Eubanks*, *supra*, 14 Cal.4th at p. 591 & fn. 3; *People v. Merritt* (1993) 19 Cal.App.4th 1573, 1578.) Aside from its purpose of "reducing the number of disqualifications" (*Eubanks*, *supra*, 14 Cal.4th at p. 591, fn. 3), section 1424 was drafted to eliminate an obvious problem inherent in the prior recusal standard: what may appear "bad" to an uninformed observer may not influence – or, more importantly, may not have any real possibility of influencing – the prosecutorial decision-making process. (*People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1486

[recusal is not appropriate based upon "the trial court's feeling that it would be cleaner or better for the Attorney General to handle the case" or even "more appropriate"].)

In sum, section 1424 requires the defendant to make an affirmative, competent, and *factual* showing of the "real, not merely apparent, potential for unfair treatment." (*Vasquez*, *supra*, 39 Cal.4th at p. 56; *Howarth v. Superior Court* (2010) 50 Cal.4th 372, 387 ["The application of that test appropriately is characterized as primarily factual"]; *Eubanks*, *supra*, at p. 592; *Conner*, *supra*, 34 Cal.3d at p. 148.) The focus thus must be exclusively on the legal recusal standard – whether defendant has come forward with competent evidence of an actual likelihood he will not receive a fair hearing if the District Attorney remains the prosecutor.

B. Defendant's Showing of a Disabling Conflict Must Be "Especially Persuasive" Because He Seeks Recusal of an Entire Prosecutorial Agency

The showing of a disabling conflict must be "especially persuasive" when, as here, the question is whether there should be recusal of an elected District Attorney and his entire office, rather than merely one prosecutor in the office. (*People v. Hamilton* (1988) 46 Cal.3d 123, 139; see also *Gamache*, *supra*, 48 Cal.4th at pp. 365-366; *Eubanks*, *supra*, 14 Cal.4th at p. 594, fn. 6; *People v. Hamilton* (1989) 48 Cal.3d 1142, 1156.) Recusal of an entire office is a "serious step" (*Hamilton*, *supra*, 48 Cal.3d at p. 1156), and "[t]he threshold necessary for [doing so] is higher than that for an individual prosecutor" (*People v. Polanski* (2009) 180 Cal.App.4th 507, 562). "Disqualification of an entire prosecutorial office from a case is disfavored by the courts, absent a substantial reason related to the proper administration of justice." (*People v. Hernandez* (1991) 235 Cal.App.3d 674, 679-680; *Merritt*, *supra*, 19 Cal.App.4th at pp. 1578-1579.) The burden of making the requisite showing rests with the defendant. (*Hamilton*, *supra*, 46 Cal.3d at p. 140; see also *Haraguchi*, *supra*, 43 Cal.4th at p. 709; *Polanski*, *supra*, 180 Cal.App.4th at p. 562.)

Thus, even assuming a conflict exists as to a particular prosecutor and the conflict is so grave as to render it unlikely the defendant will receive fair treatment during all portions of the criminal proceedings, it is nonetheless impermissible to recuse the entire prosecutorial staff of the district attorney's office unless the defendant has also come forward with "substantial evidence" that the alleged conflict has necessarily spread and affected everyone in the office. (See

Hamilton, supra, 46 Cal.3d at p. 140.) Recusal of an entire office is permitted only where the conflict has spread such that it precludes *any* deputy from prosecuting the case in an evenhanded manner. (*Id.* at p. 139; accord, *Merritt, supra*, 19 Cal.App.4th at pp. 1578-1579.)

Where the recusal would extend to the entire staff of prosecutors, rather than only one or more individual members, the granting of the recusal motion would involve a commitment of resources of a second prosecutorial agency, also at public expense, and would inevitably require a costly duplication of work. In this regard, cautious deliberation as to the magnitude of the perceived conflict of interest is especially critical. (*People ex rel. Younger v. Superior Court (Rabaca)* (1978) 86 Cal.App.3d 180, 204; see also *Eubanks, supra*, 14 Cal.4th at p. 593, fn. 6.)

In sum, there must be "no other alternative available but to recuse the entire District Attorney's Office." (*Merritt, supra*, 19 Cal.App.4th at p. 1579.)

II. RECUSAL SHOULD NOT BE GRANTED BECAUSE DEFENDANT HAS FAILED TO SHOW ANY DISABLING CONFLICT OF INTEREST OR THAT ANY ALLEGED CONFLICT IS ESPECIALLY PERSUASIVE

Defendant contends that the SLODA cannot prosecute him fairly and impartially because a deputy district attorney assigned to the instant matter, a district attorney investigator, a district attorney victim witness coordinator, and a detective, all wore an article of clothing containing the color purple on at least one occasion during the preliminary hearing. (Mot. at 6-7.) Defendant's claim fails to show that the SLODA has a disabling conflict of interest.

Defendant does not address any specific actions by DDA Peuvrelle which would amount to misconduct and/or a conflict of interest warranting recusal. "In general, a prosecutor's conduct in pursuit of [his] duties, even if erroneous, will not support disqualification." (*People v. Parmar* (2001) 86 Cal.App.4th 781, 809, citing *Millwee, supra*, 18 Cal.4th at p. 123; *People v. Turner* (1994) 8 Cal.4th 137, 162-163, overruled on other grounds in *Griffin, supra,* 33 Cal.4th at p. 555, fn. 5.) In every case, the prosecutor has a "special obligation" to "promote justice." (*People v. Kasim* (1997) 56 Cal.App.4th 1360, 1378; see also *Conner, supra*, 34 Cal.3d at p. 148; *Johnson v. Superior Court* (1975) 15 Cal.3d 248, 255; *In re Ferguson* (1971) 5 Cal.3d 525, 531; *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1181; *National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 764.) The obligation to promote justice in situations which point

beyond a reasonable doubt to a defendant's guilt also necessarily implies every prosecutor has an interest adverse to that of every guilty defendant. As noted by the United States Supreme Court, the prosecutor is "the 'servant of the law, the two-fold aim of which is that guilt shall not escape nor innocence suffer.'" (*United States v. Agurs* (1976) 427 U.S. 97, 111.) That a prosecutor is personally convinced of a defendant's guilt—as, of course, a prosecutor is "obliged" to be—and that he or she has expressed this conviction, does not create a recusable conflict of interest. (*People v. Eubanks, supra,* 14 Cal.4th at p. 590.) As the California Supreme Court explained in *People v. Bryant* (2014) 60 Cal.4th 335: As we explained in *Vasquez,* . . . "[d]istrict attorneys, as people, inevitably hold individual personal values and allegiances and feel varying emotions relating to their work. As public officeholders, they may also have political ambitions or apprehensions. But that a public prosecutor might feel unusually strongly about a particular prosecution or, inversely, might hesitate to commit to a prosecution for personal or political reasons does not inevitably indicate an actual conflict of interest, much less a constitutional bar to prosecution." (*Vasquez, supra,* 39 Cal.4th at p. 63.) "Zealous advocacy in pursuit of convictions forms an essential part of the prosecutor's proper duties and does not show the prosecutor's participation was improper." (Id. at p. 65.) Recusal is justified only when the prosecutor has "an interest in the case extraneous to [his or her] official function." (*People ex rel. Clancy v. Superior Court* (1985) 39 Cal.3d 740, 746.)

Courts will not recuse an entire prosecutorial agency, or even a specific prosecutor, for simple misconduct absent "other evidence of overriding bias" that would warrant disqualification. (*Millwee, supra,* 18 Cal.4th at p. 123, citing *Turner, supra,* 8 Cal.4th at pp. 162-163 [finding recusal was properly denied due to lack of evidence that the prosecutor who had committed reversible error during defendant's first trial would commit misconduct at retrial]; *Hamilton, supra,* 48 Cal.3d at pp. 1155-1156 [finding that the prosecutor's ex parte contacts with a represented defendant did not warrant recusal absent evidence of actual antagonism toward the defense]; see also *Merritt, supra,* 19 Cal.App.4th at p. 1993 [reversing order recusing entire District Attorney's Office, despite the fact that a district attorney investigator (1) had withheld possibly exculpatory information from the defense (and the prosecution), (2) had engaged in

"sexual impropriety" toward a material witness, (3) was "guilty of the appearance of 'gross misconduct,' if not an actual crime", and (4) might have been a witness in the case].)

Here, defendant fails at the outset to demonstrate any misconduct. Defendant has not identified any caselaw, nor is the Attorney General aware of any, that stands for the proposition that a prosecutor commits misconduct by simply wearing a particular color, which conveys no message other than general support for a crime victim, during a proceeding that is not before a jury. Indeed, defendant fails to discuss how he was prejudiced by the presentation of the color purple at his preliminary hearing. In fact, his own counsel appears to have worn the color purple as well at one point in the proceedings. (See Flores Mot. Exhibit 627 at 1, 5.)

More importantly, even if DDA Peuvrelle had engaged in some sort of misconduct, there is no conflict because there has been no evidence to support or suggest that DDA Peuvrelle exercised "overriding bias" or antagonism toward defendant or that DDA Peuvrelle might not exercise his discretionary function in an evenhanded manner. Further, defendant cannot show that DDA Peuvrelle acted in any way that would render it unlikely that defendant will receive a fair trial because the complained of conduct by DDA Peuvrelle occurred *pretrial* and not before a jury. (See *People v. Espinoza* (1992) 3 Cal.4th 806, 820 ["[C]onduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury."], internal quotation marks omitted.) In sum, defendant fails to show DDA Peuvrelle engaged in the use of deceptive or reprehensive methods or demonstrated "overriding bias" or antagonism toward him; accordingly, recusal of DDA Peuvrelle is not warranted.

Finally, assuming a conflict was shown as to DDA Peuvrelle, this Court could erect an "ethical screen" around it, thereby eliminating any prejudicial effect of the alleged conflict. (See, e.g., *People v. Clark* (1993) 5 Cal 4th 950, 1000, disapproved on other grounds in *Doolin, supra*, 45 Cal.4th at p. 421, fn. 22; *People v. Christian* (1996) 41 Cal.App.4th 986, 998; *Hernandez, supra*, 235 Cal.App.3d at p. 680; *Love, supra*, 111 Cal.App.3d at p. 374.) Thus, even assuming DDA Peuvrelle's conduct warranted recusal in this case, which it does not, there is simply nothing to suggest that the entire district attorney's office should also be recused. Defendant has

not made an affirmative, competent, and *factual* showing of the "real, not merely apparent, potential for unfair treatment." (*Vasquez, supra*, 39 Cal.4th at 56.) Defendant has utterly failed to make the requisite showing of an especially persuasive conflict. (*Hamilton, supra*, 46 Cal.3d at p. 140.)

CONCLUSION

Defendant has not demonstrated a reasonable possibility that DDA Peuvrelle has not exercised or may not in the future exercise discretionary functions in an evenhanded manner, nor has he established that any conflict alleged is so grave as to render it unlikely he will receive fair treatment. Accordingly, the Attorney General respectfully requests that recusal be denied.

Dated: August 18, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN PITHEY
Senior Assistant Attorney General
WYATT E. BLOOMFIELD
Deputy Attorney General

SETH P. MCCUTCHEON
Deputy Attorney General
Attorneys for the Attorney General, State of California

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64461919.doc

DECLARATION OF SERVICE BY E-MAIL

Case Name: **People v. Paul Ruben Flores**
No.: **21F-02402-A**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service.

On **August 18, 2021**, I served the attached

OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE

by transmitting a true copy via electronic mail as below:

Robert M. Sanger, Attorney at Law
Sarah S. Sanger, Attorney at Law
Email: RMSteam@sangerswysen.com

Christopher Peuvrelle
Deputy District Attorney
cpeuvrelle@co.slo.ca.us

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **August 18, 2021**, at Los Angeles, California.

Nora Fung
Declarant

/s/ Nora Fung
Signature

SPM: nf
LA20201603068
64461913.doc

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FILED
8/18/2021 2:32 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

DAN DOW (Bar No. 237986)
DISTRICT ATTORNEY
Crystal Seiler (Bar No. 261629)
Deputy District Attorney
Office of the District Attorney
County Government Center
San Luis Obispo, CA 93408
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Attorneys for the People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

PAUL FLORES,

Defendant.

Case No. 21F-02402-A

OPPOSITION TO DEFENDANT PAUL FLORES'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE

[Penal Code Section 1424]

Date: August 25, 2021
Time: 9:00 a.m.
Dept.: 5

I

INTRODUCTION

On August 11, 2021, Defendant Flores[1] filed a Motion to Recuse the District Attorney's Office pursuant to Penal Code section 1424. Defendant Flores relies primarily on the assertion that members of the prosecution team have worn articles of clothing with the color purple in them at times during the preliminary hearing to support his assertion that (a) a conflict of interest exists, (b) the conflict is so serious that it would render it unlikely that Defendant Flores would receive a fair trial, and (c) the conflict is so pervasive that any prosecutor assigned to the case would be influenced by it. Even if the court were to take the speculative

[1] Codefendant Ruben Flores has not joined the instant motion and therefore any mention of "Defendant Flores" in this opposition is in reference to Defendant Paul Flores.

allegations regarding purple attire in the motion as true, they do not demonstrate a conflict much less establish the real potential for unfair treatment, nor have they made a prima facie showing to warrant an evidentiary hearing, and the Court should deny the motion to recuse on the merits based on the written submissions of the parties.

II

LAW AND ARGUMENT

A. A COURT CANNOT GRANT RECUSAL UNLESS A DEFENDANT DEMONSTRATES A CONFLICT OF INTEREST EXISTS AND THE CONFLICT IS SO GRAVE THAT IT WOULD RENDER IT UNLIKELY THE DEFENDANT WOULD RECEIVE A FAIR TRIAL

"The district attorney is the public prosecutor, except as otherwise provided by law. [¶] The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses." (Gov. Code, § 26500.) The district attorney is chosen by the people to represent them in their public affairs. (Gov. Code, § 24009; *People v. Superior Court (Martin)* (1979) 98 Cal.App.3d 515, 519.) "In every case, we presume the prosecutor has ' "properly and conscientiously discharge[d] [her] duties" [citation], and that "[she] has performed official duty properly [citation]." ' [Citation.]" (*Melcher v. Superior Court* (2017) 10 Cal.App.5th 160, 170.)

Penal Code section 1424[2] governs the standard for a motion to recuse an individual prosecutor or an entire prosecutor's office: "The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial." (Pen. Code, § 1424, subd. (a)(1).) The statute was enacted in 1980 in response to the ruling in *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, in which the California Supreme Court held that a trial court had the statutory authority under Civil Procedure section 128 to disqualify the prosecuting attorney when it found any conflict of interest that might affect or appear to affect the prosecutor's impartiality. (*Id.* at p. 269.) Three years later, responding to "the substantial increase in the number of unnecessary prosecutorial

[2] All further references are to the Penal Code unless otherwise noted.

recusals under the 'appearance of conflict' standard set forth in [*Greer*]," the Legislature adopted Penal Code section 1424 and set forth a new standard of recusal. (*Spaccia v. Superior Court* (2012) 209 Cal.App.4th 93, 103 (*Spaccia*).) "[T]he Legislature made clear in Penal Code section 1424 that a conflict of interest, whether actual or apparent, required recusal under our statutory law only if it bore an *actual likelihood* of leading to unfair treatment" and established both procedures and substantive requirements for such a motion. (*People v. Vasquez* (2006) 39 Cal.4th 47, 58-59, italics in original.) When the Legislature enacted section 1424, it rejected the *Greer* standard for all purposes (*Stark v. Superior Court* (2011) 52 Cal.4th 368, 416-417) and "eliminated the appearance of impropriety as an independent ground for prosecutorial disqualification" (*People v. Eubanks* (1996) 14 Cal.4th 580, 592 (*Eubanks*).)[3]

The test for disqualification under section 1424 has two parts: "(i) is there a conflict of interest?; and (ii) is the conflict so severe as to disqualify the district attorney from acting?" (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711 (*Haraguchi*).) First, the moving party must show a conflict such that the circumstances of a case evidence a reasonable possibility that the assigned prosecutor and/or the entire prosecutor's office may not exercise its discretionary function in an evenhanded manner. (*People v. Conner* (1983) 34 Cal.3d 141, 148.) Second, to rise to the level of disqualification, the conflict must be "so grave as to render it unlikely that the defendant will receive fair treatment during all portions of the criminal proceedings." (*Eubanks*, *supra*, 14 Cal.4th at p. 592, internal quotations omitted.) Section 1424 does not allow disqualification "merely because the district attorney's further participation in the prosecution would be unseemly, would *appear* improper, or would tend to reduce public confidence in the impartiality and integrity of the criminal justice system." (*Id.* at p. 592, italics in original.) Absent a finding of a conflict that compromises a prosecutor's ability to pursue a

[3] After the enactment of section 1424, a Court of Appeal characterized the appearance of impropriety as "a malleable factor having the chameleon-like quality of reflecting the subjective views" of the beholder, something on which judicial decision-making should not turn. (*People v. Lopez* (1984) 155 Cal.App.3d 813, 823.) The Court held that "[m]atters as significant to the public and the parties as removing the entire staff of a district attorney's office in a criminal case require reliance upon more objective criteria." (*Id.*)

case in the interest of justice and the community as a whole, a trial court should not interfere with the People's prerogative to select their representative. (*Haraguchi, supra*, 43 Cal.4th at p. 709.)

B. DEFENDANT FLORES HAS NOT MET HIS BURDEN OF DEMONSTRATING A SERIOUSLY GRAVE CONFLICT

Defendant Flores fails to meet his burden of proving with admissible evidence that Deputy District Attorney Christopher Peuvrelle or the entire San Luis Obispo County Office of the District Attorney must be recused from this case. First, he has not established that a conflict, much less a seriously grave conflict, exists for either the assigned attorney or the office. And second, he bases his claim that he is likely to receive unfair treatment entirely on speculation, and speculation alone cannot form the basis for recusal. Accordingly, the motion should be denied.[4]

1. Defendant Paul Flores Has Not Established a Conflict of Interest

The defendant "bear[s] the burden of demonstrating a genuine conflict; in the absence of any such conflict, a trial court should not interfere with the People's prerogative to select who is to represent them." (*Haraguchi, supra*, 43 Cal.4th at p. 711.) That burden is "especially heavy" when a defendant seeks to recuse the entire office. (*People v. Trinh* (2014) 59 Cal.4th 216, 229.)

The case law that has evolved since the passage of Penal Code section 1424 reflects the very high standard required for a court to find recusal necessary. "[C]ases upholding recusal have generally identified a structural incentive for the prosecutor to elevate some other interest over the interest in impartial justice, should the two diverge." (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 754.) One category of conflict can occur when the

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[4] Defendant Flores also asserts that the recusal is required "to protect his rights to due process of law, a fair trial, an impartial jury, and equal protection under the 5th, 6th, and 14th Amendments to the United States Constitution, and Article 1, sections 7 and 15 of the California Constitution." (Mot. at p. 2.) Because he does not articulate how, if at all, the relevant constitutional principles differ from the statutory standard, the People discuss only the legal standard set out in Penal Code section 1424 and its jurisprudence. (*People v. Snow* (2003) 30 Cal.4th 43, 86 fn. 12.)

relationship of a defendant, a witness, or victim to a member of the prosecutor's office affects the discretionary function of the prosecutor on the case, such as when a prosecutor, an employee, or family of an employee is a victim or a witness in a crime. (See *Dekraii, supra*, 5 Cal.App.5th at pp. 1144-1145.) In *People v. Conner* (1983) 34 Cal.3d 141, recusal of an entire office was necessary when a defendant stabbed a deputy sheriff, took the deputy's firearm, pointed it at a deputy district attorney, fired a shot as the attorney fled, and the attorney discussed the "harrowing" experience with a number of coworkers including almost half of the attorneys on his team. In *People v. Choi* (2000) 80 Cal.App.4th 476, recusal was necessary when the elected district attorney with an indirect connection to a charged murder continued to involve himself in the proceedings despite an ethical wall established in the office. And in *People v. Vasquez* (2006) 39 Cal.4th 47, recusal was necessary when the assigned deputy district attorney admitted that her concerns about the appearance of impropriety over the close family relationship between longtime employees of the office and one defendant had affected her decision-making on the case. (*Id.* at p. 55.)

The fact that a prosecutor, an employee, or the family of an employee is a victim, witness, or defendant in a crime does not amount to a per se conflict of interest that requires recusal. Indeed, Courts of Appeal have rejected the idea that recusal was necessary in a number of cases. (See, e.g., *Melcher v. Superior Court* (2017) 10 Cal.App.5th 160, 170 [recusal of office not necessary when elected district attorney's spouse was victim of crime but district attorney was walled off from prosecution]; *People v. Gamache* (2010) 48 Cal.4th 347, 364 [recusal of office not necessary when district attorney employee a victim]; *People v. Snow* (2003) 30 Cal.4th 43, 85 [deputy district attorney and investigator testified at trial, recusal not required merely because one or more employees were witnesses]; *Trujillo v. Superior Court* (1983) 148 Cal.App.3d 368 [recusal of office not necessary when deputy district attorney tackled defendant during escape attempt and defendant attempted to strangle prosecutor with his tie].) Indeed, in *Millsap v. Superior Court* (1999) 70 Cal.App.4th 196, the defendant was charged with 27 counts: 8 counts of first degree murder for which the death penalty was sought, most counts included other codefendants, and Counts 25 and 26 alleged that the defendant

solicited the murder of the two prosecuting attorneys assigned to the case. (*Id.* at p. 197.) The Court of Appeal found no conflict of interest to justify the recusal of the entire Los Angeles District Attorney's office, and while the Court of Appeals ordered the two prosecuting attorneys assigned to the case to be recused from trying the solicitation charges, the Court found they did not need to be recused from the remaining counts. (*Id.* at p. 204-205.)

Similarly, the existence of a personal conflict does not necessarily amount to a disabling conflict that affects the decisionmaking of the prosecutor or the office. (See, e.g., *People v. Trinh*, *supra*, 59 Cal.4th 216 [district attorney's father was recent patient at hospital where defendant committed mass shooting]; *Hollywood v. Superior Court* (2008) 43 Cal.4th 721 [assigned prosecutor turned case file over to filmmaker hoping film would help locate defendant]; *Haraguchi*, *supra*, 43 Cal.4th 706 [no recusal required for recent publication of novel by assigned prosecutor depicting case with similar charges]; *People v. Millwee* (1998) 18 Cal.4th 96, 123 [district attorney and defendant were adversaries in other legal proceedings where defendant prevailed]; *People v. Phillips* (1985) 169 Cal.App.3d 632, 641 [assigned prosecutor appeared on radio program discussing deputy public defender's abandonment of client].)

Most importantly, "a prosecutor may not be disqualified simply for zealously pursuing convictions." (*People v. Sy* (2014) 223 Cal.App.4th 44, 70.)

> A prosecutor has a duty of zealous advocacy and need not be disinterested on the issue of whether the prospective defendant has committed a crime. [Citation.] If convinced of the defendant's guilt, the prosecutor is free, and indeed obligated, to be deeply interested in urging that view by any fair means. [Citation.] In this respect, however, the prosecutor's interest should coincide with the interest of the public in bringing a criminal to justice and should not be under the influence of third parties who have a particular axe to grind against the defendant. [Citation.]

(*People v. Parmar* (2001) 86 Cal.App.4th 781, 796–797.) "Zealous advocacy in pursuit of convictions forms an essential part of the prosecutor's proper duties and does not show the prosecutor's participation was improper." (*People v. Vasquez* (2006) 39 Cal.4th 47, 65.) "So long as their zeal remains within legal limits … the lawful execution of their duty does not establish as a matter of law that they have surrendered their independence and impartiality."

(*Hambarian v. Superior Court* (2002) 27 Cal.4th 826, 843.) Recusal is justified only when the prosecutor has an interest in the case that is "extraneous to [his or her] official function." (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 376 (*Bryant*).)

In support of his claims, Defendant Flores marshals the declarations of his own defense attorney and his investigator. Mr. Sanger declares that individuals attending the preliminary hearing have worn articles of clothing that include the color purple and attaches several news articles (some undated) with photographs of the prosecutor during the preliminary hearing. (Sanger Decl., ¶ 2.) Ms. Messina states that she has observed the investigating officer with the Sheriff's Office wearing a purple tie every day of the preliminary hearing. (Messina Decl., ¶ 3.) She also vaguely states that she has observed Deputy District Attorney Peuvrelle wearing a purple tie "during the course of the preliminary hearing", that "a number of witnesses"—the number of which is not specified—called by the prosecution wore purple articles of clothing, and that the victim/witness coordinator has worn an unstated clothing item with the color purple twice. Ms. Messina further notes that she observed District Attorney Investigator J.T. Camp "has worn a checkered shirt with purple lines in it" at some point during the lengthy preliminary hearing. (Messina Decl., ¶¶ 3, 4.) Defendant Flores combines these observations with the high profile nature of the case to claim that somehow establishes a personal bias extraneous to the case.[5]

This allegation is directly contradicted by Deputy District Attorney Christopher Peuvrelle's declaration, attached as Exhibit A. Mr. Peuvrelle states that his pursuit of justice in this case is based on his review of the evidence and his experience handling homicide cases (Peuvrelle Decl., ¶¶ 2-4). that his contacts with Kristin Smart's family are professional that have resulted from this case and his actions to honor their rights as victims under the California Constitution (Peuvrelle Decl., ¶ 6). and that he has not and will not allow outside interests

[5] Ms. Messina asserts without support or explanation that there "seems to be a partisan attitude on the part of the witnesses being called by the prosecution." (Messina Decl. ¶ 8.) Conclusory statements, made without supporting evidence, are not "admissible evidence" and should not be considered by the court. (Evid. Code, §§ 403, subd. (a)(1) [failure to establish preliminary facts], 412 [viewing weaker and less satisfactory evidence with distrust].)

including those of the victim's family to affect his duty as a prosecutor to act fairly and seek justice. (Peuvrelle Decl., ¶ 7).[6]

In *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, the trial court recused the entire prosecutor's office after it found the prosecutor's repeated objections to the defendant's access of the victim's medical and psychotherapy records amounted to a conflict by seeking to represent third-party interests. The California Supreme Court held that the trial court's recusal was an abuse of discretion, ruling that the prosecutor's argument at a third party discovery hearing did not amount to representation of third party interests. (*Id.* at p. 752.) The Court further held that the assigned prosecutor's actions did not amount to formal representation of a third party and did not bring with them any corresponding duty of loyalty or divided loyalty or structural incentive potentially at odds with the prosecutors' duties to handle the prosecution fairly. (*Id.* at p. 754.) "Rather, the prosecution vigorously advocated a legal position that happened to align with the interests of various third parties at one moment in time." (*Id.*) There was no reason to believe that, should the interests of the prosecutor and the victim diverge in the future, the prosecutors would place the victim's interests above their duty to act fairly. (*Id.* at pp. 754-755.)

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[6] Mr. Sanger concludes his declaration by asserting that the Sheriff's Office and the District Attorney's Office "have compromised their objectivity" and Defendant Flores "is being and 'will be treated unfairly' " without explanation. (Sanger Decl., ¶ 12.) " '[Although] opinion evidence which is otherwise admissible is not made inadmissible simply because it embraces the ultimate issue to be decided by the trier of fact ... [t]he cited rule does not ... authorize an 'expert' to testify to legal conclusions in the guise of expert opinion.' [Citations.]" (*People v. Jones* (2013) 57 Cal.4th 899, 950; 1 Witkin, Cal. Evidence (5th ed. 2012) Opinion Evidence, § 98, pp. 745–748. See also *Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30 fn.3 ["the proper place for argument is in points and authorities, not declarations"].)

Furthermore, Mr. Sanger's assertion that there "is no new evidence purporting to implicate Paul Flores in a murder since the 1990s" is incorrect and directly contradicted by an exhibit (Exhibit A) attached to his declaration in support of a series of motions, including a Motion to Compel Discovery, filed on August 16, 2021. The exhibit references a witness, Jennifer Hudson, who testified before the court on Thursday, August 12, 2021, regarding admissions by Paul Flores and who was first interviewed by law enforcement in 2019. (See Judicial Council of California Criminal Jury Instruction (CALCRIM) 226 [witness veracity].)

The allegations from the defendant in this case are even more benign than those in *Humberto S.* Defendant Flores has not established the appearance of much less an actual conflict of interest. There is no evidence that the prosecutor and his office are acting in any way other than with the professional zeal for getting justice for the community and for the victim, and there is no evidence that the prosecutor and his office will place the victim's family interests above their duties to act fairly. Defendant Flores does not and can not provided to the court any case law in support of the incredible and speculative conclusion he draws that something as simple as basic clothing choices could warrant the drastic step of recusing an entire prosecutor's office from this prosecution, nor does he provide any legitimate evidence to establish that the prosecutor and his office would place the victims' interest above their duty to act fairly and pursue justice.

2. Defendant Paul Flores Has Not Established It Is Unlikely He Will Receive Fair Treatment

If a defendant establishes a conflict exists, a court "must consider the entire complex of facts surrounding the conflict to determine whether the conflict makes fair and impartial treatment of the defendant unlikely." (*Eubanks, supra*, 14 Cal.4th at p. 599.) The threshold is even higher when a defendant seeks to recuse an entire prosecutorial office. (*People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1481.) Such a recusal is a "drastic step that imposes a substantial burden on the People." (*People v. Pierce* (2019) 38 Cal.App.5th 321, 344.) "Recusal of an entire prosecutorial office is a 'disfavored,' 'drastic' remedy and 'there must be "no other alternative available." ' [Citation.]" (*People v. Dekraai* (2016) 5 Cal.App.5th 1110, 1139.)

> "[W]hen the entire prosecutorial office of the district attorney is recused and the Attorney General is required to undertake the prosecution or employ a special prosecutor, the district attorney is prevented from carrying out the statutory duties of his elective office and, perhaps even more significantly, the residents of the county are deprived of the services of their [locally] elected representative in the prosecution of crime in the county." [Citation.]

(*Eubanks, supra*, 14 Cal.4th at p. 594, fn. 6.) As such, it requires a showing of a conflict of interest that is especially pervasive. (*People v. Hernandez* (1991) 235 Cal.App.3d 674, 678.) Specifically, a defendant must show " 'that the conduct of any deputy district attorney assigned

to the case, or of the office as a whole, would likely be influenced by the personal interest of the district attorney or an employee' [Citation.]" (*Bryant, supra*, 60 Cal.4th at p. 373). This generally involves a structural incentive to elevate an interest above impartial justice, resulting in a divided loyalty or structural incentive at odds with the prosecutor's duty to prosecute. (*Id.* at p. 375; *Humberto S., supra*, 43 Cal.4th at p. 754.)

Petitioner has not demonstrated a divided loyalty or structural incentive whatsoever much less one that renders his fair treatment unlikely. Prosecutors believe based on the evidence in the case that Kristin Smart was murdered, and Defendant Flores is the one who murdered her. (Peuvrelle Decl., ¶ 4.) In accordance with that belief, they filed homicide charges against Defendant Flores and took the case to a preliminary hearing. (Peuvrelle Decl., ¶¶ 4-5.) This is zealous advocacy done in the interest of bringing a criminal to justice.[7]

The assigned prosecutor, along with the investigating officer,[8] met with the victim's family. (Messina Decl., ¶ 7.) Pursuant to the California Constitution, victims have the right to be treated with dignity and respect. (Cal. Const., Art. I § 28, subd. (a)(2).) They are constitutionally entitled to a number of rights outlined in Article I, section 28, and those rights include, among others, the right to reasonably confer with the prosecuting agency regarding specified aspects of the case. (*Id.*, subd. (b)(6).) They are also entitled to have their enumerated rights enforced through the passage of laws and through the good faith efforts and actions of elected, appointed, and publicly employed officials. (*Id.*, subd. (a)(4).) The constitutional provisions apply to the family (spouse, parents, children, siblings, and guardians) of victims and to the lawful representatives of a crime victim who is deceased. (*Id.*, subd. (e).)

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[7] Defendant Flores has not claimed the wearing of the color purple was an attempt to influence the factfinder, perhaps because this is a preliminary hearing and the factfinder is a judge, perhaps because his claims address a muted article of clothing rather than the public display of a button or a ribbon, and perhaps because the defense is the party who brought the color to the court's attention.

[8] While Defendant Flores's motion attempts to include the actions of the Sheriff's Office and witnesses in its claims, the only individuals employed by the Office of the District Attorney are the deputy attorneys, investigators, and victim/witness coordinators. Defendant Flores presents no authority, and the People are unaware of any, that the actions of witnesses can be imputed to the District Attorney's Office in a request for recusal.

Compliance with the constitutional rights of victims is not evidence of bias.

Furthermore, Petitioner claims that the high-profile nature of this case creates a conflict (Mot. at p. 7); however, the California Supreme Court specifically dismissed such a claim in *Hollywood v. Superior Court* (2008) 43 Cal.4th 721:

> Consequently, as the trial court found, [the assigned prosecutor] is left with the same interest in burnishing his legacy that every attorney has in a high-profile case—indeed, that every attorney on both sides in this case has. Success in high-profile cases brings acclaim: it is endemic to such matters. Moreover, if the high-profile nature of a case presents incentives to handle the matter in any way contrary to the evenhanded dispensation of justice, the problem is not one recusal can solve, as the same issue would arise equally for any theoretical replacement prosecutor. In such matters, we must rely on our prosecutors to carry out their fiduciary obligation to exercise their discretionary duties fairly and justly—to afford every defendant, whether suspected of crimes high or petty, equal treatment under the law. [Citations.]

(*Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 734.)

Neither the facts provided by Defendant Flores nor Penal Code section 1424 and its jurisprudence support his claim that recusal is necessary and the court should deny his motion.

C. DEFENDANT FLORES HAS NOT ESTABLISHED A PRIMA FACIE CASE TO WARRANT AN EVIDENTIARY HEARING ON HIS RECUSAL REQUEST

Penal Code section 1424 provides not only the very high standard for recusal but also the procedure for a recusal motion. A defense motion to recuse must contain three things: (1) a statement of facts detailing the grounds for the claim that recusal is necessary, (2) the legal authorities providing the basis for the claim of recusal, and (3) affidavits of witnesses who are competent to testify to the facts set forth in the affidavit. (*Id.*, subd. (a)(1).) The District Attorney or the Attorney General or both can oppose the motion with affidavits, a written opinion on the issue, and/or appearing in opposition to the motion at the hearing. (*Id.*) A defendant is not entitled to an evidentiary hearing when he files a recusal motion; rather, "[t]he judge shall review the affidavits and determine whether or not an evidentiary hearing is necessary." (*Id.*)

"An evidentiary hearing may be ordered if the defendant's affidavits establish a prima facie case for recusal; that is, if the facts demonstrated by the affidavits, if credited, would

require recusal." (*Packer v. Superior Court* (2014) 60 Cal.4th 695, 698 (*Packer*).) The facts in the affidavits must be demonstrated by admissible evidence. (*Spaccia*, 209 Cal.App.4th at p. 112.)

> In some instances, the affidavits might present disputed material facts, the resolution of which may depend largely upon the affiants' veracity and credibility under circumstances that can be determined only by holding an evidentiary hearing. If those credibility and veracity determinations, resolved in defendant's favor, would demonstrate that the conflict is so grave as to make a fair trial unlikely, the trial court abuses its discretion by failing to hold an evidentiary hearing.

(*Packer*, *supra*, 60 Cal.4th at p. 698.) However, a motion to recuse a prosecutor must be based upon a likelihood of unfairness and not upon mere speculation. (*Spaccia*, *supra*, 209 Cal.App.4th at pp. 107-109; see also *Kain v. Municipal Court* (1982) 130 Cal.App.3d 499, 504.)

Even assuming arguendo that the defendant's claims that are supported by more than conclusory assertions are true for the purpose of considering whether an evidentiary hearing is necessary, they do not amount to a prima facie demonstration of a conflict of interest much less a serious, grave conflict that renders the defendant's fair treatment unlikely, and the court should deny the motion without an evidentiary hearing.

III

CONCLUSION

Defendant Paul Flores has not met his burden to demonstrate recusal is appropriate in this case: he has not established a conflict exists, he has not shown that it is unlikely he will receive fair treatment, and he has not demonstrated that it will influence the conduct of any attorney assigned to the case. He claims the evidence is insufficient to prove he is responsible for the death of Kristin Smart: the People respectfully disagree. "[R]ecusal is not the appropriate remedy merely because [a defendant] does not agree with the charges that were filed." (*People v. Petrisca* (2006) 138 Cal.App.4th 189, 197.) Defendant Flores is entitled to pursue the remedies available to him, including the preliminary hearing currently underway, a

motion pursuant to Penal Code section 995 to challenge any holding order, and a jury trial. At the trial, he may pursue a trial court order regarding the attire by victims, witnesses, and parties if he believes they are so inherently prejudicial as to deprive him of a fair trial.[9] Whether he is successful in any of those pursuits will be determined based on the facts and the law at a hearing. But he is not entitled to the disqualification of either the assigned prosecutor or the entire prosecutor's office and he has not come close to meeting his burden of establishing otherwise.

For all of these reasons, the People respectfully request the Court deny the motion to recuse.

DATED: August 18, 2021

RESPECTFULLY SUBMITTED,

DAN DOW
District Attorney

Crystal Seiler
Deputy District Attorney

[9] But see *People v. Ramirez* (2021) 10 Cal.5th 983, 1016 [presence of 17 or 18 uniformed officers in courtroom on day of closing arguments in trial for murder of peace officer not inherently prejudicial]; *People v. Zielesch* (2009) 179 Cal.App.4th 731, 745 [allowing courtroom spectators to wear buttons depicting the likeness of fallen officer not unduly suggestive of guilt].

EXIBIT A

DAN DOW (Bar No. 237986)
DISTRICT ATTORNEY
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. PAUL FLORES, Defendant.	Case No. 21F-02402-A DECLARATION OF CHRISTOPHER PEUVRELLE

I, Christopher Peuvrelle, declare:

1. I am a licensed attorney in the State of California and employed as a deputy district attorney in and for the Office of the District Attorney, County of San Luis Obispo, in the State of California.

2. I have been a prosecutor for almost 15 years. During that time, I have handled thousands of cases. I am aware of my ethical requirement as a prosecutor to only pursue cases that I believe, based on my review of the evidence in the case, can be proven beyond a reasonable doubt.

3. During my career, I have been assigned to approximately 11 homicide cases, and I am familiar with the elements of the offense and what is needed to prove that a particular individual committed a homicide.

4. I am the deputy district attorney assigned to prosecute Paul Flores for the murder of Kristin Smart. I have spent more than 1,000 hours to date working on the case. Based

on my review of the reports and evidence in this case, I recommended to my office that we file a first degree murder charge against Paul Flores for the murder of Kristin Smart. Based on my review of the reports and evidence in this case, I believe the evidence demonstrates Paul Flores murdered Kristin Smart and based on that informed belief I continue to pursue justice by prosecuting the case.

5. On August 2, 2021, the first day of the preliminary hearing in the above-referenced case, I wore a purple tie in support of Kristin Smart, the victim in this case who I believe the evidence demonstrates was killed by Paul Flores in 1996. I support the victims in all of the homicide cases I prosecute, and this in no way reflects any animosity for or bias toward Paul Flores or any of the other defendants in homicide cases to which I am assigned.

6. I met Kristin Smart's family, who are victims themselves under Article I, section 28 of the California Constitution, through my assignment as the prosecutor to this case and my interactions with them have been in my capacity as the prosecutor assigned to this case. Pursuant to the California constitution, victims, including the parents and siblings of a murder victim, are entitled to reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding a number of things, including the arrest of the defendant and the charges that are filed. The Smart family has requested they remain informed of the developments in the case pursuant to their rights under the constitution and I have made every effort to comply with those rights.

7. I have not and will not allow any outside interests, including the interests of the victim and the victim's family should they diverge from the prosecution's interests to seek justice, to affect my duty to act fairly and to seek justice.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on August 16, 2021, in San Luis Obispo County, California.

Christopher Peuvrelle

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On August 18, 2021, I served the foregoing document(s) described as:

OPPOSITION TO DEFENDANT PAUL FLORES'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE [PC 1424]

(*People v. Paul Ruben Flores,* Case No. 21F-02402-A)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
COURTESY COPY
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OFFICE OF THE ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL SETH MCCUTCHEON
SETH.MCCUTCHEON@DOJ.CA.GOV

[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 18, 2021, at San Luis Obispo, California.

Sandee Lopez

Sandee Lopez, Legal Clerk

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SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

Dan Dow
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State Bar #237986
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County Government Center, Room 450
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Telephone: (805) 781-5800

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & 21F-02402 -B AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND ORDER SEALING RECORDS

I am Christopher Peuvrelle, a Deputy District Attorney for San Luis Obispo County. I am the assigned prosecutor for the above-entitled case.

As the court and counsel for the defendant are well aware, there has been a great deal of public interest in this pending case. It has been the goal of all parties to this case to limit the amount of information disseminated to the public to maintain the integrity of the potential jury pool in this county. Such efforts will hopefully assure the defendant is able to receive a fair and impartial trial in San Luis Obispo County.

In this regard, I have submitted a copy of people's Offer of Proof Regarding Statements of Defendant Paul Flores to DA Investigator Bill Hanley to be heard on August 20, 2021. In accordance with Section 6255 of the California Government Code, I am requesting that this

court order that the Offer of Proof Regarding Statements of Defendant Paul Flores to DA Investigator Bill Hanley be sealed until further order of this Court. I respectfully urge that, under Section 6255, the public interest served by not making such records public clearly outweighs the public interest served by disclosure of such records. I would further request that a copy of such reports be released only to counsel for the People and the defendant to prepare for the Preliminary Hearing. Defense counsel represented in chambers on April 15, 2021, that they agree with this request.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 19, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher Peuvrelle
Deputy District Attorney

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Attorneys for Defendant
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FILED:08/19/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

CONDITIONALLY UNDER SEAL

ATTESTATION OF THE CLERK OF THE SUPERIOR COURT

(Subject to Application to File Under Seal)

Hon. Craig Van Rooyen

I, the undersigned, Clerk of a Superior Court of the State of California in and for the County of San Luis Obispo, do hereby certify that this Honorable Craig Van Rooyen by whom the foregoing Certificate was made and whose genuine signature is subscribed thereto was at the time of signing of the same, and still is, Judge of the Superior Court of the State of California, in and for the County of San Luis Obispo, duly commissioned, qualified and sworn, and to whose acts of such full faith and credit are due.

///

IN WITNESS WHEREOF, I have hereunto set my signature and affixed the Seal of said Court this 19th day of August, 2021.

Dated: August 19, 2021

CLERK OF THE SUPERIOR COURT
County of San Luis Obispo
State of California

Dan Dow
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Attorney for the People of the State of California

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES & RUBEN RICARDO FLORES, Defendant.	CASE NO.: 21F-02402 A & B **PEOPLE'S OFFER OF PROOF REGARDING STATEMENTS OF DEFENDANT PAUL FLORES TO DA INVESTIGATOR BILL HANLEY** Date: August 20, 2021 Time: 9:00 a.m. Dept. 5

STATEMENT OF FACTS

On May 28, 1996, Officer Robert Cudworth interviewed defendant Paul Flores in his dorm room at the Santa Lucia dorms. This was a consensual interview, the defendant was never in custody, never handcuffed, and never threatened with arrest. He tells Cudworth that he walked home with Smart on Saturday morning. He was at the party at 135 Crandall Way, saw Smart at the party, but did not speak with her. As he was leaving the party, he saw Smart standing with Tim Davis and Cheryl Anderson. He was going to go home and offered to walk Smart and Anderson back to their dorm rooms. He said he had to stop along the way because Smart was having trouble walking. He continued to walk with both girls until they

came to the intersection of Perimeter Road and Grand Ave. At that time, he told Anderson that he would walk Smart back to her dorm at Muir. Flores did not say anything about wanting to kiss Anderson. Smart and Flores walked towards both Santa Lucia and Muir dorms and went their own ways near Santa Lucia. He stated he saw Smart walk towards Muir and he went to his room in Santa Lucia. He said he was not interest in Smart and did not want to "get together with her."

Detective Mike Kennedy testified on August 4, 2021 in the Preliminary Hearing in this case. Kennedy testified that he spoke with Paul Flores on May 28, 1996 in his dorm room. The defendant was not under arrest, not handcuffed, nor was he in custody. Detective Kennedy asked if he could speak with the defendant. Kennedy observed the defendant was nervous and saw his heart or his breathing was pounding/moving the shirt. Kennedy asked defendant what his recollections were that night and defendant stated he had walked the missing person home and had given two hugs while they were in transit walking from the party up the hill. The defendant told Kennedy that he was fine with, and had no problem with, speaking again.

DA Investigator Bill Hanley interviewed the defendant on May 31, 1996. Hanley called the defendant and asked if he would be available for an interview. Flores agreed and said he would come to the Cal Poly Police Department. He was advised by Investigator Hanley and DA Investigator Larry Hobson that he was a witness in this case. They asked if defendant would mind talking to them about what he knew. Paul Flores responded that he was willing to help them in any way that he could and agreed to an interview. He described getting off work on May 24 at around 3pm. He played pool with his friend Rex, Javier, and Zack. Afterwards, he and Javier went to the Lighthouse, then played more pool. Paul Flores went to his room afterwards and had some beer. He was going to walk to his sister Ermelinda's house on Olive Street and started walking. He explained how his vehicle was impounded in February 1996 for DUI. He explained his roommate Derrick Tse was gone for the weekend in Oakland and would not return until Tuesday May 28. As he walked down Crandall Way, he saw the party

and stopped. He said Kristin Smart introduced herself as Roxy and that he saw her hanging all over several guys. He thought her to be intoxicated and claimed he did not find her attractive as he "doesn't like those type of girls."

When asked what other contact he had with her at the party, he replied "none." He said the only time they talked is when she went up to him and introduced herself. Flores denied contacting her, talking to her, or touching her at anytime during the party and that he was sure of it. At around 2:30am the party was out of beer, and he decided to go home. He described his level of intoxication as a 7 or 8 out of 10. As he was walking out of the house, he saw a girl waiting outside (Cheryl Anderson) and Kristin Smart. He did not remember any conversation about him joining them, but he remembers walking with the two girls back towards the dorms. He stated Roxy started complaining about being cold, so he hugged her to warm her up. Flores reiterated that he was not attracted to Roxy. As they got to Perimeter and Grand, the other girl said goodbye. When asked if he was certain, he confirmed that the only thing he can remember saying to this girl was goodbye. He stated that he and Roxy continued walking straight on Perimeter Way towards his dorm room. She was walking on the sidewalk, and he continued straight. Flores denied touching, kissing, or having any physical contact with Roxy when they parted company. When asked if Roxy was so intoxicated, why he didn't walk her up to the dorm he stated he didn't even think about it and just dropped her off. He went back to his room and went to bed. At around 5am he felt sick and vomited "just a very little bit." He then took a shower due to the bad taste in his mouth. He heard someone walk into the bathroom but did not see anyone.

With regards to Saturday, he got up in the morning and just "hung out." He went to dinner with his friend Javier. On Sunday, his father Ruben Flores came to the Cal Poly Campus and picked him up to go back to their house.

Investigator Hanley observed a black eye and asked defendant how it was received. Flores stated he and Jeromy Moon were playing basketball on Monday and got elbowed in the face. He stated he was positive it was that Monday. Hanley and Hobson asked if he

would take a polygraph and the defendant said he would be more than willing to. They asked if he would be willing to take them on the route they took to walk back to the dorms and he agreed. That route was then documented. Hanley asked defendant what he thinks happened and he stated, "I think she just took off with someone" and "I think she's dead." Defendant was never handcuffed, never detained, and said he had no problem with further cooperation even agreeing to a polygraph.

On June 19, 1996, the defendant agrees to another interview with Investigators Hanley and Hobson at the Arroyo Grande police station. The investigators pick up the defendant for purposes of conducting the Polygraph that he had agreed to. Once at the station, defendant changes his mind about the polygraph but agrees to be interviewed instead. The recording begins shortly into the interview. The delay in beginning the recording is because AG PD personnel must press the record button. There is only a brief delay between the start of the interview and the beginning of the video. Just as in the previous interviews, the defendant willingly meets with investigators, is never handcuffed, is never arrested, is never detained, and at the conclusion of each interview walks away. On this occasion defendant states he didn't remember Kristin Smart stumbling or anything. When asked what he thinks happened to her he says "she's not alive anymore... and someone put her in the car and took her someplace. I don't know." Paul Flores again claims he did not feel any attraction to her. When asked about them falling to the ground he claims he doesn't remember doing anything like that. When asked about the walk he claims, "I remember her just walking and I was walking right next to her." He also claims he did not ask for a hug or good night kiss from Cheryl Anderson. When asked about where he and Kristin Smart parted ways he says, "I walked with her to where the driveway was and then I went up to my dorm because the walkway goes that way towards my dorm and then she started walking that way. He also claims they had no contact at the party other than Smart introducing herself to him. He claims he has no idea where he joined in with Cheryl Anderson and Tim Davis.

In the same interview, the investigators ask him about his black eye. Paul Flores

admits that last time he claimed he got it playing basketball. This time he claims he got it in his Ranger and that it happened on Monday at about 2am. He claims he lied because "I didn't think it would matter." He later claims he lied because "I make me sound like a klutz."

When asked about people saying he and Roxy fell to the floor he claims, "I never fell to the floor." Then then denies ever forcing a kiss on someone at a party. Upon reflection, he said, "well, I was at the one party that I was kind of like a little aggressive, I guess."

Investigator Hanley tells him, "we truly made a mistake. We now have to look at this in a different light. Because if anybody lies as much as you have, about something as serious as this... what does that tell you?" Defendant then claims he does not know of any lies, but then says, "oh, it's not really lies. A fib. It's so minute, it's not... well, I guess you can call it a little white lie." This was in reference to his multiple lies about the source of the black eye. At around page 55 of the transcript, Paul Flores asks, ..."but as I said, I already have to go. So, is it all right then? Investigator Hobson replies, "no. Not yet. We're not through yet. We haven't worked this out. Ok? Where do you gotta go at four o'clock?" Flores responds, "I just have to go."

The People are only presenting the first 55 pages and approximately 48 minutes of the corresponding video that end just before the above question by Paul Flores about whether he can go. At the end of the interview, the defendant leaves the station when Ruben Flores picks him up. Just like in all the other interviews, he is never handcuffed, never arrested, and never detained. All his interviews were voluntary, and he had made repeated statements that he had no problem continuing to speak with investigators.

DISCUSSION

I.

THE DEFENDANT VOLUNTARILY CAME TO SPEAK TO DETECTIVES JUST LIKE EVERY OTHER INTERACTION WITH LAW ENFORCEMENT

In *Lego v. Twomey* (1972) 404 U.S. 477 the United States Supreme Court held that the standard of proof for the admissibility of a confession is a simple preponderance of the evidence. (*Id.* at p. 489.) This standard applies as well to questions of compliance with

Miranda v. Arizona (1966) 384 U.S. 436. (*Colorado v. Connelly* (1986) 479 U.S. 157, 168-169.) With the adoption of Article I, section 28, subdivision (f)(2) (originally subd. (d)) to the California Constitution by the electorate in 1982, California courts cannot set a higher standard for the exclusion of evidence than that required by the federal Constitution. Hence, in California the prosecution's burden of proof of the voluntariness of a defendant's *Miranda* waiver, as well as a defendant's confession, is by a preponderance of the evidence. (*People v. Markham* (1989) 49 Cal.3d 63, 71; see generally, *People v. Dykes* (2009) 46 Cal.4th 731, 751; *People v. Bradford* (1997) 14 Cal.4th 1005, 1034.)

A. Miranda does not apply because the defendant was not in custody

"It is settled that Miranda advisements are required only when a person is subjected to 'custodial interrogation.'" (People v. Davidson (2013) 221 Cal.App.4th 966, 970.) "[S]tatements made in a noncustodial setting are admissible against the speaker" even when they are not preceded by Miranda warnings. (People v. Battaglia (1984) 156 Cal.App.3d 1058, 1065.)

Custodial interrogation has long been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (Miranda v. Arizona (1966) 384 U.S. 436, 444; People v. Salinas (1982) 131 Cal.App.3d 925, 935.)

When determining whether a suspect is in "custody" for purposes of *Miranda*, the court must take into account all of the circumstances surrounding the questioning. "[T]he ultimate inquiry is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." (*California v. Beheler* (1983) 463 U.S. 1121, 1125; see also *Stansbury v. California* (1994) 511 U.S. 318, 322; *People v. Stansbury* (1995) 9 Cal.4th 824, 830.)

The test is entirely objective. (*People v. Davidson*, *supra*, 221 Cal.App.4th at p. 971.) Whether a person is in custody depends on the objective circumstances of the interrogation rather than on the subjective view of either party. (*Stansbury v. California*, *supra*, 511 U.S. at

p. 323.) Where no formal arrest takes place, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." (*Berkemer v. McCarty* (1984) 468 U.S. 420, 442, fn. omitted.)

Lengthy and detailed questioning, even over several hours, would not lead a reasonable person to believe his or her freedom of movement had been impaired where the tone is generally nonaccusatory. But even pointed questioning about a suspect's involvement does not convert the questioning into a custodial interrogation. (*People v. Vasquez* (1993) 14 Cal.App.4th 1158, 1164; *People v. Spears* (1991) 228 Cal.App.3d 1, 21-26.) Nor does the fact that questioning occurs at the police station at the officer's request show one is in custody. (*California v. Beheler, supra,* 463 U.S. 1121; *People v. Kopatz* (2015) 61 Cal.4th 62, 79-82; *People v. Stansbury, supra,* 9 Cal.4th 824.) In fact, several leading cases hold the interrogation was non-custodial despite the presence of all of these factors. (*People v. Stansbury, supra*; *Oregon v. Mathiason, supra,* 429 U.S. 492; see also *People v. Moore* (2011) 51 Cal.4th 386, 394-404; *People v. Spears, supra*; but see, *People v. Aguilera* (1996) 51 Cal.App.4th 1163 [accusatory questioning after telling suspect they would take him home if he told the truth held custodial].)

Up to the point referenced on page 55, any reasonable person would have understood he would be free to leave. He had never been handcuffed, never detained, he voluntarily joined the detectives for the interview, and only 48 minutes had gone by since the start of the interview. As described in the case law above, even though this was at a police station does not indicate he is in custody. Just because the investigators asked pointed questions about his involvement does not render this a custodial situation. In fact, at the very end of the video, Paul Flores walks out of the interview room on his own accord without being cuffed, detained, or arrested by law enforcement. That in and of itself demonstrates that even the defendant understood he could walk out at any time. Up to just after the 48-minute, mark, every circumstance shows that a reasonable person would have understood that they were free to go.

CONCLUSION

The defendant's statements were voluntary. He expressed over multiple interviews that he was willing to assist. On June 19, 1996, he voluntarily went with the detectives to the Arroyo Grande Police station. *Miranda* does not apply because he was not in custody.

Date: August 19, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: _____
Christopher G. Peuvrelle
Deputy District Attorney

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On August 19, 2021, I served the foregoing document(s) described as:

PEOPLE'S OFFER OF PROOF REGARDING STATEMENTS OF DEFENDANT PAUL FLORES TO DA INVESTIGATOR BILL HANLEY

(*People v. Paul Ruben Flores & Ruben Ricardo Flores*; Case No. 21F-02402-A & B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
21F-02402-B
EMAIL: HAROLDMESICK@GMAIL.COM

[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 19, 2021, at San Luis Obispo, California.

Alyssa Muckey, Legal Clerk

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SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On August 19, 2021, I served the foregoing document(s) described as:

AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND PROPOSED ORDER SEALING PUBLIC RECORDS
(*People v. Paul Ruben Flores & Ruben Ricardo Flores,* Case No. 21F-02402-A & B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 19, 2021, at San Luis Obispo, California.

Alyssa Muckey, Legal Clerk

RITA L. NEAL, SBN 151156
County Counsel
ANN C. DUGGAN, SBN 169531
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Attorneys for County of San Luis Obispo
County Sheriff's Department

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By: M. Goossens,
Deputy Clerk

Exempt from filing fees per Gov. Code § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

In the matter of PEOPLE OF THE STATE OF CALIFORNIA, v. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES Defendants. SHERIFF OF THE COUNTY OF SAN LUIS OBISPO, Real Party in Interest.	Case Number: 21F-02402 **SHERIFF'S MOTION FOR PROTECTIVE ORDER AND REQUEST FOR CLOSED HEARING RE: AUGUST 12, 2021 DISCLOSURES** [Evid. Code, §§ 1043, 1045; 1046; Pen. Code, § 832.5; 832.7] DATE: August 20, 2021 TIME: 9:00 a.m. DEPT: Dept. ~~6~~ 5

TO THE ABOVE-NAMED DEFENDANT AND HIS ATTORNEY OF RECORD:

The Sheriff of the County of San Luis Obispo hereby moves, through his attorney of record, the Office of County Counsel, for a protective order regarding the disclosure of alleged Brady[1] material provided to the defense in this matter on August 12, 2021, and requests that any hearing to consider the admissibility or use of the disclosed material be considered by the court in chambers, or alternatively in a closed hearing. This motion is based on the following points and

[1] *Brady v. Maryland* (1963) 373 U.S. 83.

authorities, the court record in this case, and on such other argument and evidence as may be presented or introduced at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Sheriff of the County of San Luis Obispo, as real party in interest, has filed this motion in order to protect confidential peace officer personnel information. The information consists of a memorandum and attachments addressed to the Sheriff of the County of San Luis Obispo, as the chief law enforcement officer of the County, which employs a detective assigned to the criminal investigation in the underlying proceedings. During the proceedings held on August 12, 2021, the District Attorney provided the defense a copy of the memorandum (hereafter "the disclosed material") in an apparent abundance of caution to comply with the District Attorney's *Brady* obligations. The disclosed material was provided within the confines of an existing gag order and protective orders issued in the underlying criminal proceedings. According to the disclosed material, the District Attorney generated the disclosed material to investigate alleged inappropriate conduct of the Sheriff's detective without the Sheriff's knowledge. Due to the unusual circumstances surrounding the manner in which the information was obtained[2] -- without the knowledge of the employing law enforcement agency and without notice and an opportunity for the officer who is the subject of the disclosed material to respond to it -- and because the disclosed material is the subject of a pending motion for discovery of peace officer personnel records (a "Pitchess motion"[3]), the Sheriff requests that the court issue a

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[2] In this regard, the Sheriff notes that the usual and customary procedure where a law enforcement agency learns of potential misconduct of another law enforcement agency's peace officer, is to inform the employing agency, which would then conduct an inquiry or investigation into the allegations. Where a prosecutor is aware of "alleged" misconduct of a peace officer in an underlying criminal proceeding, the prosecutor discloses to the defense that there *may be Brady* material in the possession of the employing law enforcement agency. This allows the defense to bring a motion pursuant to Evidence Code section 1043 et seq. and affords the peace officer who is the subject of the alleged misconduct a level of due process by providing for the opportunity to oppose the motion and, at a minimum, to ensure that any information alleging misconduct is reviewed in chambers by a judge who determines whether disclosure is proper in light of the relevancy of the information to the underlying proceedings.

[3] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

specific protective order prohibiting any further disclosure or dissemination of the disclosed material and conduct any hearing as to the admissibility or use of the disclosed material in the underlying criminal proceedings in a closed hearing.

II. ARGUMENT

A. THE DISLOSED MATERIAL CONSTITUTES PEACE OFFICER PERSONNEL INFORMATION PROTECTED BY PENAL CODE SECTION 832.7

As noted above, the disclosed material was addressed to the employing law enforcement agency, specifically to the County Sheriff, and the disclosed material is currently the subject of a pending Pitchess motion in the underlying criminal proceedings. Penal Code section 832.7 provides that peace officer personnel records and records maintained pursuant to section 832.5 are confidential. They may not be disclosed in any criminal or civil proceeding except by discovery pursuant to a motion brought in accordance with Evidence Code section 1043, et seq. Subdivision (a) of section 832.7 provides an exception to the confidentiality afforded by section 832.7, but only with respect to a district attorney, a grand jury, or the Attorney General: "This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office." (66 Ops.Cal.Atty.Gen. (1983).)

Because the disclosed material was directed to the Sheriff's Office and alleges inappropriate conduct by a sheriff's detective assigned to the underlying criminal investigation in this case, all protections provided by Penal Code section 832.7 and Evidence Code section 1043 et seq. should be afforded to the detective that is the subject of the disclosed material. This is especially the case because the memorandum and the attached investigative reports, which constitute the disclosed material, reveal that the allegations that precipitated the District Attorney's inquiry are unfounded and untrue. Indeed, the disclosed material does not reflect misconduct that would require disclosure of the information pursuant to *Brady v. Maryland, supra*, 373 U.S. 83.

B. THE COURT SHOULD ISSUE A PROTECTIVE ORDER PROHIBITING FURTHER DISCLOSURE OR DISSEMINATION OF THE DISCLOSED MATERIAL IN ACCORDANCE WITH PENAL CODE SECTION 832.7.

The Attorney General of the State of California has interpreted the District Attorney's treatment of confidential personnel information pursuant to Penal Code section 832.7 and has opined that the DA has a continuing obligation to not publicly reveal peace officer personnel information: "A district attorney, however, would not be authorized under section 832.7 to release [peace officer personnel] information to the public; the exception language in the statute is limited to the district attorney's office for the purposes stated." In the present case, the disclosure has not been made publicly as the disclosure occurred within the confines of closed proceedings that have not yet been revealed publicly. To protect the confidentiality of the peace officer personnel information that is the subject of the disclosed material, in consideration of the pending Pitchess motion, and in accordance with the Legislative scheme protecting peace officer personnel information,[4] the Sheriff requests that the court issue a specific protective order prohibiting further disclosure or dissemination of the disclosed material. In addition, the Sheriff also requests that any hearing regarding the admissibility or use of the disclosed material in the pending criminal proceedings be conducted in closed session to ensure that the protections afforded by Penal Code section 832.7 and Evidence Code section 1043 et seq. are maintained.

[4] Pen. Code, § 832.5 et seq. and Evid. Code, § 1043.et seq.

III. CONCLUSION

For the reasons stated herein, the court should issue a protective order prohibiting further disclosure or dissemination of the disclosed material and should consider within the confines of a closed hearing whether the disclosed material is admissible in the underlying criminal proceedings.

Dated: August 19, 2021.

RITA L. NEAL
County Counsel

ANN DUGGAN
Deputy County Counsel

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN LUIS OBISPO)

I am employed in the County of San Luis Obispo, California; I am over the age of 18 years, and not a party to the within action; my business address is County Government Center, Room D320, San Luis Obispo, CA 93408.

On August 19, 2021, I served a true copy of this declaration and the following described document(s):

SHERIFF'S MOTION FOR PROTECTIVE ORDER AND REQUEST FOR CLOSED HEARING RE: AUGUST 12, 2021 DISCLOSURES

on the party or parties named below:

Robert Sanger Sanger Swysen & Dunkle 222 East Carrillo Street, Ste 300 Santa Barbara, CA 93101 Email: rsanger@sangerswysen.com (By Email Transmission)	Christopher Peuvrelle District Attorney's Office Courthouse Annex 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408 (By Inter-Department Mail)
Harold V. Mesick 1303 Higuera St. San Luis Obispo, CA 93401 Email: haroldmesick@gmail.com (By Email Transmission)	

☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above on August 19, 2021. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **By Interdepartment Mail.** I enclosed a true copy of the documents in a sealed envelope addressed to each of the persons as indicated above, and then placed the envelope for collection where it would be, following my employer's business practice with which I am readily familiar, delivered via interoffice mail on the following business day.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 19, 2021, at San Luis Obispo, California.

Patricia L. Hays

Patricia L. Hays, Supervising Legal Clerk

1502plhpld

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

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8/20/2021 8:00 AM
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By: M. Goossens,
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & 21F-02402 -B AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND ORDER SEALING RECORDS

I am Christopher Peuvrelle, a Deputy District Attorney for San Luis Obispo County. I am the assigned prosecutor for the above-entitled case.

As the court and counsel for the defendant are well aware, there has been a great deal of public interest in this pending case. It has been the goal of all parties to this case to limit the amount of information disseminated to the public to maintain the integrity of the potential jury pool in this county. Such efforts will hopefully assure the defendant is able to receive a fair and impartial trial in San Luis Obispo County.

In this regard, I have submitted copies of People's Reply to Defense Motion to Compel and People's Request for Closing Hearing Re: August 12, 2021 Disclosures and Supplemental Information to be heard on August 20, 2021. In accordance with Section 6255

of the California Government Code, I am requesting that this court order that the People's Reply to Defense Motion to Compel and People's Request for Closing Hearing Re: August 12, 2021 Disclosures and Supplemental Information be sealed until further order of this Court. I respectfully urge that, under Section 6255, the public interest served by not making such records public clearly outweighs the public interest served by disclosure of such records. I would further request that a copy of such reports be released only to counsel for the People and the defendant to prepare for the Preliminary Hearing. Defense counsel represented in chambers on April 15, 2021, that they agree with this request.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 20, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher Peuvrelle
Deputy District Attorney

ELECTRONICALLY
RECEIVED
8/20/2021 8:00 AM

Electronically
FILED:08/20/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

PAUL RUBEN FLORES AND

RUBEN RICARDO FLORES,

Defendant.

CASE NO. 21F-02402-A & 21F-02402 -B

[PROPOSED] ORDER SEALING PUBLIC RECORDS

Based upon the foregoing Affidavit and Request, IT IS HEREBY ORDERED that:

1. The People's Reply to Defense Motion to Compel and People's Request for Closing Hearing Re: August 12, 2021 Disclosures and Supplemental Information and the Affidavit in support of the People's Reply to Defense Motion to Compel and People's Request for Closing Hearing Re: August 12, 2021 Disclosures and Supplemental Information are sealed and lodged with the Court;

2. No other sealing is ordered pursuant to the People's request; and

3. Defense Counsel for Paul Ruben Flores, Robert M. Sanger and his office and Defense Counsel for Ruben Ricardo Flores, Harold V. Mesick and his office are permitted to view the sealed records.

Dated: August 20, 2021

Craig Van Rooyen

THE HONORABLE CRAIG B. VAN ROOYEN
JUDGE OF THE SUPERIOR COURT

ELECTRONICALLY
FILED
8/20/2021 8:00 AM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On August 20, 2021, I served the foregoing document(s) described as:

PEOPLE'S REPLY TO DEFENSE MOTION TO COMPEL AND PEOPLE'S REQUEST FOR CLOSING HEARING RE: AUGUST 12, 2021 DISCLOSURES AND SUPPLEMENTAL INFORMATION, AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND PROPOSED ORDER SEALING PUBLIC RECORDS

(*People v. Paul Ruben Flores & Ruben Ricardo Flores,* Case No. 21F-02402-A & B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
21F-02402-B
EMAIL: HAROLDMESICK@GMAIL.COM

[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 20, 2021, at San Luis Obispo, California.

Sandee Lopez

Sandee Lopez, Legal Clerk

DIANA PALACIOS (State Bar No. 290923)
dianapalacios@dwt.com
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Fax: (213) 633-6899

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

ELECTRONICALLY
FILED
8/23/2021 3:27 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A/B

NOTICE OF OBJECTIONS OF NON-PARTY MEDIA REPRESENTATIVE CHRIS LAMBERT TO DEFENDANT'S SUBPOENA

Return Date: August 30, 2021
Time: 9:00 a.m.
Dept: 5

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Non-Party Media Representative Chris Lambert has served Objections to the Order to Attend or Provide Documents: Subpoena/Subpoena Duces Tecum ("Subpoena") served by counsel for Defendant Paul Ruben Flores ("Defendant"), which demands Mr. Lambert's attendance at a 9:00 am hearing on August 30, 2021 and documents ("Subpoena"). Mr. Lambert objects to the Subpoena on the grounds set forth in the attached Objections of Non-Party Media Representative Chris Lambert to Defendant's Subpoena, including objecting on the grounds that the Subpoena seeks the production of information that is protected by the statutory, common law, and constitutional privileges for the media under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070.

DATED: August 23, 2021

DAVIS WRIGHT TREMAINE LLP
DIANA PALACIOS

By: _____
Diana Palacios

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
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EXHIBIT A

DIANA PALACIOS (State Bar No. 290923)
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Attorneys for Non-Party Media Representative
CHRIS LAMBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES, Defendant.	Case No. 21F-02402-A/B **OBJECTIONS OF NON-PARTY MEDIA REPRESENTATIVE CHRIS LAMBERT TO DEFENDANT'S SUBPOENA** Return Date: August 30, 2021 Time: 9:00 a.m. Dept: 5

PROPOUNDING PARTY: Defendant Paul Ruben Flores

RESPONDING PARTY: Non-Party Media Representative Chris Lambert

Non-Party Media Representative Chris Lambert respectfully submits the following Objections to the Order to Attend or Provide Documents: Subpoena/Subpoena Duces Tecum ("Subpoena") served by counsel for Defendant Paul Ruben Flores ("Defendant"), which demands Mr. Lambert's attendance at a 9:00 am hearing on August 30, 2021 and documents.[1] *See* Subpoena attached as Exhibit A.

[1] A non-party may object to a subpoena, and is not obliged to file a motion to quash. *Monarch Healthcare v. Superior Court*, 78 Cal. App. 4th 1282, 1290 (2000).

OBJECTIONS TO SUBPOENA

1. Mr. Lambert is the creator of the podcast "Your Own Backyard," and engages in news gathering.[2] *See O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1457 (2006) (extending the privilege to bloggers engaged in the gathering and dissemination of news). Under Article I, § 2(b) of the California Constitution, California Evidence Code § 1070, and the common law, Mr. Lambert is protected against the compelled disclosure of unpublished information. *See, e.g., Delaney v. Superior Court*, 50 Cal. 3d 785, 808 (1990); *Fost v. Superior Court*, 80 Cal. App. 4th 724, 736-737 (2000); *In re Jack Howard*, 136 Cal. App. 2d 816, 818-19 (1955); *see also Miller v. Superior Court*, 21 Cal. 4th 883, 890 (1999). Here, Defendant has not demonstrated and cannot demonstrate that any testimony or documents sought from Mr. Lambert are material to his case, or that he can satisfy the four-part test set forth in *Delaney*, 50 Cal.3d at 808.[3]

2. Mr. Lambert independently objects to the Subpoena based on the First Amendment qualified reporters' privilege. *Shoen v. Shoen*, 5 F.3d 1289, 1294 (9th Cir. 1993) ("*Shoen I*"); *see also Mitchell v. Superior Court*, 37 Cal. 3d 268, 280, 282 (1984). The federal constitutional privilege protects both confidential and non-confidential information. *Id.* at 1295. Defendant cannot overcome this constitutional protection because he cannot establish: (a) that the information sought is not available from alternative sources; (b) that the information meets the high standard of relevance necessary to overcome the privilege; and (c) that the information would not be cumulative of other information available to the Defendant. *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995) ("*Shoen II*").

---

[2] Indeed, the Court has recognized that Mr. Lambert is a member of the media. *See* Exhibit B (Order granting Media Request to Permit Coverage).

[3] Under *Delaney*, a media representative cannot be compelled to provide unpublished information unless the criminal defendant satisfies a threshold requirement of showing that the particular information or testimony will materially assist his case. 50 Cal. 3d at 808. Even if Defendant could meet this burden, he will not be able to meet the requirements under California law to compel disclosure of unpublished information, which consider: (1) whether "disclosure would somehow unduly restrict the newsperson's access to future sources and information," which "is the primary purpose of the Shield Law"; (2) whether the policy of the Shield Law will in fact be "thwarted by disclosure"; (3) the "importance of the information to the criminal defendant" and (4) whether there is an "alternative source for the unpublished information." *Id.* at 810-811.

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3. Mr. Lambert further objects to the Subpoena to the extent that it seeks documents and/or information protected by the right of privacy under the U.S. Constitution, California law, other state laws or any other privacy right.

4. Mr. Lambert further objects to the Subpoena to the extent that the information sought is neither relevant nor reasonably likely to lead to the discovery of admissible evidence.

5. Mr. Lambert further objects to the Subpoena to the extent that it purports to impose any requirements or obligations other than or beyond those specifically required under the Code of Criminal Procedure and/or any other applicable law.

6. Mr. Lambert further objects to the Subpoena to the extent that it seeks documents not in Mr. Lambert's possession, custody, or under its control, and to the extent that it purports to require Mr. Lambert to produce documents exclusively within the possession, custody, or under the control of other persons or entities.

7. Mr. Lambert further objects to the Subpoena to the extent that it seeks information that is protected by the attorney-client privilege, the attorney-work-product doctrine, or any other privilege, doctrine, or immunity.

8. Mr. Lambert further objects to the Subpoena on the grounds that the description of documents requested is vague and ambiguous, overbroad, unreasonably burdensome, and contains terms that are not defined with reasonable particularity.

9. Mr. Lambert further objects to the Subpoena on the grounds that, to the extent it is seeking materials that have been publicly disseminated, whether by Mr. Lambert or a third party, those materials are equally accessible to Defendant.

10. Mr. Lambert further objects to the Subpoena to the extent that it requires Mr. Lambert to produce electronically stored information in multiple forms and/or in a form which is inconsistent with the form in which it is usually maintained. Mr. Lambert further objects to this Subpoena to the extent it purports to require the production of electronically stored information from sources that are not reasonably accessible because of undue burden and cost.

11. Mr. Lambert's objections do not in any way constitute an admission of any factual averments stated or implied by the Subpoena.

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(213) 633-6800
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SPECIFIC OBJECTIONS

REQUEST NO. 1:

All podcasts, including recordings thereof, transcripts, however preserved, all photographs, video or audio recordings of anyone or anything associated with the Kristin Smart disappearance, all materials sent to or obtained by Chris Lambert or anyone associated with him or anything under his possession or control relating to the Kristin Smart disappearance, persons related to the investigation of said disappearance, or pertaining to persons suspected of being witnesses to or involved in said disappearance, or related to or involved in any purported or potential location of Kristin Smart, or purported or potential allegations related to the location of Kristin Smart including the purported location of her remains, if she is no longer alive.

RESPONSE TO REQUEST NO. 1:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com.

REQUEST NO. 2:

All recordings including outtakes of the "Your Own Backyard" podcast, or any other blog, production, publication of any nature relating to the investigation of Kristin Smart's disappearance.

RESPONSE TO REQUEST NO. 2:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of

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information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com.

REQUEST NO. 3:

All communications however preserved, to and from members of law enforcement and all reports, documents or other materials generated by or provided by law enforcement relating to the Kristin Smart matter in any way.

RESPONSE TO REQUEST NO. 3:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com, and other sources who are not media representatives, including law enforcement.

REQUEST NO. 4:

All correspondence, memoranda, phone messages, emails, text messages, or any other materials however preserved, relating to the investigation of Paul Flores, Ruben Flores, Susan Flores and Michael McConville or their property, personal effects, vehicles or anything associated

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LOS ANGELES, CALIFORNIA 90017-2566
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with them or with any other individuals or entities associated with the investigation of Kristin Smart's disappearance, including without limitation, any surreptitious recording of whatever type conducted by any individual with regard to anyone associated with the investigation of Kristin Smart's disappearance.

RESPONSE TO REQUEST NO. 4:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com, and other sources who are not media representatives. Mr. Lambert further objects to this Request to the extent that it seeks documents and/or information protected by the right of privacy.

REQUEST NO. 5:

Any and all documentation whatsoever and specific references to all case names and numbers relating to court actions in which you are a party or with regard to which restraining orders have been issued against you.

RESPONSE TO REQUEST NO. 5:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, the attorney-work-product doctrine, or any other privilege, doctrine, or immunity. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr.

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Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including court dockets. Mr. Lambert further objects to this Request to the extent that it seeks documents and/or information protected by the right of privacy.

Subject to these objections, Mr. Lambert responds that no responsive documents exist.

Mr. Lambert expressly reserves all other objections to the Subpoena or to questions that may be asked of him if he is required to appear. These objections are made without waiver of any other defects in the service or in the Subpoena itself.

DATED: August 23, 2021

DAVIS WRIGHT TREMAINE LLP
DIANA PALACIOS

By: _____
Diana Palacios

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
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EXHIBIT A

CR-125/JV-525

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
1050 Monterey Street
San Luis Obispo, CA 93408
Criminal Branch

PEOPLE OF THE STATE OF CALIFORNIA v. PAUL ROBERT FLORES

ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS:
Subpoena/Subpoena Duces Tecum

21F-02402-A

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1 To (name or business): Chris Lamoen

2 You must follow the court order(s) checked below.

a [ ] Attend the hearing.

b [x] Attend the hearing and bring all items checked in c below.

c [x] Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records.)

(1) SEE ATTACHMENT

(2)

(3)

[x] *If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."*

d [ ] If someone else is responsible for maintaining the items checked in c, that person (the Custodian of Records) must also attend the hearing.

e [ ] If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order**, you do not have to attend court if you follow the instructions in item 5.

3 **Court Hearing Date:**
Date Aug 30, 2021 Time 9:00 a.m.
Dept 5 Rm

The court hearing will be at *(name and address of court)*
1050 Monterey Street, San Luis Obispo, CA 93408

Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.

4 The person who has required you to attend court or provide documents is

Name Robert M. Sanger Phone No. 805-962-4887

Address 222 E. Carrillo St., Ste. 300
(Number, Street, Apt. No.)
Santa Barbara, CA 93101
(City) *(State)* *(Zip)*

Date August 10, 2021 Signature ▶ _____
(Name and Title)

ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS:
(For Subpoena/Subpoena Duces Tecum)
(Criminal and Juvenile)

PROVIDE THESE ITEMS

1. All podcasts including transcripts of podcast transcripts however preserved, all photographs, videos or audio recordings of anyone or anything associated with the Kristin Smart disappearance, all materials sent to or obtained by Christopher Lambert or communications associated with him or anything under his possession or control relating to the Kristin Smart disappearance, persons related to the investigation of said disappearance or pertaining to persons suspected of being witnesses to or involved in said disappearance, or related to or involved in any purported or potential location of Kristin Smart, or purported or potential allegations related to the location of Kristin Smart including the purported location of her remains if she is no longer alive.

2. All recordings including outtakes of the "Your Own Backyard" podcast, or any other blog production publication of any nature relating to the investigation of Kristin Smart's disappearance.

3. All communications however preserved, to and from members of law enforcement and all reports, documents or other materials generated by or provided by Law enforcement relating to the Kristin Smart matter in any way.

4. All correspondence, memoranda, phone messages, emails, text messages or any other materials however preserved, relating to the investigation of Paul Flores, Ruben Flores, Susan Flores and Michael McConville or their property, personal effects, vehicles or anything associated with them or with any other individuals or entities associated with the investigation of Kristin Smart's disappearance, including without limitation, any surreptitious recording of whatever type conducted by any individual with regard to anyone associated with the investigation of Kristin Smart's disappearance.

5. Any and all documentation whatsoever and specific references to all case names and numbers relating to court actions in which you are a party or with regard to which restraining orders have been issued against you.

SANGER SWYSEN & DUNKLE

Attorneys at Law

ON CALL AGREEMENT
People v. Paul Ruben Flores
San Luis Obispo Superior Court
Case Number 21F-02402-A

Witness: Chris Lambert

HEARING: 8/30/2021
DEPARTMENT: 5
ADDRESS: 1050 Monterey St
San Luis Obispo, CA 93408
TIME: 9:00 a.m.

I acknowledge that I have been served with a subpoena requiring me to be present at court on August 30, 2021 at 9:00 a.m. as indicated above to be a witness in the referenced case.

However, since my testimony may actually be required at a later time, the firm of Sanger Swysen & Dunkle has agreed that I may be placed ON CALL. That means that I will agree to appear at court to testify upon 2 hours notice.

I can be reached at the following phone number: _____

It is my responsibility to be sure that someone is at that phone number who can make sure I get the message immediately. It is also my responsibility to appear in court within the agreed number of hours after a call is placed to that number.

Failure to show up in court as directed may result in the issuance of a warrant for my arrest.

DATED: _____

_____
WITNESS SIGNATURE

Social Security/Drivers License Number: _____

Address: _____

_____

EXHIBIT B

MC-510

MEDIA AGENCY (name): YOUR OWN BACKYARD PODCAST
CHANNEL FREQUENCY NO.: www.yourownbackyardpodcast.com
PERSON SUBMITTING REQUEST (name):
CHRISTOPHER LAMBERT
TELEPHONE NO.: 805 925 8268

Department 8 1035 Palm Street San Luis Obispo CA

TITLE OF CASE:
THE PEOPLE VS FLORES

NAME OF JUDGE:
HON CRAIG VON ROOYEN

FILED
APR 19 2021
SAN LUIS OBISPO SUPERIOR COURT
BY: Nikki Rodriguez, Deputy Clerk

ORDER ON MEDIA REQUEST TO PERMIT COVERAGE

CASE NUMBER:
21F-02402 A/B

AGENCY MAKING REQUEST (name): YOUR OWN BACKYARD PODCAST

1 a [X] No hearing was held
b [ ] Date of hearing Time Dept /Div Room

2 The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court rule 1 150 (see reverse)

3 [ ] THE COURT FINDS (findings or a statement of decision are optional) [ ] Attached [ ] As follows

THE COURT ORDERS

4 The request to photograph, record or broadcast is
a [ ] **denied**
b [X] **granted** subject to the conditions in rule 1 150, California Rules of Court, AND the following
(1) [ ] The local rules of this court regulating media activity outside the courtroom (copy attached)
(2) [ ] The order of the presiding or supervising judge regulating media activity outside the courtroom (copy attached)
(3) [ ] Payment to the clerk of increased court -incurred costs of (specify): $ [ ] to be determined
(4) [ ] The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 1 150, and any local rule or order
(5) [ ] Personnel and equipment shall be placed [ ] as directed [ ] as indicated in the attachment [ ] as follows (specify)

(6) (i) [ ] The attached statement of agreed pooling arrangements is approved
(ii) [ ] A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins
(7) [ ] This order
(i) [ ] shall not apply to allow coverage of proceedings that are continued
(ii) [ ] shall apply to allow coverage of proceedings that are continued
(8) [X] Other (specify)

No audio

5 Coverage granted in item 4b is permitted in the following proceedings
a [X] All proceedings, *except* those prohibited by California Rules of Court, rule 1 150, and those proceedings prohibited by further court order
b. [ ] Only the following proceedings (specify type or date or both)

6 [ ] The order made on (date) is [ ] terminated [ ] modified as follows (specify)

7 [ ] Number of pages attached

Date 4/19/21

JUDGE

(See reverse for additional information)

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, California 90017-2566.

On August 23, 2021, I served the foregoing document(s) described as: **OBJECTIONS OF NON-PARTY MEDIA REPRESENTATIVE CHRIS LAMBERT TO DEFENDANT'S SUBPOENA** on the interested parties in this action as stated below:

Robert M. Sanger, Esq.
Sanger Swysen & Dunkle
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Email: rmsTeam@sangerswysen.com
Tel: (805) 962-4887

☒ (BY ELECTRONIC MAIL) I caused such documents to be transmitted via electronic mail to the offices of the addressee(s) at the listed electronic mail address(es).

☒ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on August 23, 2021, at Pico Rivera, California.

☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Nancy Gonzalez
Print Name

Nancy Gonzalez

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
(213) 633-6800
Fax: (213) 633-6899

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, California 90017-2566.

On August 23, 2021, I served the foregoing document(s) described as: **NOTICE OF OBJECTIONS OF NON-PARTY MEDIA REPRESENTATIVE CHRIS LAMBERT TO DEFENDANT'S SUBPOENA** on the interested parties in this action as stated below:

Robert M. Sanger, Esq.
Sanger Swysen & Dunkle
222 E. Carrillo Street, Suite 300
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Email: rmsTeam@sangerswysen.com
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☒ (BY ELECTRONIC MAIL) I caused such documents to be transmitted via electronic mail to the offices of the addressee(s) at the listed electronic mail address(es).

☒ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on August 23, 2021, at Pico Rivera, California.

☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Nancy Gonzalez
Print Name

Nancy Gonzalez

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
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Attorney for the People of the State of California

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SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & 21F-02402 -B AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND ORDER SEALING RECORDS

I am Christopher Peuvrelle, a Deputy District Attorney for San Luis Obispo County. I am the assigned prosecutor for the above-entitled case.

As the court and counsel for the defendant are well aware, there has been a great deal of public interest in this pending case. It has been the goal of all parties to this case to limit the amount of information disseminated to the public to maintain the integrity of the potential jury pool in this county. Such efforts will hopefully assure the defendant is able to receive a fair and impartial trial in San Luis Obispo County.

In this regard, I have submitted a copy of the People's Reply To Defense's Motion To Compel to be heard on August 30, 2021. In accordance with Section 6255 of the California Government Code, I am requesting that this court order that the People's Reply To Defense's

Motion To Compel be sealed until further order of this Court. I respectfully urge that, under Section 6255, the public interest served by not making such records public clearly outweighs the public interest served by disclosure of such records. I would further request that a copy of such reports be released only to counsel for the People and the defendant to prepare for the Preliminary Hearing. Defense counsel represented in chambers on April 15, 2021, that they agree with this request.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher Peuvrelle
Deputy District Attorney

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On August 27, 2021, I served the foregoing document(s) described as:

AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND PROPOSED ORDER SEALING PUBLIC RECORDS
(*People v. Paul Ruben Flores & Ruben Ricardo Flores,* Case No. 21F-02402-A & B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
21F-02402-B
EMAIL: HAROLDMESICK@GMAIL.COM

[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 27, 2021, at San Luis Obispo, California.

Alyssa Muckey, Legal Clerk

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Dan Dow
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Attorney for the People of the State of California

Electronically
FILED:08/30/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	CASE NO. 21F-02402-A & 21F-02402 -B
vs.	[PROPOSED] ORDER SEALING PUBLIC RECORDS
PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendant.	

Based upon the foregoing Affidavit and Request, IT IS HEREBY ORDERED that:

1. The People's Reply To Defense's Motion To Compel and the Affidavit in support of the People's Reply To Defense's Motion To Compel are sealed and lodged with the Court;

2. No other sealing is ordered pursuant to the People's request; and

3. Defense Counsel for Paul Ruben Flores, Robert M. Sanger and his office are permitted to view the sealed records.

Dated: August 30, 2021

Craig Van Rooyen

THE HONORABLE CRAIG B. VAN ROOYEN
JUDGE OF THE SUPERIOR COURT

DIANA PALACIOS (State Bar No. 290923)
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Attorneys for Non-Party Media Representative
CHRIS LAMBERT

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SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A/B

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF CHRIS LAMBERT AND DIANA PALACIOS WITH EXHIBITS A-B

Hearing Date: September 8, 2021
Time: 9:00 am
Department: 5

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 8, 2021 at 9:00 a.m., or as soon thereafter as counsel may be heard in Department 5 of the above-entitled Court, 1050 Monterey Street, San Luis Obispo, California, non-party media representative Chris Lambert will and hereby does move the Court to quash the Order to Attend or Provide Documents: Subpoena/Subpoena Duces Tecum ("Subpoena") served on Mr. Lambert in the above matter by Defendant Paul Ruben Flores ("Defendant") in connection with a criminal case pending before this court.

This Motion is made on the grounds that both the California Shield Law (Article I, § 2(b) of the California Constitution and California Evidence Code § 1070) and the First Amendment to the

United States Constitution protect individual journalists from being compelled to reveal unpublished information obtained or prepared in the course of their journalistic activities. Even criminal defendants are not entitled to force journalists or media organizations to produce constitutionally protected unpublished materials, unless strict conditions are met that justify abrogating these state and federal constitutional protections. Defendant has not come close to meeting those standards here because the information requested is not materially relevant to the case, it can be obtained from other sources, and is cumulative. *See* Memorandum, Section III, IV.

The Motion is based on this Notice; the attached Memorandum of Points and Authorities, the attached Declarations of Chris Lambert and Diana Palacios with Exhibits A-B, on all pleadings, records, and files in this case, on all matters of which judicial notice may be taken, and on such additional argument as shall be presented at the hearing on this Motion.

DATED: September 2, 2021

DAVIS WRIGHT TREMAINE LLP
DIANA PALACIOS

By: _____
Diana Palacios

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

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I. SUMMARY OF ARGUMENT

Mr. Lambert objects to the Subpoena on the grounds that "Defendant has not demonstrated and cannot demonstrate that any ***testimony*** or ***documents*** sought from Mr. Lambert are material to his case" or that that he can satisfy his burdens to overcome the Shield Law or the First Amendment qualified privilege. *See* Palacios Decl. ¶ 2; Ex. B (emphasis added). Any argument by defense counsel to the contrary is plainly wrong and misconstrues Mr. Lambert's objections.

The First Amendment and California shield law protect Mr. Lambert from being compelled to disclose unpublished information that was obtained or prepared in the course of its journalistic activities. Even criminal defendants are not entitled to subject members of the media to compelled discovery, unless strict conditions are met that justify abrogating these state and federal constitutional privileges. Defendant has not met and cannot meet his burdens.

First, under the California Shield law, it is Defendant's burden at the outset to demonstrate a *reasonable probability* exists that the information sought would *materially* assist his defense. *Delaney v. Superior Court*, 50 Cal. 3d 785, 808 (1990). If he does not meet this burden, the inquiry stops. *Id.* Moreover, even if Defendant could meet the threshold burden – which, as discussed below, he cannot – this Court would then balance the parties' respective constitutional interests. *Id.* This balancing of interests also favors protecting Mr. Lambert's constitutional rights. Indeed, defense counsel has already examined several witnesses on this topic so the information Defendant seeks is available from other sources and would be cumulative (which is one of the four factors this Court must consider); this and other factors militate against the sort of fishing expedition through third party files and information epitomized by Defendant's subpoena. *See* Section III, *infra.*

Second, the qualified First Amendment journalist's privilege independently protects Mr. Lambert. The California Supreme Court has recognized that this federal constitutional protection applies in state court proceedings. *See New York Times Co. v. Superior Court*, 51 Cal. 3d 453, 469 (1990) (Mosk, J., concurring and dissenting); *Mitchell v. Superior Court*, 37 Cal. 3d 268, 277-279 (1984) (applying First Amendment privilege). Under this federal constitutional protection, a party cannot compel a media organization or journalist to testify about (or produce) unpublished information unless the party first demonstrates that the information sought "goes to the heart" of the

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case, the testimony is "noncumulative," and the party "has exhausted all alternative sources of obtaining the needed information." *Mitchell*, 37 Cal. 3d at 280, 282 (internal quotation and citation omitted); *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995) ("*Shoen II*"). Here, Defendant cannot show that the material sought is otherwise unavailable, noncumulative, or even relevant, particularly given his extraordinarily broad request. *See* Section IV, *infra*.

For all these reasons, and to protect a third party from the unreasonably burdensome and oppressive tactics used by Defendant and his counsel here, this Court should grant Mr. Lambert's motion to quash the subpoena in its entirety.

II. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Lambert started a podcast to document the 1996 disappearance of Kristin Smart. Lambert Decl. ¶ 2. Over the course of gathering news and information about this incident, Mr. Lambert interviewed several witnesses. *Id.* Mr. Lambert acted in a purely journalistic capacity to gather information for his podcast, and engaged in no activities that could be construed as an attempt to persuade or intimidate any witness. *Id.* ¶ 2. The podcast entitled *Your Own Backyard* premiered in September 2019 and is publicly available online. ¶ 3.

On or about August 10, 2021, Mr. Lambert received a subpoena from Defendant, which demanded his attendance and documents regarding the podcast and unpublished information, including outtakes, notes, documents, communications, memoranda, phone messages, emails, text messages, photographs, recordings, and transcripts, all materials sent or obtained by Mr. Lambert.

On August 23, 2021, Mr. Lambert served objections to the subpoena, including objections based on the California shield law and the First Amendment. Palacios Decl. ¶ 2; Ex. B.

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III. THE UNPUBLISHED INFORMATION DEMANDED BY DEFENDANT IS PROTECTED FROM COMPELLED DISCLOSURE BY THE CALIFORNIA SHIELD LAW.

Article I, § 2(b) of the California Constitution provides that a journalist:

> shall not be adjudged in contempt … for refusing to disclose *any* unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public. … Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be adjudged in contempt … for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.
>
> As used in this subdivision, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, *whether or not related information has been disseminated* and includes, but is not limited to, all notes, *outtakes*, photographs, tapes, or other *data of whatever sort not itself disseminated to the public* through a medium of communication, *whether or not published information based upon or related to such material has been disseminated.*

Cal. Const., Art. I § 2(b) (emphasis added); *see also* Cal. Evid. Code § 1070.

By elevating this constitutional provision from a statute – Evidence Code § 1070 – to the state constitution in 1980, the California electorate made clear that journalists must be given the strongest possible protection for information that they obtain in the course of their newsgathering activities. As the Second Appellate District Court of Appeal has noted:

> The elevation to constitutional status must be viewed as an intention to favor the interest of the press in confidentiality over [competing interests]. . . .
>
> It has long been acknowledged that our state Constitution is the highest expression of the will of the people acting in their sovereign capacity as to matters of state law. When the Constitution speaks plainly on a particular matter, it must be given effect as the paramount law of the state.

Playboy Enters., Inc. v. Superior Court, 154 Cal. App. 3d 14, 27-28 (1984).

A. California's Shield Law Broadly Protects Against The Compelled Disclosure of Unpublished Information.

Mindful of its constitutional mandate, California courts have interpreted this state's Shield Law broadly. As the California Supreme Court explained in *Delaney*, the Shield Law applies to *any* unpublished information, regardless of whether it was obtained in confidence:

> The language of article I, section 2(b) is clear and unambiguous …. The section states plainly that a newsperson shall not be adjudged in contempt for 'refusing to disclose any unpublished information.' … The use of the word 'any' makes clear

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> that article I, section 2(b) applies to all information, regardless of whether it was obtained in confidence. ... *In the context of article I, section 2(b), the word 'any' means without limit and no matter what kind.*

50 Cal. 3d at 798 (emphasis added; citations omitted). Accordingly, the California Supreme Court confirmed in *Delaney* and in *New York Times Co. v. Superior Court*, 51 Cal. 3d 453, 461-62 (1990), that the Shield Law immunizes journalists from compelled disclosure of *any* information received, or materials generated or compiled, during the newsgathering process, unless those specific materials have been published.

Here, the material sought by the subpoena is expressly protected by California's constitutional and statutory shield law: Defendant is seeking *unaired* audio recordings and *unpublished* documents gathered by Mr. Lambert in the course of producing a podcast and related testimony. The California Shield Law squarely applies to this type of program, just as it applies to more traditional "news" outlets and programs. *See, e.g., O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1457-66 (2006) (Shield Law barred subpoenas directed at an online blog about Apple computer products); *People v. Von Villas*, 10 Cal. App. 4th 201, 231-32 (1992) (Shield Law protected freelancer who was contracted to write article for *Hustler* magazine).

Because any unaired interview recordings, unpublished documents, and related testimony, fall squarely within the scope of the California Shield Law, Defendant has the burden of overcoming these statutory and constitutional privileges.

B. Defendant Cannot Meet The Strict Requirements Necessary To Overcome California's Statutory And Constitutional Shield Laws.

The California Supreme Court made clear in *Delaney* that the immunity afforded by the Shield Law may be overcome in a criminal proceeding *only* if the defendant demonstrates that "nondisclosure would deprive [him] of his federal constitutional right to a fair trial." 50 Cal. 3d at 805. Where, as here, a criminal defendant attempts to compel production of unpublished information that is covered by the Shield Law, a court must follow a "two-stage inquiry" to determine whether the defendant has made a sufficient showing to abrogate the media representative's state constitutional rights. *Miller v. Superior Court*, 21 Cal. 4th 883, 891 (1999).

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As a threshold inquiry, Defendant must establish "a reasonable possibility the information will materially assist his defense." *Delaney*, 50 Cal. 3d at 808 (emphasis added). The "burden is on [Defendant] to make th[is] required showing." *Id.* at 809. If the Court finds that Defendant failed to meet his burden with respect to this preliminary showing, the inquiry ends, and Mr. Lambert may not be required to produce any unpublished information. *In re Willon*, 47 Cal. App. 4th 1080, 1093 (1996) (holding that *Delaney* balancing test is "inapplicable [where court is] not confronted with a request by a defendant for information that would directly assist in his or her defense").[1]

But even if a defendant satisfies the "threshold requirement," that is not the end of the inquiry. *If* the threshold showing is made, the Court then must engage in a balancing test, in which it evaluates the respective rights of the criminal defendant and the constitutional rights of the third party journalist. *Delaney*, 50 Cal. 3d at 809. In doing so, the Court should consider four factors: *First*, the Court must consider whether "disclosure would somehow unduly restrict" the journalist's ability to access "future sources and information," because "protection of that ability is the primary purpose of the shield law." *Id.* at 810. *Second*, the "trial court must determine whether the policy of the shield law will in fact be thwarted by disclosure." *Id.* at 811. *Third*, the Court must consider the "importance of the information to the criminal defendant." *Id. Fourth*, the Court should consider "whether there is an alternative source for the unpublished information." *Id.*

As discussed below, Defendant cannot even meet his threshold burden. But even if he could do so, the four-part balancing test favors Mr. Lambert, and warrants an order quashing the subpoena.

1. Defendant Cannot Meet His Threshold Burden.

To make his threshold showing, Defendant cannot rely on conjecture or speculation that

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[1] *See also People v. Sanchez*, 12 Cal. 4th 1, 58 n.4 (1995) (declining to reach *Delaney* balancing factors where defendant failed to show reasonable possibility that unpublished information would materially assist his defense) (disapproved on other grounds, *People v. Doolin*, 45 Cal. 4th 390, 421 n. 22 (2009)); *People v. Von Villas*, 10 Cal. App. 4th 201, 235 (1992) (finding there is "no requirement for the trial court to balance the interests of the newsperson with those of the criminal defendant as set forth in *Delaney*" where defendant failed to show reasonable possibility that information would materially assist his defense).

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something useful might be found in the materials sought. California courts have made clear that the defendant must make a *specific* showing as to how the unpublished information will "materially" assist his defense. Moreover, the information sought cannot be cumulative of other evidence in the case. Instead, to justify infringing a journalist's state constitutional rights, the defendant must show that the unpublished information would reveal something different from other evidence in the case.

For example, in *People v. Sanchez*, 12 Cal. 4th at 56, the California Supreme Court rejected a subpoena directed to a reporter for the Bakersfield Californian on the ground that the defendant "failed to make the threshold showing that publication of alleged unpublished interview information ... would have materially assisted the defense[.]" *Id.* at 57-58. In that case, the reporter had interviewed the defendant five times about the circumstances surrounding several murders. *See id.* at 21. The newspaper later published articles based on the interviews, which attributed certain statements to the defendant. *Id.*[2] After the prosecutor called the reporter to testify about published information, the defense attorney attempted to cross-examine the reporter about *un*published information, and the trial court sustained objections based on the Shield Law. *Id.* at 50. The defendant challenged the ruling, arguing that he met *Delaney's* threshold test:

> The [unpublished information] might have shown that defendant never said he was a "triple murderer" or a "triple killer"; that he did not hit either [victim]; that he did nothing to aid or abet [in the crime]; that he did not intend that either [victim]s be killed; that he tried to stop [the murders]; or that he feels guilty because he failed to prevent the homicides. Any of these possibilities would have bolstered defendant's insufficiency of the evidence argument.

Id. at 57. The California Supreme Court disagreed, however, finding that the defendant's threshold showing "consist[ed] of nothing more than self-serving statements that a court could reasonably conclude were either too speculative to assist defendant or would harm, rather than materially assist, the defense." *Id.* In particular, the Court observed, "defendant never shows *how* the information he sought would materially assist his defense, or *how it differed* in content from the testimony and published information available for cross-examination[.]" *Id.* (emphasis added).

---

[2] In one article, the defendant reportedly admitted that he was "a triple murderer," and that the victims were killed for their social security checks. *Id.* In other articles, the defendant reportedly denied killing two of the victims, but said that "he deserve[d] to die because he was present when the slaying happened, because he helped the killers and because he didn't intervene to save the couple, who had been kind to him for years." *Id.* at 49.

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Similarly, in *People v. Ramos*, 34 Cal. 4th 494, 527 (2004), the Supreme Court rejected the criminal defendant's attempt to meet *Delaney*'s threshold test with evidence that amounted to "nothing more than mere speculation on [the defendant's] part." In *Ramos*, as in *Sanchez*, the defendant was seeking unpublished information related to an interview he had with a newspaper reporter. *Id.* at 523. The defendant argued that the reporter's interview notes might "validate [his] psychiatric disorder and [] provide evidence of a mitigating factor for the jury to consider in rendering a verdict." *Id.* at 526. The Court disagreed, however, concluding that the defendant had failed to meet his burden, since the evidence "does not suggest the notes contain anything of substance that the jury had not already heard." *Id.* at 527.

A year later, in *People v. Vasco*, 131 Cal. App. 4th 137, 155 (2005), the appeals court found that a murder defendant's speculative evidence failed to overcome a reporter's Shield Law rights. The defendant had been convicted of two counts of murder, and "[m]ultiple-murder and lying-in-wait special-circumstance allegations were found to be true." 131 Cal. App. 4th at 142. She also had been interviewed by a newspaper reporter about the circumstances surrounding the murders, and defense counsel later sought to cross-examine the reporter about unpublished information gathered in connection with the interview. *Id.* at 154. The defendant "complain[ed] that the reporter paraphrased her statements, and argue[d] [that] cross-examination would have revealed her exact statements, which, in turn, *might* have bolstered her lack of intent defense." *Id.* at 155 (emphasis added). She also claimed that "disclosure of any notes or tape-recorded interview[s] ... may have revealed her exact statements"; that "cross-examining [the reporter] about her demeanor would have corroborated [her] fear of [her boyfriend] and the description of his threats"; that "cross-examination may have revealed [the reporter] used other information sources besides [her], and that "[the reporter] coerced her into making involuntary admissions." *Id.*

The Court of Appeal rejected the defendant's claims, however, as "nothing more than rank speculation." *Id.* The court also noted that "[m]uch of the information [that defendant] sought to elicit was cumulative of other admitted evidence." *Id.* The court emphasized that "defendant failed to explain how this information would have assisted her defense, or how it differed from other mitigating evidence presented at trial." *Id. See also People v. Cooper*, 53 Cal. 3d 771, 820 (1991)

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(California Supreme Court refused to compel a reporter to produce anonymous letter that allegedly described mishandling of a murder investigation, finding "the competency of the investigation ... was only tangentially relevant to the issue of guilt," and already had been "exhaustively explored.")

The same rationale applies here. Defendant has failed to provide *any* substantive explanation why the outtakes or unpublished materials and information sought by the Subpoena are relevant to Defendant's criminal proceeding. To the extent defense counsel argues that Mr. Lambert attempted to persuade witnesses, this type of baseless allegation is nothing more than "rank speculation," and defense counsel has provided no information regarding how that would assist the defense. Moreover, defense counsel has already interviewed several of the witnesses at issue. Therefore, here, Defendant has failed to even meet the threshold showing.

In contrast, in *Delaney*, the Supreme Court found that the defendant had satisfied the threshold requirement because the testimony sought from reporters was "pivotal," and would "likely be determinative of the outcome" of the case. 50 Cal. 3d at 815 (emphasis added). The crucial issue in that case was whether the defendant had consented to a search – that was his *only* defense – and the reporters were the *only* disinterested witnesses. *Id.* at 814-16. That is a far cry from the circumstances here, where the interviews reflected in the Podcast were conducted well after the alleged criminal events took place and Defendant has made no claim that Mr. Lambert has "pivotal" information. For this reason alone, Mr. Lambert's motion should be granted, and the subpoena should be quashed.

2. The *Delaney* Factors Weigh In Favor Of Mr. Lambert.

Even if Defendant had met his threshold burden under *Delaney* the four *Delaney* factors also weigh against compelled disclosure.

Factor One: Sensitivity of Information. A court must consider whether the information sought is "confidential or sensitive," and whether its disclosure would unduly restrict the media's access to future sources and information. *Delaney*, 50 Cal. 3d at 810. Here, the requested information is the quintessential type of unedited, unpublished information that journalists rely on every day to do their jobs. Interview subjects rely on a journalist's skills and discretion to report stories accurately and fairly, and that includes the journalist's editorial control over the end product.

If third parties could routinely obtain material that a journalist or media organization chose not to include in an edited program, potential sources of information might refuse to be interviewed (or recorded), to avoid having their unguarded comments become fodder for a criminal defendant's fishing expedition into potential avenues for impeachment. As one court recognized, "[m]any doors will be closed to reporters who are viewed as investigative resources of litigants." *United States v. Marcos*, 17 Media L. Rptr. 2005, 2007 (S.D.N.Y. 1990).

Factor Two: Special Policy Consequences That Would Moot The Need To Avoid Disclosure. This factor allows a court to consider any factors that "may, as a practical matter, render moot the need to avoid disclosure." *Delaney*, 50 Cal. 3d at 810-11. These circumstances include the situation where the defendant himself or herself made the statements at issue, or other cases where a "reporter's news-gathering ability will not be prejudiced" by application of the Shield Law. *Id.* No such special circumstances are present here. Instead, the interests being protected are of a non-party media representative, Mr. Lambert. Criminal defendants should not be given unfettered access to information to unrelated material, particularly where the information was not included in any published report. *See Shoen II*, 48 F.3d at 416. This factor weighs in favor of Mr. Lambert.

Factor Three: Importance to Defendant. To justify his request to compel Mr. Lambert to reveal unpublished information, Defendant must show that the information is important to his defense. *Delaney*, 50 Cal. 3d at 811. As the Supreme Court explained, if the unpublished information "goes to the heart of defendant's case," then "the balance will weigh more heavily in favor of disclosure than if he could show only a reasonable possibility the evidence would assist his defense." *Id.* Even assuming, for sake of argument, that Defendant's speculative hope that he will discover impeachment evidence satisfies his threshold requirement, it gets her no further. It is purely conjecture that there would be anything in the outtakes or unpublished information that could be used for impeachment of witnesses. Because the information sought is speculative, at best, it does not bear on any material issue, let alone go to the "heart" of Defendant's case. This factor also weighs in favor of Mr. Lambert.

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Factor Four: Alternative Sources. The final factor that the California Supreme Court has recognized is whether the criminal defendant "has exhausted all alternative sources of obtaining the needed information." *Delaney*, 50 Cal. 3d at 811 (citation omitted). That does not mean that the "alternative source" must be for the outtakes or unpublished documents; it asks whether there is an alternative source for the information sought. Here, Defendant has been able to examine witnesses, including statements made to law enforcement, family, friends, and others, including statements made during the taping of the Podcast. Defendant also presumably has other information that he intends to use for impeachment, including physical evidence, police reports, and the like.

In any event, reporters frequently are the only source for their own unpublished information, which is why this factor is not dispositive. Instead, "[t]he relative weight of these factors in a particular case is for the trial court to decide." *People v. Charles*, 61 Cal. 4th 308, 325 (2015). Here, because the unpublished information is expressly protected by the Shield Law, and the request for the information is based entirely on speculation about whether witnesses were persuaded by Mr. Lambert, the weight of the *Delaney* factors favors Mr. Lambert. This Court should quash the subpoena under controlling California law.

IV. THE FIRST AMENDMENT QUALIFIED JOURNALIST'S PRIVILEGE INDEPENDENTLY PROTECTS MR. LAMBERT FROM COMPELLED PRODUCTION OF UNPUBLISHED INFORMATION.

In addition to the protections offered by the state constitutional Shield Law, Mr. Lambert has a qualified privilege against the forced disclosure of unpublished information under the First Amendment. The United States Supreme Court recognized the important First Amendment interests in journalists' newsgathering activities in *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972), noting that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Id.* at 681. Following *Branzburg*, most federal appellate courts – including the Ninth Circuit – have recognized a qualified "journalists' privilege" under the First Amendment, which protects both confidential sources and nonconfidential newsgathering information. *See, e.g., Shoen v. Shoen*, 5 F.3d 1289, 1292 n.5 (9th Cir. 1993) ("*Shoen I*"). California courts also expressly have recognized a qualified journalists' privilege arising from the First Amendment. *See, e.g., Mitchell,*

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37 Cal. 3d at 274-84. This qualified federal privilege applies regardless of whether the information sought was confidential. *See Shoen II*, 48 F.3d at 416.[3]

To ensure that the privilege prevails "in all but the most exceptional cases," the subpoenaing party must show that the requested material is "(1) unavailable despite exhaustion of all reasonable alternative sources; (2) noncumulative; and (3) clearly relevant to an important issue in the case." *Shoen II*, 48 F.3d at 416. Defendant cannot make the required showing.

In particular, because the party seeking to overcome the journalist's privilege must meet *all* three factors, *id.*, the subpoena should be quashed on First Amendment grounds because he cannot show that the material is *clearly* relevant to an *important* issue in the case. As with California's Shield Law, the First Amendment protections require Defendant to do more than merely speculate as to information he might find, or its importance. *See, e.g., United States v. Cuthbertson*, 651 F.2d 189, 196 (3d Cir. 1981) (defendant seeking information must prove that the information sought is "crucial to the claim"); *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 597 (1st Cir. 1980) (discussing the federal reporters' privilege, the court held that "[a]s a threshold matter, the court should be satisfied that a claim is not frivolous, a pretense for using discovery powers in a fishing expedition"); *Harbert v. Priebe*, 466 F. Supp. 2d 1214 (N.D. Cal. 2006) (subpoena barred because the requester's "mere belief" that information from a newspaper might help the case insufficient to show that the information was "clearly relevant").

Particularly pertinent here, the desire to fish for possible impeachment evidence repeatedly has been found inadequate to overcome the reporter's privilege. For example, in *Shoen II*, the

---

[3] Courts regularly have applied the federal qualified privilege to journalists involved in a wide variety of media and publications. *See, e.g., Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977) (documentary filmmaker); *Apicella v. McNeil Laboratories, Inc.*, 66 F.R.D. 78 (E.D.N.Y. 1975) (author of medical newsletter); *Shoen I*, 5 F.3d at 1293 (book author); *People v. Hendrix*, 820 N.Y.S.2d 411 (N.Y. Sup. Ct. Kings County 2006) ("reality show about the New York City Police Department ultimately titled NYPD 24/7"); *Price v. Time, Inc.*, 2003 WL 23273874, 2003 U.S. Dist. LEXIS 24586 (N.D. Ala. Dec. 8, 2003) (applying First Amendment privilege to *Sports Illustrated*); *People v. Ford*, 2007 N.Y. Misc. LEXIS 55 at *2-6 (N.Y. Crim. Ct., Richmond City 2007) (quashing subpoena for footage from MTV program "True Life: I'm a Staten Island Girl"); *United States v. Grant*, 2004 U.S. Dist. LEXIS 28176 (S.D.N.Y. Nov. 18, 2004) (privilege applied to different episode of MTV's "True Life" program); *Gonzales v. NBC*, 194 F. 3d 29, 32 (2d Cir. 1999) (applying privilege to *Dateline* television program); *Krase v. Graco Children Prods., Inc.*, 79 F.3d 346, 353 (2d Cir. 1996) (same); *Kinsella v. Welch*, 827 A.2d 325 (N.J. App. 2003) (applying newsgathering statute to television program "Trauma, Life in the E.R.").

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Ninth Circuit rejected the notion that potential impeachment of the defendant was an interest that could overcome the journalist's privilege because the impeachment of the defendant through interview notes was not "an important issue in the case." 48 F.3d at 418. Similarly, in *Re/Max Int'l v. Century 21 Real Estate Corp.*, 846 F. Supp. 910, 912 (D. Colo. 1994), the federal district court in Colorado rejected an attempt to depose a reporter where "[t]he only possible value in deposing [the reporter] is to impeach [a witness's] testimony." *Id.* at 912. In such a circumstance, the value of taking the reporter's deposition would have been "de minimis." *Id.* at 912; *see also United States v. Burke*, 700 F.2d 70, 77 (2d Cir. 1983) (quashing subpoena to reporter where criminal defendant "failed to make the clear and specific showing that these documents were necessary or critical to the maintenance of his defense," even though the reporter's notes "may have been material and relevant inasmuch as they might have contradicted the trial testimony of" a prosecution witness).

The value here of potential impeachment evidence based on interviews given for the Podcast is *de minimis*, at best. For this reason alone, and because he cannot satisfy the other constitutional requirements for compelling production of unpublished information for the reasons set forth above,[4] the Subpoena should be quashed.

V. MR. LAMBERT HAS NOT ATTEMPTED TO PERSUADE WITNESSES

To the extent that defense counsel argues that Mr. Lambert's constitutional privileges do not apply because he attempted to persuade witnesses, he is wrong. *First*, counsel's generalized assertion does not identify any factual basis to support such an allegation, much less identify any issue on which any witness was supposedly "persuaded." Mr. Lambert did not intimidate or attempt to persuade any witness. Lambert Decl. ¶ 3. *Second*, defense counsel has not identified any conduct that is improper, much less criminal. Interviewing subjects and asking questions is what journalist do, and cannot possibly provide the basis for overcoming privilege. Otherwise, journalists would lose reporters' privilege altogether. *Third*, as discussed above, even if Defendant

[4] This includes the requirement that Defendant exhaust all alternative sources of information. *See, e.g., Riley v. City of Chester*, 612 F.2d 708, 7616 (3d Cir. 1979) (privilege cannot be abrogated absent a "strong showing" that there is "no other source for the information requested"); *Mitchell*, 37 Cal. 3d at 282 ("virtually all cases agree that discovery should be denied unless the plaintiff has exhausted all alternative sources of obtaining the needed information").

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were seeking information regarding communications between Mr. Lambert and witnesses, that is insufficient to meet his burden under the California Shield Law or the qualified First Amendment privilege. *Finally*, defense counsel has not provided any authority showing that Mr. Lambert's conduct is an exception to the Shield Law or the qualified First Amendment privilege.

VI. CONCLUSION

For all the reasons set forth above, this Court should grant the Motion and quash the subpoena directed to Mr. Lambert.

DATED: September 2, 2021

DAVIS WRIGHT TREMAINE LLP
DIANA PALACIOS

By: _____
Diana Palacios

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

DAVIS WRIGHT TREMAINE LLP
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DECLARATION OF CHRIS LAMBERT

I, CHRIS LAMBERT, declare as follows:

1. I am over 18 years of age, and not a party to this case. I have personal knowledge of the matters stated below, and if called as a witness I could testify competently to these facts.

2. I started a podcast to document the 1996 disappearance of Kristin Smart. Over the course of documenting this incident, I interviewed several individuals.

3. I did not intimidate or attempt to persuade any witness. The role of a reporter, journalist, or podcaster is to ask questions.

4. The podcast entitled *Your Own Backyard* premiered in September 2019 and is publicly available online at: https://yourownbackyard.libsyn.com.

5. On or about 8/10/21 I was served with an Order to Attend or Provide Documents: Subpoena/Subpoena Duces Tecum ("Subpoena"). Attached as **Exhibit A** is a true and correct copy of the Subpoena.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this 1 day of September, 2021, in SAN LUIS OBISPO, California.

Chris Lambert

EXHIBIT A

CR-125/JV-525

[illegible] SBN [illegible]
SANGER SAWYER & DUNKLE
222 E [illegible]
Santa Barbara, CA [illegible]

[illegible] 311
[illegible]
[illegible] Fleiss

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
1050 Monterey Street
San Luis Obispo, CA 93408
Criminal Branch

PEOPLE OF THE STATE OF CALIFORNIA v. PAUL EDENFIELDS

FOR COURT USE ONLY

ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS:
Subpoena/Subpoena Duces Tecum

21F-02402-A

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1 To (name or business): Chris Lambert

2 You must follow the court order(s) checked below.

a [ ] Attend the hearing.

b [X] Attend the hearing and bring all items checked in c below.

c [X] Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records.)

(1) SEE ATTACHMENT

(2)

(3)

[X] *If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."*

d [ ] If someone else is responsible for maintaining the items checked in c, that person (the Custodian of Records) must also attend the hearing.

e [ ] If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order**, you do not have to attend court if you follow the instructions in item 5.

3

Court Hearing Date:
Date Aug 30 2021 Time 9:00 a.m.
Dept 5 Rm

The court hearing will be at *(name and address of court)*
1050 Monterey Street, San Luis Obispo, CA 93408

Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.

4 The person who has required you to attend court or provide documents is

Name Robert M. Sanger Phone No. 805-962-4887
Address 222 E. Carrillo St., Ste. 300
(Number, Street, Apt. No.)
Santa Barbara, CA 93101
(City) *(State)* *(Zip)*

Date August 10, 2021 Signature [signature]
(Name and Title)

[illegible] Judicial Council of California
[illegible]

ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS:
(For Subpoena/Subpoena Duces Tecum)
(Criminal and Juvenile)

PROVIDE THESE ITEMS

1. All podcasts including transcripts of transcripts however preserved, all photographs, audio or video recordings of anyone or anything associated with the Kristin Smart disappearance, all materials sent to or obtained by Chris Lambert or anyone associated with him or anything under his possession or control relating to the Kristin Smart disappearance, persons related to the investigation of said disappearance or pertaining to persons suspected of being witnesses to or involved in said disappearance, or related to or involved in any purported or potential location of Kristin Smart, or purported or potential allegations related to the location of Kristin Smart including the purported location of her remains or she is no longer alive.

2. All recordings including outtakes of the *Your Own Backyard* podcast, or any other blog production publication of any nature relating to the investigation of Kristin Smart's disappearance.

3. All communications however preserved, to and from members of law enforcement and all reports, documents or other materials generated by or provided by Law enforcement relating to the Kristin Smart matter in any way.

4. All correspondence, memoranda, phone messages, emails, text messages or any other materials however preserved, relating to the investigation of Paul Flores, Ruben Flores, Susan Flores and Michael McConville or their property, personal effects, vehicles or anything associated with them or with any other individuals or entities associated with the investigation of Kristin Smart's disappearance, including without limitation, any surreptitious recording of whatever type conducted by any individual with regard to anyone associated with the investigation of Kristin Smart's disappearance.

5. Any and all documentation whatsoever and specific references to all case names and numbers relating to court actions in which you are a party or with regard to which restraining orders have been issued against you.

SANGER SWYSEN & DUNKLE

Attorneys at Law

ON CALL AGREEMENT
People v. Paul Ruben Flores
San Luis Obispo Superior Court
Case Number 21F-02402-A

Witness: Chris Lambert

HEARING: 8/30/2021
DEPARTMENT: 5
ADDRESS: 1050 Monterey St.
San Luis Obispo, CA 93408
TIME: 9:00 a.m.

I acknowledge that I have been served with a subpoena requiring me to be present at court on August 30, 2021 at 9:00 a.m. as indicated above to be a witness in the referenced case.

However, since my testimony may actually be required at a later time, the firm of Sanger Swysen & Dunkle has agreed that I may be placed ON CALL. That means that I will agree to appear at court to testify upon 2 hours notice.

I can be reached at the following phone number: _____.

It is my responsibility to be sure that someone is at that phone number who can make sure I get the message immediately. It is also my responsibility to appear in court within the agreed number of hours after a call is placed to that number.

Failure to show up in court as directed may result in the issuance of a warrant for my arrest.

DATED: _____

_____
WITNESS SIGNATURE

Social Security/Drivers License Number: _____

Address: _____

_____

DECLARATION OF DIANA PALACIOS

I, Diana Palacios, declare as follows:

1. I am an attorney admitted to practice before all the courts of the State of California and before this Court. I am a partner at the law firm of Davis Wright Tremaine LLP, and I am one of the attorneys representing Non-Party Media Representative Chris Lambert. The facts stated below are true of my own personal knowledge, except for those matters stated on information and belief, which I am informed and believe to be true.

2. On August 23, 2021, our office served objections to the subpoena served on Lambert via overnight delivery and email. Attached as **Exhibit B** is a true and correct copy of the objections served on Defendant on behalf of Mr. Lambert.

3. Defendant's counsel and I met and conferred regarding the motion to quash on September 1, 2021. We did not reach any resolution.

4. I have not received any communications or response from Defendant's counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this 2nd day of September, 2021, in Altadena, California.

Diana Palacios

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EXHIBIT B

DIANA PALACIOS (State Bar No. 290923)
dianapalacios@dwt.com
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Fax: (213) 633-6899

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES, Defendant.	Case No. 21F-02402-A/B **OBJECTIONS OF NON-PARTY MEDIA REPRESENTATIVE CHRIS LAMBERT TO DEFENDANT'S SUBPOENA** Return Date: August 30, 2021 Time: 9:00 a.m. Dept: 5

PROPOUNDING PARTY: Defendant Paul Ruben Flores

RESPONDING PARTY: Non-Party Media Representative Chris Lambert

Non-Party Media Representative Chris Lambert respectfully submits the following Objections to the Order to Attend or Provide Documents: Subpoena/Subpoena Duces Tecum ("Subpoena") served by counsel for Defendant Paul Ruben Flores ("Defendant"), which demands Mr. Lambert's attendance at a 9:00 am hearing on August 30, 2021 and documents.[1] *See* Subpoena attached as Exhibit A.

[1] A non-party may object to a subpoena, and is not obliged to file a motion to quash. *Monarch Healthcare v. Superior Court*, 78 Cal. App. 4th 1282, 1290 (2000).

OBJECTIONS TO SUBPOENA

1. Mr. Lambert is the creator of the podcast "Your Own Backyard," and engages in news gathering.[2] *See O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1457 (2006) (extending the privilege to bloggers engaged in the gathering and dissemination of news). Under Article I, § 2(b) of the California Constitution, California Evidence Code § 1070, and the common law, Mr. Lambert is protected against the compelled disclosure of unpublished information. *See, e.g., Delaney v. Superior Court*, 50 Cal. 3d 785, 808 (1990); *Fost v. Superior Court*, 80 Cal. App. 4th 724, 736-737 (2000); *In re Jack Howard*, 136 Cal. App. 2d 816, 818-19 (1955); *see also Miller v. Superior Court*, 21 Cal. 4th 883, 890 (1999). Here, Defendant has not demonstrated and cannot demonstrate that any testimony or documents sought from Mr. Lambert are material to his case, or that he can satisfy the four-part test set forth in *Delaney*, 50 Cal.3d at 808.[3]

2. Mr. Lambert independently objects to the Subpoena based on the First Amendment qualified reporters' privilege. *Shoen v. Shoen*, 5 F.3d 1289, 1294 (9th Cir. 1993) ("*Shoen I*"); *see also Mitchell v. Superior Court*, 37 Cal. 3d 268, 280, 282 (1984). The federal constitutional privilege protects both confidential and non-confidential information. *Id.* at 1295. Defendant cannot overcome this constitutional protection because he cannot establish: (a) that the information sought is not available from alternative sources; (b) that the information meets the high standard of relevance necessary to overcome the privilege; and (c) that the information would not be cumulative of other information available to the Defendant. *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995) ("*Shoen II*").

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[2] Indeed, the Court has recognized that Mr. Lambert is a member of the media. *See* Exhibit B (Order granting Media Request to Permit Coverage).

[3] Under *Delaney*, a media representative cannot be compelled to provide unpublished information unless the criminal defendant satisfies a threshold requirement of showing that the particular information or testimony will materially assist his case. 50 Cal. 3d at 808. Even if Defendant could meet this burden, he will not be able to meet the requirements under California law to compel disclosure of unpublished information, which consider: (1) whether "disclosure would somehow unduly restrict the newsperson's access to future sources and information," which "is the primary purpose of the Shield Law"; (2) whether the policy of the Shield Law will in fact be "thwarted by disclosure"; (3) the "importance of the information to the criminal defendant" and (4) whether there is an "alternative source for the unpublished information." *Id.* at 810-811.

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3. Mr. Lambert further objects to the Subpoena to the extent that it seeks documents and/or information protected by the right of privacy under the U.S. Constitution, California law, other state laws or any other privacy right.

4. Mr. Lambert further objects to the Subpoena to the extent that the information sought is neither relevant nor reasonably likely to lead to the discovery of admissible evidence.

5. Mr. Lambert further objects to the Subpoena to the extent that it purports to impose any requirements or obligations other than or beyond those specifically required under the Code of Criminal Procedure and/or any other applicable law.

6. Mr. Lambert further objects to the Subpoena to the extent that it seeks documents not in Mr. Lambert's possession, custody, or under its control, and to the extent that it purports to require Mr. Lambert to produce documents exclusively within the possession, custody, or under the control of other persons or entities.

7. Mr. Lambert further objects to the Subpoena to the extent that it seeks information that is protected by the attorney-client privilege, the attorney-work-product doctrine, or any other privilege, doctrine, or immunity.

8. Mr. Lambert further objects to the Subpoena on the grounds that the description of documents requested is vague and ambiguous, overbroad, unreasonably burdensome, and contains terms that are not defined with reasonable particularity.

9. Mr. Lambert further objects to the Subpoena on the grounds that, to the extent it is seeking materials that have been publicly disseminated, whether by Mr. Lambert or a third party, those materials are equally accessible to Defendant.

10. Mr. Lambert further objects to the Subpoena to the extent that it requires Mr. Lambert to produce electronically stored information in multiple forms and/or in a form which is inconsistent with the form in which it is usually maintained. Mr. Lambert further objects to this Subpoena to the extent it purports to require the production of electronically stored information from sources that are not reasonably accessible because of undue burden and cost.

11. Mr. Lambert's objections do not in any way constitute an admission of any factual averments stated or implied by the Subpoena.

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SPECIFIC OBJECTIONS

REQUEST NO. 1:

All podcasts, including recordings thereof, transcripts, however preserved, all photographs, video or audio recordings of anyone or anything associated with the Kristin Smart disappearance, all materials sent to or obtained by Chris Lambert or anyone associated with him or anything under his possession or control relating to the Kristin Smart disappearance, persons related to the investigation of said disappearance, or pertaining to persons suspected of being witnesses to or involved in said disappearance, or related to or involved in any purported or potential location of Kristin Smart, or purported or potential allegations related to the location of Kristin Smart including the purported location of her remains, if she is no longer alive.

RESPONSE TO REQUEST NO. 1:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com.

REQUEST NO. 2:

All recordings including outtakes of the "Your Own Backyard" podcast, or any other blog, production, publication of any nature relating to the investigation of Kristin Smart's disappearance.

RESPONSE TO REQUEST NO. 2:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
(213) 633-6800
Fax: (213) 633-6899

information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com.

REQUEST NO. 3:

All communications however preserved, to and from members of law enforcement and all reports, documents or other materials generated by or provided by law enforcement relating to the Kristin Smart matter in any way.

RESPONSE TO REQUEST NO. 3:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com, and other sources who are not media representatives, including law enforcement.

REQUEST NO. 4:

All correspondence, memoranda, phone messages, emails, text messages, or any other materials however preserved, relating to the investigation of Paul Flores, Ruben Flores, Susan Flores and Michael McConville or their property, personal effects, vehicles or anything associated

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with them or with any other individuals or entities associated with the investigation of Kristin Smart's disappearance, including without limitation, any surreptitious recording of whatever type conducted by any individual with regard to anyone associated with the investigation of Kristin Smart's disappearance.

RESPONSE TO REQUEST NO. 4:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks the production of information that is protected by the statutory, common law, and constitutional medias' privileges under the First Amendment to the United States Constitution, Article 1, Section 2(b) of the California Constitution, and California Evidence Code § 1070. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr. Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including the website https://yourownbackyard.libsyn.com, and other sources who are not media representatives. Mr. Lambert further objects to this Request to the extent that it seeks documents and/or information protected by the right of privacy.

REQUEST NO. 5:

Any and all documentation whatsoever and specific references to all case names and numbers relating to court actions in which you are a party or with regard to which restraining orders have been issued against you.

RESPONSE TO REQUEST NO. 5:

Mr. Lambert incorporates each of its General Objections into this response, as set forth above.

Mr. Lambert further objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, the attorney-work-product doctrine, or any other privilege, doctrine, or immunity. Mr. Lambert further objects to this Request as overbroad and unduly burdensome, and on the grounds that it seeks the production of materials that are not relevant to the underlying proceedings, nor reasonably likely to lead to the discovery of relevant evidence. Mr.

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Fax: (213) 633-6899

Lambert further objects to this Request to the extent that it seeks the production of materials that are available to Defendant from publicly available sources, including court dockets. Mr. Lambert further objects to this Request to the extent that it seeks documents and/or information protected by the right of privacy.

Subject to these objections, Mr. Lambert responds that no responsive documents exist.

Mr. Lambert expressly reserves all other objections to the Subpoena or to questions that may be asked of him if he is required to appear. These objections are made without waiver of any other defects in the service or in the Subpoena itself.

DATED: August 23, 2021

DAVIS WRIGHT TREMAINE LLP
DIANA PALACIOS

By: _____
Diana Palacios

Attorneys for Non-Party Media Representative
CHRIS LAMBERT

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
(213) 633-6800
Fax: (213) 633-6899

EXHIBIT A

CR-125/JV-525

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
1050 Monterey Street
San Luis Obispo, CA 93408
Criminal Branch

PEOPLE OF THE STATE OF CALIFORNIA: PAUL RUBEN FLORES

ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS:
Subpoena/Subpoena Duces Tecum

21F-02403-A

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1 To (name or business): Chris Lamben

2 You must follow the court orders I checked below.

a [ ] Attend the hearing.

b [x] Attend the hearing and bring all items checked in c below.

c [x] Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):

(1) SEE ATTACHMENT

(2)

(3)

[x] *If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."*

d [ ] If someone else is responsible for maintaining the items checked in c, that person (the Custodian of Records) must also attend the hearing.

e [ ] If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order**, you do not have to attend court if you follow the instructions in item 5.

3

Court Hearing Date:
Date: Aug 30, 2021 Time: 9:00 a.m.
Dept: 5 Rm:

The court hearing will be at *(name and address of court)*:
1050 Monterey Street, San Luis Obispo, CA 93408

Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.

4 The person who has required you to attend court or provide documents is:

Name: Robert M. Sanger Phone No.: 805-962-4887
Address: 222 E. Carrillo St., Ste. 300
(Number, Street, Apt. No.)
Santa Barbara, CA 93101
(City) (State) (Zip)

Date: August 10, 2021 Signature: Robert M. Sanger
(Name and Title)

PROVIDE THESE ITEMS

1. All police including records, reports, transcripts, however preserved, all photographs, books or audio recordings of anyone or anything associated with the Kristin Smart disappearance, all materials sent to or obtained by Chris Lambert or anyone associated with him or anything under his possession or control relative to the Kristin Smart disappearance, persons related to the investigation of said disappearance or pertaining to persons suspected of being witnesses to or involved in said disappearance, or related to or involved in any purported or potential location of Kristin Smart, or purported or potential allegations related to the location of Kristin Smart including the purported location of her remains if she is no longer alive.

2. All recordings including outtakes of the 'Your Own Backyard' podcast, or any other blog production publication of any nature relating to the investigation of Kristin Smart's disappearance.

3. All communications however preserved, to and from members of law enforcement and all reports, documents or other materials generated by or provided by law enforcement relating to the Kristin Smart matter in any way.

4. All correspondence, memoranda, phone messages, emails, text messages or any other materials however preserved, relating to the investigation of Paul Flores, Ruben Flores, Susan Flores and Michael McConville or their property, personal effects, vehicles or anything associated with them or with any other individuals or entities associated with the investigation of Kristin Smart's disappearance, including without limitation, any surreptitious recording of whatever type conducted by any individual with regard to anyone associated with the investigation of Kristin Smart's disappearance.

5. Any and all documentation whatsoever and specific references to all case names and numbers relating to court actions in which you are a party or with regard to which restraining orders have been issued against you.

SANGER SWYSEN & DUNKLE

Attorneys at Law

ON CALL AGREEMENT
People v. Paul Ruben Flores
San Luis Obispo Superior Court
Case Number 21F-03402-A

Witness: Chris Lambert

HEARING: 8/30/2021
DEPARTMENT: 5
ADDRESS: 1030 Monterey St
San Luis Obispo, CA 93408
TIME: 9:00 a.m.

I acknowledge that I have been served with a subpoena requiring me to be present at court on August 30, 2021 at 9:00 a.m. as indicated above to be a witness in the referenced case.

However, since my testimony may actually be required at a later time, the firm of Sanger Swysen & Dunkle has agreed that I may be placed ON CALL. That means that I will agree to appear at court to testify upon 2 hours notice.

I can be reached at the following phone number: _____.

It is my responsibility to be sure that someone is at that phone number who can make sure I get the message immediately. It is also my responsibility to appear in court within the agreed number of hours after a call is placed to that number.

Failure to show up in court as directed may result in the issuance of a warrant for my arrest.

DATED: _____ _____
WITNESS SIGNATURE

Social Security/Drivers License Number: _____

Address: _____

_____

EXHIBIT B

MC-610

MEDIA AGENCY (name) YOUR OWN BACKYARD PODCAST
CHANNEL FREQUENCY NO www.yourownbackyardpodcast.com
PERSON SUBMITTING REQUEST (name)
CHRISTOPHER LAMBERT
TELEPHONE NO 805 925 8268

Department 5 1035 Palm Street San Luis Obispo CA

TITLE OF CASE
THE PEOPLE VS FLORES

NAME OF JUDGE
HON CRAIG VON ROOYEN

FILED
APR 19 2021
SAN LUIS OBISPO SUPERIOR COURT
BY: Nikki Rodriguez, Deputy Clerk

ORDER ON MEDIA REQUEST TO PERMIT COVERAGE

CASE NUMBER
21F-02402 A/B

AGENCY MAKING REQUEST (name) YOUR OWN BACKYARD PODCAST

1 a ☒ No hearing was held
b ☐ Date of hearing Time Dept /Div Room

2 The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court rule 1 150 (see reverse)

3 ☐ THE COURT FINDS (findings or a statement of decision are optional) ☐ Attached ☐ As follows

THE COURT ORDERS

4 The request to photograph, record or broadcast is
a ☐ **denied**
b ☒ **granted** subject to the conditions in rule 1 150, California Rules of Court, **AND** the following
(1) ☐ The local rules of this court regulating media activity outside the courtroom (copy attached)
(2) ☐ The order of the presiding or supervising judge regulating media activity outside the courtroom (copy attached)
(3) ☐ Payment to the clerk of increased court incurred costs of (specify) $ ☐ to be determined
(4) ☐ The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 1 150, and any local rule or order
(5) ☐ Personnel and equipment shall be placed ☐ as directed ☐ as indicated in the attachment ☐ as follows (specify)

(6) (i) ☐ The attached statement of agreed pooling arrangements is approved
(ii) ☐ A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins
(7) ☐ This order
(i) ☐ shall not apply to allow coverage of proceedings that are continued
(ii) ☐ shall apply to allow coverage of proceedings that are continued
(8) ☒ Other (specify)
No audio

5 Coverage granted in item 4b is permitted in the following proceedings
a ☒ All proceedings, except those prohibited by California Rules of Court rule 1 150, and those proceedings prohibited by further court order
b. ☐ Only the following proceedings (specify type or date or both)

6 ☐ The order made on (date) is ☐ terminated ☐ modified as follows (specify)

7 ☐ Number of pages attached

Date 4/19/21

Craig V. Rooyen
JUDGE

(See reverse for additional information)

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, California 90017-2566.

On August 23, 2021, I served the foregoing document(s) described as: **OBJECTIONS OF NON-PARTY MEDIA REPRESENTATIVE CHRIS LAMBERT TO DEFENDANT'S SUBPOENA** on the interested parties in this action as stated below:

Robert M. Sanger, Esq.
Sanger Swysen & Dunkle
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Email: rmsTeam@sangerswysen.com
Tel: (805) 962-4887

☒ (BY ELECTRONIC MAIL) I caused such documents to be transmitted via electronic mail to the offices of the addressee(s) at the listed electronic mail address(es).

☒ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on August 23, 2021, at Pico Rivera, California.

☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Nancy Gonzalez
Print Name

Nancy Gonzalez

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, California 90017-2566.

On September 2, 2021, I served the foregoing document(s) described as: **NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF CHRIS LAMBERT AND DIANA PALACIOS WITH EXHIBITS A-B** on the interested parties in this action as stated below:

Robert M. Sanger, Esq.
Sanger Swysen & Dunkle
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Email: rmsTeam@sangerswysen.com
Tel: (805) 962-4887

☒ (BY ELECTRONIC MAIL) I caused such documents to be transmitted via electronic mail to the offices of the addressee(s) at the listed electronic mail address(es).

☒ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on September 2, 2021, at Pico Rivera, California.

☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Nancy Gonzalez
Print Name

Nancy Gonzalez

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
(213) 633-6800
Fax: (213) 633-6899

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9/3/2021 3:57 PM

SANGER SWYSEN & DUNKLE
Robert M. Sanger, SBN 058214
Sarah S. Sanger, SBN 322722
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Tel.: (805) 962-4887
Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

Electronically
FILED:09/07/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES, Defendant.	Case No. 21F-02402-A ***CONDITIONALLY UNDER SEAL*** **ATTESTATION OF THE CLERK OF THE SUPERIOR COURT** (Subject to Application to File Under Seal) Hon. Craig Van Rooyen

I, the undersigned, Clerk of a Superior Court of the State of California in and for the County of San Luis Obispo, do hereby certify that this Honorable Craig Van Rooyen by whom the foregoing Certificate was made and whose genuine signature is subscribed thereto was at the time of signing of the same, and still is, Judge of the Superior Court of the State of California, in and for the County of San Luis Obispo, duly commissioned, qualified and sworn, and to whose acts of such full faith and credit are due.

///

IN WITNESS WHEREOF, I have hereunto set my signature and affixed the Seal of said Court this 7th day of September, 2021.

Dated: September 7, 2021

CLERK OF THE SUPERIOR COURT
County of San Luis Obispo
State of California

ELECTRONICALLY
FILED
9/7/2021 8:58 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SANGER SWYSEN & DUNKLE
Robert M. Sanger, SBN 058214
Sarah S. Sanger, SBN 322722
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Tel.: (805) 962-4887
Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

DEFENDANT'S OPPOSITION TO NON-PARTY WITNESS CHRIS LAMBERT'S MOTION TO QUASH SUBPOENA

Date: September 8, 2021
Time: 9:00 a.m.
Dept.: 5

Hon. Craig B. Van Rooyen

Defendant, Paul Ruben Flores, respectfully submits the following Opposition to the motion to quash subpoena filed by non-party Chris Lambert.

I. THE DEFENDANT HAS MET HIS THRESHOLD BURDEN TO SHOW THAT THE INFORMATION WILL MATERIALLY ASSIST HIS DEFENSE

To meet his threshold burden to show that he is entitled to the information requested, the defendant must show "a reasonable possibility the

information will materially assist his defense." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 808 ("*Delaney*").) The "reasonable possibility" standard does not require that the defendant show that the information goes to "the 'heart of the case'" as such a requirement would be "impractical." (*Id.* at pp. 808-809.)

The showing required "need not be detailed or specific, but it must rest on more than mere speculation." It must show "only a reasonable possibility the information will materially assist his defense" such as, for example that it would "impeach the credibility of a prosecution witness". (*Delaney, supra,* 50 Cal.3d at 809.)

Here, the defendant has made such a showing. Testimony in Court has shown that Chris Lambert has contacted and interviewed multiple witnesses in this case and has attempted to influence or persuade at least one witness. Mr. Lambert disclosed critical information to Jennifer Hudson in an attempt to influence her testimony. Ms. Hudson testified that she was contacted by Mr. Lambert before she spoke to law enforcement. Mr. Lambert told her not to tell law enforcement that he had given her information, including the results of his flying a drone over a property in Huasna and finding a 4x4 truck on the property. Moreover, Ms. Hudson told the defense investigator that Mr. Lambert asked her "to hide stuff, not to tell stuff, they tried to manipulate me and make me think that Cole is incompetent." She said that Mr. Lambert wanted her "to tell the story his way, to add stuff in he wanted in the story and take out stuff for him."

This conduct amounts to witness tampering in violation of Penal Code section 137:

> (c) Every person who knowingly induces another person to give false testimony or withhold true testimony not privileged by law or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from,

a law enforcement official is guilty of a misdemeanor.

II. DISCLOSURE MUST BE COMPELLED TO ENSURE THE DEFENDANT'S RIGHT TO A FAIR TRIAL

The *Delaney* Court held that no factor or combination of factors is determinative in deciding whether disclosure must be compelled, noting that:

> A mechanistic, checklist approach would not in the long run (nor perhaps even in a particular case) serve the best interests of either newspersons or criminal defendants. (*Delaney*, *supra*, 50 Cal.3d at 813.)

The circumstances of this case mandates that the California Shield Law must yield to the defendant's constitutional right to a fair trial.

1. Whether the unpublished information is confidential or sensitive

Here, the defendant is seeking the testimony of Mr. Lambert not about the statements of the witnesses he interviewed or the facts he gathered from them but about his affirmative acts to influence witnesses.

2. The interests sought to be protected by the shield law

The purpose of the Shield Law is to protect the newsperson's ability to gather information. The policy of the Shield law will not be thwarted by disclosure here because it is the actions of the reporter in trying to influence witnesses in this case, not the disclosure of the source used or the information obtained in the course of news gathering, that are at issue here.

3. The importance of the information to the defendant

It has already been established that Mr. Lambert provided one witness with drone information he collected and information about his theories, asked a witness to tell the story his way by adding and omitting information, and told the witness not to disclosed this to law enforcement. Mr. Lambert has interviewed a number of witnesses in this case and his name has come up repeatedly during the testimony so far. It is likely that he did the same with

other witnesses.

4. Where there is an alternative source for the unpublished information

In *Delaney*, the Court concluded that "a universal and inflexible alternative-source requirement in a criminal proceeding is inappropriate." (*Delaney*, *supra* 50 Cal.3d at p. 812.) Whether such a requirement applies depends on the facts of the case, including factors such as the type of information being sought, the quality of alternative source, and the practicality of obtaining the information from the alternative source. (*Id.* at pp. 812-813.) The Court must also consider the factors 1 through 3 set forth above. (*Id.* at p. 813.)

As stated above, the information being sought relates to Mr. Lambert's influencing witnesses in this case before their testimony. Mr. Lambert is the best, if not the only, source for the information sought. Only Mr. Lambert can describe completely what information he gave to the witnesses in order to influence them.

CONCLUSION

For the foregoing reasons, the defendant respectfully requests that the Court deny Mr. Lambert's Motion to Quash Subpoena.

Dated: September 7, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On September 7, 2021, I served the foregoing document entitled: **DEFENDANT'S OPPOSITION TO NON-PARTY WITNESS CHRIS LAMBERT'S MOTION TO QUASH SUBPOENA** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

_X_ **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed September 7, 2021, at Santa Barbara, California.

Jake Swanson

Jake Swanson

SERVICE LIST

Diana Palacios
865 South Figueroa Street, 24th Floor
Los Angeles, CA 90017-2566
dianapalacios@dwt.com
Via Email Only

Christopher Peuvrelle
Deputy District Attorney
1035 Palm St, # 4
San Luis Obispo, CA 93408-1000
cpeuvrelle@co.slo.ca.us
Via Email Only

Harold Mesick
1303 Higuera St.
PO Box 23
San Luis Obispo, CA 93406
haroldmesick@gmail.com
Via Email Only

ELECTRONICALLY
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9/15/2021 3:56 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & 21F-02402 -B AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND ORDER SEALING RECORDS

I am Christopher Peuvrelle, a Deputy District Attorney for San Luis Obispo County. I am the assigned prosecutor for the above-entitled case.

As the court and counsel for the defendant are well aware, there has been a great deal of public interest in this pending case. It has been the goal of all parties to this case to limit the amount of information disseminated to the public to maintain the integrity of the potential jury pool in this county. Such efforts will hopefully assure the defendant is able to receive a fair and impartial trial in San Luis Obispo County.

In this regard, I have submitted a copy of the People's Request to Unseal, Duplicate and Reseal Search Warrant #14726, Including Affidavit, Exhibits, and Search Warrant Return; Declaration Of Christopher G. Peuvrelle to be heard on September 20, 2021. In accordance

with Section 6255 of the California Government Code, I am requesting that this court order that the People's Request to Unseal, Duplicate and Reseal Search Warrant #14726, Including Affidavit, Exhibits, and Search Warrant Return; Declaration Of Christopher G. Peuvrelle be sealed until further order of this Court. I respectfully urge that, under Section 6255, the public interest served by not making such records public clearly outweighs the public interest served by disclosure of such records. I would further request that a copy of such reports be released only to counsel for the People and the defendant to prepare for the Preliminary Hearing. Defense counsel represented in chambers on April 15, 2021, that they agree with this request.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 15, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher Peuvrelle
Deputy District Attorney

ELECTRONICALLY
FILED
9/15/2021 3:56 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
Courthouse Annex, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & B PEOPLE'S REQUEST TO UNSEAL, DUPLICATE AND RESEAL SEARCH WARRANT #14726, INCLUDING AFFIDAVIT, EXHIBITS, AND SEARCH WARRANT RETURN; DECLARATION OF CHRISTOPHER G. PEUVRELLE Hearing Date: September 20, 2021

The People hereby request the Court to unseal, duplicate, and reseal the search warrant, affidavit, exhibits, and search warrant return for search warrant #14726. The original search warrant #14726, the affidavit, exhibit and search warrant return are under seal with the San Luis Obispo County Superior Court.

A copy of search warrant #14726, the affidavit, exhibits and search warrant return shall be given to the Prosecution for dissemination to the Defense.

Defense Counsel, Robert M. Sanger and Harold V. Mesick, shall not copy, reproduce or distribute search warrant #14726, the affidavit, exhibits and search warrant return in any way and said documents shall be maintained in the sole possession of Robert M. Sanger and

Harold V. Mesick, their investigator or other staff and shall be shown to the defendants only while Robert M. Sanger or Harold V. Mesick or their staff are present.

Dated: September 15, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: _____
Christopher G. Peuvrelle
Deputy District Attorney

DECLARATION OF CHRISTOPHER G. PEUVRELLE

1. I, Christopher G. Peuvrelle, am a Deputy District Attorney assigned to the prosecution of criminal cases in San Luis Obispo County.

2. On September 13, 2021, Nancy Reynolds, Legal Clerk with the San Luis Obispo Sheriff's Department contacted Rebecca Cripe, DA Paralegal, regarding search warrant #14726. Ms. Reynolds stated that search warrant #14726 had been inadvertently omitted from their search warrant tracking sheets. As such, the DA's office did not include search warrant #14726 in its request to the Court to unseal, duplicate and reseal search warrants signed by the Honorable Judge van Rooyen on June 30, 2021.

3. Search warrant #14726, including the affidavit, exhibits, and search warrant return, are needed in the prosecution of Paul Ruben Flores and Ruben Ricardo Flores in San Luis Obispo Superior Court case #21F-02402-A and B, respectively.

4. I, therefore, request that Search warrant #14726, including the affidavit, exhibits, and search warrant return, be unsealed and provided to the San Luis Obispo County District Attorney's Office for duplication and release to the Prosecution, and then resealed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 15, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher G. Puevrelle
Deputy District Attorney

ELECTRONICALLY
FILED
9/15/2021 3:56 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On September 15, 2021, I served the foregoing document(s) described as:

PEOPLE'S REQUEST TO UNSEAL, DUPLICATE AND RESEAL SEARCH WARRANT #14726, INCLUDING AFFIDAVIT, EXHIBITS, AND SEARCH WARRANT RETURN; DECLARATION OF CHRISTOPHER G. PEUVRELLE; [PROPOSED] ORDER TO UNSEAL, DUPLICATE, AND RESEAL SEARCH WARRANT #14726, INCLUDING AFFIDAVIT, EXHIBITS, AND SEARCH WARRANT RETURN; AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND [PROPOSED ORDER] SEALING PUBLIC RECORDS

(*People v. Paul Ruben Flores & Ruben Ricardo Flores,* Case No. 21F-02402-A & B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
21F-02402-B
EMAIL: HAROLDMESICK@GMAIL.COM

[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 15, 2021, at San Luis Obispo, California.

Sandee Lopez

Sandee Lopez, Legal Clerk

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9/15/2021 3:56 PM

Electronically
FILED:09/16/2021
San Luis Obispo Superior Court
By:Goossens, Michelle

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	CASE NO. 21F-02402-A & 21F-02402 -B
vs.	[PROPOSED] ORDER SEALING PUBLIC RECORDS
PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendant.	

Based upon the foregoing Affidavit and Request, IT IS HEREBY ORDERED that:

1. The People's Request to Unseal, Duplicate and Reseal Search Warrant #14726, Including Affidavit, Exhibits, And Search Warrant Return; Declaration Of Christopher G. Peuvrelle and the Affidavit in support of the People's Request to Unseal, Duplicate and Reseal Search Warrant #14726, Including Affidavit, Exhibits, and Search Warrant Return; Declaration Of Christopher G. Peuvrelle are sealed and lodged with the Court;

2. No other sealing is ordered pursuant to the People's request; and

3. Defense Counsel for Paul Ruben Flores, Robert M. Sanger and his office are permitted to view the sealed records.

Dated: 9/16/2021

for THE HONORABLE ~~GRAIG B. VAN ROOYEN~~
JUDGE OF THE SUPERIOR COURT

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FILED:09/16/2021
San Luis Obispo Superior Court
By: Goossens, Michelle

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	COURT CASE NO. 21F-02402-A & B [PROPOSED] ORDER TO UNSEAL, DUPLICATE AND RESEAL SEARCH WARRANT #14726, INCLUDING AFFIDAVIT, EXHIBITS, AND SEARCH WARRANT RETURN

ORDER

IT IS HEREBY ORDERED that search warrant #14726, including the affidavit, exhibits, and search warrant return, shall be unsealed, copied, and resealed.

The original search warrant #14726, the affidavit, exhibits and search warrant return are currently under seal with the San Luis Obispo County Superior Court.

A copy of search warrant #14726, the affidavit, exhibit and search warrant return shall be given to the Prosecution for dissemination to the Defense.

Defense Counsel, Robert M. Sanger and Harold V. Mesick, shall not copy, reproduce or distribute search warrant #14726, affidavit, exhibits and search warrant return in any way and said documents shall be maintained in the sole possession of Robert M. Sanger and Harold V. Mesick, their investigator or other staff and shall be shown to the defendants only while Robert M. Sanger or Harold V. Mesick or their staff are present.

Dated this 16th day of September, 2021.

for THE HONORABLE ~~CRAIG B. VAN ROOYEN~~
JUDGE OF THE SUPERIOR COURT

ELECTRONICALLY
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9/16/2021 2:11 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SANGER SWYSEN & DUNKLE
Robert M. Sanger, SBN 058214
Sarah S. Sanger, SBN 322722
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Tel.: (805) 962-4887
Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

NOTICE OF PROVISIONAL WITHDRAWAL OF DEFENDANT PAUL FLORES'S MOTION TO SUPPRESS, QUASH AND TRAVERSE

Date: TBD
Time: TBD
Dept.: 5

Hon. Craig B. Van Rooyen

Defendant Paul Flores provisionally withdraws his Motion to Suppress, Quash and Traverse, as noticed to be heard in the course of the preliminary hearing.

Given the state of the record, Mr. Flores does not choose to contest the warrantless searches at this time. Furthermore, based on the evidence that has been introduced thus far in the preliminary hearing, it does not appear that any evidence adverse to Paul Flores has been introduced based on a

search and seizure pursuant to a warrant, with the possible exception of the statement of Susan Flores in a phone call to Paul Flores. That statement should be stricken on the grounds that it is not admissible against Paul Flores. It is hearsay and does not qualify as an exception. The defendant hereby moves to strike the statement on evidentiary grounds.[1]

At this point, defendant Paul Flores withdraws his motion to suppress, quash and traverse based on the lack of inculpatory evidence sought to be introduced by the prosecution at the preliminary hearing that appear to be obtained as a result of an unlawful search and seizure based on the current state of the record in this hearing.

Defendant Ruben Flores, through counsel, indicated that he was joining in the current motion and would file additional pleadings. While this motion is being provisionally withdrawn on behalf of Paul Flores, it is not the intention to prejudice the ability of Ruben Flores to pursue Fourth Amendment challenges if he decides to do so.

Should additional evidence be introduced during the remainder of the preliminary hearing, the defendant reserves the right to renew this motion before the conclusion of the preliminary hearing. Furthermore, defendant withdraws his motion at this time without prejudice to filing a motion

///

///

///

[1] Even if said evidence is not stricken, it is of no probative value.

pursuant to Penal Code section 1538.5, subdivision (i) and the Fourth Amendment to the United States Constitution if he were held to answer.

Dated: September 16, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On September 16, 2021, I served the foregoing document entitled: **NOTICE OF PROVISIONAL WITHDRAWAL OF DEFENDANT PAUL FLORES'S MOTION TO SUPPRESS, QUASH AND TRAVERSE** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

_X_ **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed September 16, 2021, at Santa Barbara, California.

Jake Swanson

Jake Swanson

SERVICE LIST

Christopher Peuvrelle
Deputy District Attorney
1035 Palm St, # 4
San Luis Obispo, CA 93408-1000
cpeuvrelle@co.slo.ca.us
Via Email Only

Harold Mesick
1303 Higuera St.
PO Box 23
San Luis Obispo, CA 93406
haroldmesick@gmail.com
Via Email Only

FILED

SEP 20 2021

SAN LUIS OBISPO SUPERIOR COURT
BY L. Herda, Deputy Clerk

PEOPLE V. Flores and Flores
21F-02402

STIPULATION OF PARTIES

The parties stipulate to the following for purposes of the Preliminary Hearing only:

Detective Kenny interviewed Ted Munley on January 11, 2007. Kenny summarized Munley's statement in his report: "Calvin's girlfriend (Jana Schrock) who was visiting opened the door, closest to Calvin's room, to let him in. Munley "hooked up with her a little bit and went to sleep" in Calvin's bed with Schrock. He didn't hear any fighting or screaming. Munley didn't see or hear Kristin Smart come into the room while he was there.

Dated: 9/20/21

CHRISTOPHER PEUVRELLE
On behalf of the People

Dated: 9/20/21

SARAH SANGER
On behalf of Paul Flores

Dated: 9/20/21

ROBERT SANGER
On behalf of Paul Flores

Dated: 9/20/21

HAROLD MESICK
On behalf of Ruben Flores

Dated: 9/20/21

HONORABLE CRAIG VAN ROOYEN
Judge of the Superior Court

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9/27/2021 5:04 PM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SANGER SWYSEN & DUNKLE
Robert M. Sanger, SBN 058214
Sarah S. Sanger, SBN 322722
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Tel.: (805) 962-4887
Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

EX PARTE APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; DECLARATION OF ROBERT M. SANGER; MEMORANDUM OF POINTS AN AUTHORITIES; [PROPOSED] ORDER

Date: TBD
Time: TBD
Dept.: 5

Hon. Craig B. Van Rooyen

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

Defendant Paul Flores, through his counsel, hereby applies for an order to show cause re contempt against the District Attorney of the County of San Luis Obispo Dan Dow, San Luis Obispo County Sheriff Ian Parkinson and such other persons as the evidence may support, for disobedience of a lawful order of the Court

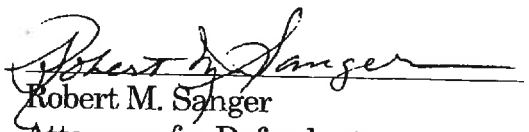
pursuant to Code of Civil Procedure section 1209(a)(5) and for such other and further relief as the Court may deem just and proper. The grounds for the application for an order to show cause re contempt are that District Attorney Dow and Sheriff Parkinson have failed to comply with, and willfully disobeyed, the Court's order dated April 15, 2021 prohibiting the "attorneys connected to this case including prosecutors," "law enforcement officers including deputies of the San Luis Obispo Sheriff's Department," and "any agent, deputy or employee" from "mak[ing] or authoriz[ing] for public dissemination extrajudicial statements concerning this case." (Exhibit A.)

The motion will be based on this Application, the Declaration of Robert M. Sanger, the attached Memorandum of Points and Authorities, such supplemental memoranda of points and authorities as hereafter may be filed with the court, all pleadings and documents heretofore filed with the Court and evidence and such oral argument as may be presented at the hearing on the application.

Dated: September 27, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the State of California and am attorney of record for the Defendant herein, Paul Ruben Flores.

2. The Court issued an order on April 15, 2021 (hereafter "Order") prohibiting the "attorneys connected to this case including prosecutors," "law enforcement officers including deputies of the San Luis Obispo Sheriff's Department," and "any agent, deputy or employee" from "mak[ing] or authoriz[ing] for public dissemination extrajudicial statements concerning this case." A true and correct copy of said Order is attached hereto as Exhibit A.

3. In direct violation of the Order, on September 22, 2021, District Attorney Dan Dow released a "tweet" on his official "SLO County Dist Atty @SLOCounty_DA" account as follows (a screen shot is attached hereto as Exhibit B):

> The preliminary hearing has concluded in the cases of Paul and Ruben Flores. A judge has determined sufficient evidence was presented for the two to be tried. "We continue to support the family of Kristin Smart as we work toward justice," said District Attorney Dan Dow. @dandow

4. In addition, District Attorney Dow also posted on his public Facebook page on September 22, 2021 the following (a screen shot is attached hereto as Exhibit C):

> Deeply grateful for all the hard work that's been done... there's much more to do and we will continue to press on.
> #JusticeForKristin

5. Furthermore, on September 22, 2021, the District Attorney posted a variation of the press releases on the official District Attorney webpage at: https://www.slocounty.ca.gov/Departments/District-Attorney.aspx (a

copy is attached hereto as Exhibit D) and on his Instagram account (a copy is attached hereto as Exhibit E). Dan Dow's re-election webpage also provides a link to his Twitter account (a copy of which is attached hereto as Exhibit F).

6. The comments by the District Attorney were picked up by the Los Angeles Times (Exhibit G), CNN (Exhibit H) and multiple other national and local news sources.

7. In direct violation of the Court's Order, on September 22, 2021, San Luis Obispo County Sheriff Ian Parkinson posted on his public Facebook page the following (a copy of which is attached hereto as Exhibit I):

> A statement from the Sheriff's Office regarding today's judicial ruling in the case of Paul and Ruben Flores:
>
> The Sheriff acknowledges Judge van Rooyen's ruling today that there is sufficient evidence to move the cases of Paul and Ruben Flores to trial. We are extremely satisfied with the judge's decision as we continue the fight for justice for Kristin Smart and her family.
> Ian Parkinson, Sheriff Sheriff's Advisory Foundation [*sic*]

8. The same post was on the official San Luis Obispo County Sheriff's public pages on Twitter (a copy is attached hereto as Exhibit J), Facebook (a copy is attached hereto as Exhibit K) and Instagram (a copy is attached hereto as Exhibit L).

9. As of the date of this declaration, all of the above violations continue to be publicly disseminated and have remained on the social media platforms on September 22, 2021 and each day thereafter.

10. In addition to being quoted in the print media, the various violations have been shared or otherwise disseminated to others through social media. This multiplies the effect of the disobedience of the Court Order.

11. The statements made in disobedience of the Court's Order are made in the context of the District Attorney's Office and lead Sheriff's detective wearing colors to show support for the Kristin Smart webpage that advocates the conviction of Paul Flores.

12. The applicant has incurred and will incur attorneys' fees and costs in an amount in accordance with proof and is entitled to an award thereof as set forth in Code of Civil Procedure section 1218.

I declare under penalty of perjury that the foregoing is true and correct and that this was executed on September 27, 2021 in Santa Barbara County, California.

Robert M. Sanger

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. THE DISTRICT ATTORNEY AND SHERIFF ARE GUILTY OF CONTEMPT

The Honorable Craig Van Rooyen issued an order on April 15, 2021 (hereafter "Order") prohibiting the "attorneys connected to this case including prosecutors," "law enforcement officers including deputies of the San Luis Obispo Sheriff's Department," and "any agent, deputy or employee" from "mak[ing] or authoriz[ing] for public dissemination extrajudicial statements concerning this case." (Declaration of Robert M. Sanger, ¶2; Exhibit A.)

Code of Civil Procedure section 1209, subdivision (a)(5) states that "[d]isobedience of any lawful judgment, order, or process of the court" is a contempt of the authority of the Court." A contemner who continuously engages in a prohibited activity may be held guilty of a separate contempt for each separate contemptuous act. In *Solano Aquatic Club v. Superior Court* (1913) 165 Cal. 278, the California Supreme Court held that a separate contempt would stand for each day a defendant violated the court's order.

As set forth in the declaration of counsel above, the San Luis Obispo County District Attorney and Sheriff have violated this Order. (See Sanger Decl., ¶¶3-8; Exhibits A-F and I-L.) We respectfully request that the Court hold District Attorney Dan Dow and Sheriff Ian Parkinson in contempt for their refusal to follow, and willful disobedience of a lawful court order.

Thus, District Attorney Dan Dow and Sheriff Ian Parkinson should be ordered to show cause why they are not in violation of the following counts of contempt of the Court's Order:

COUNT ONE: On or about September 22, 2021 and continuing each day thereafter until removed, Dan Dow did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on Twitter

concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT TWO: On or about September 22, 2021 and continuing each day thereafter until removed, Dan Dow did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on Facebook concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT THREE: On or about September 22, 2021 and continuing each day thereafter until removed, Dan Dow did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a press release on the official District Attorney website (https://www.slocounty.ca.gov/Departments/District-Attorney.aspx) concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT FOUR: On or about September 22, 2021 and continuing each day thereafter until removed, Dan Dow did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on Instagram concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement

supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT FIVE: On or about September 22, 2021 and continuing each day thereafter until removed, Ian Parkinson did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on Facebook concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT SIX: On or about September 22, 2021 and continuing each day thereafter until removed, Ian Parkinson did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on the San Luis Obispo County Sheriff's public Twitter page concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT SEVEN: On or about September 22, 2021 and continuing each day thereafter until removed, Ian Parkinson did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on the San Luis Obispo County Sheriff's public Facebook page concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

COUNT EIGHT: On or about September 22, 2021 and continuing each

day thereafter until removed, Ian Parkinson did willfully violate the Court's order of April 15, 2021 by publishing or causing to be published a post on the San Luis Obispo County Sheriff's public Instagram page concerning the above-entitled case, including a statement regarding the Court's ruling holding defendants to answer, and a statement supporting the family of the alleged victim. Said disobedience has continued each day thereafter with the participation of the contemners and each day constitutes a separate violation.

CONCLUSION

District Attorney Dan Dow and Sheriff Ian Parkinson have violated this Court's Order and we respectfully request that the Court find them guilty of contempt and impose appropriate sanctions.

Dated: September 27, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

EXHIBIT A

FILED

APR 15 2021

SAN LUIS OBISPO SUPERIOR COURT
BY Patrice Morales
Patrice Morales, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES, Defendant.	Case No. 21F-02402-A ~~[PROPOSED]~~ ORDER Date: April 15, 2021 Time: 8:30 a.m. Dept.: To be Assigned

GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED that this order applies to the following persons: (1) parties to this action; (2) attorneys connected to this case including prosecutors, defense counsel, and their investigators; (3) law enforcement officers including deputies of the San Luis Obispo Sheriff's Department; (4) court clerks and bailiffs; (5) witnesses; ~~(6) public officials~~; (7) judicial officers or employees; and (8) any agent, deputy or employee of the persons listed above. ur 4/15/21

IT IS FURTHER ORDERED that:

1. No person listed above shall make or authorize for public dissemination extrajudicial statements concerning this case, and that no such persons

shall release or authorize the release of any documents, exhibits, or other evidence connected with this case.

2. No person listed above shall make any statement for public dissemination concerning the existence or possible existence of any document, exhibit, or other evidence connected with the case.

3. No person listed above shall express for public dissemination or make any comment outside the court concerning the weight or effect of any evidence as tending to establish guilt or innocence.

4. No person listed above shall make any statement for public dissemination concerning the identity of any prospective witness, or the witness' probable testimony, or the effect thereof.

5. No person listed above shall make any statement for public dissemination concerning the nature, source or effect of any evidence obtained as a result of the investigation of this matter.

6. No person listed above shall make any statement for public dissemination as to the nature, source, or effect of any evidence introduced or testimony given in any proceeding related to this case.

7. If a person listed above believes that it is necessary to issue a public statement in response to adverse publicity they may make application to the Court for permission to make such a statement.

8. That this order shall remain in effect until further order of the Court.

This order is not intended to preclude any witnesses from discussing any matter in connection with the case with any of the attorneys representing the defendant or the government, or any investigators or representatives of such attorneys.

Dated: 4/15/21

Judge of the Superior Court

EXHIBIT B

Tweet

SLO County Dist Atty
@SLOCounty_DA

The preliminary hearing has concluded in the cases of Paul and Ruben Flores. A judge has determined sufficient evidence was presented for the two to be tried.
"We continue to support the family of Kristin Smart as we work toward justice," said District Attorney Dan Dow. @dandow

8:39 AM · Sep 22, 2021 · Twitter for iPhone

28 Retweets **11** Quote Tweets **71** Likes

Tweet your reply

Coastkid @Briggs57Briggs · Sep 22
Replying to @SLOCounty_DA and @dandow
Congratulations to all involved and thank God this is moving forward to trial!!!! #JusticeforKristin

5

dandow @dandow · Sep 22
Replying to @SLOCounty_DA
Press release is found here. #JusticeForKristin #KristinSmart

Paul and Ruben Flores Held to Answer by Judge, trial dates will be set
District Attorney Dan Dow announced today that Paul Flores (44) and Ruben Flores (80) were held to answer at the conclusion of their ...
slocounty.ca.gov

4 3 11

PedalPowerWorkBikes @BikeTaxiGuy · Sep 23
Katherine Heigl is Kristin Smart in disguise, playing out their end game strategy as scripted by Arnon Milchan and others from their Hollywood Cabal.

Ernest Espinosa @TheBigHispanic · Sep 22
Replying to @SLOCounty_DA and @dandow
Great they caught these criminals after all these years.

2

Search Twitter

Relevant people

SLO County Dist A
@SLOCounty_DA
Veritas et Justitia: (seeking truth and a every criminal case County. Retweets a endorsements.

dandow
@dandow
District Attorney of County, California. endorsements. Per

What's happening

COVID-19 · LIVE
Biden's vaccine mandate f workers is supported by le precedents, experts say

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The UN General Assembly continues in New York

Politics · Trending
Matt Gaetz
22.6K Tweets

San Francisco Chron · Y
As more Californians head Texas, a new study reveals on how the states really st

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@JS19597450

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AdventureDeb @Amer_River_Lax · Sep 22
Replying to @SLOCounty_DA and @dandow
Thank you for your efforts to hold these men accountable for their crimes. Hopefully justice will prevail. #JusticeForKristin #KristinSmart

1 5

Show more replies

Search Twitter

JS
@JS19597450

Messages

EXHIBIT C



Dan Dow

Elected as District Attorney, San Luis Obispo County. Love God, seek justice; serve humanity.

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To see what he shares with friends, send him a friend request.

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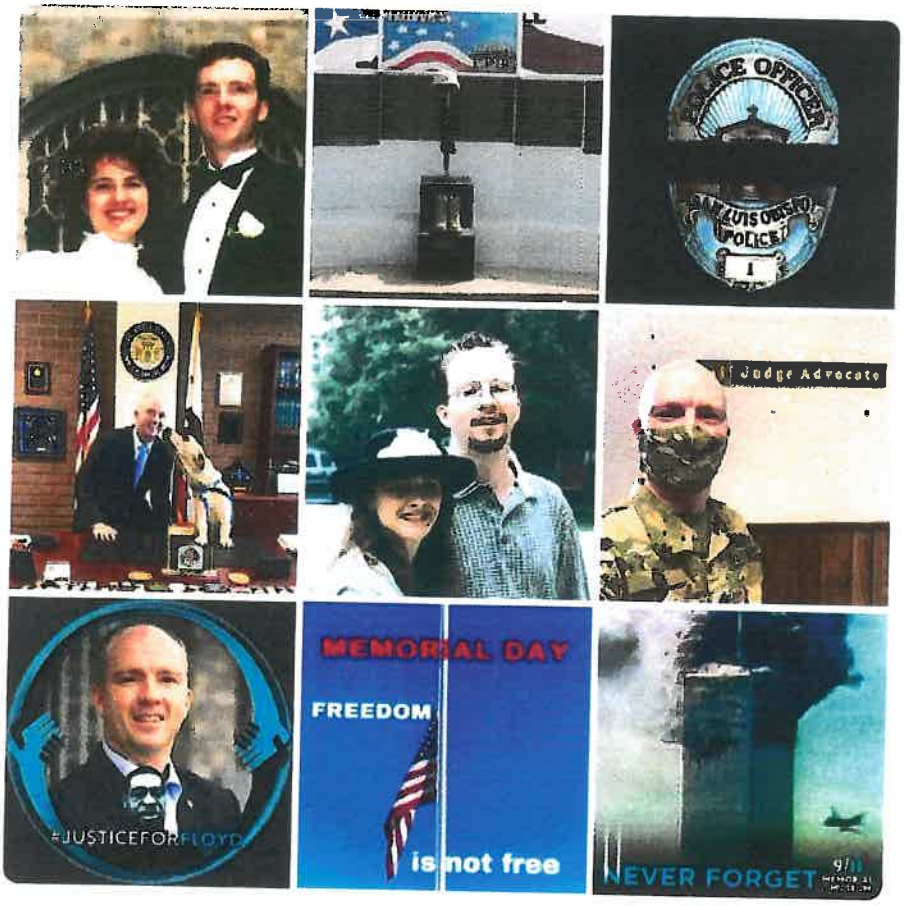
Intro

- Lieutenant colonel at **California National Guard**
- District Attorney at **County of San Luis Obispo Government**
- Former Deputy District Attorney at **County of San Luis Obispo Government**
- Former Deputy District Attorney at **Riverside County District Attorney's Office**
- Former Sales representative at Sun Microsystems
- United States Army
- Studied at **Santa Clara Law**

From Gloucester, Massachusetts

Photos

See All Photos



Friends

See All Friends

Life Events

See All

Started New Job at California National Guard

Started New Job at County of San Luis Obispo Government

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Posts

Filters

Dan Dow
September 22 at 10:31 AM ·

Deeply grateful for all the hard work that's been done... there's much more to do and we will continue to press on. #JusticeForKristin

San Luis Obispo County District Attorney
September 22 at 8:42 AM ·

The preliminary hearing has concluded in the cases of Paul and Ruben Flores. A judge has determined sufficient evidence was presented for the two to be tried.... **See More**

154 15 Comments

Like Comment Share

View 13 more comments

Nathan Mechikoff
Awesome job sir!

Like · **Reply** · 3d

Write a comment...

Dan Dow is with **Wendy Dow** at **Templeton High School**.
September 17 at 7:40 PM · Templeton ·

Let's Go Eagles!!! Templeton High School Templeton High School Athletics



60

Like Comment Share

Write a comment...

Dan Dow is with **Wendy Dow** and **Mary E Dow**.
September 15 at 8:20 PM ·

My sweet Mom (Mary) now in Heaven... and our sweet daughter Chloe. I love these side by side comparisons. ❤️ #family



Like Comment Share

View previous comments

Steve Frank
wow! that is amazing She will live on
Like · **Reply** · 4d 1

Write a comment...

Dan Dow
September 11 at 8:02 PM ·

Courtesy of the Red White and Blue!



Toby Keith
September 11 at 2:43 PM ·

Folk Polk, LA...brought to you courtesy of the red, white, and blue.

Thank you to those stationed at Fort Polk and to all who have served.

24 2 Comments 1 Share

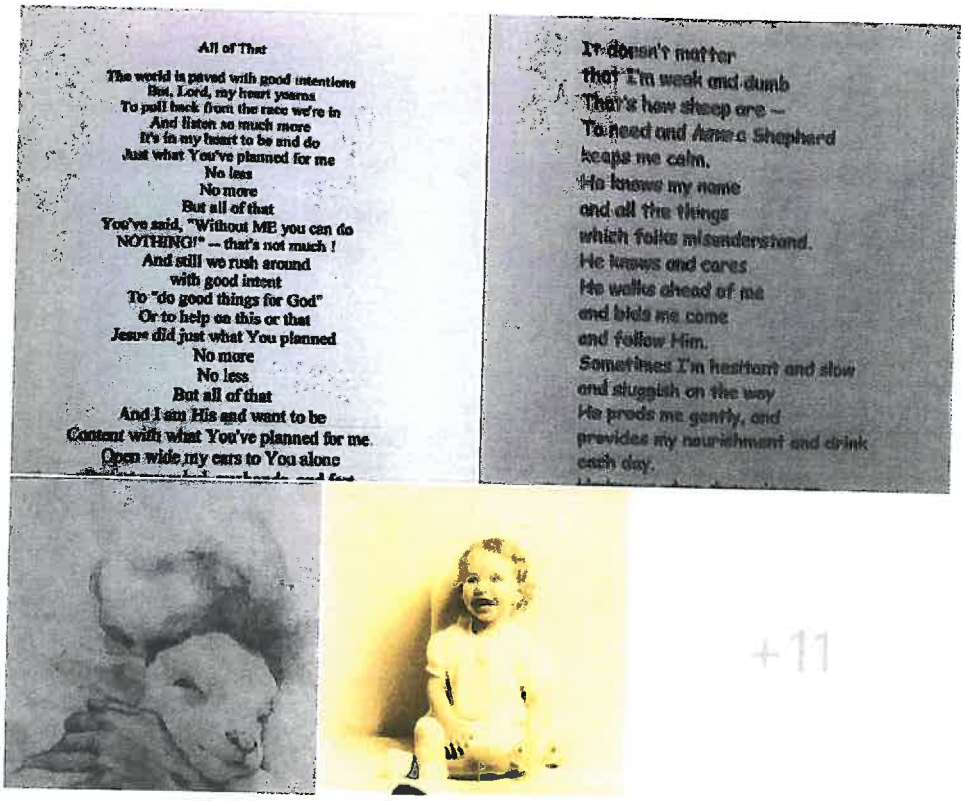
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Sylvia Dodd

Dan Dow is with **Mary E Dow**.
September 11 at 12:35 PM ·

My mom Mary, was always a very early riser. I remember that during most of my growing up years she was up as early as 3:30 or at least by 4:30 to pray and read scripture and write in her journals. She also was an avid writer who wrote many poems. Here are three of a very large collection. I hope to find and read many of her journals.



296 47 Comments 14 Shares

Like Comment Share

View 42 more comments

Amy Messenger
Wow I wish I was like your dear mom. She was a dear matriarch.

Like · **Reply** · 1w

Write a comment...









EXHIBIT D

(/Home.aspx)

Due to COVID-19 the District Attorney's Office lobby is closed until further notice. However, staff is still working so you can call 805-781-5800 if you need assistance. If you are experiencing an emergency call 9-1-1. For public health information go to ReadySLO.org.

District Attorney (/Departments/District-Attorney.aspx)

MENU County of San Luis Obispo

Paul and Ruben Flores Held to Answer by Judge Trial dates will be set

"We continue to support the family of Kristin Smart as we work toward justice."
– Dan Dow, SLO County District Attorney

September 22, 2021
slocounty.ca.gov/da

Paul and Ruben Flores Held to Answer by Judge

Paul and Ruben Flores Held to Answer by Judge, trial dates will be set

Author: District Attorney
Date: 9/22/2021 10:32:47 AM

Share

District Attorney Dan Dow announced today that Paul Flores (44) and Ruben Flores (80) were held to answer at the conclusion of their preliminary hearing for the 1996 homicide of Cal Poly college student Kristin Smart.

District Attorney Dan Dow announced today that the preliminary hearing has concluded in the cases of Paul Flores (DOB 10/22/1976) and his father Ruben Flores (DOB 04/09/1941) for the 1996 homicide of Kristin Smart, a college student at Cal Poly.

The Honorable Craig van Rooyen determined sufficient evidence was presented at the hearing for the defendants to be tried on the charges.

Paul and Ruben Flores will be arraigned on October 20, 2021, at 8:30 am in Department 5 of the San Luis Obispo County Superior Court.

"We continue to support the family of Kristin Smart as we work toward justice," said District Attorney Dan Dow.

It is important to note that a criminal complaint contains charges that must be proven in a court of law by proof beyond a reasonable doubt. Every defendant is legally presumed innocent until proven guilty.

To view Paul Flores' booking photo, click here (/CountyOfSanLuisObispo/media/DistrictAttorneyMedia/Press%20Release%20Photos/Paul-Flores.jpg). To view Ruben Flores' booking photo, click here (/CountyOfSanLuisObispo/media/DistrictAttorneyMedia/Press%20Release%20Photos/Ruben-Flores.jpg). To view a copy of the charging document, click here (/CountyOfSanLuisObispo/media/DistrictAttorneyMedia/Press%20Release%20Photos/Flores-filed-complaint.pdf).

Please contact Assistant District Attorney Eric J. Dobroth at 805.781.5819 with any questions.

###

County Government Center

1055 Monterey Street, San Luis Obispo, CA 93408

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(https://www.google.com/maps/place/1055+Monterey+St,+San+Luis+Obispo,+CA+93408/@35.2821867,-120.6623615,17z/data=!3m1!4b1!4m5!3m4!1s0x80ecf103f8846375:0x1a2ced6ddf2d515e!8m2!3d35.2821867!4d-120.6601675)

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EXHIBIT E

da_slocounty • Follow ...

Paul and Ruben Flores Held to Answer by Judge Trial dates will be set

"We continue to support the family of Kristin Smart as we work toward justice."

Dan Dow
SLO County District Attorney

September 22, 2021
slocounty.ca.gov/da

Liked by abbee28 and others

47 MINUTES AGO

Add a comment...

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Paul and Ruben Flores Held to Answer by Judge Trial dates will be set

"We continue to support the family of Kristin Smart as we work toward justice."

Dan Dow
SLO County District Attorney

September 22, 2021
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Liked by **abbee28** and **others**

47 MINUTES AGO

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Paul and Ruben Flores Held to Answer by Judge Trial dates will be set

"We continue to support the family of Kristin Smart as we work toward justice."

Dan Dow
SLO County District Attorney

September 22, 2021
slocounty.ca.gov/da

Liked by **abbee28** and **others**

47 MINUTES AGO

Add a comment...

EXHIBIT F

Dan Dow
DISTRICT ATTORNEY ★ ★ ★ ★

Latest News

Elected District Attorneys Support Dan Dow for Re-election

May 18, 2018

San Luis Obispo, CA – Today, District Attorney Dan Dow announced the endorsement of Stanislaus County District Attorney Birgit Fladager, in addition to other elected District Attorneys from across a broad political spectrum.

Read more

Morro Bay Police Officers Association Supports Dan Dow for DA

May 3, 2018

San Luis Obispo, CA – The Morro Bay Police Officers Association is the sixth major public safety organization to recently endorse District Attorney Dan Dow's re-election campaign. Earlier this past month Dow received the support of the Paso Robles POA, Arroyo Grande POA, the Atascadero POA, the San Luis Obispo Deputy District Attorneys, and the San Luis Obispo POA.

Read more

San Luis Obispo Police Officers Association Backs Dan Dow for DA

April 27, 2018

San Luis Obispo – The San Luis Obispo Police Officers' Association is the fifth major public safety organization this month to endorse District Attorney Dan Dow's re-election campaign. Earlier in the month Dow received the support of the Paso Robles POA, Arroyo Grande POA, the Atascadero POA, and the San Luis Obispo Deputy District Attorneys.

Read more

Paso Robles Police Officers Association Endorses Dan Dow for DA

April 25, 2018

San Luis Obispo – The Paso Robles Police Officer Association is the latest organization to endorse District Attorney Dan Dow's re-election campaign. Dow has received a flood of support from public safety associations this month, including the Arroyo Grande POA, the Atascadero POA, and the San Luis Obispo Deputy District Attorney's.

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What People are Saying

"Without Dan's leadership on the issues or dedication to the men and women who have served our country, the Veterans Treatment Court would have never been possible. This is the kind of resolve we need in a District Attorney."

– Shoba Sreenivasan, Ph.D., Forensic Psychologist, Veterans Administration, and Clinical Professor, University of Southern California

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From the Gallery

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Arroyo Grande Police Officers Association Endorses Dan Dow for DA

April 19, 2018

San Luis Obispo – The Arroyo Grande Police Officer Association is the latest organization to endorse District Attorney Dan Dow's re-election campaign. Earlier in the week the Atascadero Police Association announced their support of Dow and the Deputy District Attorney's backed Dow's re-election last week.

Read more

2 › »



Twitter Updates

- Very grateful. The hard work continues! #JusticeForKristinSmart https://t.co/e0O273mVg1
  11 hours ago
- We vigorously prosecute crimes of abuse against elder and dependent adults. https://t.co/1fhRcmUxcW
  2 days ago

EXHIBIT G

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CALIFORNIA

Judge rules Paul Flores and father to stand trial in 1996 Kristin Smart killing

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Los Angeles Times



Paul Flores was arrested by the San Luis Obispo County Sheriff's Office in April in the disappearance of Kristin Smart, who went missing 25 years ago after leaving a college party. (San Luis Obispo County Sheriff's Office)

BY RICHARD WINTON | STAFF WRITER

SEPT. 22, 2021 8:52 AM PT

A San Luis Obispo County judge has ruled that Paul Flores will be tried for murder in the 1996 disappearance of Kristin Smart and that his father must also answer to charges that he was an accessory to the crime.

Judge Craig B. Van Rooyen on Wednesday morning made the decision there was probable cause to try both fath
the prosecutor laid out a circun
person seen with the fellow Cal
May 25, 1996.
n

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Paul Flores was arrested in April at his San Pedro home, nearly 25 years after Smart, 19, vanished after last being seen walking with him toward the dormitories. Although Smart's body has never been found, she was legally declared dead in 2002.

"We continue to support the family of Kristin Smart as we work toward justice," San Luis Obispo County Dist. Atty Dan Dow said following Wednesday's ruling.

During the preliminary hearing, the prosecutor solicited testimony from witness Jennifer Hudson that the now 44-year-old Flores admitted to the crime to her in 1996.

ADVERTISING

"I'm done playing with her and I put her out underneath my ramp..." Hudson testified Flores told her. But she didn't tell anyone of those words for years, and only informed the lead investigator in the case in 2019.

Deputy Dist. Atty. Chris Peuvrelle, seeking to also try Ruben Flores, Paul Flores' 80-year-old father, as an accessory
father allegedly concealed the b
the remains below a deck at his

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In arguing for the case's dismissal, Paul Flores' attorney Robert Sanger said "there was no consistent theory" about where Smart's body went and no proof of what happened to her.

After noting that a former boyfriend had left burned shoes on Smart's doorstep, Sanger said he was not saying that the ex-boyfriend killed her. "I'm saying there's no evidence anyone had done it," he said.

The standard to send a case to trial, however, is lower than proving the charges beyond a reasonable doubt. At preliminary hearings, prosecutors must convince the judge there is sufficient evidence to bring the case to trial.

Since the hearing began Aug. 2, Peuvrelle has layered witness upon witness. A classmate testified Paul Flores lied about a black eye he had claimed to have gotten in a basketball game. Another woman testified she saw Paul Flores hanging around Smart's dormitory even though he claimed to have never been there.

Peuvrelle said that Smart had passed out at the party for two hours in full view of many, and that two friends were holding her to walk her home when her accused killer "came out of the darkness" and repeatedly told one of those friends, Cheryl Anderson, that he would get her home safe.

Though Smart's body has never been found despite decades of searches, Peuvrelle, through a series of witnesses, showed the elder Flores kept everyone away from an area below a wooden deck at his Arroyo Grande home, and that area had been dug up and refilled.

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Paul Flores' ex-girlfriend, identified as Angie Doe, said she once tried to pick an avocado from the backyard at Ruben Flores' home.

"I don't remember if it was Mr. [Paul] Flores or Ruben, but they redirected me away from the avocado trees," she said. "They told me to come around [the house] and get away from that area."

A renter of the home told a similar story.

A geologist testified that in one of the holes that was dug, there was a lack of consistency in the sandy soil and a "bathtub ring" along the side of the wall, which she said was a "good indication" of a human burial site and that its contents were later removed. Fibers recovered could also be consistent with the clothes Smart was last seen wearing, another expert testified.

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But Sanger, at the conclusion of the hearing, said those fibers could be pink construction string.

Prosecutors at the hearing also portrayed Paul Flores as a serial predator who "has raped so many women, it's hard to keep track."

The judge, however, did not allow testimony about other allegations of sexual assaults and drugging of women and rejected a move to add rape charges from 2011 and 2017 involving two women in Los Angeles.

The prosecutor argued there was a nexus to the murder charge against Flores because, he said, Flores had a history of raping women who were either drunk or intoxicated.

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But Judge Van Rooyen said there is no evidence of a sex crime in Smart's killing and the evidence from the Los Angeles incidents cannot be used as a substitute.

Sanger said the attempt at the new charges amounted to a publicity stunt.

During the hearing, prosecutors said detectives had found homemade videos of Flores having sex with women who appeared intoxicated, and recovered prescription drugs that could be used in the comm
Office investigators also uncov
depicted rape of intoxicated wc
hearing.

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In the years since Smart disappeared, San Luis Obispo authorities have called Flores a "person of interest," then a "suspect," then a "prime suspect." They searched his homes. They searched his parents' homes. They called him before a grand jury, tapped his cellphone and read his text messages. But hamstrung by their inability to find Smart's body, they stopped short of accusing him of the killing until this year.

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Prosecutors during a trial will face the challenge of proving to a jury that a murder and cover-up occurred without being able to show definitively that Smart was killed.

The view from Sacramento

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Richard Winton

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Richard Winton is an investigative crime writer for the Los Angeles Times and part of the team that won the Pulitzer Prize for public service in 2011. Known as @lacrimes on Twitter, during 25 years at The Times he also has been part of the breaking news staff that won Pulitzers in 1998, 2004 and 2016.

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EXHIBIT H

1996 will stand trial for her death

By Stella Chan, CNN

Updated 3:23 PM ET, Wed September 22, 2021

(CNN) — The man accused of killing 19-year-old college student Kristin Smart in 1996 will stand trial for her death, according to the San Luis Obispo County District Attorney's office.

Paul Flores, 44, faces a first-degree murder charge for allegedly killing Smart in his Cal Poly San Luis Obispo dorm room. Prosecutors say Flores raped or attempted to rape Smart, who was then a freshman at the university. His father, Ruben Flores, 80, is charged as an accessory to the murder, and prosecutors say he helped hide Smart's body.

The preliminary hearing for the pair lasted weeks and wrapped up on Monday. The DA's office tweeted Wednesday that a "judge has determined sufficient evidence was presented for the two to be tried."

"We continue to support the family of Kristin Smart as we work toward justice," District Attorney Dan Dow said in the tweet.

CNN is seeking comment from lawyers for Paul and Ruben Flores. Both men have pleaded not guilty.



Related Article: Two suspects arrested in the disappearance of Kristin Smart, San Luis Obispo County sheriff says

The two men were arrested in April after a 25-year search to find Smart, who was last seen near her Cal Poly dorm on May 25, 1996, and then disappeared. She was never found and was declared dead in 2002.

Paul Flores has been the prime suspect in the decades-long missing persons case. Officials have said Flores, who was a 19-year-old freshman at the time, walked Smart home and was the last person to see her that day.

In documents filed in the case, a sheriff's office detective stated that investigators are "in possession of biological evidence that makes them believe the victim was buried underneath the defendant's deck at one time."

Prosecutors also accused Paul Flores of being a "serial rapist."

"Dozens of women have recounted Paul Flores' sexual assaults and predatory behavior that document his twenty-five years as a serial rapist," Deputy District Attorney Christopher Peuvrelle wrote in his report.

Smart's family released a statement after their arrest in April calling it a "bittersweet day."

"It is impossible to put into words what this day means for our family; we pray it is the first step to bringing our daughter home," the family said. "While Kristin's loving spirit will always live in our hearts, our life without her hugs, laughs and smiles is a heartache that never abates."

CNN's Steve Almasy, Eric Levenson, Cheri Mossburg and Paul Vercammen contributed to this report.

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EXHIBIT I





Ian Parkinson, Sheriff

@SherifflanParkinson · Government Official

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parkinson4sheriff.com

Ask Ian Parkinson, Sheriff

"Can you tell me more about yourself?" **Ask**

"Can I learn more about your background?" **Ask**

"Are you available to chat?" **Ask**

"Where are you located?" **Ask**

Type a question **Ask**

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http://www.parkinson4sheriff.com/

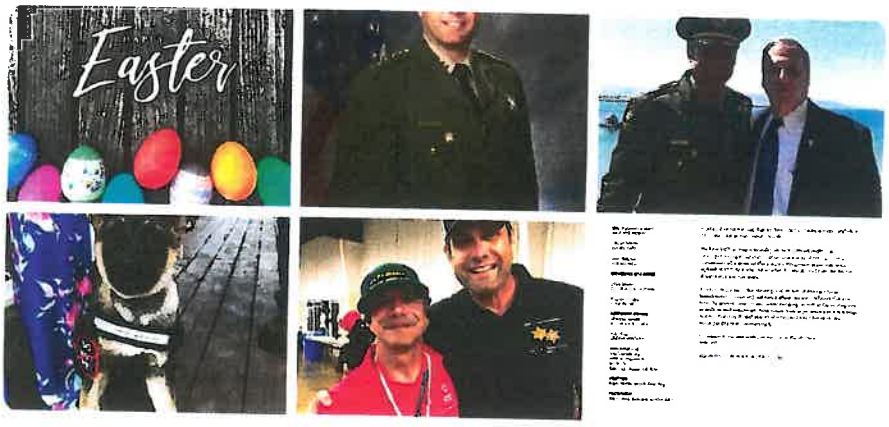
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A great cross section of our community sharing who they ...

21

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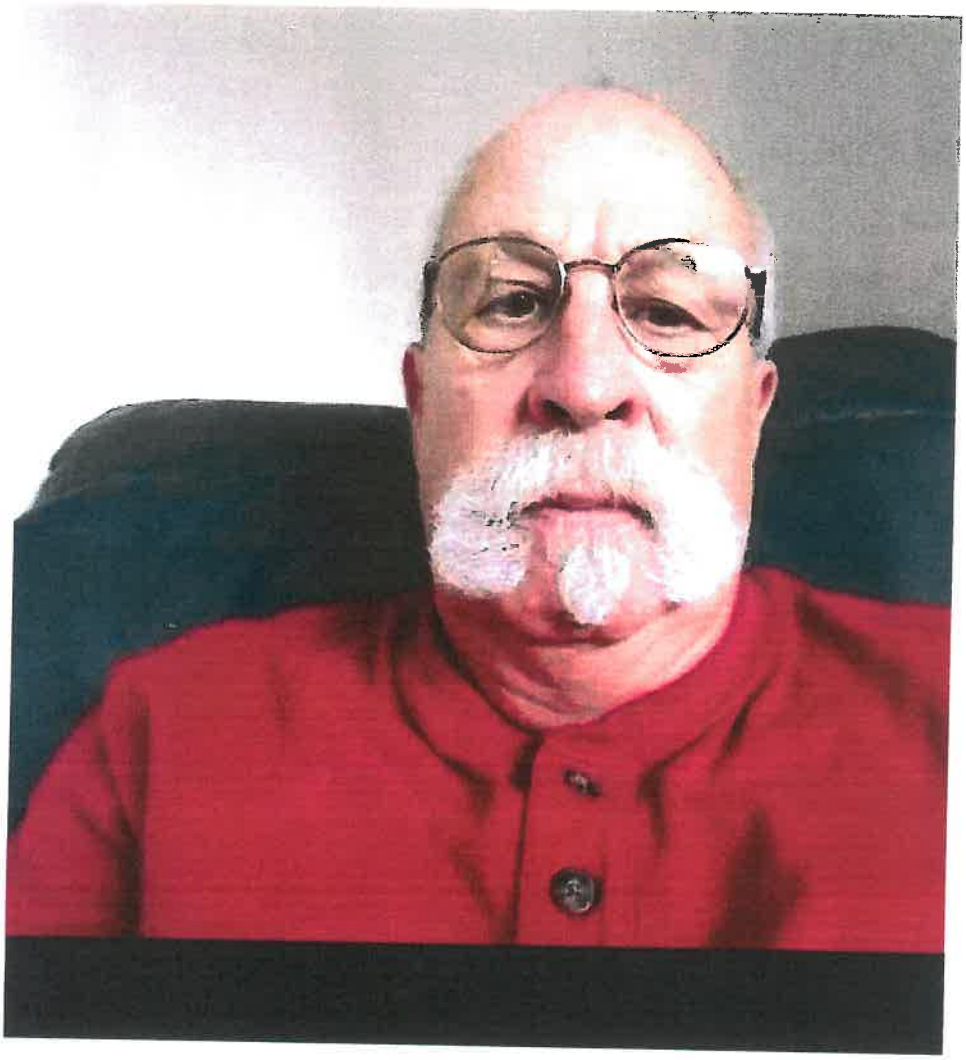
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Ian Parkinson, Sheriff
September 22 at 5:53 PM ·

I am going to miss this guy





Byron Breault
September 22 at 4:19 PM ·

Our friend TUNNY ORTALI passed away today
🙏❤️😇❤️🙏😇.
Until we meet again. RIP
🙏🙏🙏❤️❤️😇😇🙏🙏

102 30 Comments

Like Comment Share

Most Relevant

Write a comment...

Yvonne Jurgens
We just lost a very special friend Tunny RIP dear friend!!
😢😢

Ian Parkinson, Sheriff
September 22 at 1:12 PM ·



San Luis Obispo County Sheriff's Office
September 22 at 12:38 PM ·

A statement from the Sheriff's Office regarding today's judicial ruling in the case of Paul and Ruben Flores:

The Sheriff's Office acknowledges Judge van Rooyen's ruling today that there is sufficient evidence to move the cases of Paul and Ruben Flores to trial. We are extremely satisfied with the judge's decision as we continue the fight for justice for Kristin Smart and her family.
Ian Parkinson, Sheriff Sheriff's Advisory Foundation

146 12 Shares

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Write a comment...



Ian Parkinson
September 11 at 10:53 AM

We will never forget all of the people that lost their lives on that tragic day. ❤️

50

Like Comment Share

Write a comment...

Ian Parkinson, Sheriff
August 31 at 6:50 PM



August 31 at 12:00 PM ·

The California State Sheriffs' Association would like to extend our sincerest condolences to the families of the 13 brave United States Marines and Soldiers who... **See More**

199 14 Comments 3 Shares

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Most Relevant

Write a comment...

Joe Young

Sheriff Ian Parkinson, I moved to SLO County 8 1/2 Year's ago from ELDO county! I left behind a great Sheriff John D'Agostini and his amazing dept. I am glad I moved to the central coast and got an equally qualified Sheriff and dept. to protect my fam... **See More**

Like · Reply · 3w 13

2 Replies

View 11 more comments

Ian Parkinson, Sheriff

July 27 ·

Ian Parkinson

July 27 ·

Thank you for all of the birthday wishes! I am very lucky to be in such a great community, with so many great people and so many great and dedicated employees a... **See More**

107 26 Comments

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Most Relevant

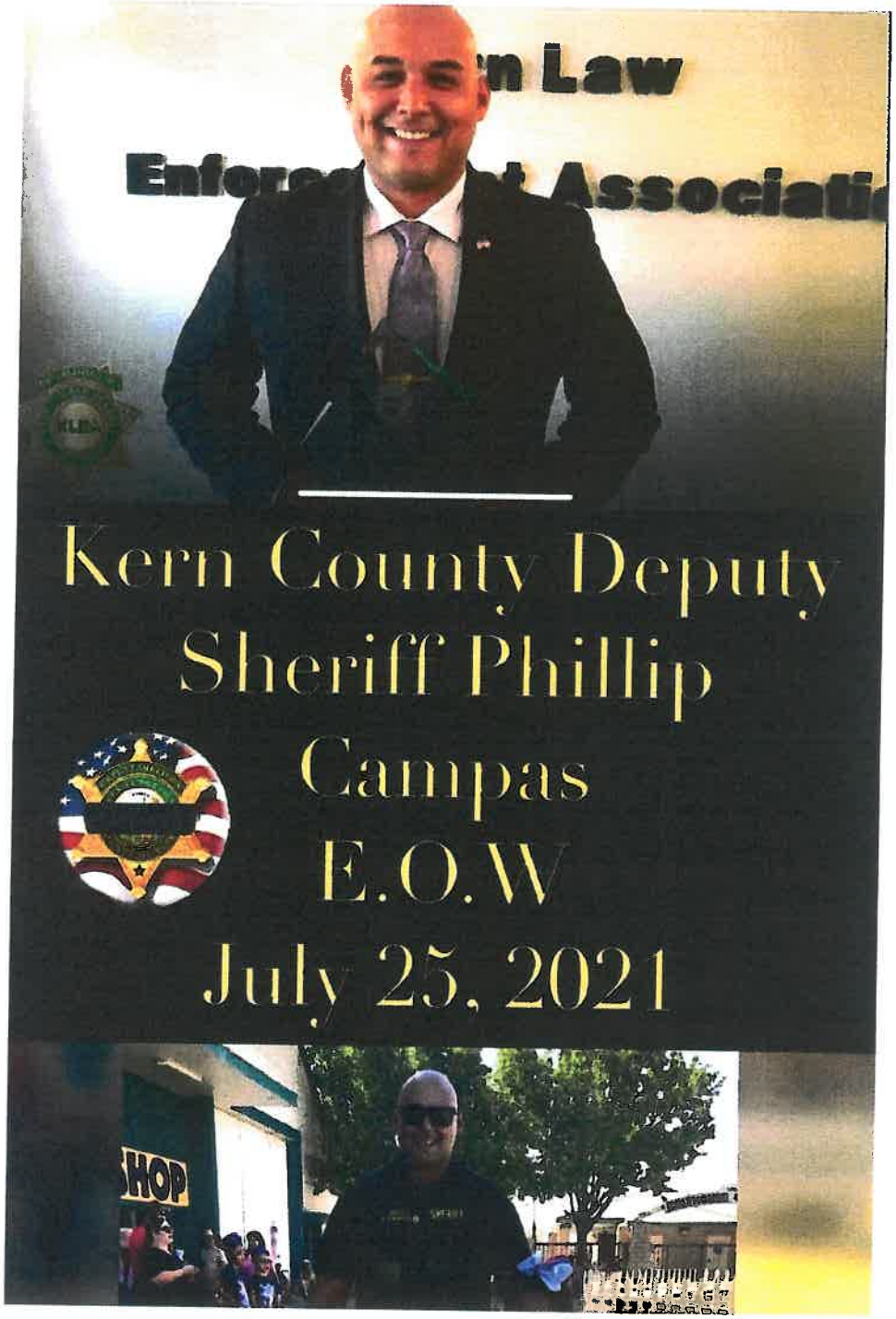
Write a comment...

Renee Bar

Happy Birthday! We are blessed to have you! We pray your team stays safe!

Like · Reply · 8w

Ian Parkinson, Sheriff
July 25 ·



Kings County Deputy Sheriff's Association
July 25 ·

Tragically, Kern County Deputy Phillip Campas was shot and killed today while in the line of duty.

Deputy Campas served Kern County on Patrol, SWAT and Honor ...

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Most Relevant

Write a comment...

Shannon Carlson
Heartbreaking. Our condolences and prayers for his family.

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Ian Parkinson, Sheriff
July 21 ·

Jason Jpaints Brock SLO County News And Public Safety
July 20 ·



+3

San Luis Obispo County Sheriff's Office
July 20 ·

A day for heroes. The Board of Supervisors issued a resolution commending San Luis Obispo County Sheriff's Deputies Nick Dreyfus and Clifford Pacas for their "h... **See More**

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Most Relevant

Write a comment...

Renee Bebout McNerlin
This is a group of "Real Heroes!" Thank you so much for what you do daily, to keep us safe! ❤
Thank you Ian Parkinson for your leader ship and thanks to the men and women of your department.

Like · **Reply** · 9w

































EXHIBIT J

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SLO County Sheriff
@SLOSheriff

...

The Sheriff's Office acknowledges Judge van Rooyen's ruling today that there is sufficient evidence to move the cases of Paul and Ruben Flores to trial. We are extremely satisfied with the judge's decision as we continue the fight for justice for Kristin Smart and her family.



12:45 PM · Sep 22, 2021 · Hootsuite Inc.

9 Retweets **48** Likes

EXHIBIT K



San Luis Obispo County Sheriff's Office
September 22 at 12:38 PM ·

A statement from the Sheriff's Office regarding today's judicial ruling in the case of Paul and Ruben Flores:

The Sheriff's Office acknowledges Judge van Rooyen's ruling today that there is sufficient evidence to move the cases of Paul and Ruben Flores to trial. We are extremely satisfied with the judge's decision as we continue the fight for justice for Kristin Smart and her family.
Ian Parkinson, Sheriff Sheriff's Advisory Foundation

973 68 Comments 94 Shares

Like Comment Share

Most Relevant

Carla Clawson Hoffman
With great gratitude, thank you for your countless hours of exhaustive and exhausting investigative work. It is an honor to know law enforcement officers with such integrity and devotion—who have worked this case for years and years.

Write a comment...

EXHIBIT L


Instagram
SHERIFF
SAN LUIS OBISPO COUNTY
slosheriff • Follow
slosheriff A statement from the Sheriff's Office regarding today's judicial ruling in the case of Paul and Ruben Flores:
The Sheriff's Office acknowledges Judge van Rooyen's ruling today that there is sufficient evidence to move the cases of Paul and Ruben Flores to trial. We are extremely satisfied with the judge's decision as we continue the fight for justice for Kristin Smart and her family.
yourownbackyardpodcast Sweet
Liked by almii and others

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On September 27, 2021, I served the foregoing document entitled: **EX PARTE APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; DECLARATION OF ROBERT M. SANGER; MEMORANDUM OF POINTS AN AUTHORITIES; [PROPOSED] ORDER** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

_X_ **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed September 27, 2021, at Santa Barbara, California.

Jake Swanson

Jake Swanson

SERVICE LIST

Christopher Peuvrelle
Deputy District Attorney
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San Luis Obispo, CA 93408-1000
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Via Email Only

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San Luis Obispo Superior Court
By:Goossens, Michelle

DAN DOW
DISTRICT ATTORNEY
STATE BAR #237986
COUNTY OF SAN LUIS OBISPO
COURTHOUSE ANNEX, 4TH FLOOR
SAN LUIS OBISPO, CA 93408
TELEPHONE: (805) 781-5800

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO
DEPARTMENT 5

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs.	COURT CASE NO. 21F-02402-A INFORMATION
PAUL RUBEN FLORES DOB: 10/22/1976 ID NO. D000182939	**DA CASE NO. 079-662557**
RUBEN RICARDO FLORES DOB: 04/09/1941 ID NO. D000445617 AKA RUBEN FLORES	**DA CASE NO. 079-663275** COURT CASE NO. 21F-02402-B
Defendants.	Appearance Date:October 20, 2021

The District Attorney of the County of San Luis Obispo, State of California, by this Information accuses the above named defendants of the following criminal offenses:

Count 1

On or about May 25, 1996, in the County of San Luis Obispo, State of California, the crime of Murder in violation of Penal Code section 187(a), a Felony, was committed in that PAUL RUBEN FLORES did unlawfully, and with malice aforethought murder K.S., a human being.

It is further alleged as to Count 1 that the murder was committed while the defendant was engaged in the commission of, or attempting to commit, the crime of Rape, in violation of Penal Code Section 261 within the meaning of Penal Code Section 189(a).

NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).

NOTICE: Conviction of this offense will require you to register pursuant to Penal Code section 290. Willful failure to register is a crime.

Count 2

On or between May 25, 1996 and April 13, 2021, in the County of San Luis Obispo, State of California, the crime of Accessory After the Fact in violation of Penal Code section 32, a Felony, was committed in that that RUBEN RICARDO FLORES unlawfully, having knowledge that the crime of Murder, a felony, in violation of Penal Code section 187 had been committed by Paul Ruben Flores, did harbor, conceal, and aid Paul Ruben Flores, with the intent that he might avoid and escape from arrest, trial, conviction, and punishment for that murder.

FURTHERMORE, the People hereby give notice of their intent to admit evidence of prior sexual acts pursuant to Evidence Code section 1108 and prior acts pursuant to Evidence Code section 1101(b). These incidents include the prior incidents described in police reports, chronological reports, and/or digital evidence previously provided to Paul Flores and Ruben Flores, and other alleged incidents of sexual or physical abuse, which evidence will be provided as it is obtained by the prosecution.

Contrary to the form, force and effect of that statute in such cases made and provided and against the peace and dignity of the people of the State of California.

Dated: October 4, 2021

DAN DOW
DISTRICT ATTORNEY

By:
ERIC J. DOBROTH
ASSISTANT DISTRICT ATTORNEY

SUMMARY PAGE

Cnt	Charge	Range	Defendant(s)	Special Allegation	Effect
1	PC187(a)		Paul Ruben Flores		
2	PC32		Ruben Ricardo Flores		

Dan Dow
District Attorney
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Attorney for the People of the State of California

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & B AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND ORDER SEALING RECORDS

I am Christopher Peuvrelle, a Deputy District Attorney for San Luis Obispo County. I am the assigned prosecutor for the above-entitled case.

As the court and counsel for the defendant are well aware, there has been a great deal of public interest in this pending case. It has been the goal of all parties to this case to limit the amount of information disseminated to the public to maintain the integrity of the potential jury pool in this county. Such efforts will hopefully assure the defendant is able to receive a fair and impartial trial in San Luis Obispo County.

In this regard, I have submitted a copy of the People's Request to Unseal, Duplicate and Reseal Property Item #1 Sealed Pursuant to Search Warrant #13651; and Declaration of Christopher G. Peuvrelle. In accordance with Section 6255 of the California Government

Code, I am requesting that this court order that the People's Request to Unseal, Duplicate and Reseal Property Item #1 Sealed Pursuant to Search Warrant #13651; and Declaration of Christopher G. Peuvrelle be sealed until further order of this Court. I respectfully urge that, under Section 6255, the public interest served by not making such records public clearly outweighs the public interest served by disclosure of such records. I would further request that a copy of such reports be released only to counsel for the People and the defendant to prepare for the Jury Trial. Defense counsel represented in chambers on April 15, 2021, that they agree with this request.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 27, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher Peuvrelle
Deputy District Attorney

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Deputy Clerk

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On October 27, 2021, I served the foregoing document(s) described as:

PEOPLE'S REQUEST TO UNSEAL, DUPLICATE, AND RESEAL PROPOERTY ITEM #1 SEALED PURSUANT TO SEARCH WARRANT #13651; DECLARATION OF CHRISTOPHER G. PUEVRELLE; ORDER TO UNSEAL, DUPLICATE AND RESEAL PROPERTY ITEM #1 SEALED PURSUANT TO SEARCH WARRANT #13651; DECLARATION OF CHRISTOPHER G. PUEVRELLE; PROPOSED ORDER; AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND PROPOSED ORDER SEALING PUBLIC RECORDS

(*People v. Paul Ruben Flores & Ruben Ricardo Flores*, Case No. 21F-02402-A & B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL:
RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
21F-02402-B
EMAIL: HAROLDMESICK@GMAIL.COM

[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 27, 2021, at San Luis Obispo, California.

Sandee Lopez

Sandee Lopez, Legal Clerk

Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
Courthouse Annex, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorney for the People of the State of California

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SAN LUIS OBISPO SUPERIOR COURT
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A & B PEOPLE'S REQUEST TO UNSEAL, DUPLICATE AND RESEAL PROPERTY ITEM # 1 SEALED PURSUANT TO SEARCH WARRANT #13651; DECLARATION OF CHRISTOPHER G. PEUVRELLE

The People hereby request that property item #1, currently held under seal pursuant to Search Warrant #13651 by the San Luis Obispo County Sheriff's Office under SLSO case #200201619, be unsealed, duplicated by the San Luis Obispo County Sheriff's Office, said copy released to the District Attorney's Office, and resealed for the reasons set forth in the attached Declaration of Deputy District Attorney Christopher Peuvrelle.

Dated: October 27, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: _____
Christopher G. Peuvrelle
Deputy District Attorney

DECLARATION OF CHRISTOPHER G. PEUVRELLE

1. I, Christopher G. Peuvrelle, am a Deputy District Attorney assigned to the prosecution of criminal cases in San Luis Obispo County.
2. On February 4, 2020, the Honorable Judge Matthew G. Guerrero signed Search Warrant #13651 and an order sealing San Luis Obispo Sheriff's Office property item #1 held under SLSO case #200201619.
3. I am aware that arrests were made as a result of an ongoing murder investigation under SLSO case #960610965, and that a criminal case has been filed in the San Luis Obispo Superior Court under case #21F-02402-A and B.
4. Property item #1 from SLSO case #200201619 is needed in the prosecution of Paul Ruben Flores and Ruben Ricardo Flores in San Luis Obispo Superior Court case #21F-02402-A and B, respectively.
5. I, therefore, request that property item #1, currently held under seal by the San Luis Obispo County Sheriff's Office under SLSO case #200201619, be unsealed and provided to San Luis Obispo County Sheriff's Office Senior Detective Clint Cole for duplication and release to the San Luis Obispo County District Attorney's Office for use in the prosecution of Paul Ruben Flores and Ruben Ricardo Flores in San Luis Obispo County Superior Court #21F-02402-A and B, and then resealed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 5, 2021

Respectfully submitted,

Dan Dow
District Attorney

By: Christopher G. Puevrelle
Deputy District Attorney

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By:Goossens, Michelle

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES Defendants.	COURT CASE NO. 21F-04202-A & B ORDER TO UNSEAL, DUPLICATE AND RESEAL PROPERTY ITEMS SEALED UNDER 1999 WIRE TAP

ORDER

GOOD CAUSE APPEARING from the attached Declaration of Christopher G. Peuvrelle, IT IS HEREBY ORDERED that property item #1, currently held under seal pursuant to Search Warrant #13651 by the San Luis Obispo County Sheriff's Office under SLSO case #200201619, be unsealed and provided to San Luis Obispo County Sheriff's Office Senior Detective Clint Cole for duplication and release to the San Luis Obispo County District Attorney's Office for use in the prosecution of Paul Ruben Flores and Ruben Ricardo Flores San Luis Obispo County Superior Court #21F-02402-A and B, and then resealed.

Dated this _____ day of October, 2021.

November 4, 2021

Craig Van Rooy

THE HONORABLE CRAIG B. VAN ROOYEN
JUDGE OF THE SUPERIOR COURT

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Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES Defendants.	COURT CASE NO. 21F-02402-A & B [CORRECTED] ORDER TO UNSEAL, DUPLICATE AND RESEAL PROPERTY ITEM # 1 SEALED PURSUANT TO SEARCH WARRANT #13651

ORDER

GOOD CAUSE APPEARING from the attached Declaration of Christopher G. Peuvrelle, IT IS HEREBY ORDERED that property item #1, currently held under seal pursuant to Search Warrant #13651 by the San Luis Obispo County Sheriff's Office under SLSO case #200201619, be unsealed and provided to San Luis Obispo County Sheriff's Office Senior Detective Clint Cole for duplication and release to the San Luis Obispo County District Attorney's Office for use in the prosecution of Paul Ruben Flores and Ruben Ricardo Flores San Luis Obispo County Superior Court #21F-02402-A and B, and then resealed.

Dated this _____ day of October, 2021.

Craig Van Rooyen

THE HONORABLE CRAIG B. VAN ROOYEN
JUDGE OF THE SUPERIOR COURT

November 18, 2021

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Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

NOTICE OF MOTION AND MOTION TO SET ASIDE THE INFORMATION (PENAL CODE § 995)

Date: January 21, 2022
Time: 8:30 a.m.
Dept.: ~~5~~ 1

Hon. Jacqueline Duffy

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TO THE CLERK OF THE ABOVE-ENTITLED COURT, TO THE DISTRICT ATTORNEY FOR THE COUNTY OF SAN LUIS OBISPO AND DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE:

PLEASE TAKE NOTICE that Defendant Paul Ruben Flores hereby moves and will move on January 21, 2022, at 8:30 a.m., or as soon thereafter as the matter may be heard in the above-entitled court, for an order setting aside the Information filed on November 19, 2021, or for such other and further relief as the Court may deem just and proper on the grounds that he was illegally committed by the Magistrate in that he was held to answer without reasonable or probable cause in violation of Penal Code section 995. In addition, this motion is made to protect Mr. Flores's constitutional rights, including the right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 7 of the California Constitution and decisional law.

The motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the transcript of the preliminary hearing and all exhibits associated therewith, such supplemental memoranda of points and authorities as hereafter may be filed with the Court, all pleadings and documents heretofore filed with the court and such oral argument as may be presented at the hearing on the motion.

Dated: December 17, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

STATEMENT OF RELEVANT FACTS

Paul Flores was charged with one count of Penal Code section 187(a) with an allegation that it was committed during the commission or attempted commission of a rape within the meaning of Penal Code section 189(a). A non-continuous preliminary hearing took place between August 2, 2021 and September 22, 2021, before the Honorable Craig B. Van Rooyen who held Paul Flores to answer on all counts. Following the preliminary hearing, Mr. Pena was arraigned on the Information on October 20, 2021.

At the preliminary hearing, the prosecution presented evidence through the testimony of the following witnesses:

A. Margarita Campos

In Spring of 1996, Margarita Campos was a student at Cal Poly living in Muir Hall next door to Kristin Smart. (4RT 965-966.) On May 24, 1996, Ms. Campos and Ms. Smart were hanging out in Ms. Campos's dorm room. (4RT 968.) Ms. Smart was wearing Roxy brand board shorts, a crop top and red tennis shoes. (4RT 971.) They went out with some other students from down the hallway to a "get together" at a house. (4RT 969-970.) They left the house with the other girls and were dropped off at a street corner. (4RT 974.) At around 10:30 or 11:00, Ms. Campos went back towards the dorms and Ms. Smart went up Crandall Way. (4RT 974, 979.)

The next day, Ms. Campos looked into Ms. Smart's dorm room, and it looked exactly as they had left it the night before. (4RT 985.) Ms. Campos said that she was present when Ms. Phipps called the police and during the interviews on the Sunday after the party. (4RT 989-990.) Ms. Campos remembered reporting the May 29, 1996 phone calls to Detective Kennedy but claimed she did not tell him she heard a woman mumbling. (4RT 993-

994.) She also reported to the police that she saw footprints outside of her dorm room window but did not hear anybody knocking on the window. (4RT 1022.)

In 1999, Ms. Campos was interviewed by law enforcement and asked a series of questions about Ms. Smart. (4RT 1004.) Ms. Campos answered questions about Ms. Smart's personality being "shy" and drinking "to relax and be more sociable." (4RT 1006.) Ms. Campos also mentioned that Ms. Smart had "ADD and depression" and took medication. (4RT 1007.) Ms. Campos mentioned that Ms. Smart was "stalking a male she liked" and testified that Ms. Smart was trying to get the male's attention. (4RT 1007-1008.) Ms. Campos did not recall telling at least three separate law enforcement officers that Ms. Smart was pregnant, that Sean Farrell was the father and that she had an abortion. (4RT 1011-1017.)

Ms. Campos said that she did not go to parties with Ms. Smart. (4RT 1019.) Ms. Campos said that Ms. Smart would pretend to be drunk "out of being noticed, being seen," meaning that "if people said she was intoxicated and acting a certain way, it's because she was really just trying to talk to people and be social." (4RT 1020.) Ms. Campos stated that her interactions with Mr. Flores were at the campus grocery store and at a party. (4RT 985.)

In 2017, Ms. Campos sent emails directly to Sheriff Parkinson and then scheduled a meeting with Detective Cole. (4RT 996-997.) Ms. Campos said that she was "frustrated with the activity that was happening pertaining to the case." (4RT 997.) When discussing Ian Parkinson and Detective Cole, Ms. Campos said, "I had a better team working on this case." (4RT 1040, 1044.) Ms. Campos also spoke with Kristin Smart podcaster Chris Lambert a few times and appeared on his podcast. (4RT 1044-1045.)

B. Kendra Koed

Ms. Koed was first interviewed by law enforcement in 2014. (1RT 136-

137.) Ms. Koed testified that she contacted law enforcement in 1996 and gave a statement to the Cal Poly Police Department. (1RT 137.) in 2014, Ms. Koed saw a website called kristinsmart.com. (1RT 137.) Dennis Mahon, a private person associated with an investigation of his own in this case, contacted Ms. Koed. (1RT 138.) After speaking with Dennis Mahon, Ms. Koed spoke with the San Luis Obispo Sheriff's Department. (1RT 139.) By this time, Ms. Koed had seen quite a bit of publicity about the investigation into the disappearance of Kristin Smart and quite a bit of it talking about Paul Flores. (1RT 139-140.)

Ms. Koed had spoken with her roommate Andrea Young, who had also been at the party, about that night. (1RT 140.) Ms. Koed had lived in San Luis Obispo for about 16 years after the party. (1RT 140.) She saw the billboards relating to the disappearance. (1RT 140.) Ms. Koed also spoke with Chris Lambert, the podcaster, once in February of 2020. (1RT 138.)

In May 1996, Kendra Koed was living in San Luis Obispo and attending Cuesta College. (1RT 131.) Ms. Koed now recalls attending the party at 135 Crandall Way the Friday before Memorial Day. (1RT 131.) She arrived at the party after dark. (1RT 131-132.) Ms. Koed estimated that there were closer to 30 to 40 people at the house. (1RT 142.) Ms. Koed had rum in a Slurpee before the party but did not drink at the party. (1RT 143, 148.) She estimated that she was drunk at a level of three out of ten, with one being "completely sober" and ten being "falling down drunk". (1RT 143.)

Ms. Koed described the house as having a front patio. (1RT 132.) Immediately inside the front door there was "a fairly large room with a pool table on, like sort of, the right-hand side, and then behind that . . . there was a kitchen area." (1RT 132.) There was a door to the backyard from the kitchen with a couple steps going down. (1RT 132.)

At the party, Ms. Koed was asking people for a piece of gum. (1RT

133.) Ms. Koed pointed to Paul Flores in the courtroom and testified that Mr. Flores said he had a piece of gum. (1RT 133.) They were behind the pool table and Mr. Flores kissed her, she pushed him away and said that she "'just wanted some gum.'" (1RT 133-134.) Ms. Koed remembered that when she and Mr. Flores were kissing someone yelled, "'Get a room'" and she was mortified by this. (1RT 143.) When the person yelled that, she stopped kissing Mr. Flores. (1RT 143, 148-149.)

He then said, "'Sure. I've got some in my car.'" (1RT 134.) They walked out the back kitchen door around to the other side of the house. (1RT 134.) Mr. Flores tried to kiss her again and she pushed him away, told him to leave her alone and walked away. (1RT 134.) This occurred around the middle of the party. (1RT 134.) Ms. Koed did not know Mr. Flores prior to the party. (1RT 133.)

Later in the party, Ms. Koed was sitting with two friends by the pool table when she saw a woman, she now knew to be Kristin Smart, fall in the middle of the hallway. (1RT 134.) Ms. Koed got up, walked to the hallway and saw Mr. Flores "sort of standing over her, next to her, in her person, and [she] picked [Kristin Smart] up and walked her outside." (1RT 134.) Ms. Koed did not see how Ms. Smart fell to the ground. (1RT 135.)

Ms. Koed sat Ms. Smart down outside the porch and talked to her for a few minutes. (1RT 135.) Ms. Koed told Ms. Smart to "'[s]tay away from that guy.'" (1RT 135.) Ms. Koed was concerned for Ms. Smart because "[s]he seemed highly intoxicated" and unable to care for herself. (1RT 135.) Ms. Koed testified that Ms. Smart could "hardly hold her head up" and "slumped over" onto Ms. Koed spilling her beverage. (1RT 135.) Ms. Koed did not see Ms. Smart drinking at the party or flirting with other men. (1RT 145-146.) Ms. Smart had introduced herself as "Roxy" at the party. (1RT 150.)

As Ms. Koed was walking home with her roommate, she saw Ms. Smart

lying down in the driveway. (1RT 136.) Ms. Koed offered to walk Ms. Smart home, but Ms. Smart said she was waiting for someone. (1RT 136.) Ms. Smart did not say who she was waiting for. (1RT 146.)

C. Matthew Toomey

In May of 1996, Mr. Toomey was a freshman living in the Sierra Madre dorms at Cal Poly down the street from Muir and Santa Lucia dorms. (2RT 368-369.) The evening of May 24, 1996, Mr. Toomey went to a house party at 135 Crandall Street. (2RT 389.) The house was off campus. (2RT 402.) Mr. Toomey identified the general location of the house on Exhibit 601. (2RT 402.) He arrived around 9:00 with his roommate, Ross Ketchum. (2RT 389.) There were roughly 30 people at the party. (2RT 415.) Mr. Toomey drank beer at the party. (2RT 415-416.) Mr. Toomey left the party around midnight when the party was still going on. (2RT 389, 410.)

Mr. Toomey spoke with law enforcement two or three times. (2RT 396.) After Ms. Smart's disappearance, it became a subject of conversation around Cal Poly. (2RT 409.) Everybody was "comparing notes." (2RT 409.) Most recently before testifying, he spoke with Mr. Camp and Mr. Peuvrelle by Zoom at which time Mr. Camp shared Mr. Toomey's statements with him. (2RT 396.) Mr. Toomey spoke to Mr. Camp twice, spoke to law enforcement back in the 1990s and then also spoke with an investigator working for the Smart family's lawyer. (2RT 396-397.) Defense investigator Ramona Messina also called Mr. Toomey but he told her that he needed to speak with the DA first because he "wasn't sure who [he's] allowed to talk to or who [he's] supposed to talk to, so [he] called the DA." (2RT 397.) The DA told him it was up to him if he wanted to talk to anyone. (2RT 397.)

During the party, Kristin Smart came up to Mr. Toomey and his friend. (2RT 389-390.) Mr. Toomey knew Ms. Smart as "Roxy" at the time of the party and only found out her name afterward. (2RT 408.) When Ms. Smart

walked up to Mr. Toomey, "[i]t seemed like she'd had a few drinks." (2RT 390.) She was "[n]ot walking entirely straight." (2RT 390.) Mr. Toomey had a brief conversation with her. (2RT 391.) Ms. Smart asked Mr. Toomey about his roommate and asked if Mr. Toomey thought Ross would find her attractive. (2RT 391.) Mr. Toomey said, "'I don't know. I didn't talk to him about it.'" (2RT 391.) She asked Mr. Toomey if he thought she was attractive and he said, "'Yes.'" (2RT 391.) Ms. Smart then walked away. (2RT 391.)

Soon after Ms. Smart walked away, a male walked up to Mr. Toomey. (2RT 392.) Mr. Toomey pointed to Paul Flores in the courtroom, though Mr. Toomey did not know Mr. Flores by name at the time of the party. (2RT 392, 407.) It was only after he saw publicity and that Mr. Flores was a person of interest that Mr. Toomey recalled seeing him at the party. (2RT 407.) At the party, Mr. Flores asked Mr. Toomey if he knew if Ms. Smart and Ross Ketchum were "an item." (2RT 392.) Mr. Flores said that he found Ms. Smart attractive and Mr. Toomey testified that he could tell Mr. Flores was interested in her. (2RT 393.) This was the end of the conversation. (2RT 393.)

Mr. Toomey had described Mr. Flores as "socially awkward." (2RT 404.) Mr. Toomey spoke with Mr. Flores "very briefly." (2RT 404.) Mr. Toomey was not aware that Mr. Flores stutters badly and did not recall him stuttering. (2RT 404.)

During the party, Mr. Toomey recalled that Ms. Smart came up and kissed his friend, Trevor Boelter. (2RT 405.) Mr. Toomey did not believe Mr. Boelter had ever met Ms. Smart before. (2RT 410.) Mr. Toomey could not remember at which point during the party this happened. (2RT 405-406.) Mr. Toomey remembered Ms. Smart kissing Ross at some point in the night. (2RT 407.) Mr. Toomey found her behavior "somewhat unusual." (2RT 408.)

As Mr. Toomey and Mr. Ketchum were leaving, closer to midnight, Mr.

Toomey saw Ms. Smart lying on the lawn "right when you came out of the house, you could see her." (2RT 393, 394.) Mr. Toomey told her that she could not stay there, and she said, "no, she wanted to stay." (2RT 393.) She "basically kind of told [them] to leave her alone." (2RT 393.) Mr. Toomey testified that Ms. Smart was tired, he was concerned but that she did not want their help. (2RT 394.) After reviewing a report, Mr. Toomey testified that Ms. Smart said to "'leave me here,' 'leave me alone.'" (2RT 395.)

Mr. Toomey did not recognize the names Ted Munley, Shahn Whitted, Brian Sawicki, Trent Buckle or Sean Farrell. (2RT 411.) Mr. Toomey knew of Scott Peterson but did not recall seeing him. (2RT 411.) Mr. Toomey testified that these people could have been at the party but he just did not know. (2RT 411.)

D. Eric Grasso

Eric Grasso was a student at Cal Poly in May of 1996. (1RT 119.) On Friday May 24, 1996, Mr. Grasso attended a party at 135 Crandall Way. (1RT 119.) The house at 135 Crandall Way had a front porch off of a very small parking area. (1RT 119.) The house had a fairly open room that would have had a pool table and a sofa to the right. (1RT 119-120.) There was a bar on the back right of the room with a door leading to the outside and a kitchen to the left. (1RT 120.)

Mr. Grasso testified that he "would imagine a couple dozen" people attended the party. (1RT 120.) Mr. Grasso testified that Paul Flores was at the party and pointed to him in court. (1RT 120.) Mr. Grasso said that Mr. Flores's behavior at the party was "normal of what [he] had seen before" at parties. (1RT 121.) He said that Mr. Flores was "generally drinking, like we all generally did, maybe a little standoffish, looking around, just observing people." (1RT 121.) According to Mr. Grasso, Mr. Flores was "not really interacting with people directly most of the time, more standing in the back

and observing people, walking back and forth." (1RT 121.) Mr. Grasso believed that Mr. Flores was drunk at the party. (1RT 121.) Mr. Grasso drank beer at the party. (1RT 125.)

Mr. Grasso did not remember Mr. Flores interacting with too many women at the party. (1RT 121.) Mr. Grasso saw him talking to a group of Mr. Grasso's friends which included women and Mr. Grasso testified that he would "generally step into a conversation like that, if [he] saw somebody they didn't know too well talking to them" but that he did not know Mr. Flores. (1RT 122.) Mr. Grasso did not believe he spoke with Mr. Flores. (1RT 123.) Mr. Grasso did not "remember much about the party." (1RT 125.) On re-direct examination, after reading a report by Officer Cudworth containing his statement from May 31, 1996, he still did not remember "speaking with [Mr. Flores] specifically, a one-on-one conversation with him or anything like that." (1RT 127.)

Mr. Grasso left the party early that night and thought he left before Mr. Flores. (1RT 128.) Mr. Grasso did not see him at another party at Crandall Street after that Memorial Day. (1RT 123.)

Mr. Grasso testified that he had not listened to the "My Backyard [*sic*] podcast." (1RT 126.) Before he testified, the District Attorney read Mr. Grasso his statement back to him which "brought back some memories." (1RT 126.)

E. Cheryl Manzer

In May of 1996, Cheryl Manzer was a freshman at Cal Poly living in the Sierra Madre dorm. (2RT 418.) Ms. Manzer attended the party on May 24, 1996 at 135 Crandall Way. (2RT 418-419.) She arrived at around 8:00 or 9:00. (2RT 419.) She estimated that she had three beers at the party over the course of four to five hours but did not remember exactly. (2RT 419.)

Ms. Manzer remembered seeing Ms. Smart at the party but could not

remember when she first saw her. (2RT 420.) Ms. Manzer remembered that Ms. Smart was wearing a gray "half-shirt," black vinyl shorts and red Puma shoes. (2RT 421.)

Ms. Manzer saw Paul Flores at the party and pointed to him in the courtroom. (2RT 421.) Ms. Manzer believed that she saw Mr. Flores at the party but did not remember "many specifics during the party." (2RT 422.) After reviewing a report, Ms. Manzer testified that Mr. Flores came up to her and put his arm around her at some point during the party. (2RT 423.) Ms. Manzer walked away from him. (2RT 423.)

The party broke up around 1:00 in the morning. (2RT 423.) Ms. Manzer's friend, Tim Davis, offered to walk her home. (2RT 423.) Before they started walking, Mr. Davis found Ms. Smart. (2RT 423.) Ms. Manzer did not remember seeing this interaction. (2RT 423.) Mr. Davis helped Ms. Smart up and they were going to walk to the dorms together. (2RT 424.) Ms. Manzer testified that Ms. Smart was "definitely intoxicated" and she was "stumbling, having trouble standing' and her "speech was impacted." (2RT 425.)

The three start to walk back to the dorms when Paul Flores joined them. (2RT 426.) Ms. Manzer did not remember the exact words but she thought he said something like "I will walk back also." (2RT 426.) At some point, Mr. Flores put his arm around her waist to help her walk back. (2RT 427.) In her interview in 1997, Ms. Manzer told Detective Stewart that she did not notice any inappropriate touching by Paul Flores while he was walking with Ms. Smart. 2RT 442.) At some point, Tim Davis left. (2RT 427.)

Ms. Manzer, Ms. Smart and Mr. Flores slowed down or "maybe fully stopped" along the way back to the dorms. (2RT 427.) Mr. Flores said that she could go ahead about a third of the way back. (2RT 427.) They stopped a

second time and Mr. Flores said that she could go back but Ms. Manzer said she did not want to walk back alone. (2RT 428.) They walked to the corner of Perimeter and Grand. (2RT 429.) Mr. Flores asked Ms. Manzer for a kiss or a hug and she said no. (2RT 42.) Mr. Flores then said he would get Ms. Smart back to her dorm. (2RT 430.) It took more than 15 minutes but less than 30 minutes to get back to the dorm, longer than it would normally take. (2RT 428.)

F. Timothy Davis

In May 1996, Mr. Davis was a student at Cal Poly. (7RT 1961.) Mr. Davis attended the party at Crandall Way where there were 30 to 40 people in attendance. (7RT 1962-1963.) Mr. Davis remembered seeing Paul Flores and Kristin Smart on the ground after falling. (8RT 2126, 2173.) Mr. Davis did not know what caused the fall. (8RT 2127.)

After the party ended, Mr. Davis went outside and saw Ms. Smart on the lawn. (8RT 2130.) Mr. Davis helped her off the ground and he held her while they walked with Cheryl Anderson. (8RT 2135, 2137-2138.) As they started walking, Mr. Flores came out from the side of the house and joined the group. (8RT 2139.) Once they get to the health center, Cheryl Anderson said that Mr. Davis did not need to go all the way to the dorms with them, so he left the group. (8RT 2144-2145.) Mr. Davis let go of Ms. Smart before leaving and Ms. Smart put her right arm around Mr. Flores and he put his arm around her waist. (8RT 2146.)

G. Steven Fleming

Steven Fleming was a student at Cal Poly from 1995 to 2000. (2RT 313.) In the 1995 to 1996 school year, Mr. Fleming lived on the third floor of Muir Hall, a dorm at Cal Poly. (2RT 314.) During this period, Mr. Fleming played basketball for Cal Poly. (2RT 314.) Muir Hall was a co-ed dorm with both men and women in it divided by floor. (2RT 357.) There was a parking

lot associated with Muir Hall but Mr. Fleming could not recall its location. (2RT 359.)

Mr. Fleming was not interviewed until January of 1999 by the FBI. (2RT 335.) Mr. Fleming did not come forward but was contacted by the FBI. (2RT 348.) Up until then, Mr. Fleming had not told anyone that he had information about Paul Flores. (2RT 335.) By March 9, 1999, Mr. Fleming was aware of all of the publicity relating to the Kristin Smart's disappearance in the form of print, television and billboards. (2RT 347.) He was still at Cal Poly at that time. (2RT 347.) At that time, Mr. Flores's name "was out there among the rumors." (2RT 349.)

Mr. Fleming was interviewed by the San Luis Obispo Sheriff for the first time on July 9, 2021 when he was interviewed by Detective Cole and "J.T." (2RT 336, 340.) Mr. Fleming told officers when interviewed that he felt some responsibility for what happened to Ms. Smart and does feel guilty. (2RT 334-335, 372.) Mr. Fleming told the interviewers that "there was a lot of speculation and a lot of talk about Paul Flores." (2RT 349.)

After college, Mr. Fleming served in the military for about 12 years. (2RT 315.) He left the military and went into law enforcement before being deployed for another seven years with the Army. (2RT 315.) After his deployment, he returned to law enforcement. (2RT 315.) In 2019, he retired due to medical issues from an injury. (2RT 315.) He had been a police officer in Berkeley. (2RT 316.)

Mr. Fleming identified Exhibits 258 to 264 and 268 to 269 as photographs of Muir Hall. (2RT 316.) In Exhibit 262, he identified that there used to be a main street that cars could drive down but it has changed. (2RT 317.) He identified his room on the third floor on Exhibit 259 and marked it with a Sharpie. (2RT 317.) Kristin Smart's dorm was on the first floor, room 120. (2RT 337, 330.)

Mr. Fleming knew Kristin Smart, took classes with her and studied. (2RT 323-324.) She came to some of his basketball games. (2RT 324.) He first met Ms. Smart in the beginning of the school year in the dorms. (2RT 325.) Mr. Fleming testified that Ms. Smart did not move into the dorm later than he did. (2RT 337-338.) During the basketball season from October to March, he did not talk "nearly as much." (2RT 326.) After March, Mr. Fleming was able to hang out with Ms. Smart "every once in a while." (2RT 327.) Mr. Fleming testified that Margarita Campos was Kristin Smart's roommate and that he did not know who Crystal Calvin was. (2RT 338.) Mr. Fleming testified that he found Ms. Smart attractive but that it did not go beyond that. (2RT 339.)

Mr. Fleming testified that Ms. Smart was "going through some things" and she was "working things out." (2RT 348.) Mr. Fleming said that school was "tough." (2RT 372.) Ms. Smart told Mr. Fleming that she wanted to travel. (2RT 373.)

Ms. Smart mentioned that she had an issue with a couple girls who were bullying her because she was tall. (2RT 367.) When he last saw Ms. Smart her hair was either brown or brown with blond highlights. (2RT 362.)

Mr. Fleming testified on direct examination that he observed Paul Flores around the Muir dorm. (2RT 328.) Mr. Fleming pointed to Mr. Flores in court. (2RT 328.) Mr. Fleming described Mr. Flores as a "lurker" and "[c]reep." (2RT 328.) Mr. Fleming remembered two times Mr. Flores was in the Muir dorm at around one in the morning by himself. (2RT 328-329.)

Mr. Fleming testified on direct examination that there were a couple of times where he thought Mr. Flores would be around Ms. Smart in the University Union Park, the main gathering area where students could eat and socialize between classes. (2RT 330, 332, 366.) Mr. Fleming said that he saw Mr. Flores at the dining hall, the student union in the area as there were

"plenty of places" because "it's not like Poly is that big." (2RT 366.)

Mr. Fleming said that Mr. Flores would be around like a "puppy dog kind of thing." (2RT 330.) Mr. Fleming said that he remembered Mr. Flores being in Ms. Smart's room. (2RT 330.) Looking back, he now felt that she looked nervous. (2RT 330-331.) Mr. Fleming testified that Mr. Flores was "not welcome." (2RT 331.) Mr. Fleming said that Ms. Smart was generally friendly but in that instance she was "standoffish." (2RT 332.) Mr. Fleming testified that this could have been in Margarita Campos's room, not Ms. Smart's. (2RT 371.) On re-direct examination, after being shown the report of his 1999 FBI interview, Mr. Fleming testified that he saw Mr. Flores in Ms. Smart's dorm room around five or six times. (2RT 374.) Mr. Fleming told the FBI in 1999 that he "'spoke to Flores occasionally as Fleming passed Smart's room. Fleming assumed that Smart and Flores were dating during that time.'" (2RT 376.) Mr. Fleming did not say that Mr. Flores was a "creep." (2RT 376.) Mr. Fleming testified that he would see Mr. Flores around but did not know if Mr. Flores was just passing. (2RT 333.) He testified that Ms. Smart would not "really pay attention to [Mr. Flores]." (2RT 333.)

Mr. Fleming said that Ms. Smart had talked to him about her problems. (2RT 339.) When detectives spoke to Mr. Fleming on July 2, 2021, Mr. Fleming recalled the following question and answer:

> "'When you say going through stuff, did she ever mention any issues with parents kind of on her butt or anything?"
>
> "Your answer. 'You know, honestly, that's some part of this shit. Like I said, I – I felt kind of bad because I kind of like told her some of my bullshit, and I didn't listen enough to her bullshit.'" (2RT 340-341.)

Mr. Fleming also recalled saying:

"'So I don't know what kind of relationship they had before then, but just – just, like, why – are you and he – he was just – he was fucking – he was creepy, you know. I mean, I know some girls around there is – is just kind of they mentioned it.

"'Like, hey, you know, make – because I – I believe it was brought up to an RA. And, hey, you know this, this guy walking through – randomly through the halls of the girls', you know, area at this time, you know. I don't – I mean, I know these things were brought up. Can I say it with – can I say 100 percent certainty it was Paul? No.'" (2RT 342-343.)

However, at the time of testifying, Mr. Fleming said that he was now "100 percent sure" that it was Paul Flores because "everything has, like, brought back memories." (2RT 385, 386.) He was the only witness who claimed that Paul Flores spent time in the Muir dorm or had any prior relationship with Kristin Smart and the only person associated with stalking Kristin Smart was a person named "Yanish."

Mr. Fleming moved out of Muir dorm before the end of the school year because he had a teammate who was not going to class and was not getting any play time and "it became kind of a bad situation in terms of just kind of like living with him, so I moved out temporarily." (2RT 344-345.) Mr. Fleming did not remember when he moved out but it was during the time when he was actively involved in basketball. (2RT 345.) He moved back once his roommate got cut from the team. (2RT 346.) Mr. Fleming had moved to the gray concrete buildings down the way. (2RT 346.) There his roommate was growing marijuana in his closet so when his former roommate in Muir left, he moved back to Muir. (2RT 346.)

Mr. Fleming testified that he and Ms. Smart did not talk about who she was dating. (2RT 347.) Mr. Fleming did not remember who Ms. Smart was dating. (RT 350.) Mr. Fleming did not know Sean Farrell, Ted Munley or Brian Sawicki. (2RT 351-352.) Mr. Fleming knew of Scott Peterson and saw

him at parties but did not see him hanging around Kristin Smart. (2RT 352.) Mr. Fleming did not recall Ms. Smart going by Roxy, Marysol, Kianna or Trixie. (2RT 352-353.)

Mr. Fleming was given Exhibit 601, which he identified as a map of Cal Poly. (2RT 355-356.) Mr. Fleming identified Muir Hall but could not recall the location of the other dorms. (2RT 356-357.)

H. Jeremy Moon

In May and June 1996, Mr. Moon was a student at Arroyo Grande High School. (6RT 1536.) On the Sunday of Memorial Day weekend in 1996, Mr. Moon hung out with Mr. Flores. (6RT 1538.) Mr. Moon noticed that Mr. Flores had a black eye. (6RT 1538.) Mr. Flores said that he woke up with it. (6RT 1538.)

Mr. Moon played basketball with Mr. Flores and two other people on Monday, May 27, 1996 at Harloe Elementary School. (6RT 1538-1539.) Mr. Moon testified that Mr. Flores was not hit in the face during the basketball game. (6RT 1539.) However, Mr. Moon testified that someone could get hit in a game and he would not know it. (6RT 1549.)

I. Stan Smart

Stan Smart, Kristin Smart's father, testified that when Kristin Smart was in 11th grade, they would commute from the family's home in Stockton to a high school in Napa during the week. (1RT 88.) Mr. Smart was the principal of the high school. (1RT 88.) Kristin Smart finished high school at a different school and took classes at Delta College. (1RT 89.) Once she went to Cal Poly, he would speak with her weekly, usually with Denise Smart present. (1RT 89-90.)

Mr. Smart last saw Kristin Smart in person several weeks before Memorial Day weekend, probably near Easter. (1RT 90.) He has not had communication with Kristin Smart since Memorial Day weekend of May

1996. (1RT 92.) Mr. Smart went to San Luis Obispo to look for Kristin Smart after that weekend. (1RT 93.)

Mr. Smart also went to Ruben Flores's house in the summer of 1996. According to Mr. Smart, Ruben Flores said "'You need to get out of here. You need to get out of here. Someone could get shot.'" (1RT 95.) Mr. Smart went to Ruben Flores's house because he was the father of Paul Flores. (1RT 112.) Mr. Smart did not know that Scott Peterson was or should have been a suspect. (1RT 112.) He did not know about Shahn Whitted at the time either. (1RT 112.) He was not aware of Ted Munley. (1RT 114.) Mr. Smart was not aware of a person named "Yanish" who was "accused of peeking in Kristin's window multiple times." (1RT 114.) The only person Mr. Smart was made aware of by the police was Paul Flores. (1RT 116.)

Mr. Smart was aware that Kristin Smart had talked about going to Thailand. (1RT 96.) She did not talk to him about working as a model but Mr. Smart thought "she was thinking maybe about going to school." (1RT 96.) She spoke to Mr. Smart "frequently" about traveling. (1RT 105.)

Mr. Smart was not aware that Kristin Smart used the nickname "Roxy" until well afterwards. (1RT 97.) She did not tell him about relationships she had with other students at Cal Poly. (1RT 99.) She did not tell him about a boyfriend who lit her shoes on fire on her doorstep when they broke up. (1RT 99-100.)

Mr. Smart was not aware that Kristin Smart went missing for a short period while in Hawaii in 1995. (1RT 102.)

Mr. Smart could not recall if Kristin Smart had a credit card in his name. (1RT 106.) Mr. Smart was told by the campus police that she may have gone camping. (1RT 107-108.)

J. Denise Smart

Denise Smart, Kristin Smart's mother, testified that she felt she had a

"very close relationship" with Kristin Smart. (1RT 24.) Kristin Smart enrolled in Cal Poly the summer of 1995. (1RT 25.) Kristin Smart's interests were architecture and travel. (1RT 26.) Denise Smart testified that when Kristin Smart was at Cal Poly they would speak with each other "[m]inimally, once a week" and "on overage," twice a week. (1RT 26.) They had "a standing Sunday call." (1RT 26.) Denise Smart could not remember any Sundays before Memorial Day weekend while her daughter was at Cal Poly that they missed the Sunday call. (1RT 26-27.)

During the spring, Kristin Smart was "not particularly happy at Cal Poly" and "didn't feel that it was a good fit." (1RT 27.) Denise and Kristin Smart "had discussions about seeing through the year, and she felt strongly about doing that." (1RT 27.) Denise Smart testified that Kristin Smart did not miss school for an extended period while at Cal Poly to her knowledge. (1RT 27.)

Kristin Smart was having "significant difficulties in school." (1RT 48.) Kristin Smart spoke to Denise Smart about her boyfriends "[v]ery infrequently." (1RT 48.) Denise Smart had not heard about Shahn Whitted or "a boyfriend that she broke up with who took her shoes, lit them on fire, and put them on her doorstep." (1RT 48.) Denise Smart was informed of a number of issues in Kirstin Smart's life in the time right before the preliminary hearing that Kristin Smart had not told her about. (1RT 49.) Denise Smart had spoken to Kristin Smart about a boy she was dating when she was in Santa Barbara prior to starting at Cal Poly and about a boy she like in the fall at Cal Poly. (1RT 55-56.)

Denise Smart last saw Kristin Smart in person during spring break of 1996 when Kristin Smart died her hair and was trying to get the color out. (1RT 28.) Denise Smart testified that Kristin Smart "seemed to be in a better place but still probably questioned the choice that she had made" but was not

"upset." (1RT 28.) The family had driven to Cal Poly to spend the weekend there. (1RT 28-29.)

Denise Smart last spoke with Kristin Smart sometime a week before Memorial Day weekend. (1RT 36-37.) Kristin Smart was "quite concerned" because she had received an incomplete in a class due to a lost test. (1RT 37.) Denise Smart then received a voicemail from her on Friday, May 24 saying that the professor had found her test. (1RT 37.) She sounded "very happy and very excited." (1RT 37.)

Since May of 1996, Kristin Smart's siblings graduated from middle school, high school and college and got married and had children. (1RT 29-33.) Kristin Smart did not attend these life events. (1RT 29-33.)

Kristin Smart took trips outside of California. She was a lifeguard at a Christian Camp in Hawaii in the summer of 1995 for six weeks. (1RT 34.) During that time she communicated with Denise Smart a couple times a week. (1RT 35.) In December 1995, Kristin Smart returned to the camp for a winter session after Christmas. (1RT 35.) They had the same level of communication as in summer. (1RT 35.) Denise Smart was not aware that Kristin Smart had gone missing for a while when she was in Hawaii. (1RT 52.)

In 11th grade, Kristin Smart went to Colorado for a week with her high school and she communicated with Denise Smart during that time. (1RT 35-36.) She spent a month in London with family friends in 11th grade. (1RT 36.) The following summer she was an exchange student in Venezuela. (1RT 36.) During these trips she did not communicate with Denise Smart as much by phone but they exchanged "multiple letters." (1RT 36.) Kristin Smart had also gone to Thailand with family. (1RT 47.)

Denise Smart testified that Kristin Smart only had access to the money her parents put in her checking account and the money she earned as a

lifeguard. (1RT 41.) Denise Smart estimated that she would put $100 into Kristin Smart's account. (1RT 41.) Kristin Smart worked as a lifeguard during the school year for the university. (1RT 41, 46.) Kristin Smart did not have a driver's license. (1RT 41-42.)

Denise Smart was not aware that Kristin Smart was applying for positions as a model. (1RT 47.) Denise Smart was not aware that Kristin Smart told people she was a model for Roxy apparel. (1RT 47.) Denise Smart was not aware until later that Kirstin Smart used "Roxy" as a nickname. (1RT 47.)

After Memorial Day weekend in 1996, Denise Smart called various individuals at Cal Poly, the Cal Poly Police Department and the FBI. (1RT 41.)

K. Jennifer Hudson

In August and September 1996, Ms. Hudson was 17 or 18 years old and living in Huasna. (8RT 2206.) Ms. Hudson testified that she was at a skateboard ramp in San Luis Obispo with several other people when a radio announcement asking for information about the disappearance of Kristin Smart came on. (8RT 2207-2208.) Ms. Hudson claimed that she heard this while near a man named "Red" and a person she claims was Paul Flores. (8RT 2208.) Ms. Hudson claimed that Mr. Flores said, "'That bitch was a dick tease, and I'm done playing with her. And I put her under my ramp in Huasna.'" (8RT 2209.)

Ms. Hudson then claimed that a couple weeks later, her neighbors in Huasna were having a party. (8RT 2211.) A couple of guys were going to go to a skate ramp and Ms. Hudson drove them. (8RT 2211.) Ms. Hudson claimed that once in the car, this same person she claims was Paul Flores pulled up in a white four-wheel-drive pickup. (8RT 2211.) When she got out of her car at the skateboard ramp, Ms. Hudson claimed that she recognized

Mr. Flores and vomited because she was scared. (8RT 2212.) Ms. Hudson did not report this to the police. (8RT 2212, 2214.)

The first time that she told anyone about her claims was in 2002 when she told her former roommate, Justin Goodwin, while they were intoxicated. (8RT 2213; 21RT 6012.) In November 2019, Ms. Hudson found out that Justin Goodwin had called a tip line and told her story. (8RT 2213-2214.) Mr. Goodwin had spoken to Chris Lambert who ran the podcast and told Ms. Hudson that Mr. Lambert wanted to talk to her. (8RT 2214.) Ms. Hudson spoke with Chris Lambert in November 2019 before she spoke with Detective Cole. (8RT 2214, 2223.)

Chris Lambert or Justin Goodwin had told Ms. Hudson that Mr. Lambert flew a drone over the property she identified in Huasna and saw a 1980s four-wheel-drive truck on the property. (8RT 2229.) Mr. Lambert told Ms. Hudson not to share specific things with Detective Cole. (21RT 6044.) Throughout the years, Ms. Hudson had also seen documentaries about the case. (21RT 6014-6015.)

L. Angie Doe

Ms. Doe dated Mr. Flores around 2003 and 2004. (6RT 1570-1571.) Ms. Doe spoke with Chris Lambert in 2019 and was familiar with the "sonofsusan" and "Your Own Backyard" websites. (6RT 1584, 1588.) Ms. Doe also participated in the podcast. (6RT 1594.) Before 2019, Ms. Doe called the number from the "sonofsusan" website, dedicated to convicting Paul Flores, in 2005 or 2006, after she and Mr. Flores ended their relationship. (6RT 1589, 1592.) She called the number because she saw publicity that Mr. Flores was a suspect. (6RT 1590.)

During the time she dated Mr. Flores, she went with Mr. Flores to his father's house and went into the back yard. (6RT 1575.) She saw five Golden Retrievers underneath the deck of the house and avocado trees and brush

directly in front of the back patio. (6RT 1575, 1600.) Ms. Doe went to walk toward the avocado trees. (6RT 1581.) Ms. Doe testified that Paul Flores wanted her to walk around the house and redirected her away from the avocado trees. (6RT 1581.) Ruben Flores had the same reaction. (6RT 1582.)

M. Edward Chadwell

Mr. Chadwell was a general contractor for the building of the home on 710 White Court in around 1991. (16RT 4627.) Mr. Chadwell had subcontractors working on the home including a carpenter, grading subcontractor, HVAC subcontractor, stucco subcontractor, painter, electrician, roofer, plasterer, insulator, sheetrock subcontractor and a finish carpenter. (16RT 4636-4638, 4660-4661.) Mr. Chadwell had other skilled laborers helping. (16RT 4638.)

Mr. Chadwell and two others built the deck. (16RT 4639.) In order to build the house, the property had to be graded and, for the deck, wooden piers set in concrete were used as its foundation. (16RT 4652-4653, 4654.) Delivery trucks came onto the site to deliver lumber and other materials during the build. (16RT 4656.) Mr. Chadwell used pink Mason twine for the layout. (16RT 4657.)

During the construction of the house no human remains were discovered. (16RT 4630.) There was no one on the build site that was specifically looking for human remains or human traces. (16RT 4646.) Mr. Chadwell testified that he did not see any injuries during the building of the house. (16RT 4641.)

N. Jamilyn Holman

In February of 2020, Ms. Holman lived near 710 White Court. (21RT 6071.) At that time, Ms. Holman arrived home and saw a cargo trailer attached to a red SUB in the driveway. (21RT 6071.) Ms. Holman had known that there had been an "FBI" search at the 710 White Court a few

days before. (21RT 6071, 6088.) The trailer and SUV were parked at the side of the house for about four days and a camper with a van was parked in the street in front of the home. (21RT 6073, 6075.) Ms. Holman gave this information to podcaster Chris Lambert who then a year later told her that she should call Detective Cole because her information was now relevant. (21RT 6091, 6094.) Ms. Holman did not call Detective Cole until March of 2021, after the arrests of Paul and Ruben Flores were publicized. (21RT 6094.) Ms. Holman was then contacted by Jim Murphy's office. (21RT 6098.)

O. Clinton Cole

On August 10, 2021, Detective Cole testified that he had been wearing a purple tie on each day of the preliminary hearing because he saw a post on the Facebook Justice for Kristin Smart. (6RT 1511-1513.) This Facebook page is dedicated to seeing Paul Flores convicted of murder. (6RT 1513.)

On June 16, 2021, Detective Cole spoke with Crystal Calvin, now Teschendorf, who had been Kristin Smart's roommate in the dorms starting in February of 1996. (4RT 1049.) Detective Cole did not cover all of the material that was covered by officers in prior interviews with Ms. Teschendorf. (4RT 1053.) Ms. Teschendorf stated that she had a friend named Jana Schrock visiting on May 24, 1996. (4RT 1050.) Ms. Teschendorf told Detective Cole that Ms. Smart would sometimes be missing for 24 hours but would typically take her red backpack with her. (4RT 1050-1051.) Ms. Teschendorf told Detective Cole that on Ms. Smart's side of the dorm room there was a red backpack and toiletries that had been unmoved since she had left the night before. (4RT 1050.)

Detective Cole testified regarding phone records under Derrick Tse's name. (Exhibit 31.) On Sunday May 26, 1996, at 0947 hours, a phone call was made to Ruben Flores's home. (15RT 4376.) There were no phone calls on Saturday and no other phone calls on Sunday. (15RT 4376.) Detective

Cole testified that he assumed based on the records that the call was made by Paul Flores. (16RT 4511.)

Detective Cole had obtained DMV records for a Ford Ranger purchased in 1993 and a white Nissan pickup belonging to the Flores family. (15RT 4382-4833; 16RT 4506.) The white Nissan pickup truck was not a four-wheel drive vehicle. (16RT 4522.) Detective Cole testified that he had leaked false information in January 2020 to Chris Lambert that law enforcement had a white Nissan pickup truck in their possession. (16RT 4514-4515.) Chris Lambert had discussed a white pickup truck with Jennifer Hudson before Detective Cole interviewed her. (16RT 4515.)

Detective Cole also testified that when he interviewed Jennifer Hudson, she told him that she saw Mr. Flores in a blue or green Ford Ranger and a "white foreign pickup truck that she thought was four-wheel drive." (15RT 4379-4380.) Detective Cole testified that Justin Goodwin shared maps with Ms. Hudson to try to find the areas she might be talking about. (16RT 4609.) No one related to the Flores family owned the properties out in Huasna. (16RT 4611.) Before the property in Huasna was excavated in January 2020, human remains detection dogs were taken onto the property and alerted at several areas. (16RT 4617.) Nothing was found in these areas. (16RT 4618.)

Detective Cole testified that there was no body buried at the skate ramp in Huasna. (16RT 4520-4521.) Detective Cole tried to corroborate Jennifer Hudson's story and spoke with Brent Moon who had been her boyfriend at the time and several other people who skateboarded regularly at the ramps Ms. Hudson mentioned. (16RT 4522-4524.) Detective Cole did not find "a single person that said that they had ever seen Paul Flores with a skateboard or be[ing] a skateboarder." (16RT 4524.)

In January of 2020, Detective Cole was advised by the Sheriff

Parkinson that there were allegations of inappropriate communications between himself and Jennifer Hudson. (16RT 4585.) Later that day, Detective Cole spoke with Mr. Peuvrelle. (16RT 4586.)

On September 8, 2021, Detective Cole testified that he obtained items 775 and 776 from the first excavation at 710 White Court from Shelby Liddell and transported them to Angela Butler at SERI lab. (19RT 5427.) There were also samples obtained from the second excavation at 710 White Court, items 831 to 866, that were sent to SERI lab. (19RT 5430, 5435.) Not all of the soil samples were sent to SERI lab and the decision of which to send was made with Shelby Liddell. (19RT 5433.) In addition, the cut out of the plywood from the trailer, item 898, was also transported to SERI lab. (19RT 5435.)

Detective Cole spoke with David Stone, a former tenant of Ruben Flores' at 710 White Court. (21RT 6048-6049.) Mr. Stone said that in the ten years he lived at 710 White Court, he was not allowed under the deck in the crawl space and had never seen it open. (21RT 6050.) Mr. Stone told Detective Cole that the access door underneath the deck was never locked. (21RT 6053.) Mr. Stone also said that he placed the drums under the deck because the lattice door was never locked. (21RT 6054.) Mr. Stone also said that there were dogs kept under the deck at different times. (21RT 6056.)

Mr. Stone said that about seven or eight years before, a plumber needed to go in the crawlspace underneath the house and Ruben Flores said that he and his son would fix the problem. (21RT 6050.) However, Mr. Stone also said that for a couple weeks, he was allowed to store two 55-gallon drums underneath the deck just inside the lattice door. (21RT 6051.) Detective Cole again spoke with Mr. Stone on September 14, 2021 at which time Mr. Stone said the 55-gallon drums had previously contained sodium silicate but the drums were sealed and empty while under the deck. (21RT

6052.) Ruben Flores told him to remove the drums. (21RT 6052.) Mr. Stone did not have anything negative to say about Ruben Flores to Detective Cole. (21RT 6057.)

P. Henry Stewart

Detective Stewart was a peace officer with the San Luis Obispo Sheriff's Office from 1984 to 2004. Investigator Hanley noticed that Mr. Flores stuttered. (12RT 3305.) On June 26, 1996, Detective Stewart went to room 128, identified as Paul Flores's room, and located a single strand of brown hair. (12RT 3313.) The room was empty at the time. (12RT 3313.)

On June 28, 1996, Detective Stewart spoke to Jennifer Phipps. (12RT 3315.) Ms. Phipps testified that she had been out with Crystal Calvin and Jana Schrock when she came back to the dorm and put Ms. Schrock "to bed." (12RT 3315.) Around 3 a.m., her boyfriend Ted Munley knocked at her window. (12RT 3315.)

On July 25, 1996, Detective Stewart interviewed Jana Schrock. (12RT 3306.) Ms. Schrock said that she was a friend of Kristin Smart's roommate, Crystal Calvin. (12RT 3306.) Ms. Schrock had been out with Ms. Calvin and some other girls and returned to Ms. Calvin's room between midnight and 1:00 in the morning on May 25, 1996. (12RT 3306, 3308.) She said that no one else was in the dorm room when she returned. (12RT 3306.)

Ms. Schrock went to sleep and at around 3 a.m. was woken up by a knock at the window by a person named Ted. (12RT 3307.) Ms. Calvin was at Dustin Zimmer's room, Ted's roommate. (12RT 3307.) She described Ted as "an angry, defensive, negative person." (12RT 3318.) She went outside and smoked a cigarette with Ted for about ten minutes. (12RT 3307.) Ms. Schrock said she did not see anyone else while she was outside. (12RT 3308.) She allowed Ted to sleep on the floor because she knew he could not go back to his room. (12RT 3307.) When Jana Schrock woke up in the morning, Ted

was in her bed but she had not been aware that he had gotten in the bed at some point. (12RT 3319.) She was shocked to find him in the bed. (12RT 3369.) Ted then left around 9 or 10 in the morning. (12RT 3307.) Ms. Schrock told Detective Stewart that if Ms. Smart had come back to the room and turned on the light, she would have probably known she came into the room, but probably would not know that she had come into the room if Ms. Smart did not turn on the light. (12RT 3318.)

Detective Stewart then interviewed Ted Munley twice. (12RT 3319.) During the July 9, 1996 interview, Ted Munley said that he and Jennifer Phipps were friends. (12RT 3319.) He said that he saw Kristin Smart at the Crandall Way party. (12RT 3320.) He said he left the party at around 1:00 t 1:15 in the morning, getting back to the dorms at 1:30. (12RT 3320.) He said he went to his dorm room in Fremont Hall to hang out for a while before going to Jennifer Phipps' room to knock on the window. (12RT 3320.) He then went to the other side of Muir Hall and woke up Jana Schrock. (12RT 3321.) He said they smoked a cigarette outside for about ten minutes and then he went home. (12RT 3321.) Mr. Munley did not say anything about spending the night with Jana Schrock. (12RT 3321.) When he was asked what he thought happened to Ms. Smart, he said that around that time of night, people are still driving on campus and "there are always people out and about on campus." (12RT 3321.)

Detective Stewart interviewed Ted Munley again on August 13. (12RT 3321.) Detective Stewart asked Mr. Munley why both Jana Schrock and Crystal Calvin would say that Mr. Munley had spent the night in the room with Ms. Schrock. (12RT 3322.) Mr. Munley said that "he had had a lot to drink that night and couldn't really recall." (12RT 3322.) He said he left in the morning but did not know what time and that he spoke to Ms. Calvin and Ms. Schrock before he left. (12RT 3322.) He said that it could have been as

late as 9 or 10 in the morning. (12RT 3323.)

Detective Stewart interviewed Felipe Arias on July 16, 1996. (12RT 3342.) Mr. Arias said that he had met Ms. Smart at the dorms and they were really good friends. (12RT 3342.) He said that she used to come over to his dorm room in Trinity Hall. (12RT 3342-3343.) He said that Ms. Smart had left some personal items before in his room including lip gloss and sandals. (12RT 3346.)

Detective Stewart also interviewed Shahn Whitted. (12RT 3346.) Mr. Whitted admitted that he set Ms. Smart's shoes on fire and left a mean note. (12RT 3347.) Detective Stewart did not recall asking him for the contents of the note. (12RT 3347.) Mr. Whitted then said that he and Ms. Smart "made up" after that. (12RT 3347.) Mr. Whitted said that Ms. Smart would get rides from people all the time. (12RT 3348.) He also mentioned that Ms. Smart started stalking a person at the bookstore. (12RT 3348.)

Detective Stewart also interviewed Tim Davis who said that he and Cheryl Anderson started to walk Ms. Smart back to the dorms. (12RT 3351-3352.) Mr. Davis said that there was a group from another frat house outside and Paul Flores was walking with them. (12RT 3352.) Then Mr. Flores came up and offered to help walk Ms. Smart home. (12RT 3352.)

Detective Stewart interviewed Trevor Boelter who was at the party. (12RT 3352.) Mr. Boelter said that Ms. Smart came up to him and said, "'Hi, I'm Roxy'" and then he gave his name and she kissed him. (12RT 3352.) Then she went into the bathroom with him and shut the door. (12RT 3353.)

Around January 22, 1997, Detective Stewart went to Ruben Flores' house and tried to speak with Paul Flores. (12RT 3355.) Paul Flores told Detective Stewart, "'I have nothing to say. Talk to my lawyer.'" (12RT 3355.) In April 1997, Detective Stewart went to a Blockbuster Video store in Irvine to speak with Paul Flores. (12RT 3356.) Paul Flores said "'I have nothing to

say. Talk to my lawyer.'" (12RT 3356.) Detective Stewart gave the shift manager a missing person's flyer and his business card. (12RT 3357.)

Detective Stewart testified that he was aware that the FBI was surveilling Paul Flores. (12RT 3326.) Detective Stewart was "instrumental" in having Mr. Flores arrested for a probation violation. (12RT 3327.) Detective Stewart went down to Costa Mesa and surveilled Mr. Flores. (12RT 3327.) When Mr. Flores was in the Santa Barbara County Jail, Detective Stewart was aware that the FBI planted someone in the jail to try to become friends with Mr. Flores. (12RT 3329.) The person went fishing with Mr. Flores after he was released from jail. (12RT 3329.)

Q. Robert Cudworth

In 1996, Officer Cudworth worked for the Cal Poly Police Department. (19RT 5532.) On May 28, 1996, Officer Cudworth was dispatched to the Muir red brick dorms due to a telephone report of a missing person. (19RT 5532.) He spoke with Crystal Calvin, Kristin Smart's roommate in the dorms. (19RT 5532.) Ms. Calvin stated that she had not seek Ms. Mart since May 24 and that her personal items were in the room untouched. (19RT 5532.)

On May 28, 1996, Officer Cudworth also spoke to Paul Flores. (19RT 5533.) Mr. Flores told Officer Cudworth that he was at a party on Crandall, knew of Kristin Smart but did not talk to her that night. (19RT 5533.) After the party, Mr. Flores saw Ms. Smart with Time Davis and Cheryl Anderson and figured he would help them walk back together as a group. (19RT 5534.) Mr. Flores said that they stopped along the way and she was having difficulty walking. (19RT 5534.) He and Ms. Smart walked up towards Muir and Santa Lucia, they separated and Ms. Smart went back to her dorm. (19RT 5534.) Mr. Flores said that he was not interested in Ms. Smart. (19RT 5535.)

Officer Cudworth was present for the re-interview of Mr. Flores by Detective Kennedy on May 31, 1996. (19RT 5535.) Officer Cudworth noticed

scrapes on Mr. Flores's knees and what appeared to be a black eye. (19RT 5535.) Officer Cudworth had not noticed a black eye on May 28. (19RT 5536.)

Officer Cudworth also spoke with Tim Davis who said that he encountered Ms. Smart after the party at about 2:30 in the morning. (19RT 5538.) He said that he helped Smart up and she "leached" onto him. (19RT 5538.)

R. Lawrence Kennedy

Detective Kennedy had been an investigator with the Cal Poly Police Department and participated in the investigation of Kristin Smart's disappearance in May 1996. (3RT 630-631.)

On June 21, 1996, Detective Kennedy spoke to Javier Carrillo who lived in Santa Lucia Hall. (3RT 631-632.) Mr. Carrillo said that Mr. Flores told him that he walked back from the party with Ms. Smart but they split up to walk to their respective dorms. (3RT 633-634.) Mr. Carrillo said he noticed Mr. Flores had a black eye. (3RT 634.) Mr. Flores told Mr. Carrillo that it happened while he was playing basketball. (3RT 634.)

On June 22, 1996, Detective Kennedy spoke with Derrick Tse, Mr. Flores's roommate. (3RT 635.) Mr. Tse was not at the dorm room Memorial Day weekend. (3RT 635.) Mr. Tse said that Mr. Flores told him that "he had walked the missing person back to an area near the residence halls and then separated from her, and he came into the hall. She went her own way." (3RT 636.)

On May 28, 1996, Detective Kennedy spoke with Mr. Flores in his dorm room. (3RT 638.) Mr. Flores was nervous because he thought he was going to be arrested for his outstanding warrant for driving on a suspended license. (3RT 640, 671-672.) Mr. Flores showed Detective Kennedy proof that he had taken care of his warrant. (3RT 672.) Mr. Flores told Detective Kennedy

that "he had walked with the missing person up the hill and that she had gone off to her residence hall. He had gone off to his residence hall." (3RT 640.) Mr. Flores said that he had not known the missing person, he had walked her up the hill and volunteered that he had given her two hugs while they were walking. (3RT 640, 674.) Detective Kennedy did not ask Mr. Flores for as much detail as he later did in the tape recorded interview. (3RT 674.)

During the May 28, 1996 contact, Detective Kennedy noticed that Mr. Flores had discoloration on his right eye. (3RT 641.) Detective Kennedy was shown Exhibit 4, identified as a photograph of Mr. Flores. (3RT 642-643.) Detective Kennedy testified that Exhibit 327 was consistent with Paul Flores's appearance on May 28, 1996. (3RT 644.)

On May 30, 1996, Detective Kennedy spoke with Mr. Flores with Officer Cudworth present. (3RT 645.) Detective Kennedy testified that Exhibit 32 was the recording of the May 30, 1996 questioning. (3RT 648-649.) Detective Kennedy testified that Mr. Flores was consistent the two times they spoke as to where he last saw Ms. Smart by the dorms. (3RT 649.)

Detective Kennedy requested phone records for Santa Lucia dorm room 128. (3RT 657.) He asked the telephone administrator Barb Ciesielski at Cal Poly to provide the records. (3RT 658.) Ms. Ciesielski told Detective Kennedy that the records were for Derrick Tse. (3RT 658.)

On June 29, 1996, Detective Kennedy and Detective Neufeld went to Room 128 of the Santa Lucia dorm and photographs were taken. (3RT 659.) Detective Kennedy was shown Exhibits 9 and 14, which he testified were photographs of Mr. Flores's dorm room as it looked on June 29, 1996. (3RT 681.) The room did not appear occupied at the time and may have been cleaned. (3RT 681-682; 4RT 961.) The dorm room had been sealed off at some point and Detective Kennedy broke the seal to get into the room. (3RT

685.) It did appear that someone had done something to the room because everything was gone and the chairs were upside down on the beds. (3RT 686.) Detective Kennedy went into one other dorm room and it was in the "basically the same condition." (3RT 687.)

On July 1, 1996, four dogs went through the dorm room. (3RT 661.) Detective Steve Tate moved the wastebasket from inside the room to somewhere down the hall away from the room. (3RT 663.) Detective Kennedy then took two similar wastebaskets from room 118. (3RT 663.)

Detective Kennedy did not know if anyone else had been in the room between June 29 and July 1, 1996. (3RT 687.)

On June 19, 1996, Detective Kennedy made contact with a person named Alyssa who was a friend of Ms. Smart's from the camp in Hawaii. (3RT 703, 706, 710.) While Ms. Smart was in Hawaii, she was supposed to fly to one island but instead flew to another island to see someone without telling anyone so no one knew where she was. (3RT 704.) Alyssa said that Ms. Smart was "carefree, outgoing, spontaneous, and boy crazy." (3RT 710.) Alyssa said that Ms. Smart "had disappeared several times during her stay at camp at around 2300 hours and would not come back until morning." (3RT 710.) Alyssa said that Ms. Smart had a crush on one of the other camp counselors and spent a great deal of money on him, including following him to another island and paying for a hotel room. (3RT 711.) Alyssa said that Ms. Smart was making "provocative comments to males" at the camp Christmas reunion. (3RT 711.) Alyssa then saw Ms. Smart disappear with a male and was gone overnight. (3RT 711.) Alyssa said that Ms. Smart "is fully capable of hiding money and leaving on her own for any extended period or time." (3RT 712.)

In 1996, Detective Kennedy spoke with Margarita Campos who said that she received a phone call from a female on May 29, 1996 that she

believed was the missing person because Ms. Smart had called late at night before. (4RT 912-913.) Ms. Campos heard the female mumble something. (4RT 913.) There were two subsequent calls that were hang-ups. (4RT 913.)

S. Rick Neufeld

Rick Neufeld was a detective with the San Luis Obispo Sheriff's Department in 1996. (6RT 1615.) On June 24, 1996, Detective Neufeld was assigned to process Santa Lucia Hall dorm room 128. (6RT 1615.) Detective Neufeld understood that "Cal Poly had a cleaning crew that cleaned the room after it was vacated." (6RT 1631.) Detective Neufeld took photographs of the room. (6RT 1615.) Detective Neufeld collected some fibers, a cut out of a suspected semen stain on one of the mattress and hairs. (6RT 1618-1619.) Detective Neufeld found suspected semen stains on the mattresses on both beds in the room. (6RT 1637.) He did not find any fingerprints. (6RT 1620.)

On June 29, 1996, Detective Neufeld again went to the dorm room and collected the mattress and the canvas box spring cover from one of the beds. (6RT 1624.) Then on July 1, 1996, Detective Neufeld cut the corner of the mattress that the dogs alerted to and the opposite corner as a control sample. (6RT 1626.)

T. William Hanley

Investigator Hanley was an investigator of the San Luis Obispo County District Attorney's Office. (11RT 3021.) On May 31. 1996, had a meeting with Detective Kennedy and Chief Tom Mitchell at the Cal Poly Police Department. (11RT 3061.) During this meeting, the decision was made to turn attention to Paul Flores. (11RT 3062.)

Later that day on May 31, 1996, Investigator Hanley interviewed Paul Flores. (11RT 3022.) He and Investigator Hobson called the campus store where Mr. Flores worked and asked him to go to the Cal Poly Police Department for an interview. (11RT 3023.) Mr. Flores responded, "No

problem. He would be there." (11RT 3023.) Mr. Flores showed up at the Police Department within ten to fifteen minutes. (11RT 3023.)

Investigators Hanley and Hobson told Mr. Flores at the police station that he was a witness in the case and that they wanted to talk to him about what happened that night. (11RT 3024.) They stayed in the police station for about five minutes and then went into Investigator Hanley's car where it was quieter. (11RT 3024-3025.) Mr. Flores sat in the passenger seat, Investigator Hanley in the driver seat and Investigator Hobson in the rear seat. (11RT 3025.) Mr. Flores was not locked in. (11RT 3025.)

Mr. Flores then told the investigators that "he got off work at the campus store. He went back to his dorm room, played several games of pool. He then said he went to his room, drank a Shapiro beer, went back out, played more pool. He went to dinner. Comping back, he said he played a little bit more pool. He then went to his room again, drank a 22-ounce Mickey beer. By that time, he said it was around 9:30, he was going to walk to his sister Ermalinda's house." (11RT 3025.) Mr. Flores said that he played pool with "Javier and Zacky." (11RT 3065.) Mr. Flores said he did not drive to Ermalinda's house because his vehicle was at his parent's house due to a suspended license. (11RT 3026.) When asked if he had access to a vehicle, Mr. Flores said that he had used his roommate's car in the past, but his roommate had left that weekend. (11RT 3026.)

Before Mr. Flores left his dorm room, he took another 22-ounce Mickey beer and put it in his sweatshirt. (11RT 3027.) As he was walking, he saw the party at 135 Crandall Way and decided to stop because he had been to a party at that house before. (11RT 3027, 3068.) He said that he had a brief conversation with a girl from his English class at the party. (11RT 3027.) When asked if he knew Kristin Smart, he says he did now but he knew her as "Roxy." (11RT 3027.) He said that Roxy had come up to him and introduced

herself to him, but that was the extent of their conversation. (11RT 3027.) Mr. Flores said he saw Roxy "hanging all over several guys." (11RT 3068.) He said that he did not find Ms. Smart attractive. (11RT 3028.) Mr. Flores said that he had seven to eight cups of beer at the party from the keg. (11RT 3073.)

Mr. Flores then told the investigators that he next saw Roxy at about 2:30 in the morning when he walked out of the house and saw Cheryl Anderson, from his statistics class, outside with Roxy. (11RT 3028.) Mr. Flores said he knew they were walking to the dorms, so he started walking with them. (11RT 3029.) When they got to Perimeter and Grand, Ms. Anderson took a right and Mr. Flores and Ms. Smart went to the left towards the dorms. (11RT 3029.) Mr. Flores was not asked if he had further interactions with Ms. Anderson other than saying goodbye when they parted ways. (11RT 3031.) Mr. Flores then said that he then split off from Roxy around the Sequoia dorm and went to his dorm in Santa Lucia, she went toward Muir Hall and he continued on Perimeter towards his dorm. (11RT 3033, 3072, 3076.)

Mr. Flores then went to his dorm room and laid down on his bed. (11RT 3033.) He started feeling sick at around five in the morning and went to the common bathroom where he threw up. (11RT 3033-3034.) Mr. Flores said he heard someone come into he bathroom while he was taking a shower. (11RT 3074.) Investigator Hanley testified that because of the setup of the common bathroom it would make sense that someone in the shower would not necessarily see a person using the toilet. (11RT 3074.) The rest of the day, Mr. Flores just hung out on campus and ended up going to a movie in San Luis Obispo with his friend, Javier, in the early evening. (11RT 3034.) Mr. Flores told investigators that on Sunday, his father came to pick him and take him back to his father's house in Arroyo Grande. (11RT 3034.)

Investigator Hanley testified that during the May 31, 1996 interview he noticed a "faint discoloration" under Mr. Flores's right eye. (11RT 3036.) Mr. Flores said that on Monday, he and Jeromy Moon played a basketball game with two other guys and he was elbowed in the eye. (11RT 3038.)

Investigator Hanley next spoke with Mr. Flores on June 19, 1996. (11RT 3041.) Investigator Hanley and his partner went to 710 White Court where Paul answered the door. (11RT 3041-3042.) Mr. Flores said that he would to the police station for questioning and the investigators drove him to the Arroyo Grande Police Department. (11RT 3042.)

The Magistrate allowed the following testimony regarding a polygraph examination only for the purpose of determining the voluntariness of the interrogation. (11RT 3043.) At first, Mr. Flores was supposed to take a polygraph test but when they got to the police station, he said he did not want to take a polygraph and wanted to talk to his parents first. (11RT 3043, 3078.) Investigator Hanley then took Mr. Flores to the interview room since there would be no polygraph. (11RT 3043.) Investigator Hanley never threatened him to take a polygraph. (11RT 3044.)

Once in the interview room, Mr. Flores said he would be willing to be interviewed. (11RT 3044.) Investigator Hanley noticed that Mr. Flores stuttered. (11RT 3078.) There was an unlocked door to the interview room and Mr. Flores's back was to the door with the investigators to the right and left of him. (11RT 3044-3045.) Mr. Flores was not handcuffed or arrested. (11RT 3045.) The questioning was recorded but the video was missing the first couple minutes during which the investigators thanks Mr. Flores for coming and told him they had some questions for him. (11RT 3046.) They asked Mr. Flores if he was willing to talk to them and he said he was. (11RT 3046.) Investigator Hanley then identified Exhibit 33 as the video of his questioning of Mr. Flores on June 19, 1996. (11RT 3058.)

U. James Camp

Investigator Camp took photographs of the red brick dorms at the Cal Poly campus in June of 2021. (15RT 4330-4332.) Detective Camp was also a student at Cal Poly in 1995. (15RT 4327-4328.) Investigator Camp testified regarding the paths that were located around the red brick dorms going from dorm to dorm. (15RT 4333, 4349.)

Investigator Camp also walked a path from Crandall Way to the front of the Santa Lucia dorm. (15RT 4336, 4363-4364.) Investigator Camp used an exercise application to time the walk at eight minutes and 35 seconds. (15RT 4336, 4362.) Investigator Camp indicated the path he took using a blue dotted line on Exhibit 393. (15RT 4366.)

On September 3, 2021, Investigator Camp spoke with Detective Kennedy about the "seizure and the eventual disposition of Kristin Smart's belongings from Cal Poly dorms." (19RT 5547.) Detective Kennedy collected certain items from Ms. Smart's dorm room that had been identified by her roommate as belong to Ms. Smart. (19RT 5548.) Detective Kennedy then took these items to Dave Mattice, the property officer at the Sheriff's Office. (19RT 5548.) Investigator Camp viewed the evidence held by the Sheriff's Office including identification cards for Kristin Smart and bank-related items. (19RT 5551-5556.)

V. Adela Morris

Adela Morris was a dog handler who had dogs specializing in human remains detection. (6RT 1659.) When Ms. Morris first started, she trained in search and rescue. (6RT 1659-1660.) Ms. Morris published a few papers involving historic and prehistoric remains. (6RT 1661-1662.)

Ms. Morris founded the Institute for Canine Forensics around 1997. (6RT 1663.) She also founded the Canine Specialized Search Team in Santa Clara County. (6RT 1663-1664.) Ms. Morris and CSST came up with their

own certification requirements for the organization. (6RT 1672.) In 2017, Ms. Morris was involved with the Alta Heritage Foundation Cremains Recovery Team in Santa Rosa after a big fire. (6RT 1664.)

Ms. Morris had a dog named Cholla from 1995 to 1999. (6RT 1673.) Ms. Morris discussed the certifications Cholla had but did not have any supporting documentation. (7RT 1812.) Cholla took the "cadaver test" with an organization called California Rescue Dog Association (CARDA), a private association of people who have rescue dogs. (6RT 1667; 7RT 1811.) Ms. Morris joined CARDA in 1986 and left about 15 years later. (6RT 1670.) CARDA had its own standards that it would use to test the dogs. (6RT 1671, 1673; 7RT 1818.) Cholla also went through Andy Rebmann's certification process. (6RT 1674) Andy Rebmann offered a certification after an eight-week course. (6RT 1671.) Ms. Morris said she had search-and-rescue-related certifications but did not know her certifications. (6RT 1667.)

Ms. Morris testified that she did not track the number of false positives or engage in proficiency testing. (7RT 1832.) Ms. Morris and Cholla were involved in several searches in which human remains or biological evidence was actually found as a result of the search in from 1995 to 2000. (6RT 1666, 1676-1678.)

Ms. Morris could provide no scientific explanation to support her contention that a deceased body starts to decompose immediately and that dogs can detect this immediate decomposition. (7RT 1840-1842.) Ms. Morris testified that she was not a chemist and, therefore, was not qualified to offer an opinion on this topic. (7RT 1860.) Ms. Morris testified that she is "not aware of papers that address the immediate death and what's – I could not name those for you." (7RT 1860, 1944.) Ms. Morris also did not know what the composition of the scent was the dogs detect. (7RT 1940-1941.)

On June 29, 1996, Ms. Morris was called to Cal Poly by the San Luis

Obispo Sheriff's Department. (6RT 1682.) First, she took her dogs to areas out by a reservoir. (6RT 1682.) Ms. Morris went to Santa Lucia Hall at around 10:00 a.m. (6RT 1683.) By then it was already a warm day which can affect the dogs. (6RT 1683; 7RT 1912.) Ms. Morris brought her dogs Cholla and Cirque. (6RT 1684.)

Cholla ran down the hall of the dorm, stopped at a door and then came back to Ms. Morris. (7RT 1885.) Law enforcement opened the door, Cholla went into the room, and she alerted on different areas on the bed on the left side of the room. (7RT 1886.) Cholla did not have any interest in the rest of the dorm. (7RT 1891.) At 1:00, Ms. Morris returned to the dorm with Cholla. (7RT 1893.) The mattress had been removed from the bed and Cholla alerted to the bed frame and desk. (7RT 1893.)

There was a garbage can on the left side of the dorm room between the bed and the desk to which Cholla alerted. (7RT 1894.) However, then "she wasn't as interested in it." (7RT 1894.)

Ms. Morris also brought her dog Cirque to the Santa Lucia dorm. (7RT 1896.) Ms. Morris claimed he had similar certifications to Cholla but was primarily Ms. Morris's husband's dog. (7RT 1896-1897.) Ms. Morris used Cirque primarily as her "second-opinion dog." (7RT 1898.) Cirque was trained for both human remains and live human detection. (7RT 1907.) Ms. Morris had used Cirque on several searches but she could not "recall any time where he alerted at all on any of the searches that [she] took him on." (7RT 1908.) Ms. Morris did not have information about his false positive rate. (7RT 1908-1909.) In the Santa Lucia dorm, Cirque alerted to the same door as Cholla and, once inside the room, alerted to the left side of the room. (7RT 1902-1903.)

Ms. Morris wrote Andy Rebmann a long letter in 1996 before she wrote her report after the search. (7RT 1826.) Andy Rebmann was an "experienced

retired law enforcement officer" and Ms. Morris was "just running by him the facts, looking for any words of wisdom that he might have. . ." (7RT 1826.) Mr. Rebmann was not mentioned in her report. (7RT 1827.)

W. Gail Laroque

In 1996, Ms. Laroque was a dog handler with a dog named Torrey. (14RT 3910.) Ms. Laroque and Torrey trained with and were certified by CARDA. (14RT 3912, 3917.) One of the people who evaluated Ms. Laroque was Adela Morris. (14RT 3939.) Ms. Laroque was also involved with FEMA, Urban Search and Rescue, the Alameda County Sheriff's Department, Canine Specialty Search Associates and the Institute for Canine Forensics. (14RT 3918-3921.) The Canine Specialty Search Associates was founded by Andy Rebmann. (14RT 3940.) Torrey was certified to find both live and deceased humans. (14RT 3924.)

The prior searches Ms. Laroque discussed with Torrey involved finding actual live human beings, deceased humans or other biological evidence. (14RT 3923-27; 3955-3956.) Ms. Laroque testified that she would have recorded false positives in her training logs, but she did not have these documents. (14RT 3944-3945.) Ms. Laroque stated that she was aware of volatile organic compounds and that they "change from live to dead" but did not know the chemical makeup of decomposition. (14RT 3952.) Ms. Laroque testified that "[t]he minute that a body – a person passes away, the chemical composition changes then." (14RT 3953.) However, Ms. Laroque did not have peer-reviewed or scientific studies to support this claim. (14RT 3953-3954.)

On June 29, 1996, Ms. Laroque went to the Santa Lucia dorm to search with her dog. (14RT 3968.) She had driven to San Luis Obispo with Adela Morris. (14RT 3991.) It was very hot, so she took the dog into the dorm's bathroom to cool down the dog. (14RT 3970.) After taking Torrey back to the

entrance to the dorm and alerted to a door of Room 128 which had red tape on it. (14RT 3975-3976, 3993.) Ms. Laroque did not see any other doors with red tape on them. (14RT 3993.)

Inside the room, Torrey alerted to the bed and a plastic garbage can on the left side of the room. (14RT 3977-3978.) The garbage can was on the floor in the left corner of the room which was removed from the room. (14RT 3980.) Torrey then alerted to the floor where the garbage can had been. (14RT 3985.) Torrey then went into the hallway where there were three trash cans and alerted to one of the trashcans. (14RT 3988.)

Looking at Exhibits 9 and 14 taken by Detective Neufeld prior to the search, Ms. Laroque testified that the room looked different when she was there. In particular, she did not recall a chair being on the bed, there was a trash can on the floor on the left side and the mattress had been removed from the left bed. (14RT 4000-4001.)

X. Wayne Behrens

Mr. Behrens is a dog handler who got his first dog, Sierra, in 1990. (15RT 4209.) Around that time, he became involved with CARDA. (15RT 4209.) Sierra was certified to find live humans and human remains. (15RT 4210, 4224.) Mr. Behrens was involved with the Yosemite National Park, CARDA, Canine Specialized Support Team and the San Mateo County Sheriff's Office. (15RT 4213.) Sierra was certified in wilderness, urban disaster and cadaver searches with CARDA and also certified with CSST. (15RT 4217-4218.) CARDA is not a governmental agency. (15RT 4225.)

Mr. Behrens testified that he would have noted false positives in his training logs, but he did not have those logs. (15RT 4226.) Mr. Behrens testified to numerous searches where Sierra's alerts resulted in human remains being found. (15RT 4220-4221.) Mr. Behrens had done fifteen to twenty searches with Adela Morris and Gail Laroque. (15RT 4258.) Adela

Morris was his original sponsor for CARDA. (15RT 4258.)

On June 29, 1996, Mr. Behrens went to Cal Poly in San Luis Obispo to search with his dog. (15RT 4237-4238.) Outside of the Santa Lucia dorm, Sierra showed interest in the bushes and the window line of the northern wing of the dorm. (15RT 4239.) He eventually entered the dorm building with Sierra and she put her paws on a door that had police evidence tape on the door. (15RT 4243, 4262.) Inside the room, she alerted to the left side of the room, went to Mr. Behrens, and then went back to the bed on the left side of the room. (15RT 4243-4244.) Mr. Behrens testified that he did not remember their being anything in the space between the bed and desk on the left side of the room. (15RT 4267.)

Mr. Behrens testified that it was his opinion that when a person dies their scent changes after 30 minutes. (15RT 4275.) Mr. Behrens claimed that he participated in a study on this topic but could not give the name for it and said that "there was some work that was done to try to figure that question out." (15RT 4275.) Mr. Behrens also did not know what chemical compounds cause a dog to alert. (15RT 4227.)

Y. Kristine Black

Ms. Black is a dog handler who was present for the March 15, 2021 search of Ruben Flores's house with her dog, Annie. (17RT 4831, 4832.) Annie was certified with CARDA, CSST and ICF. (17RT 4813, 4815.) Ms. Black mentioned some searches Annie had participated in all of which involved human remains being found. (17RT 4849-4852.)

At the March 15, 2021 search, Ms. Black and Annie searched after the other dog handler, Karen Atkinson, had completed her search. (17RT 4833.) Ms. Black was asked to search a vehicle in the driveway and Annie did not alert to the vehicle. (17RT 4834.) Ms. Black then took Annie to the backyard where Annie showed a change in behavior while under the deck but did not

alert. (17RT 4835-4836.) A change in behavior is not an alert. (17RT 4855.)

Z. Karen Atkinson

Ms. Atkinson is a dog handler who was present for the March 15, 2021 search of Ruben Flores's house with her dog, Amiga. (17RT 4885.) Amiga was certified with the CARDA. (17RT 4868.) Ms. Atkinson was also affiliated with CSST and ICF. (17RT 4868.) Ms. Atkinson did keep records of false alerts that Amiga had in training and said that she had "five possibly." (17RT 4904.) Ms. Atkinson testified to several searches she conducted with Amiga, all of which resulted in finding actual human remains or biological evidence. (17RT 4872-4875.) Ms. Atkinson testified that she did not know of any peer-reviewed articles that state that an alert by itself is evidence without any independent evidence found as a result of an alert. (17RT 4878.)

At the March 15, 2021 search of 710 White Court, Ms. Atkinson started by taking Amiga to a car at which Amiga had no alerts. (17RT 4885.) Next, Ms. Atkinson went underneath the deck with Amiga who had a change of behavior but did not alert. (17RT 4887-4888, 4893.)

AA. Philip Hanes

Mr. Hanes was an archaeologist with a Bachelor's degree in Anthropology and a Master's degree in Cultural Resource Management. (18RT 5108.) He works for a company comprised of himself, Cindy Arrington and a couple of field staff members. (18RT 5116.) Mr. Hanes mentioned one successful case in which human remains were located after Mr. Hanes was directed by law enforcement to use the ground-penetrating radar machine at a location for which they had an anonymous source. (18RT 5117, 5161.)

Mr. Hanes testified that he specialized in "remote sensing" which is the "application of technology to gain a better understanding of what's underground in order to potentially guide excavation. . ." (18RT 5111.)

Specifically, Mr. Hanes testified that he specialized in ground-penetrating radar which uses a "ground-penetrating radar unit to send radar pulses within the ground and receive a signal back to determine buried anomalies." (18RT 5111.) an anomaly is "a consistency change to the underground environment that is visible on the radar, but may or may not be specifically defined until we excavate or ground truth that anomaly to determine what it actually is." (18RT 5112.)

The ground-penetrating radar machine is pushed along a grid and measures the exact distance across the ground to keep track of the location. (18RT 5113-5114.) The data is then collected and stored by the computer. (18RT 5115.) Once the data is compiled, it is downloaded and turned into "time slices, which are horizontal slices across the ground" that can be looked at for anomalies. (18RT 5115.)

Mr. Hanes's advisor in college, Dr. Larry Conyers, assisted in the development of ground-penetrating radar hardware and its application to archaeology. (18RT 5128.) When Mr. Hanes received the equipment, he had some "initial over-the-phone training in its operation" with the manufacturer. (18RT 5129.) Mr. Hanes was not aware of any peer-reviewed journals where this technology was reviewed for proficiency in detecting human remains. (18RT 5129.) The typical use of ground-penetrating radar is to find voids due to things like buried pipes or use in ice research and commercial uses such as finding structural damage on bridges or oil and gas exploration. (18RT 5136, 5142.) The ground-penetrating radar at 710 White Court was not used for any of those purposes and no voids were found. (18RT 5145.) The radar is just used to screen for anomalies that then have to be confirmed by "ground truthing" or actually digging up the area. (18RT 5146-5147.)

On March 15 and 16, 2021, Mr. Hanes was hired by the San Luis Obispo Sheriff's Office to go to 710 White Court. (18RT 5117.) To begin with,

Mr. Hanes determined on which areas of the property he would be able to run his ground-penetrating radar machine and then took soil samples look at in order to determine the soil type to calibrate the machine to determine depth. (18RT 5119, 5120.) The machine is "calibrated" because the "conductivity" of the soil "determines the speed at which the radar waves travel through the ground, and that speed is then converted into an approximate measurement of depth." (18RT 5119.) The moisture content of the soil can affect the accuracy of the ground-penetrating radar unit but Mr. Hanes did not have a "specific number" for the moisture content since he only conducted a visual inspection of the soil. (18RT 5135-5136.)

After visually inspecting the sand and calibrating the machine, Mr. Hanes discussed with investigators where they would like to place the grids. (18RT 5120.) He placed eleven grids. (18RT 5122.) Grid 1 was located underneath the porch. (18RT 5126.) On the wall of the house near Grid 1 there was a sewer clean-out and a dryer vent. (18RT 5162.) Before using the machine on Grid 1, vegetation was cleared from under the deck and it looked "pretty heavily vegetated." (18RT 5176, 5178.) After using the machine on six grids, Mr. Hanes determined that there were multiple anomalies at different grids and determined that some of the anomalies did not meet the criteria for excavation because of their size. (18RT 5165-5166.) There were excavations at Grids 3 (east side of the house) and 10 (behind the garage) but nothing was found as a result. (18RT 5166-5167.)

Mr. Hanes testified that there was an "anomaly" in Grid 1 that was approximately four by six feet. (18RT 5149.) The anomaly started at "[a]pproximately the surface or very close to it" and went to about three-and-a-half feet, maybe four. (18RT 5153.) Mr. Hanes testified that he does not know what an anomaly is until it is "ground truthed" and cannot tell when the soil was disturbed. (18RT 5151, 5162.)

BB. Shelby Liddell

Ms. Liddell was a forensic specialist with the San Luis Obispo Sheriff's Office who process scenes for evidence. (17RT 4907-4908.) On March 15, 2021, Ms. Liddell responded to 710 White Court and took photographs. (17RT 4910.) The next day, on March 16, she returned and began excavating multiple areas on the property. (17RT 4912.) Ms. Liddell was "mainly in charge of photographing the excavation and being the watcher, essentially to notice if there was any changes in the soil or any items of value that were located in the soil." (17RT 4912.) In addition, Ms. Liddell collected soil samples with Cindy Arrington. (17RT 4912.) There were four or five excavations on March 16. (17RT 4912.)

Prior to the excavations, the person doing the ground penetrating radar set up eleven grids. (20RT 5725.) Ms. Liddell and others spoke with Detective Cole about which grids should be excavated. (20RT 5726.) There was no excavation in grids 5, 8 or 11. (20RT 5727.) Ms. Liddell believed there was an anomaly in Grid 6 based on the ground penetrating radar results but was not excavated. (20RT 5728.) There was no evidence found in grid 6. (20RT 5728.) For grid 3, Ms. Liddell collected one sample. (20RT 5729.) For grid 10, Ms. Liddell was not involved but no soil samples were collected. (20RT 5730.)

The excavation of Grid 1 was under the deck, to the left and up the incline. (17RT 4912; 20RT 5736; depicted in Exhibit 100.) Detectives removed part of the trellis underneath the deck and made a grid with quadrants labeled A, B, C and D. (17RT 4913-4914.) This particular grid was about three to four feet by about five to six feet. (17RT 4914.) The dirt removed from underneath the deck was then laid out on a tarp by quadrant to be sifted through. (17RT 4914.) Around eight detectives participated in the excavation along with archaeologist Cindy Arrington. (17RT 4915.)

On this excavation of Grid 1, Ms. Liddell started to observe staining in the soil at around three feet deep. (17RT 4916.) There was a dark exterior with an "irregular border around it." (17RT 4916.) Ms. Liddell then collected soil samples starting around two feet. (17RT 4917.) For the stain, "you could actually follow the staining down into the hole as you dug down deeper." (17RT 4917.) At around the four-foot mark, Ms. Arrington collected a soil sample that was part of the exterior boarder of the staining. (17RT 4918.) They stopped digging once they hit hard compact soil with rock components. (17RT 4919-4920.) In April, they also re-excavated Grid 1 under the deck that was excavated in March and obtained additional soil samples from around three feet down. (17RT 4947, 4951.)

Ms. Liddell testified that in the excavation of Grid 1, she saw stains that continued down through the soil from two-and-a-half feet on down. (20RT 5755.) Ms. Liddell testified that in Grid 1, "[i]n the area of staining it does not appear that after the stain was there that the stain had been disturbed." (20RT 5758.)

Ms. Liddell returned to 710 White Court on April 13 and 14. (17RT 4929.) Ms. Liddell again started by taking photographs and then waited for part of the deck to be removed so that they could gain access to "an area that [they] were unable to dig previously because . . . [i]t was too small of a space." (17RT 4930; see Exhibit 119.) The soil samples collected during the April excavation were in a hole below the exhaust vent on the house. (17RT 4933, 4942-4943; depicted in Exhibit 129.) Staining was found in this excavation site as week at about 22 inches in depth. (17RT 4941.)

Reviewing Exhibit 140 depicting this grid, Ms. Liddell testified that this stain at around two feet down was deposited after any disturbance to the ground. (20RT 5780.) Reviewing Exhibit 144, a location where a soil sample was taken, Ms. Liddell testified that the stain would have been deposited

after the soil was disturbed, if it had been disturbed. (20RT 5780.) Looking at Exhibits 151 through 155, from this grid, the stain was deposited after the soil was in place. (20RT 5781.)

In April, Ms. Liddell also took multiple control samples from around the property. (17RT 4933.) Ms. Liddell also took a sample from some discoloration of soil in a crawl space underneath the house that is accessible from a door underneath the deck. (17RT 4937.)

On April 22, 2021, Ms. Liddell conducted a search of a white Haulmark Passport Cargo trailer towed from 710 White Court. (17RT 4954.) Ms. Liddell used Bluestar chemical in the area just inside the side door of the trailer that reacts to the hemoglobin in blood but can also result in false positives by responding to certain household cleaners, foods, pains and varnishes. (17RT 4954-4955.) In that area there was a reaction. (17RT 4961.) The section of the floor of the trailer was cut and booked into evidence. (17RT 4962-4963.)

Ms. Liddell testified that once a person dies, they stop bleeding because there is no blood pumping. (17RT 4969-4970.)

CC. Cindy Arrington

Ms. Arrington testified that she was an archaeologist with a Master's degree. (18RT 5182.) Roughly 25 percent of Ms. Arrington's archaeological work related to human remains and only five percent related to forensics. (18RT 5208-5209.)

On March 15 and 16, 2021, Ms. Arrington was hired by the Sheriff's Department to conduct an evaluation and possible excavation of 710 White Court. (18RT 5186.) Ms. Arrington was aware that she was looking for the remains of Kristin Smart. (18RT 5210.) After clearing the vegetation under the deck, they set up a grid pattern to run the ground-penetrating radar machine. (18RT 5187.)

For the excavation of Grid 1 in March, officers dug under the deck and removed the dirt to tarps. (18RT 5191-5192.) Ms. Arrington noticed a stain and went into the area excavation of Grid 1 and begin to brush. (18RT 5192.) Ms. Arrington described the stain as a "bathtub ring" in the soil meaning the stain could be seen "through the sidewalls of the hole [they] were digging where the anomaly was." (18RT 5193.)

Ms. Arrington testified that the stain looked like a "decomposition stain." (18RT 5195.) She testified that the stain here was smaller because she believed it had been dug previously. (18RT 5195.) Looking at Exhibit 107, a photograph of the sidewall from the area excavated in Grid 1, Ms. Arrington testified that there was "no defined stratigraphy, meaning the soil had been previously dug." (18RT 5202.) Ms. Arrington did not find anything in the excavation site that would have caused the staining, suggesting it had been removed. (18RT 5203.) Ms. Arrington also testified that there was not a definitive bottom of staining that one would expect if nothing had been removed. (18RT 5204.)

However, Ms. Arrington testified that she could not definitively say what the cause of the stain was. (18RT 5212.) Ms. Arrington could only tell from the stain "that there's a stain there and it looks like it could have come from human remains, but you don't know." (18RT 5213.) Ms. Arrington testified that if a body had been buried under the deck it would have emitted a "very strong odor" at one point. (18RT 5217.)

Ms. Arrington came back out to the property in April. (18RT 5222.) An excavation was conducted further up the incline from Grid 1 under the deck. (18RT 5265.) In this excavation "more staining was observed." (18RT 5266.) In some small areas, the staining continued downward through the strata. (18RT 5268.) It would have been a "definitive layer across the bottom had it not been disturbed." (18RT 5270.)

Ms. Arrington testified that the staining could have been decomposing plant material. (18RT 5274.) Ms. Arrington testified that she has never excavated a human grave and not found some physical evidence of human remains. (18RT 5275.) Ms. Arrington testified that if a body had been deposited under the deck with a 25-year span, one would expect to find bones or fibers. (18RT 5235.) Ms. Arrington did not see any of that during the excavation. (18RT 5235.) Ms. Arrington testified that if "something were wrapped around something and pulled out, nothing would be left behind other than perhaps trace fibers and fluid." (18RT 5277.)

DD. Angela Butler

Ms. Butler was a forensic serologist at the Serological Research Institute (SERI) specializing in the identification of bodily fluids and performing DNA analysis. (19RT 5438.) As part of her duties, Ms. Butler tests for the presence of human blood. (19RT 5444.) The first step is to do a "presumptive test" which simply indicates whether there is a "stain of interest." (19RT 5444.) The presumptive test, called ortho-tolidine, is not confirmatory as it can react with other substances that contain iron, such as rust. (19RT 5444.)

The second step is to perform a "confirmatory test." (19RT 5446.) Ms. Butler uses the SERATEC HemDirect test that is "specific for human hemoglobin" which is found in red blood cells. (19RT 5446.) The test is for human blood but can also react to higher primates. (19RT 5447.) Ms. Butler testified that there were validation studies for this particular test, but she was not able to cite any validation studies specifically for soil. (19RT 5478.) She testified that neither she nor her lab did validation testing for the tests for blood in soil. (19RT 5500.)

After the presumptive and confirmatory tests for blood, the sample can be tested for DNA. (19RT 5451.) Factors such as the type of evidence, how

the evidence was stored, degradation due to the age of the sample and whether there are any other substances in the sample that cause "inhibition for downstream application" can affect the ability to extract DNA from a sample. (19RT 5452-5453.) In soil, there are substances such as microbes that can degrade the DNA. (19RT 5454.)

Ms. Butler testified that the lab received items 775 and 776 from Detective Cole. (19RT 5456.) These items were containers of soil. (19RT 5457.) For item 775 (SERI number 26), Ms. Butler performed the presumptive test and received a weak positive response. (19RT 5458.) The confirmatory test for item 775 was negative for human blood. (19RT 5459.)

Ms. Butler then performed the presumptive and confirmatory tests for item 776 (SERI number 27). (19RT 5459.) Six samples were taken from item 776 and they were all weak positives for the presumptive presence of blood. (19RT 5459-5460.) A confirmatory test was performed on the samples taken from item 776 and the results were one negative, two weak positives and three positives. (19RT 5460.)

On April 27, SERI received additional items from the San Luis Obispo Sheriff's Department, items 898, 831, 847, 849, 863 and 859. (19RT 5462.) Two samples were tested from item 831 (SERI number 34) and both came back negative for blood on both the presumptive and confirmatory tests. (19RT 5462-5463.) Ms. Butler tested three samples from item 847 (SERI number 44). (19RT 5463.) Item 847 was a small vial with 146 grams of soil. (19RT 5479.) and received a weak positive result for all three on the presumptive test and two weak positives and one positive for the confirmatory test. (19RT 5463.) Each sample she took from item 847 was about an 8th to a 16th of a teaspoon, "these little pieces that [she] picked out." (19RT 5482.)

Ms. Butler took three samples from item 863 (SERI number 40) and

received weak positives on all three for the presumptive test and two of the samples tested positive in the confirmatory test. (19RT 5464.) The third sample from item 863 was not tested because it was a solid piece of material and Ms. Butler tested it for DNA though none was detected. (19RT 5464.) Ms. Butler took four samples from item 859 (SERI number 41) and received four positive results on the presumptive test and obtained two weak positive and two negative results on the confirmatory test. (19RT 5465.) For item 849 (SERI number 45), Ms. Butler obtained two samples and received a weak positive for the presumptive test and one negative and one weak positive result for the confirmatory test. (19RT 5466.) Ms. Butler agreed that the "tests were correct because [she] can't quantify the degree to which they could be incorrect." (19RT 5500.)

For item 859, Ms. Butler also collected some material embedded in the clumps of soil using a lifter to preserve the fibers. (19RT 5467.)

Ms. Butler tried to extract DNA for all of the samples regardless of whether they tested positive or negative for human blood. (19RT 5467.) There was no DNA detected in any of the samples. (19RT 5468.) There is no DNA in red blood cells, which is what the confirmatory test tests for. (19RT 5468.) Ms. Butler testified that modern DNA testing can detect "very small amounts of DNA on very small samples of biological material." (19RT 5484.)

Ms. Butler also did testing on item 898 (SERI number 32) which was the plywood from the trailer. (19RT 5469.) Ms. Butler only did the presumptive test on the plywood because there were no visible stains. (19RT 5469.) The results of the presumptive test were "very weak." (19RT 5470.) Ms. Butler did not perform a confirmatory test and instead performed DNA testing. (19RT 5470.) Ms. Butler had control samples of DNA for Kristin Smart, Paul Flores and Ruben Flores. (19RT 5470.) She did find DNA on the plywood sample but it was not from Kristin Smart, Paul Flores or Ruben

Flores. (19RT 5470, 5475.)

EE. Faye Springer

Ms. Springer is a criminalist who works mostly with trace evidence. (15RT 4283-4284.) Ms. Springer received materials from the SERI lab with a San Luis Obispo Sheriff's Department case number that contained lifts with fibers. (15RT 4295-4297.) Ms. Springer received instructions from Detective Cole. (15RT 4312.) Ms. Springer used a microscope to look for hair initially and did not find any hair. (15RT 4296.) Ms. Springer then documented "what color and very loosely what the type of fiber is, basically what they look like under a stereomicroscope." (15RT 4297.)

The fibers were mostly colored and were blue, red, black, brown and some light or uncolored fibers. (15RT 4297, 4316.) Ms. Springer said that one of the "lightly colored almost transparent" fibers could be pink, light gray or white but there was "not enough color to say what the fabric would look like." (15RT 4302.) Ms. Springer testified that it would not be unusual to find fibers of this sort near a construction site or where a house would have been built. (15RT 4316.) The red fibers looked "reasonably clean," "fairly intense in color" and did not look as though there was a degradation of the material. (15RT 4320-4321.) The vast majority of the fibers were blue. (15RT 4322.) Ms. Springer testified that the degradation of fibers could be slowed down by protection from "sunlight, the elements, water, harsh chemicals, decomposition" and in an environment such as that in which her laboratory keeps their collections. (15RT 4325.)

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ARGUMENT

I. AN INFORMATION SHALL BE SET ASIDE IF THE DEFENDANT HAS BEEN COMMITTED WITHOUT PROBABLE CAUSE

An information must be set aside if the defendant has been "committed without reasonable or probable cause." (Pen. Code, § 995, subd. (a)(2)(B).) Probable cause to hold a defendant to answer for an offense is shown if a person of ordinary caution or prudence would be led to believe and conscientiously entertain a strong suspicion of the guilt of the accused. (*People v. Mower* (2002) 28 Cal.4th 457, 473, internal quotations omitted.) There must be some evidence to support each and every element of the charges against the defendant, or the finding must fail. (*People v. Hwang* (1994) 25 Cal.App.4th 1168, 1175.) Inferences which may be drawn from such evidence may not be speculative. (*Birt v. Superior Court* (1973) 34 Cal.App.3d 934, 938 (*Birt*).)

II. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING OF PROBABLE CAUSE

A. The Prosecution's Reliance on Speculation and Innuendo and Lack of a Coherent Theory Is Insufficient to Support a Finding of Probable Cause

This is a case in which there has been no new credible evidence regarding the disappearance of Kristian Smart or any involvement on the part of Paul Flores in that disappearance for over 20 years. Nevertheless, in a series of orchestrated televised moves, the Sheriff and the District Attorney proceeded to arrest and the prosecute Paul Flores without credible evidence.

Although the District Attorney touted some "new" material; that material is not evidence that withstands the most cursory look. Repeatedly,

Mr. Peuvrelle claimed that they had a new witness, Jennifer Hudson, who would say that Kristin Smart was buried in Huasna and that they had new evidence that a body was buried under the deck at Ruben Flores' house in Arroyo Grande. He also touted evidence that a body was transported from Mr. Flores' house in a trailer after the initial search of his property and before it was excavated.

To hold a person to answer there has to be credible evidence that supports a theory of guilt, not just speculation. What is the theory? That Paul Flores told a random woman, Jennifer Hudson, that he buried Kristin Smart in Huasna and that a short time later that same random woman happened to see Paul Flores again near her rural home in Huasna and that he showed her where the body was buried. (8RT 2209-2212.) Of course, on the face of it, this is preposterous. Paul Flores was not a skater, no one else ever saw him around skaters or skate ramps. (16RT 4524.) Importantly, the cocky attitude she claimed Paul Flores demonstrated in claiming credit for killing was contrary to every other observation of him. He consistently told everyone, including an undercover agent placed in the jail, that he last saw Ms. Smart when they parted at the dorms and he consistently told everyone he did not have anything to do with her disappearance. (See, e.g., 3RT 633-634; 11RT 3033, 3072, 3076.)

Jennifer Hudson did not tell her bizarre story to anyone until she was heavily under the influence and told her drug friend. (8RT 2213; 21RT 6012.) That friend eventually told the obsessed podcaster who has made a career of following this case. Years later, Hudson met with the friend and that podcaster to "locate" the burial site. (8RT 2213-2214, 2223.) The podcaster fed her information, some of which he got from the Sheriff and some he mistakenly believed he had discovered, such as his belief he and his drone had located a four-wheel drive white truck on property that he falsely

believed belonged to the Flores family. (8RT 2229.) As a result, Hudson was adamant that Paul Flores drove up to do skateboarding near her house in a four-wheel drive white truck and that he happened to tell her that the body was buried there near a skateboard ramp.

After many false dog alerts and substantial excavation, no evidence of a body was found. (16RT 4520-4521.) Of course, it was nothing more than a drug addict and her friend trying to make something out of nothing. Still, this "new" evidence was proffered to hold a human being to answer. Yet, more importantly, even if there was any credibility to the story of Jennifer Hudson, her story makes no sense in the context of the rest of prosecution's case.

The prosecution offered a different theory as to the location of Kristin Smart. They claimed that the body had been buried out behind Ruben Flores' house in Arroyo Grande beneath an avocado tree. Their evidence was a statement made by a former girlfriend of Paul Flores who, long after the fact, felt that she was being kept from going back to the avocado trees when she visited the Flores house for dinner. (6RT 1582.) In addition to this not being evidence of anything, this is not consistent with the other theories as to where Kristin Smart was allegedly buried.

Countless searched and excavations were conducted on and around the Cal Poly campus, Huasna and elsewhere. Most involved dogs falsely alerting.

So, then the prosecution came up with the theory that, contrary to the ex-girlfriend's speculation, a body was actually buried under the deck right behind and attached to Ruben Flores' house. Here, they employed ground penetrating radar which recorded "anomalies" that suggested to the operator that the ground could have been dug up to bury something. (18RT 5120, 5126.) They also used dogs which were reported to be able to detect human remains. Although the dogs did not alert, they showed a "change in

behavior." (17RT 4835-4836, 4887-4888.)

After much to do on direct examination, the witness Shelby Liddell admitted on cross-examination that the staining she found was deposited over the anomalies and seeped down, indicating that whatever caused them was not buried there and removed. (20RT 5755-5758.) In addition, to dig under the deck would have (and for the Sheriff, did) require that the deck be removed. (17RT 4930.) There was no evidence that the deck had ever been removed prior to the Sheriff sawing it apart. And, of course, the area was right below the dryer vent and a sewer clean out valve. It was also right below the room that Mr. Flores had rented continuously to tenants. (18RT 5162.)

To bolster the claim that a body had someone inexplicably been buried beneath the deck, the prosecutor suggested that Ruben Flores, his wife and friend had somehow come to remove the body between the ground penetrating radar and the excavation. This was not consistent with the physical evidence (the ground had not been disturbed and the deck had not be removed) but the prosecutor proffered evidence that there was what looked like a body fluid stain on the floor of a work trailer that had been parked at the house – never mind that the criminalist who performed the DNA testing excluded Kristin Smart, Paul Flores and Ruben Flores as sources. (19RT 5470, 5475.)

Even if any of this had any semblance of credibility, the prosecutor cannot just throw up random inconsistent possibilities and hope that the magistrate will find something sufficient to hold the accused to answer. Overall, the theory the prosecutor seeks to prove with this "new" evidence is simply bizarre. The theory evidently is that Paul Flores took the body and buried it in Huasna in the middle of a remote rural area a couple of months after Kristin Smart disappeared and while his picture was being

broadcast on television. Then the court is asked to believe that sometime later, Paul Flores – while the perennial suspect in the case – decided to dig up the body and bring it back to his father's house and put it under an avocado tree or under his deck. And then, after twenty-five years, the court is supposed to believe that a body still exuding liquids is dug up from under the deck without disturbing the ground or the deck and placed in a trailer leaving a large imprint. This is nothing more than speculation.

So much for the "new" evidence.

What is left in the case is all that was known in 1996. Kristin Smart, known as Roxy, was pretty much out of control and drunk at a frat party. (See, e.g., 2RT 390-391, 405, 407-408.) While Paul Flores left Ms. Smart at her dorm and went on to his, it turns out that another young man, who had been at the party, came into Smart's room that night and slept with another girl who was unconscious. (12RT 3306-3323.) Ms. Smart had been threatened by a former boyfriend who finally left her a "mean note" and who set her shoes on fire on her doorstep in the dorms. (12RT 3347.) Smart had said that she was going camping, she had previously gone off to Hawaii and, from there, went missing with another man. (3RT 704-712.) Her friends said she was likely to get in car with a stranger. (12RT 3348.) And, it turns out, when there was someone else in her dorm room she would go elsewhere, as she did the night before, to stay with another young man in his dorm which was further up the hill. (12RT 3342-3346.)

The only thing that pointed to Paul Flores beyond speculation was the so-called dog alerts at his dorm. The dog evidence in this case, including the evidence of the alerts at the dorm, lack the appropriate scientific or expert foundation. This is set forth in more detail below and calls into question whether a mere alert that does not produce evidence can be considered evidence.

For the sake of argument here, however, the fact is that even if there was an alert, the chain of evidence to incriminate Paul Flores is lacking. The dorm room had been emptied, cleaned and rearranged before it was searched two weeks after Paul Flores and his roommate left. (3RT 681-682; 4RT 961.) In addition, the room had been entered by multiple law enforcement and other people and police tape was placed on the door. (See, e.g., 3RT 638; 6RT 1615; 12RT 3313; 14RT 3975-3976, 3993.) The dogs "alerted" but there is no evidence as to what caused the behavior. No evidence was found. The most recent people to have been in the room were police officers who may have been in contact with human trace evidence in the context of other duties. There was no basis for giving evidentiary value to an "alert" where nothing was found. The same dogs alerted elsewhere on the campus and other dogs, in the course of the investigation, alerted all over San Luis Obispo around the campus and in Huasna with negative results.

Therefore, there is no evidence other than speculation, prohibited by *Birt*, to support an allegation that Paul Flores committed a murder. Furthermore, there is no evidence to support the allegation in the Information that Paul Flores committed a rape or attempted rape and he cannot be held to answer under Penal Code section 189(a). And, of course, there is no evidence that Ruben Flores committed any crime.

B. The Testimony of Witnesses Was Significantly Influenced by Publicity at the Time, by the Obsessed Podcaster Chris Lambert and by the Social Media Driven Campaign to Convict Paul Flores

Evidence Code section 780 establishes that bias and attitude toward the proceedings are relevant to the evaluation of evidence. One of the things that all of the witnesses for the prosecution had in common was that they had seen substantial publicity mentioning Paul Flores as a suspect. Testimony

about the publicity and the rumors on campus were established by several of the witnesses. (See, e.g., 1RT 139-140; 2RT 407; 2RT 347; 6RT 1590.) In addition, some of the witnesses, particularly those with improbable, late-reported stories, like Jennifer Hudson, Angie Doe and Jamilyn Holman, had extensive contact with the obsessed podcaster, Chris Lambert. (4RT 1044-1045; 6RT 1594; 8RT 2214, 2223, 2229; 21RT 6091, 6094.)

On August 10, 2021, Detective Cole testified that he had been wearing a purple tie on each day of the preliminary hearing because he saw a post on the Facebook Justice for Kristin Smart. (6RT 1511-1513.) This Facebook page is dedicated to seeing Paul Flores convicted of murder. (6RT 1513.) In addition, the prosecutor, the District Attorney's investigator and District Attorney's witness coordinator all wore purple. (13RT 3065; 14RT 4017; 17RT 4891.)

All of this is significant in light of the prosecution's showing at the preliminary hearing. The original evidence offered against the defendants did not establish a basis to hold the defendants to answer. The embellishments since that time were heavily influenced by these inappropriate factors. For instance, Margarita Campos clearly showed an allegiance to Detective Cole and denied that she had made inconsistent statements over the years to other officers. (4RT 1011-1017.) Steven Fleming's testimony, clearly referring to somebody other than Paul Flores, was influenced by all the publicity and his desire to help law enforcement now convict Paul Flores. Jennifer Hudson, in crafting her bizarre story, clearly incorporated inconsistent facts that had been given to her by the obsessed podcaster Chris Lambert. (8RT 2229.)

Looking at this case in the light of day, testimony of witnesses like Fleming and Hudson is clearly not credible and should not have been considered credible by an investigating officer or the prosecution. However,

when the entire prosecution dresses in purple to show solidarity with a website dedicated to convicting Paul Flores, that becomes the lens with which they see all of the evidence. We respectfully ask this Court to stand back and look at the actual evidence for what it is.

C. There Was Insufficient Foundation to Establish the Admissibility of the Dog "Alerts" and the Testimony of the Dog Handlers Is of No Evidentiary Value

There was an insufficient foundation to establish admissibility of a dog "alert" as at the dorm, other places on campus and in Huasna, nor to establish evidentiary value of a "change in behavior" that did not amount to an alert such as at Ruben Flores's house. The fundamental problem is that there is no scientific basis for evidence of dog behavior itself unless it actually leads to physical evidence such as a fleeing individual or an actual body.

The admissibility of expert testimony in California is governed by the California Supreme Court decision in *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770-772 (*Sargon*). The Court expressly acknowledged that judges are the "gatekeepers" with regard to a determination of the admissibility of expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 U.S. 579 (*Daubert*). The California Supreme Court set forth three criteria to determine the admissibility of this kind of testimony:

> "[U]nder Evidence Code sections 801, subdivision (b), and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." (*Sargon, supra*, 55 Cal.4th at pp. 771-772.)

The Court also observed that "[o]ther provisions of law, including decisional law, may also provide reasons for excluding expert opinion

testimony." (*Id.* at p. 772.)

As gatekeepers, courts must focus on the "'principles and methodology'" asserted by the proposed expert and not "'on the conclusions that they generate.'" (*Sargon, supra*, 55 Cal.4th at 772, quoting *Daubert, supra*, 509 U.S. at p. 595.) Thus, the "gatekeeper's role 'is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.'" (*Sargon, supra*, 55 Cal.4th at p. 772, quoting *Kumho Tire Co. v. Carmichael* (1999) 526 U.S. 137, 152 (*Kumho Tire*).) These requirements apply to both scientific testimony as well as non-scientific expert testimony. (*Kumho Tire, supra*, 526 U.S. 137.)

It should be noted that the California Supreme Court in *Sargon* did not take a bold leap. The Court relied on the Evidence Code itself but also incorporated the *Kelly/Frye* analysis. Under *People v. Kelly* (1976) 17 Cal.3d 24 (*Kelly*), there are three prongs: "First, there must be proof that the technique is considered reliable in the scientific community. Second, the witness testifying about the technique must be a qualified expert on the subject. Third, there must be proof that the person performing the test used correct scientific procedures." (*People v. Willis* (2004) 115 Cal.App.4th 379, 385 (*Willis*).) Therefore, under *Sargon*, Evidence Code sections 801 and *Kelly*, the court is the gatekeeper charged with the duty to exclude expert evidence unless a foundation is laid demonstrating that there is foundational validity to the technique employed and that it is valid as applied by a qualified expert using correct scientific procedures. This is consistent with the view of the scientific community as set forth in the PCAST report and other current scientific studies. (See President's Counsel of Advisors on Science and Technology (PCAST), *Forensic Science in Criminal Courts:*

Ensuring Scientific Validity of Feature-Comparison Methods (2016).)

Here, the dog handlers involved in the search of the dorm room did not employ the intellectual rigor required by *Sargon* and *Kumho Tire*. The dog handlers made claims that they were unable to support with any academic or scientific studies. They did not establish the validity of the "'principles and methodology'" on which they based their conclusions. (*Sargon*, *supra*, 55 Cal.4th at 772, quoting *Daubert*, *supra*, 509 U.S. at p. 595.)

In addition to the fundamental law pertaining to admissibility of expert testimony, the courts of California have discussed evidence pertaining to dogs in the context of dog trailing. This is different than human remains detection and substantially different than attempting to lay a foundation for alerts that did not result in the location of evidence. Dog trailing cases involve a claim that a particular person can be tracked from one place to another by scent but generally involve locating an actual person who has other connections to the alleged crime.

In *People v. Jackson* (2016) 1 Cal.5th 269 (*Jackson*), the California Supreme Court set forth the standard for the admissibility of dog-trailing evidence based on the Court of Appeal opinion in *People v. Malgren* (1983) 139 Cal.App.3d 234, 238 (*Malgren*). The Court established four factors that had to be satisfied by the proponent in order for the dog-trailing evidence to be admissible, namely: (1) whether 'the dog's handler was qualified by training and experience to use the dog'; (2) whether 'the dog was adequately trained in tracking humans'; (3) whether 'the dog has been found to be reliable in tracking humans'; (4) whether the dog was 'placed on the track where circumstances indicated the guilty party to have been.'" (*Jackson*, *supra*, 1 Cal.5th at p. 321, quoting *People v. Malgren*, *supra*, 139 Cal.App.3d at p. 238.) Furthermore, the dog-trailing evidence must be corroborated by either direct or circumstantial evidence. (*Jackson*, *supra*, 1 Cal.5th at p.

321.)

The *Jackson* Court held that a hearing under *People v. Kelly* (1976) 17 Cal.3d 24 (*Kelly*), was not necessary to determine the admissibility of dog-trailing evidence. (*Jackson, supra,* 1 Cal.5th at pp. 317-320.) The Court found that dog-trailing evidence was not "so foreign to everyday experience that it would be unusually difficult for jurors to evaluate." (*Jackson, supra,* 1 Cal.5th at p. 317.) Moreover, the Court found that it was "also unlikely that a juror would believe that dogs are scientifically infallible, a risk that *Kelly* was intended to address." (*Ibid.*) To this point, the Court emphasized that the experts in the defendant's case repeatedly testified to this point and particular experts testified to their dogs' previous mistakes. (*Id.* at pp. 317-318.)

The Court, however, emphasized that "dog-trailing procedures and experiments must comply with the laws of physics, chemistry, and biology" and if they do not, courts must exclude the testimony as "unfounded." (*Jackson, supra,* 1 Cal.5th at p. 318.) Trailing cases where someone is located and there is corroborating evidence are different than this case where the behavior of the dog is offered as evidence despite the fact that nothing was located and there is no corroboration.

The courts in *People v. Mitchell* (2003) 110 Cal.App.4th 772 (*Mitchell*) and *Willis, supra,* 115 Cal.App.4th 379, both recognized that there is an additional foundation required to establish the foundational validity of "scent discrimination" evidence, which involves a dog "sniffing the scent collected from an object a person is known to have touched and determining whether a second object has been touched by the same individual." (*Mitchell, supra,* 110 Cal.App.4th at p. 779.) In *Mitchell*, the court considered testimony by the dog handlers that a scent "will remain on an object for two to four months after it has been touched." This testimony was based on anecdotes regarding the

dog's prior performances, but "no effort was made to present information from any academic or scientific sources, let alone peer review journals, regarding these testimonial assertions." (*Mitchell, supra,* 110 Cal.App.4th at p. 791.) The court was also concerned about similarly unsubstantiated claims that "every person has a scent so unique that it provides an accurate basis for scent identification lineup." (*Id.* at p. 791.) The court emphasized that neither of the dog handlers who testified had a background in science and neither were aware of scientific data supporting this claim. (*Id.* at p. 791.) Thus, the *Mitchell* court stated that these "assumptions" must be supported by more than "the mere experiences of one trainer and one dog." (*Id.* at pp. 793-794.)

Similarly, in *Willis*, the Court of Appeal stated that the "prosecution cannot rely solely on anecdotes regarding the dog's capabilities." (*Willis, supra,* 115 Cal.App.4th at p. 386.) The court in *Willis* summarized the factors considered in *Mitchell* as follows: "a foundation must be laid from academic or scientific sources regarding (a) how long scent remains on an object or at a location; (b) whether every person has a scent that is so unique that it provides an accurate basis for scent identification, such that it can be analogized to human DNA; (c) whether a particular breed of dog is characterized by acute powers of scent and discrimination; and (d) the adequacy of the certification procedures for scent identifications." (*Willis, supra,* 115 Cal.App.4th at p. 386.) The court in *Willis* also stated that a dog "showing interest" is "a far cry from tracking a suspect and giving an unambiguous alert that the person has been located." (*Id.* at p. 386.)

The foundation found to be insufficient for the admissibility of evidence in *Mitchell* and *Willis* is precisely what is involved here. For example, Adela Morris (7RT 1840-1842), Wayne Behrens (15RT 4275) and Gail Laroque (14RT 3953) each testified that a deceased body starts to decompose

immediately after death and that dogs can detect this immediate composition. However, the dog handlers testified that they were not aware of any peer-reviewed scientific studies supporting this assumption. (7RT 1860, 1944 [Adela Morris]; 15RT 4275 [Wayne Behrens]; 14RT 3953-3954 [Gail Laroque].) The dog handlers were not even qualified to explain the process of decomposition or what their dogs were detecting. (See 7RT 1940-1941 [Adela Morris]; 15RT 4227 [Wayne Behrens]; 14RT 3952 [Gail Laroque].) Thus, the dog handlers could not articulate and did not understand the basic principles that they claimed were the basis for their conclusions.

Furthermore, the evidence in this case did not even meet the requirements of *Jackson/Malgren*. The first factor is whether "'the dog's handler was qualified by training and experience to use the dog.'" (*Jackson*, *supra*, 1 Cal.5th at p. 321; quoting *People v. Malgren* (1983) 139 Cal.App.3d 234, 238 (*Malgren*).) Here, the dog handlers were not qualified by training and experience to use their dogs. The handlers were all qualified by the same private organizations – California Rescue Dog Association, Canine Specialized Search Team, Institute of Canine Forensics – which were run by the same people, primarily Adela Morris and Andy Rebmann. (6RT 1663-1664, 1667, 1672 [Adela Morris]; 15RT 4209, 4213, 4225 [Wayne Behrens]; 14RT 3912, 3917, 3939 [Gail Laroque].) As stated above, the dog handlers were also not able to answer questions about the basic principles of dog alerts, instead advancing unfounded theories. (See, e.g., 7RT 1860, 1944 [Adela Morris]; 15RT 4275 [Wayne Behrens]; 14RT 3953-3954 [Gail Laroque].)

The second and third factors are whether the dog was "'adequately trained'" and was found to be reliable. (*Jackson*, *supra*, 1 Cal.5th at p. 321; quoting *People v. Malgren* (1983) 139 Cal.App.3d 234, 238 (*Malgren*).) The dog handlers testified that the dog and handler are certified together as a

"team." (7RT 1869.) Therefore, the qualification of the handler is tied directly to the qualification of the dog. In addition, the dog handlers could not provide information regarding the false positive rate of their dogs either because they did not keep such records, or they no longer had that information. (7RT 1832, 1908-1909 [Adela Morris]; 15RT 4220-4221 [Wayne Behrens]; 14RT 3944-3945 [Gail Laroque].) Thus, the dogs were not established to be adequately trained or reliable.

The fourth factor is whether the dog was "'placed on the track where circumstances indicated the guilty party to have been.'" (*Jackson, supra,* 1 Cal.5th at p. 321; quoting *People v. Malgren* (1983) 139 Cal.App.3d 234, 238 (*Malgren*).) Adapting this to the context of human remains detection, the question would be whether the dog was taken to a place where circumstances indicated the deceased body of Ms. Smart had been. Here, there was no independent evidence indicating that Ms. Smart had been in the dorm room in Santa Lucia even though evidence established that the room previously shared by Mr. Flores and his roommate had been entered by numerous police officers and others and had been taped off. (See, e.g., 3RT 659 [Detective Kennedy testified that at the end of June, the room appeared to have been cleaned]; 6RT 1615 [Rick Neufeld's testimony that he processed the room for trace evidence on June 24, 1996 accompanied by Detective Kennedy]; 12RT 3313 [Investigator Hanley's testimony that he was in the room on June 26, 1996]; 14RT 3933 [Gail Laroque's testimony that on June 29, 1996, there was red tape on the door of Room 128].)

Furthermore, there was no independent evidence presented that corroborated the dog scent evidence. (*Jackson, supra,* 1 Cal.5th at p. 321.) There was no biological evidence found in the dorm room that established a basis for the dogs' alerts. In fact, there was no evidence found in the dorm room at all nor was there any evidence that Ms. Smart was in the dorm room

at any point. The prosecution merely relied on speculation and innuendo. Thus, the alerts by themselves cannot be accorded evidentiary value under the *Jackson/Malgren* criteria.

Furthermore, as set forth in detail above, the *Jackson/Malgren* criteria apply to trailing cases in which a suspect is located and is found to have some connection to the alleged offense. Even where there is some evidence that could be claimed to be corroboration, it has to be substantial or it is not sufficient. For instance, in *People v. Gonzalez*, the prosecution relied on several pieces of circumstantial evidence to support the dog trailing evidence, including "footprints found intermittently upon the track, along with a shiny dime," and that the officer "saw a heavy-set Mexican mail suspect flee int eh direction taken by the dog" and that the suspect was "found lying face down in tall grass when found and refused to speak when confronted by the officer." (*People v. Gonzales* (1990) 218 Cal.App.3d 403, 415 (*Gonzalez*).) The court found all of that to be insufficient evidence to corroborate the dog trailing evidence. (*Ibid.*)

Of course, the present case is a case in which there is no evidence at all and, therefore, would be evaluated under *Mitchell* and *Willis*. The foundation does not meet those criteria. In addition, the overarching law under *Sargon, Daubert, Kumho Tire* and Evidence Code sections 801 and 802 require the Court to exercise its gatekeeping function. The only conclusion is that no scientific or expert foundation has been established. Therefore, the dog alert evidence cannot be considered.

D. The Search and Seizure at 710 White Court

1. The Dog Handler Testimony Had No Evidentiary Value

The search of 710 White Court on March 15, 2021 began with dog handlers Kristine Black with dog Annie and Karen Atkinson with dog Amiga

searching areas of the property. Ms. Black and Ms. Atkinson and their dogs are subject to the same analysis as stated above. Neither knew the basic principles that make up the foundation of dog scent evidence nor did they have any academic or scientific support for their contentions.

However, the testimony has the further foundation issue that the dogs did not alert but only showed a "change in behavior." (17RT 48335-4836 [Kristine Black and Annie]; 17RT 4887-4888, 4893 [Karen Atkinson and Amiga].) As the Court in *Willis* found in the context of dog trailing evidence, "[s]howing interest in locations is a far cry from tracking a suspect and giving an unambiguous alert that the person has been located." (*Willis, supra,* 115 Cal.App.4th at p. 386.) Therefore, the dog behavior has no evidentiary value in determining whether to hold either defendant to answer.

The proffered evidence sought to incriminate Paul Flores and Ruben Flores turned out not to be what was originally represented. The "anomalies" found by the ground-penetrating radar turned out to be irrelevant. Whatever was interpreted by the operator to be potential burial sites were not. There was staining found in the areas under the deck. (18RT 5192.) However, whatever caused the staining was deposited on top of the "anomaly" and permeated downward as was demonstrated by Shelby Liddell as she went through the photographs of the areas excavated under the deck. (20RT 5780-5781.)

The area under the deck was directly below a sewer clean-out valve and a dryer vent. It was also covered by decking for which there was no evidence whatsoever that it had been disturbed since it was built as a part of the house in 1991. In addition, Ruben Flores continuously rented out the room to tenants which was immediately above this deck. (See, e.g., 21RT 6048-6049 [David Stone].) Had there been a decomposing body depositing fluids it would have been obvious to anyone with their bedroom window right above

the location. Ms. Arrington testified that if a body had been buried under the deck it would have emitted a "very strong odor" at one point. (18RT 5217.)

2. The Evidence Relating to Fibers Has No Evidentiary Value

The prosecution attempted to associate fibers that were collected from soil samples from underneath the deck where the staining was found. (19RT 5467.) Faye Springer, a criminalist, received the fibers at her lab but was unable to make any real determination as to their significance since she had nothing to which to compare it. (15RT 4295-4297.) Ms. Springer testified that the fibers were mostly blue but there were also red, black, brown and uncolored fibers. (15 RT 4297, 4316, 4322.) Ms. Springer testified that it would not be unusual to find fibers of this sort near a construction site or where a house would have been built. (15RT 4316.) The red fibers looked "reasonably clean," "fairly intense in color" and did not look as though there was a degradation of the material. (15RT 4320-4321.)

Ironically, the prosecution attempted to assert that the pink fibers had something to do with Kristin Smart. (15RT 4302.) There was no scientific basis for that connection. It turned out that the builder of the house, Edward Chadwell, used pink mason twine to lay out the foundation. (16RT 4657.) Coincidence and unsupported guesswork by the prosecution that ultimately have logical explanations cannot support a holding order. The prosecution's own expert would not draw the conclusions suggested by the prosecutor because there was no scientific basis. If she had offered such an opinion, which she did not, it would not have been admissible under *Sargon*, *Daubert* or *Kumho Tire*.

3. The Evidence Relating to the Soil Samples Lacks Foundation

It is important to not lose sight of the fact that the prosecution claimed

through the discredited testimony of Jennifer Hudson that the body had been buried in Huasna in 1996 and had remained there for months, if not years. (8RT 2206-2212.) It is inherently improbable that anyone involved in concealing a body would then dig it up from a remote area and bring it back to their father's house and somehow bury it under a deck directly under a tenant's window. As Cindy Arrington testified, a body stops bleeding when the heart stops pumping. (18RT 5233.) Had a body been deceased for several months, if not years, and reburied, it would not be bleeding. Furthermore, Ms. Arrington testified that if a body had been deposited under the deck with a 25-year span, one would expect to find bones or fibers. (18RT 5235.) Ms. Arrington did not see any of that during the excavation. (18RT 5235.)

Nevertheless, the prosecution attempted to introduce evidence that the source of stained soil removed from what turned out to be undisturbed "anomalies" was human blood. From the samples analyzed by Angela Butler, the forensic serologist at the Serological Research Institute (SERI), some samples were positive, some samples were weak positive, and some were negative for blood. She conceded that the test was not conclusive for human blood and could react to higher primates or animals like ferrets. (19RT 5447.) Furthermore, the tests were not validated for detecting blood in soil. (19RT 5478, 5500.) Ms. Butler was not able to extract DNA from the samples. (19RT 5451.) Therefore, Ms. Butler could not determine if there was a human, primate or other animal genome present, nor could she do a DNA comparison to known samples related to Kristin Smart.

The testimony of Angela Butler did not result in evidence that could be used to hold either defendant to answer. As articulated above, scientific evidence must meet the standards of *Sargon*, *Daubert* and *Kumho Tire* as well as Evidence Code sections 801 and 802. With regard to a scientific test even under *Kelly*, the second and third prongs of *Kelly* must be met. That

requires the prosecution to establish a foundation that "the witness testifying about the technique must be a qualified expert on the subject" and that "there must be proof that the person performing the test used correct scientific procedures." (*Willis, supra*, 115 Cal.App.4th at p. 385.) This requires that the prosecution establish the foundational validity of the scientific procedures which is consistent with the requirements of the scientific community as set forth, for instance, in the PCAST report.

In order to establish a foundation that "correct scientific procedures" were followed, the prosecution must establish foundational validity. Here, there were no validation studies, meaning that there was no basis to establish foundational validity, for the use of the SERATEC HemDirect test. Ms. Butler testified that there were validation studies for this particular test, but she was not able to cite any validation studies specifically for soil. (19RT 5478.) She testified that neither she nor her lab did validation testing for the tests for blood in soil. (19RT 5500.) Therefore, there is no foundation for testimony regarding the evaluation of an unknown substance in soil using the SERATEC HemDirect test under *Sargon*, *Daubert* and *Kumho Tire* as well as Evidence Code sections 801 and 802, the second and third prongs of *Kelly* and forensic scientific standards as set forth in the PCAST report.

4. Conclusion

For the reasons stated above relating to the lack of evidentiary value and the lack of an adequate foundation, there is no evidence that Kristin Smart was buried under the deck in Ruben Flores's house. Any arguments made by the prosecution are simply speculative and do not establish a basis to hold either defendant to answer. (*Birt, supra*, 34 Cal.App.3d at p. 938.) In this case, even the speculation of the prosecution is overwhelmed by the other evidence presented to the Magistrate regarding the several locations at which the body was allegedly buried, removed, transported, re-buried and removed

again. None of this speculation supports a holding order for Paul Flores and, since it is the only evidence offered against Ruben Flores, the information should be set aside as to both.

E. On June 19, 1996, Paul Flores Was Subjected to A Custodial Interrogation without Being Advised of His *Miranda* Rights in Violation of His Constitutional Rights Under the Fifth and Sixth Amendments to the United States

During the preliminary hearing, former District Attorney Investigator William Hanley testified regarding an interrogation of Paul Flores at the station for the Arroyo Grande Police Department on June 19, 1996. (11RT 3041.) The video of part of the interrogation was admitted into evidence as Exhibit 33. (11RT 3058.) Mr. Flores was not advised of his *Miranda* rights during the June 19, 1996 custodial interrogation and, therefore, testimony regarding the interview and the recording of the interview (Exhibit 33) should not have been admitted.

Mr. Flores was interrogated. Mr. Flores was not advised of his *Miranda* rights during the June 19, 1996 interrogation. This was clearly an interrogation initiated by two officers for the purpose of attempting to elicit an incriminating response. (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301 (*Innis*).) For over two hours at the Arroyo Grande Police Department, Mr. Flores was repeatedly asked what happened to Kristin Smart and was told to assume she was deceased; he was questioned and challenged about his statements about what happened after the party that night; he was repeatedly asked to take a polygraph despite Mr. Flores responding that he needed to speak with his parents first; and the investigators repeatedly threatened Mr. Flores with statements to the effect that this case will never go away and that the investigators do not believe him. (Exhibit 33.)

Moreover, Investigator Hanley testified that on May 31, 1996, he had a meeting with Detective Kennedy and Chief Tom Mitchell of the Cal Poly Police Department. (11RT 3061.) During this meeting, the decision was made to turn attention to Paul Flores. (11RT 3062.) Thus, two weeks later, when Investigators Hanley and Hobson questioned Paul Flores, they were trying to elicit incriminating responses. (See Innis, 446 U.S. at p. 301.) Thus, the questioning on June 19, 1996 was an interrogation.

The other threshold issue with regard to the requirement of *Miranda* warnings is whether the interrogation was custodial. The Court must consider the totality of the circumstances to determine whether the interrogation was custodial. (See, e.g., *Yarborough v. Alvarado* (2004) 541 U.S. 652, 660-663.) These circumstances include "'(1) [W]hether the suspect has been formally arrested; absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of questioning.'" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403, quoting *People v. Forster* (1994) 29 Cal.App.4th 1746, 1753.)

Here, the two officers removed all doubt by telling Mr. Flores he could not leave. Mr. Flores said he had to be somewhere at 4 o'clock and 48 minutes into the recording, he responds to the continuing interrogation as follows:

> Officer: Well, I think you're remembering and wish it would go away.
>
> Flores: Well there isn't anything. But, but, as I said, I already have to go, so, is it all right then?
>
> Officer: No, not yet. We're not through yet. We gotta work this out. Okay? Where do you gotta go at four o'clock?

An hour and fifteen minutes later, he is still asking to leave and the officers are telling him that he is not allowed to leave the room. Starting at 2:01:

Hobson:	Just sit still, Paul. Your dad's coming down here.
Flores:	Well- well- well, I thought you said I could leave.
Hobson:	No, your dad's coming down here.
Flores:	So am I allowed to leave or not?
Hobson:	Your dad's coming down here to talk to you.
Flores:	So y-you said I can leave right?
Hobson:	And I-I think this is something you need to work out with your dad.
Flores:	Okay, but I'm allowed to leave this room now?
Hobson:	No.
Flores:	S-so should I call an attorney then because they're making me stay in this room?

Shortly after this colloquy, the tape ends and apparently Mr. Flores was allowed to leave. The fact that they allowed him to leave does not obviate the custodial nature of the two-hour interrogation.

This was a custodial interrogation. Mr. Flores asked to leave and was told he could not. It was not a temporary detention. A temporary detention "allows 'the officer . . . [to] ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions.'" (*People v. Clair* (1992) 2 Cal.4th 629, 679.)

Besides the actual statement that Mr. Flores was not free to go, this

interrogation meets the time-honored criteria articulated by the Court of Appeal and oft quoted:

> "Courts have identified a variety of relevant circumstances [to determine custody]. Among them are whether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; whether the express purpose of the interview was to question the person as a witness or a suspect; where the interview took place; whether police informed the person that he or she was under arrest or in custody; whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person's conduct indicated an awareness of such freedom; whether there were restrictions on the person's freedom of movement during the interview; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; whether they manifested a belief that the person was culpable and they had evidence to prove it; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation." (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162.)

Therefore, the June 19, 1996 questioning was a custodial interrogation. Paul Flores was not informed of his *Miranda* rights and the statements of Mr. Flores and the observations of the officers are inadmissible and should not be considered.

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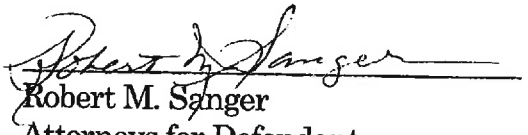
CONCLUSION

For the foregoing reasons, the defendant Paul Flores respectfully requests that the Court set aside the Information.

Dated: December 17, 2021

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On December 17, 2021, I served the foregoing document entitled: **NOTICE OF MOTION AND MOTION TO SET ASIDE THE INFORMATION (PENAL CODE § 995)** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

X **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed December 17, 2021, at Santa Barbara, California.

Jake Swanson

Jake Swanson

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SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES AND RUBEN RICARDO FLORES, Defendants.	CASE NO. 21F-02402-A, B PEOPLE'S POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS 1 AND 2 OF THE INFORMATION PURSUANT TO PENAL CODE SECTION 995 Date: January 21, 2022 Time: 8:30 a.m. Dept. 1

STATEMENT OF THE CASE

On August 2, 2021, the Preliminary Hearing in this case began in front of Judge Van Rooyen in Department 5. The hearing concluded on September 22, 2021, when Judge Van Rooyen held the defendants to answer on the complaint. On October 4, 2021, the People filed an Information alleging one count of Murder in violation of PC 187 as to defendant Paul Flores and one count of Accessory after the Fact in violation of PC 32 as to defendant Ruben Flores. Defense Counsel for Paul Flores filed a PC 995 motion on December 17, 2021, and Defense Counsel for Ruben Flores filed a PC 995 motion on December 23, 2021.

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STATEMENT OF FACTS

Volume 1 – August 2, 2021

Denise Smart

Mrs. Smart testified that she is married to Stan Smart and is the mother to three children, including Kristin Smart. (Reporters Transcript: page 20, lines 17-24). She testified how she and the other children had a very close relationship with Kristin. (RT: page 24, lines 15-27) She testified that Kristin had plans for the future including an intention to study Architecture, as well as travel. (RT: page 26, lines 11-18) She and Kristin would talk at least once a week. (RT: page 26, line 19) The last time she saw Kristin was Easter break 1996 (RT: page 28, lines 10-12) The last time she spoke with Kristin was the week before she went missing (RT: page 36, lines 26-28) Ms. Smart also testified that there wasn't "a chance in the world" that Kristin would have missed the weddings of her two siblings, the births of her nieces and nephews, or the dozens of birthdays and holidays celebrated since 1996. (RT: page 33, lines 21-28)

Stan Smart

Mr. Smart testified that he had a close and wholesome relationship with Kristin Smart and that they often traveled as a family. (RT: page 88, lines 1-3) He took a job as a principal several hours from their home and Kristin followed him to that school. (RT: pages 88-89, lines 27-4) He described Kristin's relationship with her siblings as "very good." (RT: page 91, lines 4-6) The last time he and Denise heard from Kristin was a voicemail the Friday before Memorial Day weekend 1996. (RT: page 91, lines 15-20)

Stan Smart also testified that in the summer of 1996 he drove by the house of Ruben Flores looking for his daughter, and Mr. Ruben Flores told him, "You need to get out of here… someone could get shot." (RT: page 94, lines 6-15)

Kendra Koed

Ms. Koed testified that she was a Cuesta student in May 1996 and attended the party at 135 Crandall Street the Friday before Memorial Day weekend. (RT: page 131, lines 19-26)

She stated she was at the party and was asking other people for gum when Paul Flores said he did in fact have some gum. (RT: page 132, lines 10-18) The defendant directed her outside than grabbed her and started kissing her again after she told him not too. (RT: pages 133-134, lines 26 – 11)

Later in the party, she saw Kristin Smart fall. Ms. Koed walked over and saw Paul Flores standing over her. (RT: page 134, lines 21-27) She was concerned for Ms. Smart's safety as Smart seemed "highly intoxicated" and seemed unable to care for herself. (RT: page 135, lines 16-19) She elaborated how Ms. Smart could hardly hold her head up and was slumped over onto Ms. Koed, spilling her beverage. (RT: page 135: lines 21-27) As Ms. Koed was walking out, she saw Ms. Smart laying in a driveway area of a nearby house. Ms. Smart appeared incapable of standing. (RT: page 136, lines 4-15) Ms. Koed described Ms. Smart's level of intoxication as a "ten" on a scale of one to ten. (RT: page 155, lines 23-26)

Volume 2 – August 3, 2021

Steve Fleming

Mr. Fleming testified that he was a student at Cal Poly in 1996 and lived on the 3rd floor of the Muir dorm. (RT: page 313, lines 1-8) Kristin lived on the first floor in room 120. (RT: page 321, lines 8-13) Mr. Fleming first met Kristin at the beginning of the school year. (RT: page 324, lines 19-21) Fleming observed Paul Flores in and around the Muir dorm during this time and described him as a "lurker" and "creepy." (RT: page 327, lines 20-21) On two occasions he saw Paul Flores in the Muir dorm late at night, between 1-2am. He did not live in the Muir Dorms and was just by himself, "lurking." (RT: page 328, lines 6-14) He saw Paul Flores around Kristin Smart in a common room and described the behavior as "puppy dog kind of thing." (RT: page 320, lines 11-13) At one point towards the end of the basketball season, Fleming saw Paul Flores in Kristin's room. (RT: page 329, lines 19-25) He observed Kristin was "nervous." (RT: page 329, lines 27-28) It was apparent Kristin was uncomfortable and that Paul Flores was "not a welcome guest in her room." (RT: page 330, lines 1-24) Fleming described Paul Flores' behavior towards Kristin as "weird and creepy" and confirmed

Kristin did not reciprocate Paul's interests. (RT: page 333, lines 1-3) Fleming estimates he saw Paul in Kristin's room approximately five to six times. (RT: page 373, lines 26-27) These interactions were weird and did not appear comfortable for Kristin. (RT: page 374, lines 5-11)

Matt Toomey

Mr. Toomey testified that in 1996 he was a student at Cal Poly and lived in the Sierra Madre dorms. (RT: page 388, lines 1-8) On May 24, 1996, he attended a house party at 135 Crandall Street. (RT: page 388, lines 15-18) He saw Kristin Smart at the party, and it appeared "she'd had a few drinks" and was "not walking entirely straight." (RT: page 389, lines 20-27) She asked Toomey if his friend Ross would find her attractive and whether Toomey thought she was attractive. (RT: page 390, lines 14-21) Kristin walked away shortly thereafter and defendant Paul Flores walked up to him. (RT: pages 390-391, lines 26-10) Paul Flores asked if Kristin and Ross were together and commented that he thought Kristin was attractive. (RT: 391-392, lines 24-3) As Toomey and Ross were leaving around midnight, Kristin was laying on the lawn. (RT: page 392, lines 10-12) She appeared more inebriated than earlier in the evening but did not want their help. (RT: page 393, lines 8-14)

Cheryl Manzer/Anderson

On May 24, 1996, Ms. Manzer was a freshman at Cal Poly and attended the party at Crandall Way. (RT: page 417-418, lines 23-2) She said Ms. Smart was wearing a gray half shirt, black vinyl shorts, and red Puma shoes. (RT: page 420, lines 3-4) At some point during the party, defendant Paul Flores came up to her and put his arm around her without her consent. (RT: page 422, lines 4-14) The party ended around 1am and she started walking home with Tim Davis. (RT: page 422, lines 19-27) Davis helped Kristin up and they were all going to walk home together. (RT: page 423, lines 2-3) The defendant approached them quickly after they started walking back and said something to the effect of "I will walk back also." (RT: page 425, lines 12-15) At this point Kristin Smart was not walking on her own. (RT: page 425, lines 23-27) Defendant Paul Flores took control of Ms. Smart and put his arm around Ms. Smart's waist. (RT: page 426, lines 1-5) About a third of the way back to the

dorms, Paul Flores tells Ms. Anderson that she can go ahead. (RT: page 426, lines 21-24) They stopped at least twice on the way back and each time Paul Flores told Ms. Anderson that she could go ahead and leave him with Ms. Smart. (RT: page 427, lines 3-6) It took between fifteen and thirty minutes to walk from the Crandall Way party to the dorms which was longer than normal. (RT: page 427, lines 16-27) Ms. Anderson thought it was concerning that Paul Flores tried to tell her to go ahead a second time. (RT: page 428, lines 6-14) At the corner of Grand and Perimeter, Paul Flores asked for a kiss, which she refused. He then asked her for a hug which was again refused. (RT: page 428, lines 16-26) Ms. Anderson asked Paul Flores if he would get Kristin back to her dorm room and Paul Flores replied "yes." (RT: page 429, lines 21-24) The last time she saw Kristin Smart, Paul Flores has his arm around Kristin Smart and Ms. Smart was intoxicated. (RT: page 434, lines 12-16)

Volume 3 – August 4, 2021

Lawrence "Mike" Kennedy

In May of 1996, Mr. Kennedy was working as an Investigator for the Cal Poly Police Department. (RT: page 630, lines 15-19) He was assigned to assist in the investigation. (RT: page 632, lines 6-11) He interviewed Javier Carrillo who said that he was friends with defendant Paul Flores, and they hung out a couple times a week (RT: page 632, lines 4-9) Mr. Carillo stated that Paul Flores told him that the missing person had been flirting with Flores at the party and that he may have met the missing person before the party or may have known her in some other way. (RT: 632, lines 19-24) Flores told Carillo that a group of students walked back and then split up. (RT: 633, lines 23-25) Carrillo confronted Flores about why he did not walk her back to the hall and he replied, "I don't know." (RT: page 633, lines23-28) Carillo observed an injury to Paul Flores' right eye on Tuesday May 28, 1996. (RT: page 634, lines 3-12) Flores told Carillo that he received the injury playing basketball. (RT: page 634, lines 24-25)

Kennedy also interviewed Derrick Tse who said he was Paul Flores' roommate. (RT: page 635, lines 8-15) Tse said he was not at the dorm room Memorial Day weekend and

returned in the evening on Tuesday, May 28, 1996. (RT page 635, lines 17-23)

Kennedy spoke with defendant Paul Flores on Tuesday May 28, 1996 in his dorm room, Santa Lucia #128. (RT: page 638, lines 8-20) Kennedy observed how Paul Flores was nervous, his heart was pounding in his chest to such a degree that his shirt was moving. (RT: page 639, lines 4-11) Paul Flores told him that he walked Kristin Smart up the hill and then they had separated. He went back to his dorm. He gave her two hugs while in transit from the party. (RT: page 640, lines 2-6) During this encounter Paul Flores was not under arrest, was not handcuffed, was not in custody, and was in his own room. Kennedy had asked him if he was willing to speak with him and Flores agreed. (RT: page 638-639, lines 21-1) At the conclusion of the interview, Kennedy asked Paul Flores if he was willing to speak again and Flores said he had no problem speaking with Investigator Kennedy again. (RT: page 641, lines 1-5) During the interview, Kennedy noticed that Paul Flores had a black right eye. (RT: page 641, lines 6-11) He identified a photograph, People's #4, as being consistent with his observations of Paul Flores on May 28, 1996. (RT: page 641, lines 23-28) Investigator Kennedy identified a blown-up version of that photograph, People's #327, as being consistent with the appearance of Paul Flores on that date. (RT: page 644, lines 21-27)

Kennedy again spoke with defendant Paul Flores on May 30, 1996. Flores was not under arrest, came to his office voluntarily, left after the interview, and said he'd be happy to speak with police again. (RT: page 645, lines 26) Flores drew a map showing where he last saw Kristin Smart and a copy of it was marked and introduced as People's 6. (RT: pages 654 and 655, lines 12 – 18)

Kennedy obtained the phone records for the Santa Lucia dorm 128 from Memorial Day weekend, they were under the name of Paul Flores or Derrick Tse. (RT: page 657, lines 9-25)

Kennedy identified four photographs taken of Paul Flores' dorm room and identified that room as the one four dogs searched on July 1, 1996. (RT: pages 660-661, lines 12-19) Detective Tate took a wastebasket from room #128 and moved it down the hall away from the room. (RT: pages 662-663, lines 28-14)

Volume 4 – August 5, 2021

Lawrence "Mike" Kennedy

Detective Kennedy testified that he asked Paul Flores for any alibi witnesses, but Flores never provided any and Kennedy was never able to find any. (RT: page 952, lines 4-18) Of the 75-125 possible sightings of Kristin Smart, none ever panned out. (RT: page 955, lines 3-10)

Margarita Campos

In May 1996, Margarita Campos was a student at Cal Poly San Luis Obispo and lived in Muir Hall. (RT: pages 964-965, lines 24-4) Kristin Smart was her next-door neighbor in the dorms and had the room right next to the exit. (RT: page 965, lines 11-17) They met after the start of the winter quarter and became closer towards her disappearance. (RT: page 966, lines 7-19) She was with Kristin early the evening of Friday May 24, 1996. (RT: page 967, lines 1-10) They were invited to a house party by other girls in the dorms and decided to go. (RT: page 968, lines 6-20) Kristin was wearing black Roxy board shorts, a gray crop top, and red tennis shoes. (RT: page 971, lines 14-20) Their friends dropped them off at Crandall way to look for a house party but she and Kristin decided to split up. (RT: page 973, lines 1-24) Kristin did not have any wallet or anything on her, nor did she have her room key or purse. Margarita gave Kristin her room key. (RT: page 974 lines 1-12) The last time she saw Kristin, Kristin was walking up Crandall Way towards 135 Crandall at approximately 11pm. (RT: page 976, lines 1-27) Margarita never saw Kristin again after that night. Kristin had never been gone for more than 24 hours and had previously come to Margarita for help if she was locked out. (RT: page 979, lines 20-28) The next morning she went to Kristin's room and nothing had been moved from the previous day. (RT: page 985, lines 2-7) She continued to check on Kristin every 15-20 minutes and on Sunday the girls in the dorm decided to call police. (RT: page 987, lines 21-28) Based on her knowledge of Kristin, if she didn't want to do something, she would aggressively get out of it. (RT: page 1034, lines 16-21)

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Detective Clint Cole

He spoke with Crystal Teschendorf who stated that in May 1996 her last name was Calvin and she was roommates with Kristin Smart in the Muir dorm room 120. (RT: page 1048, lies 8-21) On Memorial Day weekend, her friend Jana Schrock was visiting and stayed in their dorm room Friday night, May 24, 1996. (RT: pages 1048-1049, lines 25-6) She stated on Saturday morning she became very concerned because there was a red backpack and some of Kristin's other toiletries that were still on the bed in the same location and unmoved from the previous evening. (RT: page 1049, lines 16-28)

Volume 5 – August 9, 2021

Cole also spoke with a Ms. Ciancio who stated that if there was a problem Kristin Smart would probably fight. (RT: page 1279, lines 3-5)

Volume 6 – August 10, 2021

Judge Van Rooyen stated that he is wearing a purple tie as well. (RT: page 1511, lines 15-16) Detective Cole testifies that he is wearing a purple tie because it was Kristin's favorite color. (RT: page 1512, line 6)

Jeromy Moon

In May of 1996, Jeromy Moon was a senior at Arroyo Grande High School and was friends with Paul Flores. (RT: page 1535-1536, lines 23-10) They hung out on Memorial Day weekend May 1996. (RT: page 1537, lines 13-18) On that Sunday evening, he noticed that Paul Flores had a black eye. (RT: page 1537, lines 8-12) Paul Flores claimed that he woke up with it. (RT: page 1537, lines 13-16) On Monday, they played basketball together with two other individuals. (RT: pages 1538-1539) During that game, Paul Flores did not get hit in the face. (RT: page 1539, lines 20-22) When asked by defense counsel for Ruben Flores whether he believed Paul's story, he said that "it doesn't seem like a likely story so, yes, I do have reasons not to believe you just wake up with a black eye." (RT: page 1559, lines 11-14)

Angie Doe

Around 2003, or 2004, Angie Doe was in a dating relationship with defendant Paul

Flores. (RT: page 1571-1572, lines 26-4) About six months into their relationship, defendant Paul Flores took Doe to defendant Ruben Flores' house in Arroyo Grande. (RT: page 1574, lines 5-21) On one occasion, she walked towards the back of the house where there are Avocado trees. (RT: page 1579, lines 11-21) Both defendants, Ruben and Paul Flores, were present in the backyard. (RT: page 1579, line 24) Doe stepped into the backyard, walked towards the Avocado trees, got a couple of feet away from the deck, when both defendants re-directed her away from the area by asking her to leave that area. (RT: page 1580, lines 4-17) Paul Flores asked her to come around the house and leave the area of the Avocado trees. (RT: page 1581, lines 18-28) Ruben Flores had the same reaction and walked her towards the front of the house, the opposite end of the property away from the Avocado trees. (RT: page 1582, lines 16-26)

Rick Neufeld

Rick Neufeld served as a Deputy Sheriff for 33 years in San Luis Obispo County. (RT: page 1614, line 25) He was assigned to process the dorm room of Paul Flores, Santa Lucia Hall #128. (RT: page 1615, line 21) He collected the mattress and canvas box spring cover of Paul Flores. (RT: pages 1624-1625, lines 22-21)

Adela Morris

Ms. Morris has been a dog handler for 35 years as of 2021. (RT: page 1659, line 19) She specializes in Human Remains Detection (HRD) and historic and prehistoric burials. (RT: page 1659, lines 22-24) She first started handling dogs in 1986. (RT: page 1662, lines 26-27) She founded the Institute for Canine Forensics, as well as the Canine Specialized Search Team that works with the Santa Clara County Sheriff's Department. (RT: page 1663, lines 15-27) She has previously testified as an expert in dog handling on two previous occasions (RT: page 1665, lines 16-17) She used her dog, Cholla, for both searches where she ultimately testified. (RT: page 1665, line 22) Both she and Cholla were certified by the California Rescue Dog Association (CARDA) during the summer of 1996. (RT: page 1667, lines 2-8) She has received over a dozen awards over her career for her work in Human Remains Detection.

(RT: pages 1668-1669, lines 2- 28) She has certified seven dogs in total for Human Remains Detection. (RT: page 1671, lines 1-2) At the time she was working with Cholla, she and Cholla had responded to approximately 150 searches, all related to Human Remains Detection. (RT: page 1672, lines 21-25) Cholla had numerous successful searches during her career. (RT: pages 1677-1678, lines 6-28) Cholla was even able to detect historic burials, including ones from 1906. (RT: page 1680, lines 18-28)

On June 29, 1996, she was called out to the Santa Lucia dorm at Cal Poly, San Luis Obispo. (RT: page 1682, lines 11-13) She brought her dog Cholla, as well as her backup dog, "Cirque", for the search. (RT: page 1684, lines 7-13) The procedure for running multiple dogs through a scene is do it "blind" so each dog and handler are unaware of the other's findings. (RT: page 1691, lines 11-20) She described the significance of multiple dogs alerting as "very powerful." When multiple dogs do the same thing, that's powerful evidence that the dogs recognize what they have been trained to do. (RT: page 1691, lines 21-28)

Volume 7 – August 11, 2021

Adela Morris continued

The court found that an adequate foundation had been laid in applying the People v. Malgren factors and allowed Ms. Morris to testify as to her search and findings in June 1996. (RT: page 1883, lines 3-7)

Cholla was the second dog to go in after Sierra and Morris did not know the results of the previous search. (RT: page 1883, lines 21-28) Morris reiterated that when multiple dogs alert on the same location they corroborate each other. (RT: page 1884, lines 13-16) Cholla gave Morris "probably the strongest alert I've ever seen her do" on #128 at Santa Lucia, the dorm of Paul Flores. (RT: page 1886, lines 8-10) Cholla alerted repeatedly on the bed on the left side of the room. She also searched the right side but returned to the left side and continued to alert on the left side, showing no interest in the right side of the room. (RT: pages 1886-1887, lines 17-4) Cholla had very strong alerts on the bed area. (RT: page 1889, lines 21-25) Cholla searched every single room on the first floor, as well as every single room on

the second and third floors and did not have any other alerts. No weak alerts, no interest in anywhere else in that dorm other than room #128. Not even a subtle change in behavior. (RT: page 1891, lines 1-15) She returned with Cholla after the mattress had been removed and Cholla repeated her alerts on the desk, the mattress frame, and the area where the mattress had been. (RT: page 1891, lines 2-27) These alerts were also very strong and Cholla was extremely animated. (RT: page 1893, lines 22-23) When discussing an alert on the garbage can, Morris stated that based on her experience it was the overwhelming scent in that location and the garbage can just happened to contain enough scent, even though it might not have been the primary sources. (RT: pages 1895-1896, lines 26-5) Morris testified that this alert was the "strongest alert ever in her career" including Cholla's whole body finds. (RT: page 1951-1952, lines 27-1)

Morris also ran her backup dog Cirque through the Santa Lucia dorms. Cirque was her husband's dog, yet she knew Cirque to reliable and would not have used Cirque if she had any concerns. (RT: page 1900, lines 9-14) When Cirque entered the dorm, he immediately ran down the door and he went straight to room #128 and indicated he wanted to go in. (RT: page 1902, lines 5-8) This was a very strong alert for Cirque. (RT: page 1903, line 2) Cirque alerted on the framework and desk area on the left side of the room. (RT: page 1903, lines 10-22) Cirque was very confident, animated and unwilling to stop his communication to Morris that he was alerting in this location, which was the same location Cholla alerted on. (RT page 1905, lines 16-24) This was a "very strong alert" for Cirque. (RT: page 1905, line 26)

Tim Davis

In May 1996, Tim Davis was a junior at Cal Poly San Luis Obispo. (RT: page 1961-1962, lines 21-1) On the evening of May 24, 1996, he attended a party at 135 Crandall way, and it began around 7:30 to 8pm. (RT: page 1962, lines 5-13) Somewhere between 30 and 40 people attended the party. (RT: page 1963, line 27)

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Volume 8 – August 12, 2021

Tim Davis continued

Davis identified defendant Paul Flores as having been present at the party. (RT: page 2119, lines 20-28) Davis saw the defendant engaging as much as he could with as many girls as he could. (RT: page 2121, lines 1-5) Davis observed the defendant and Kristin Smart laughing or drinking together. They fell in front of him on the ground, then popped back up and continued drinking more. (RT: page 2126, lines 10-16) They were about 5 feet in front of Davis. He remembers seeing Paul Flores laying on his left shoulder and Kristin Smart laying on her right shoulder, both are kind of giggling and embarrassed then they pop back up. (RT: page 2126, lines 19-27) He saw how they were engaging in some type of interaction when they fell together. (RT: page 2127, lines 1-7) He estimated this was around 11:00-11:30pm (RT: page 2127, lines 19-20) Davis observed how both Paul and Kristin were intoxicated. (RT: page 2128, lines 1-3) Davis further remembered seeing Paul's arm around Kristin's waist. (RT: page 2128, lines 23-24) Davis testified that by the end of the night he was sober and has a vivid memory of that night. (RT: page 2129, lines 22-25) After the fall, he again saw Paul and Kristin speaking together a few times and saw Paul "engaged with her." (RT: page 2130, lines 1-11)

At the end of the party, Davis saw Kristin on the lawn and didn't realize she was out there. (RT: page 2130, lines 21-26) He saw her between 1:30am and 2:00am. (RT: page 2131, lines 16-17) He saw Paul 5-10 minutes later when he started walking with Cheryl and Kristin towards the health center. (RT: pages 2130-2131, lines 27-3) It was noticeably cold that evening, in the upper 50s to low 60s. (RT: page 2131, lines 20-21) Prior to starting to walk, he saw a body on the ground. He went over and saw Kristin laying face down, on her arm, in the grass. (RT: pages 2131-2132, lines 27-15) She needed his help to get up off the ground so he lifted her up and engaged her so that she could stand. Davis described it as almost like an elderly person, helping them to a car. He remembered She put her arms around him and said, "I'm so cold." (RT: page 2135, lines 4-16) Davis was holding Kristin

while she was hanging on him, and they started moving with Cheryl Anderson. (RT: page 2137, lines 15-25) He knew that Kristin, in the state she was going to be in, was going to take a 20-minute walk instead of a 10-minute walk. (RT: pages 2138 – 2139, lines 28-4) Davis turned around, and Paul Flores came out, uninvited, from "wherever he was" to join them. (RT: page 2139, lines 13-19) Paul Flores was just standing there and like, "Hey I'll just go with you guys." (RT: page 2140, lines 17-20) Davis further described Paul's behavior as, "He just kind of the darkness and joins us." (RT: page 2152, lines 15-16) From Paul Flores' location you could see directly to where Kristin Smart had been laying face down in the grass. (RT: page 2153, 19-28) From the time he helped her up he was supporting Kristin. (RT: page 2141, lines 14-16) Kristin Smart could not walk on her own. (RT: page 2142, line 15) Around the Health Center, Cheryl Anderson told Davis that she could "take these guys back." (RT: page 2144, lines 20-21) Paul said, "I'll take Kristin, give her to me. I'll take her the rest of the way." (RT: page 2145, lines 20-21) Davis left and went home at that point. (RT: page 214, lines 23-28) Davis described transferring custody of Kristin to Paul Flores: "I picked her up under her armpit, and Paul was next to me this way. And she put her right arm around him, and I remember he put his arm around her waist." (RT: page 2146, lines 19-22) He observed Kristin hanging onto Paul and saw them stumbling. (RT: pages 2147-2148, lines 24-3)

Jennifer Hudson

In August and September of 1996, she was around 17 or 18 years old. (RT: page 2206, lines 11-15) One time, she was skateboarding in San Luis Obispo and the defendant was present. (RT: page 2207, lines 1-15) There were about 6-8 people skateboarding and a radio advertisement came on that piqued everyone's interest. (RT: page 2207, lines 23-28) A Public Service Announcement was read asking if anyone had information about Kristin Smart or her disappearance. (RT: page 2208, lines 2-5) Near Hudson were defendant Paul Flores and another individual named Red. (RT: page 2208, lines 16-17) Flores responded to the PSA by saying that bitch was a dick tease and that he was done playing with her. He buried/put her underneath his ramp in Huasna. (RT: page 2208, lines 25-28) Hudson couldn't

remember whether he used the word, "buried" or the phrase "put her". (RT: page 2208, lines 27-28) Hudson remembered him being very non-chalant and matter of fact. (RT: 2210, line 2) It did not appear to Hudson that he was joking as he was not laughing or smiling. (RT: page 2210, lines 10-18) Hudson was so concerned by the statement that she left in the middle of the social gathering. (RT: page 2211, lines 2-6) She saw the defendant again about a couple weeks later. (RT: page 2211, lines 10-12) She was living off Huasna Townsite Road and was invited to a skate ramp in Huasna by some of her friends. (RT: page 2211, lines 14-18) On the way, she saw Paul Flores pull up in a white, four-wheel drive pick up truck. (RT: page 2211, lines 25-27) When she saw Paul Flores she vomited because she recognized him from the skate ramp in San Luis. (RT: page 2212, lines 9-14) She left and did not call police because she was afraid, and he knew people she hung out with. (RT: pages 2212-2213, lines 22-6) The only person she ever told was Justin Goodwin, who had submitted an anonymous tip with this information in 2004. (RT: pages 2213, lines 19 – 4) In 2019, Justin Goodwin contacted her and urged her to reach out to Chris Lambert, and then she spoke with Detective Cole. (RT: page 2214, lines 6-23) The first time she saw Paul Flores was in a blue or green Ford Ranger truck. (RT: page 2294, lines 10-14) She has guilt every day for not coming forward earlier, and hopes that her information can bring closure. (RT: page 2294-2295, lines 27-10)

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Chief DA Investigator Bill Hanley interviewed defendant Paul Flores on May 31, 1996. (RT: page 3022, lines 21-28)

Chief Hanley began his law enforcement career in 1980 with the San Luis Obispo Police Office and served as a DA Investigator in May of 1996. (RT: page 3022, lines 11-19) The Cal Poly Police Department asked him to reach out to Paul Flores since he was the last person to see Kristin Smart alive. (RT: 3023, lines 7-14) Hanley called the campus store and asked Paul Flores if he would be willing to come to the Cal Poly Police Department for an interview and he replied no problem and he would be there. (RT: page 3023, lines 17-23) Fifteen minutes later, the defendant arrived at the station, but it was very busy that day.

Hanley suggested, and Paul Flores agreed, that they would go into Hanley's vehicle to talk. (RT: 3023-3024, lines 27-4) Hanley thanked him for coming down and told him he was a witness in this case. Flores responded that he had no problem with that. (RT: page 3024, lines 9-13) Flores was not cuffed or detained in anyway and told Hanley he was willing to help in any way that he could. (RT: page 3024, lines 18-24) They went into an unmarked car. Flores was not cuffed and was not locked in the car. (RT: page 3025, lines 4-11) Flores claimed that he knew Smart as Roxy and that she had come up to him and introduced herself but that was the extent of their conversation. (RT: page 3027, lines 23-27) Flores claimed that he did not find Roxy attractive and, "didn't like those type of girls." (RT: page 3028, lines 1-4) Flores also claimed that he did not contact, touch, or talk to her during the party. (RT: page 3028, lines 18-19) Later in the conversation, Flores again claimed he was not attracted to Roxy at all. (RT: page 3029, lines 11-12) Flores claimed that when they arrived at Perimeter and Grand, he said goodbye to Cheryl Anderson and that was the extent of his interaction with Cheryl Anderson. (RT: page 3031, lines 21-22) Paul Floes never told Hanley that he asked Anderson for a hug or a kiss or that she denied him. (RT: page 3032, lines 20-28) Flores then tells Hanley, that Kristin Smart walked off on her own towards her dorm up perimeter from the intersection with Grand. (RT: page 3033, lines 12-14) When asked why, if Smart was so intoxicated, he did not walk her to her dorm Flores replied that he did not think of it. (RT: page 3033, lines 19-22)

Flores stated his father, defendant Ruben Flores, picked him up from Cal Poly the Sunday of Memorial Day weekend and they drove to his father's house in Arroyo Grande. (RT: page 3034-3035, lines 23-3) On May 31, Investigator Hanley saw a discoloration under the right eye of Paul Flores that was consistent with the later stages of a black eye. (RT: page 3036, lines 15-17) On this occasion, Flores claimed he got the black eye from playing basketball on Monday with Jeromy Moon. (RT: page 3038, lines 1-8) Hanley asked why Flores would take a shower if he had a bad taste in his mouth and Flores didn't have an answer. (RT: page 3059, lines 12-19) At the conclusion of this interview, Hanley thanked

Flores, said they would have follow-up questions, and then dropped Flores off on campus. Flores said, "no problem." (RT: page 3040, lines 15-17) During this entire interview, defendant Paul Flores was never cuffed, arrested, or detained in any way. (RT: page 3040, lines 21-27)

Hanley again spoke with Paul Flores on June 19, 1996. Hanley and his partner, Investigator Hobson, went to 710 White Court. Paul Flores answered the door when they knocked. (RT: page 3042, lines 1-4) They said they had some follow up questions and asked if he wouldn't mind coming with them to the Arroyo Grande Police Department. Flores responded that he would go with them and joined them in their car. (RT: page 3042, lines 3-8) In the car ride, Paul again expressed that it was fine for them to ask some more questions. (RT: page 3042, lines 25-26) Paul Flores refuses a polygraph that he had previously agreed to, so the two investigators ask Paul into the interview room and thank him for speaking with them. (RT: page 3043, lines 23-28) The officer never threatened him to do the Polygraph and Flores again indicated he would answer their questions. (RT: page 3044, lines 1-17) The door to the interview room was unlocked, the detectives were not blocking the exit and in fact Flores' back was to the door. Flores was never cuffed, detained, or arrested. (RT: page 3045, lines 1-12) The first few minutes of the interview were not recorded, but the Investigators again thanked him and confirmed he was willing to speak with them. (RT: page 3046, lines 6-16)

The People offered a portion of this interview into evidence that ends on Page 44, Line 20 of the transcript submitted to the court as 33A. (RT: page 3048) In his ruling on defense's Miranda objection to that portion of the interview, Judge Van Rooyen said, "In the court's view, based on the totality of the circumstances, a reasonable person in his position would not feel like he was under arrest, and so I don't find that there was a Miranda violation by not advising him of his Miranda Rights. Again, this is just a ruling on the first 48 minutes of the interview, and I'm not making a ruling on the rest of the interview." (RT: page 3054, lines 13-25)

The video and transcript of the video were stipulated into evidence and Judge Van Rooyen viewed the video. (RT: page 3054, lines 27-28) Amongst other statements, the defendant claims that he did not receive the black eye while playing basketball, but actually hit the steering wheel of his truck. (Exhibit #33A, page 30-31, lines 10-2) The defendant admits he lied originally about getting it playing basketball and says, "Oh it's not really lies. A Fib. So minute, it's not well, I guess you can call it a little white lie." (Exhibit #33A, page 42, lines 17-18)

On cross-examination by Mr. Mesick, Hanley was asked about Paul Flores' claim that he took a shower and why Hanley was concerned with the defendant's answer. Hanley answered, "I guess where I was going with that is if there's some physical evidence on him that would have him take a shower, whether it be blood, anything. That's how come - - it was not that he took a shower." (RT: page 3083, lines 20-28)

Volume 12 – August 23, 2021

Investigator Henry Stewart

Stewart was a San Luis Obispo Sheriff's Investigator assigned to this case in May 1996. (RT: page 3305, lines 14-27) He interviewed Jana Schrock who stated she was a friend of Crystal Calvin (now Teschendorf). She had been out with Crystal and others and had returned to the dorm between midnight and one in the morning. She stayed in Kristin and Crystal's room. (RT: page 3306, lines 9-17) She stated that no one else was in the room when she got home, then she went to sleep. Around 3am, she was awakened by a knock on the window by Ted Munley demanding entry. They smoked a cigarette outside for about ten minutes, then let him sleep on the floor. (RT: 3306-3307, lines 22-24) Schrock did not see anyone else that evening. (RT: page 3308, line 6)

Volume 14 – August 30, 2021

Gail Laroque worked as a dog handler from 1992 until 2001, then continued as a trainer and evaluator. (RT: page 3910, lines 2-9) Her dog's name was Torrey. (RT: page 3910, line 25) Laroque was a trainer, instructor, and evaluator for HRD work beginning in

1994. (RT: page 3911, lines 11-18) Laroque was certified as a veteran handler with CARDA. (RT: page 3920, lines 12-17) Laroque had numerous other certifications including advanced certification in Cadaver and Advanced Forensic Evidence of Body Recovery. (RT: page 3921, lines 8-25) Laroque and Torrey certified together in each of her certifications. (RT: page 3922, line 26) The court overruled defense's objection to her testimony and allowed the questioning to proceed. (RT: page 3967, lines 25-26)

Laroque responded to the Santa Lucia dorm at Cal Poly on June 29th, 1996, with Torrey. (RT: page 3968) She confirmed all handlers worked independently, or blind, from each other. (RT: page 3968, line 16) Laroque began at the main entrance to the dorm and sent Torrey down the hallway to search by herself. (RT: page 3972, lines 2-6) Torrey ran down the hallway, came back, ran down a second time, then did a fishhook and went to a specific doorway that Laroque could not see. Torrey pawed at the door, smelled the bottom of the door, and brought her bringsel (item indicative of an alert) back to Laroque. (RT: 3975, lines 18-25) Laroque confirmed this behavior indicates an alert that Torrey is smelling the scent of a cadaver. (RT: page 3976, lines 14-15) This door led to room #128. (RT: page 3976, line 24) Law Enforcement opened the door to Santa Lucia room #128, and Torrey went to the far-left corner and took her bringsel. She pawed and smelled that left corner. She actually picked up the garbage can and brought it to Laroque. (RT: page 3978, lines 8-15) Torrey only took her bringsel one time, she continued to work the room trying to find the primary source. The strongest scent she found to that point was in the left corner. (RT: page 3978, lines 18-27) The significance of this for Laroque, was that Torrey was working to find the strongest source of scent. "If you think of a scent pool like a balloon, there's the scent will be everywhere, but it will be strongest in some areas and weaker in other areas. And by her repeatedly returning to that location, I would say that there was stronger scent there in that corner." (RT: page 3980, lines 10-16) The fact that Torrey actually picked up the trash can and brought it to laroque is an alert on the trash can. (RT: page 3981, line 2) Torrey went to the bedframe on the left side, which did not have the mattress, and continued to sniff along

the frame. Torrey "worked and worked and worked and worked and worked that bed. She seemed very frustrated, because I could tell that she was getting scent there, but she could not pinpoint, like, the strongest scent." (RT: page 3981, lines 12-20) Torrey again alerted on the left side of the room after the trash can had been removed. (RT: page 3985, line 21) Laroque explained how she later found out that the mattress had been removed on the left side of the room. "If the mattress had been the primary source of scent, that would explain her not being able to pinpoint it on the bedframe itself." (RT: page, 3990, lines 8-12)

Volume 15 – August 31, 2021

Wayne Behrens

As of August 31, 2021, Behrens had been a dog handler for over 30 years. (RT: page 4209, lines 2-3) His dog Sierra was born in 1990, and he has had three other dogs since. (RT: 4210, lines 20-24 Sierra and Behrens were certified in Human Remains Detection by CARDA. (RT: page 4211, lines 1-4) In 1996, he was a member of the Canine Specialized Support Team, the Bay Area Mountain Rescue Unit, as well as other organizations. (RT: page 4213, lines 3-27) Defense objections were overruled, and Judge Van Rooyen found the Malgren factors have been met for Behrens and allowed the testimony. (RT: 4237, lines 18-20)

Behrens conducted a search at Cal Poly San Luis Obispo on June 29, 1996, with his dog Sierra. (RT: 4237, lines 24-27) Sierra searched along the outside of the dorm and jumped onto a window frame outside the Santa Lucia dorm. (RT: 4239, lines 6-8) Sierra entered through the southern door, went ahead of Behrens, came up to a door, turned right, and put her paws on the door indicating she wanted to go inside Santa Lucia dorm #128. (RT: pages 4240-4241, lines 14-23) Behrens noted how this was a strong response. (RT: page 4242, lines 7-8) He explained, "the wind was out of the east coming down sloped towards the ocean, so the wind would have been coming through the dorms out into the area I was searching. So her response to jump onto the windowsill, was by itself, and this is outside the dorms, was unusual. It indicated there was a strong scent. Her going past all the other dorm rooms and all the other people and ignoring all of those and proceeding up and then putting

her paws on that particular door, was also unusual. It was a very strong response to get. The deputy who was behind me kind of went, 'wow'." (RT: page 4242, lines 14-28) Sierra went into #128, sniffed around the room, went to the left side, then decided and alerted to Behrens that she had a definitive source for Human Remains. (RT: page 4243, lines 22-27) Sierra went to the bed at the level of her nose, then reported the alert. (Rt: page 4244, lines 10-12) Behrens opined that Sierra indicated she had an unambiguous scent. Sierra was very clear and it was a strong alert. "this was not ambiguous." (RT: page 4245, 21-24)

Faye Springer

Springer has worked for approximately fifty (50) years as a criminalist. She received submission of materials from the SERI lab related to this case. (RT: page 4294, lines 24-25) Inside were evidence lifts. (RT: page 4295, lines 24-28) While viewing under a stereomicroscope, she observed fibers that would be suitable for comparison at some point. (RT: page 4297-4298, lines 23-15) She noted there were blue, red, black, uncolored, gray, and some lightly colored fibers. (RT: page 4297, lines 20-2) Some of these fibers were synthetic and some were cotton. (RT: page 4298, lines 6-12) Over her 50 years, she has seen fibers fade or degrade over time, depending on whether they are protected in an environment that's not exposed to sunlight or weathering conditions. (RT: pages 4300-4301, lines 20-8)

DA Investigator JT Camp

Camp attended Cal Poly and graduated in 1995. (RT: page 4328, lines 1-4) He walked the path from Crandall Way to the Santa Lucia dorms and it took him 8 minutes and 35 seconds. (RT: page 4336, line 20) The walk was approximately .44 miles. (RT: page 4336, line 25)

Clint Cole

Cole testified that he reviewed the phone records contained in People's exhibit 31 and saw that on Sunday, May 26, 1996, Paul Flores made a call to Ruben Flores at 9:47am to Ruben's Arroyo Grande home from the dorm room. (RT: page 4376, lines 17-19) There were

no calls on Saturday and no other calls from the phone on Sunday, May 26. (RT: page 4376-4377, lines 26-1)

On May 19, 2021, Cole responded to the home of Ruben Flores at 710 White Court with a Search Warrant for a Buccal swab on defendant Ruben Flores. (RT: page 4377, lines 10-22) Cole approached Ruben Flores who pointed to the names of Susan Flores and Mike McConville on the warrant and asked why I would be taking their DNA. He said, "They did not commit a felony, only I did." (RT: page 4378, 6-11)

During Cole's discussions with Jennifer Hudson, she mentioned seeing Paul Flores in a green or blue Ford Ranger on one occasion, then a white foreign pickup truck she believed to be four-wheel drive on the second occasion. (RT: page 4380, lines 18-23) He then identified certified DMV documents, as well as a photograph from the case file. These were marked as People's 413 and 413-B. The photograph showed a blue/green Ford Ranger with a license plate that matched the DMV paperwork showing ownership by Paul Flores.

Volume 16 – September 1, 2021

Detective Clint Cole continued

Cole identified People's 414 and 414-B showing Ruben Flores owned a white Nissan pickup in May 1996.

On Cross-Examination, Mr. Mesick asked detective Cole if Cole thought Ruben Flores just mis-interpreted Cole's question. Cole said, "No, I do not. I even explained – he asked me why he was needing to give another one. And I explained why to him. And when he made this statement, there was no direct question from me at all. He just asked me why I was getting the other two subjects because he is the one that committed a felony." (RT: pages 4589-4590, lines 19-3)

On Cross-Examination, counsel asked detective Cole how he formed the reasonable suspicion that a crime was committed on the property of Ruben Flores. (RT: page 4590, lines 10-13) Cole responded, "Well, we had served prior search warrants where we discovered anomalies and prior evidence of digging in a hole underneath Mr. Flores's deck. And in that

hole, four feet down, we found the fibers that were testified to yesterday along with human blood." (RT: page 4590, lines 14-18) Cole continued, "the blood was found four feet down – human blood was found four feet down. Very suspicious staining in the soil that would be indicative of something being in there. It could potentially be related to human remains. We also have a witness you mentioned that saw some suspicious activity on March (February) 9, 2020 where there was a trailer parked down on the side of Mr. Flores's residence. It appeared that they were up at odd hours. Both Susan Flores and Mike McConnville were there. So we were able to seize that trailer and found suspicious activity inside that trailer, which caused me to have enough, in a judge's opinion, to get a warrant for Mr. Flores' DNA." (RT: page 591, lines 6-19) Cole continued, "some of the other things we discovered was inside the utility trailer that was brought down alongside of the house on February 9th, there was a fence moved to arrange for that. As I said, Mrs. Flores and Mike McConville appeared to have stayed the night that night. Later, we seized that trailer. And that trailer was parked in away where it was facing frontwards on the side of the house so that the rear of the trailer was facing towards the neighbors. There was also a large retaining wall area that allows that trailer to be not seen from the public the way it was parked. We searched the trailer with some Bluestar, which is a chemical that detects bodily fluids. And we searched – sprayed the entire trailer, and there was a very suspicious stain – this cargo trailer had on the front door, on the right side of it – so most trailers have like, you know, the rear fold-down door. This had a second door which was on the right side which would have been completely concealed from the roadway on White court and the public. Inside that stain – or excuse me. Inside that trailer was a suspicious Bluestar reaction, which looking at it actually looks like it could be similar to a human body laying on its side. That was one of the reasons we were requesting DNA. We also know that that stain can react to certain cleaning chemicals as well, as if that area was cleaned. There was no bluestar reaction anywhere else in the trailer, just in that one particular spot." (RT: pages 4592-4594, lines 28-2) Cole continued, "I also spoke to Angie (Doe) who has testified, but she said that – she told me that after being on that property, and

based on the reaction of Mr. Ruben and Paul Flores, that she was very suspicious that something was going on there. (RT: page 4595, lines 19-27)

Cole continued, "Well, based on my knowledge of the case, no timeline for Paul Flores from 5 in the morning to 6PM at night on that Saturday. I believe that the family did assist him, potentially using one of the vehicles at their disposal. Paul's sister lived approximately one mile from campus. He had called her that night on his way to the party. And based on that timeline and then learning the blood, I think that that is where Kristin went immediately that morning on the 25th, 26th Memorial Day weekend." (RT: pages 4596-4597, lines 22-4) Cole continued, "based on that, other statements that the family was together that entire weekend or most of that weekend at the residence, the fact Paul Flores had scratches on his knees, the black eye, all of those things were a consideration." (RT: page 4597, lines 11-15) Cole continued, "Paul Flores was seen with a black eye on Sunday Ruben Flores told two different stories on when he noticed the black eye. The rest of the family is saying that, I believe, they did not see the black eye until Monday. But the court has heard testimony from a person who did see it positively on Sunday. (RT: page 4597-4598, lines 25-2)

Ed Chadwell

In 1991, Mr. Chadwell was a general contractor building houses. (RT: page 4625, lines 24-28) He built the house at 710 White Court in 1991 for Ruben and Susan Flores. (RT: page 4627, lines 2-8) Chadwell did the underground work including the foundation and the framing. He was there every day. (RT: pages 4627-4628, lines 27-4) During the construction of the house no human bodies were found. (RT: page 4630, line 12) Nor did he find any buried monkeys or ferrets. (RT: page 4630, lines 24-28) There were no injuries to the people who were building this house either. (RT: page 4631, line 3)

Volume 17 – September 2, 2021

Kris Black is the Assistant Director of the Santa Clara County Sheriff's Office Search and Rescue Team including their specialized K-9 group. (RT: page 4812, lines 11-13) In 2021, she had a dog named Annie. (RT: page 4814, line 10) Annie is her fourth dog, all three

of her previous dogs were CARDA certified in Human Remains Detection with her as the handler. (RT: page 4815-4816, lines 1-23) She has been a handler for 19 years and is an instructor in the areas of dog handling and Human Remains Detection. (RT: pages 4817-4821, lines 7-23) In the 2000s, and years prior, it was the industry standard for dogs to have multiple certifications. (RT: page 4831, lines 1-3) The court specifically found that the Malgren factors have been met and defense objection was overruled and the testimony admitted. (RT: page 4864, lines 2-4)

On March 15, 2021, Black responded to 710 White court in Arroyo Grande to perform a search with Annie. (RT: page 4832, lines 9-11) She drove separately from handler Karen Atkinson who responded with K9 Amiga. (RT: page 4832, lines 14-18) She did not see any portion of Atkinson's search, and this was a blind search. (RT page 4833, lines 10-15) Black deployed Annie to search the backyard and was asked to search underneath the deck and underneath the house. Annie showed a change in behavior in a particular area underneath the deck that is consistent with when she is in odor. (RT: page 4835, lines 16-21) Annie consistently worked this particular area and showed all the behaviors including nose down, heavy breathing, snorting, stepping out, coming back and searching in the area, but she did not go to her final response. (RT: page 4835, lines 21-25)[1] Black saw all the behaviors that she normally sees when Annie is working odor except for a final response. (RT: page 4836, lines 23-24) This suggests to Black that there was enough information there odor wise for her to register that scent she has trained on, but it, whatever reason, was not enough for her to go to her final response. The lack of a primary source would be consistent with those findings. (RT: page 4837, lines 1-8)

Karen Atkinson

Atkinson is a dog handler with the Santa Clara County Sheriff's Department Canine

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[1] Black drew this area on a photograph that was marked into evidence. This location is the same location under the deck where Detectives dug and found human blood. This prosecutor believes that exhibit to be People's #98, however due to the court retaining the exhibits I am not certain of the exhibit number. The record indicates on page 4844 that Black used exhibits #97, #98, and #11 to orient herself

Specialized Search Team and has been a certified dog handler since 2009. (RT: page 4866, lines 11-20) Her dog, Amiga, has been certified in Human Remains Detection since 2013. (RT: page 4866, lines 20-26) Atkinson is certified in Human Remains Detection with multiple dogs. (RT: page 4867, lines 20-22) She is certified with CARDA and the Institute for Canine Forensics. (RT: page 4868, lines 10-17) The court overruled defense's objection, found the Malgren factors have been met, and admitted the testimony. (RT: page 4883, lines 17-18)

On March 15, 2021, Atkinson traveled to Arroyo Grande with Amiga to perform a search at 710 White Court. (RT: pages 4883-4885, lines 23-1) She ran Amiga under the deck, inside the lattice work and observed Amiga have a change of behavior. (RT: page 4885, lines 13-22) In the area inside the lattice up the incline, Atkinson described the change of behavior as "head pops" and sniffing. Atkinson remarked how it was notable to her as a handler. (RT: page 4887, lines 12-24) She described this as Amiga's "characteristic behavior when she detects her target odor, that being human remains. (RT: page 4887-4888, lines 28-3) Atkinson further explained how it appeared to her that Amiga briefly encountered and detected some of her target odor. (RT: page 4888, lines 16-17) Amiga can be in target odor for a certain time period without finding where things are located. (RT: page 4900, lines 4-10)

Shelby Liddell

Liddell is a Forensic Specialist for the San Luis Obispo Sheriff's Department. (RT: page 4907, lines 26-28) Her job duties include responding to a crime scene to photograph the crime and process for evidence to take back to the lab. (RT: page 4908, lines 3-16) She has been a Forensic Specialist for three years. (RT: page 4909, line 2) She was assigned to process a scene on March 15 and 16 at 710 White Court in Arroyo Grande. (RT: page 4910, lines 10-11) She begun the excavation on March 16 under the supervision of Forensic Archeologist Cindy Arrington who collected most of the samples. (RT: page 4912, lines 7-15) The Sheriff's team dug underneath the deck and to the left, up the incline. (RT: page 4913, lines 5-18) Forensic Archeologist Arrington, as well as Liddell's partner Forensic Specialist West, watched while the excavation begun. Detectives were able to start digging, then dig sideways

up the incline without issue while the deck was in place as evidence by People's #109. This photograph plainly shows that the defendants would have been able to dig the hole this location.

About three feet down they noticed changes in the soil. It had a dark exterior irregular border which was unique to any of the other locations they excavated. It was not seen anywhere else. (RT: page 4916, lines 3-16) After they saw the soil staining, Archeologist Arrington started digging in the hole and tried to follow how far down the staining was going. (RT: page 4017, lines 14-18) At around the four foot of depth mark, Arrington collected part of the dark staining and put it into the collection container. (RT: page 4918, 16-21) This was labeled at RMS item number 776. (RT: page 4928, lines 5-6) Liddell identified People's exhibits 107 and 108 as showing some of the progression the dark staining made down into the excavation hole. (RT: page 4926-4927, lines 2-4)

The Sheriff's office returned April 13 and 14 to do another dig in the location underneath the deck. (RT: page 4929, lines 2-11) On this date, the entire deck was removed to dig further up the incline. (RT: page 4930, lines 16-25) On People's #153, Liddell described a collection of area A, evidence item 847, and said this stain appeared darker to her than some of the stains higher up towards the surface of the soil. (RT: page 4944, lines 4-11) She drew on the exhibit with a blue sharpie the rough area where she took the sample. (RT: page 4944, lines 20-21) On People's #155, she did the same from area B, collection sample #4, evidence item 849. (RT: page 4945, lines14-28) She targeted the areas marked because they were the thickest areas with the darkest staining. (RT: page4946, lines 4-5) In People's #160, Liddell took a sharpie and indicated where she took soil from area E #1. She selected the location because it seemed to be a thick area of darker staining. (RT: page 4949, lines 1-8) In People's #172, Liddell used a sharpie to indicate where she took a sample from section #2 and stated she chose this spot to collect the sections of soil that were darkest and thickest. (RT: page 4951-4952, lines 14-18)

On April 22, 2021, she used a Bluestar technique on a white Haulmark Passport Cargo trailer license plate 4ML7869. (RT: page 4955, 12-28) She described the trailer as full of items including tools, files and paperwork. She testified it was hard to have more than one or two people in there at a time. (RT: page 4956, lines 1-9) People's #314 shows the trailer in place at 710 White Court. (RT: page 4958, lines 20-24) People's #313 shows a picture of the application of the Bluestar and a view of the chemical luminescing with a reaction. (RT: page 4958, lines 17-19) This location is inside a side door that was circled on People's #314. (RT: page 4959, lines 7-9) If the trailer went backwards into the property, this side door would end up adjacent to where they dug underneath the deck. (RT: page 4959, lines 10-14) While the Bluestar is a test for the presence of human blood, false positives can happen if the area has been cleaned with Chlorine bleach cleaners. (RT: page 4960, lines 19-27) People's #316 is a composite photo of the Bluestar reaction inside the trailer. (RT: page 4961, lines 14-16)

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Phil Hanes has been an archeologist for 15 years. (RT: page 5108, lines 4-17) His entire career has been specializing in remote sensing archeological sites. (RT: page 5111, lines 11-18) Hanes specializes in the use of ground penetrating radar (GPR). This involves establishing a tight grid on the ground surface and using a ground penetrating radar unit to send radar pulses within the ground and receive a signal back to determine buried anomalies. (RT: page 5111, lines 21-28) An anomaly is a consistency change to the underground environment that is visible on the radar but might not be defined until excavation. (RT: page 5112, lines 8-13) On March 15 and 16, 2021, Hanes and his partner Cindy Arrington were hired by the San Luis Obispo Sheriff's Office to do an archeological evaluation of 710 White Court. (RT: page 5116, lines 9-20) Hanes developed 11 possible grids to review at the property. (RT: page 5122, line 3) Grid 1, underneath the deck showed the most promise because the anomaly was approximately four by six feet, giving it the size requirements to be big enough to be potentially a burial site for a human body. Its characteristics observed in the

3D rendering of the GPR data made it an anomaly of sufficient size for a human body. (RT: page 5149, lines 5-11)

Cindy Arrington

Arrington is an Archeologist specializing on prehistoric, historic, and human remains. She has a Bachelor's in Anthropology and a Master's degree in Historical Archeology with an emphasis on human remains. (RT: page 5182, lines 6-21) She has performed fieldwork since the late 1980s. (RT: page 5183, line 14) She has evaluated hundreds of sites dealing with possible human remains. (RT: page 5184, lines 15-18) She is a registered Professional Archeologist and has been since 2004. (RT: page 5184-5185, lines 25-5) She was hired by the San Luis Obispo Sheriff's Office to evaluate and excavate at 710 White Court. (RT: page 5186, lines 19-24) She noted how Grid 1 had an anomaly that is the correct proportions to hold human remains. (RT: page 5190, lines 16-18) During the excavation, she noticed that there was an odd staining. (RT: page 5192, lines 20-21) She observed a "bathtub ring" in the soil in the anomaly. "In other words, you could see the stain in the sidewalls of the hole we were digging where the anomaly was. So if you envision a bathtub, the anomaly is the tub, and you can see a stain running along the \sides of it once you have excavated down." (RT: page 5193, lines 1-13) In soils you look for stratigraphy as you're excavating a hole. There is a continuity to those unless there has been an interruption due to erosion or human intervention. (RT: pages 5193-5194, lines 27-15) Arrington noticed how the strata indicated that this soil has been disturbed and she noticed a very thin ring. It doesn't look like the other soil, it's a bit erratic, and you can tell at some point in time it's fluid that has gotten into the hole. (RT: page 5194, lines 16-24) Ms. Arrington concluded, "For an archeologist who has a great deal of experience in excavating human remains, that stain looks like a decomposition stain, or a cadaver-soaked stain. It's called a few different things. But, nonetheless, as a body decomposes it starts to liquify, and so there's a very distinct stain that you will see. If a burial has never been disturbed, you'll be able to outline the burial because there will be a nice big ring around it where the body has decomposed and the liquefaction has slowly

spread out. So this ring is much smaller because the soil, in my professional opinion, had been dug previously in what we identified as the anomaly." (RT: page 5195, lines 6-22) In describing the significance of the darker stain, Arrington stated, "it does not match the stratigraphy in the soil surrounding the anomaly. It is indicative from an archeological standpoint of what one would see in a decomposition stain where there had been human remains. (RT: page 5200, lines 10-16) This is generally a good indication of burial because "one of the first things you want to look for is the staining. It almost always encompasses a human burial. That can be a little different depending on soil types, environment, how wet the soil is, how dry it is, temperature. But when you see a staining situation like that, as an archeologist you think there's a burial." (RT: page 5201, lines 14-23) In discussing People's #107, Archeologist Arrington opined that "there is no defined stratigraphy, meaning the soil had been previously dug. There is no continuity. Second, there's that very fine line of staining that runs from the southwest corner of the photograph up to the northeast corner of the photograph." (RT: page 5202, lines 22-27) The significance of this is that the staining should not be there. "it encompassed the entire circumference, if you will, of the anomaly. We found it in varying thickness and visibility on all sides of the anomaly area. As an archeologist it says to me that something was there and it leaked fluid. (RT: page 5203, lines 1-7) "One would expect to see that whatever had leaked the fluid would still be there. In this case we did not – as an archeologist, I did not find anything in the excavation of the anomaly that would have caused this fluid leaking state." (RT: page 5203, lines 11-15. This suggests "that whatever had caused the fluid leaking had been removed." (RT: page 5203, lines 17-18) Arrington described how there wasn't a definitive bottom to the staining as you would expect, she concluded that this shows the hole had been excavated and something removed. (RT: page 5204, lines 3-17)

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Ruling on Motion to Quash Subpoena

Judge Van Rooyen ruled that "I don't find that the defense has made the threshold

showing that by putting Mr. Lambert on the stand, in addition to all of that, that there's a reasonable probability that the information that he would provide would materially assist in Mr. Flores' defense." (RT: page 5424-5425, lines 26-6)

Clint Cole

He transported items 775 and 776 to the SERI lab for testing on March 17, 2021. (RT: page 5427, lines 8-13)

Angela Butler

Butler is Forensic Serologist, or a Forensic DNA Analyst, for the SERI lab. (RT: page 5438, lines 13-21) She has worked as a serologist for 20 years and is serving as the lab manager. (RT: pages 5442-5443, lines 18-23) Her duties involve testing samples for blood and DNA. (RT: page 5443, lines 24-28) SERI uses the SERATEC HemDirect test. It is a very sensitive test that is human specific, though it cannot exclude higher primates or ferrets. (RT: pages 5446-5447, lines 21-28) She tested sheriff's items 775 and 776. 776 was re-labeled as SERI #27. (RT: page 5457, lines 1-10) She found that Item #27 had pieces of colored material that were of interest. She did presumptive and confirmatory tests for blood. (RT: page 5459, lines 14-28) She took six total samples from item 27, all six were presumptive positive for human blood. She then proceeded to the confirmatory tests where one was negative, two that were weak positive for human blood, and three that were positive for human blood. (RT: page 5460, lines 15-20)

SERI also later received items 831, 847, 859, 863, which were re-numbered as SERI #34, #44, #45, and #40 respectively. (RT: page 5462, lines 5-24) With regards to item #44, Butler obtained three confirmatory tests positive for human blood, two weak and one regular. (RT: page 5463, lines 24-28) With regards to item #40 Butler obtained three confirmatory tests that were positive for human blood. (RT: page 5464, lines 10-11) With regards to #41, Butler obtained two weak positive confirmatory tests for blood and two negative tests. (RT: page 5465, lines 13-14) With regards to item #45, she obtained a weak positive result on a confirmatory test for human blood. (RT: page 5466, line 18) In item #41, Butler observed

small clumps of material. She broke up the clumps which contained small, little fibers, and preserved those on a gel lifter[2]. (RT: pages 5466-5467, lines 23-17)

Robert Cudworth

Cudworth testified that in May of 1996 he was a patrol officer with the Cal Pol Police Department. (RT: page 5532, lines 8-9) He interviewed Paul Flores on May 28, 1996, and Flores claimed he knew of Kristin Smart but didn't talk to her that night. (RT: page 5533, lines 27-28) Flores never told Cudworth he asked Cheryl Anderson for a hug and kiss, told Cudworth he was not interested in Kristin Smart. (RT: page 5535, lines 12-17) On May 31, 1996, he noticed the defendant's black eye and scrapes on his knees but did not notice the black eye on May 28 or get a look at the defendant's knees. (RT: page 5535-5536, lines 24-2)

JT Camp

Camp spoke with Investigator Kennedy who stated that he seized several items from the dorm room of Kristin Smart. (RT: 5548, lines 1-6) Among these items was Ms. Smart's Social Security card, bank card, checkbook, Stenner Glen ID card, among other items. (RT: page 5551-5556, lines 7-27)

Volume 20 – September 9, 2021

Shelby Liddell continued

Liddell testified that it took detectives about one hour to dig two feet on March 15, 021. (RT: page 5796, lines 11-14) During the entirety of the investigation, no primate, ferret, or weasel remains were ever found. (RT: page 5797, lines 1-21) Liddell admitted she is not a Forensic Archeologist, does not have a degree in Archeology, does not have a degree in Anthropology, is not a Registered Professional Archeologist, has never been a Professional Registered Archeologist, has never worked as a Forensic Archeologist, and has never even worked as an Archeologist. (RT: pages 5797-5798, lines 22-11) She confirms her job is to document and collect evidence at a crime scene and this is the exact reason why a Forensic Archeologist was specifically brought to this site. (RT: page 5798, lines 12-24)

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[2] These were the fibers evaluated by Faye Springer

Liddell identified People's #179 as a picture she took during the April excavation. (RT: page 5799, lines 15-21). It depicts staining on the side wall of the location underneath the deck. Liddell circled it on the exhibit. (RT: page 5799, lines 22-28)

Volume 21 – September 20, 2021

Jennifer Hudson continued

Hudson confirmed that Counsel Mr. Sanger's question that "you told Detective Cole that the reason you thought it was a for wheel drive pickup truck is that Chris Lambert showed you drone footage or said he had drone footage of a four wheel drive pickup truck was out on the property that belonged to the Flores family" was incorrect. (RT: page 6030, line 3) Hudson testified that she doesn't "believe anybody came to me with information about any Ford Ranger" (RT: page 6033, lines 22-26) She had not even listened to the podcast when she visited Huasna. (Rt: page 6034, lines 1-3)

Clint Cole continued

Cole spoke with David Stone who was a tenant at 710 White Court for about ten years. (RT: page 6049, lines 5-7) Stone described an incident seven or eight years prior where there was a plumber at the house for a plumbing issue, and Ruben Flores refused to allow the plumber under the deck and crawl space. (RT: page 6050, lines 14-22) Stone said he had never seen anyone go under the deck in the ten years he lived at the house. (RT: pages 6051-6052, lines 25-3) He stated he briefly stored two 55-gallon drums underneath the deck on the right side of the lattice, but Ruben Flores demanded he move them from under the deck. (RT: page 6052, lines 16-28)

On August 10, 2021, Clint Cole spoke with Brent Moon who dated Jennifer Hudson during the time she was at the skate ramp. (RT: page 6058-6059, lines 12-20) Moon called Cole to discuss a subpoena from defense and asked about the time frame. Cole told him it would have been about Memorial Day 1996. Moon stated this made a lot of sense to him because he and Jennifer Hudson broke up sometime between June and either August or

September of 1996. Jennifer Hudson never returned to the skate ramp. (RT: page 6060, lines 1-14)

Jamilyn Holman

Holman testified that she is a neighbor to Ruben Flores and had a clear line of sight to his house in February 2020. A couple of days after February 5th, she saw there was a cargo trailer backed up into the driveway at 710 White court. This was unusual to her because she had never seen trailers at the residence, and she knew that had just been a search. (RT: page 6071, lines 14-28) She saw Ruben Flores there, as well as Susan Flores, and Mike McConville. (RT: page 6072, line 17) Later that evening she saw the cargo trailer had been pulled to the side of the house by the red SUV. (RT: page 6073, lines 11-22) She had never seen the cargo trailer before and believes this was four days after the search by law enforcement. (RT: page 6073, lines 23-28) All of the vehicles she saw were there the entire night. This was unusual because she had never seen both vehicles spend the night before. (RT: page 6075, lines 14-24) She identified People's #82 through #93 as photographs taken of the vehicles at 710 White court that night. (RT: page 6079, lines 14-15)

ARGUMENT

I.

AN INFORMATION MAY NOT BE SET ASIDE IF THERE IS SOME RATIONAL GROUND FOR ASSUMING THE POSSIBILITY THAT DEFENDANT HAS COMMITTED AN OFFENSE.

An information will not be set aside if there is some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it. (*Rideout v. Superior Court* (1967) 67 Cal.2d 471, 474.) "On a motion to set aside an information, the question of guilt or innocence of the defendant is not before the court, nor does the issue concern the quantum of evidence necessary to sustain a judgment of conviction. The court is only to determine whether the magistrate, acting as a man of ordinary caution or prudence, could conscientiously entertain a reasonable suspicion that a public offense had been

committed in which the defendant had participated." (*People v. Jablon* (1957) 153 Cal.App.2d 456, 459.) Neither the trial court in a section 995 proceeding (*People v. Landry* (1964) 230 Cal.App.2d 775, 779; *Hacker v. Superior Court* (1968) 268 Cal.App.2d 387, 392-393.) nor a reviewing court on appeal therefrom (*Rideout v. Superior Court*, *supra.*, 67 Cal.2d at p. 474; *People v. Cirilli* (1968) 265 Cal.App.2d 607, 612-613.) may substitute its judgment as to the weight of the evidence for that of the committing magistrate. "Although the magistrate, in reaching his decision, may weigh the evidence, resolve conflicts, and give or withhold credence to witnesses, such a balancing of the evidence is not within the powers of a tribunal reviewing the magistrate's order." (*Perry v. Superior Court* (1962) 57 Cal.2d 276, 283-284.) Every legitimate inference that may be drawn from the evidence must be drawn in favor of the information. *People v. Hall* (1971) 3 Cal.3d 992, 996, quoting *Rideout v. Superior Court*, *supra.*, 64 Cal.2d 474.)

Consequently, an information should not be set aside pursuant to Penal Code section 995 as long as there is some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it. (*People v. Hall*, *supra*; *Rideout v. Superior Court*, *supra.*) In other words, an indictment or information should be set aside only when there is a total absence of evidence to support a necessary element of the offense charged. (*People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1226; *Somers v. Superior Court* (1973) 32 Cal.App.3d 961, 963.)

A. <u>Judge Van Rooyen had a rational basis for his holding order as to Count 1 for Paul Flores and made a record of that rational basis</u>

Judge Van Rooyen made the following record specifically stating it was for a reviewing court: "In the court's view, one reasonable interpretation of the testimony and the exhibits as to Paul Flores is that on May 26, 1996, he had contact with Kristin Smart at the party on Crandall Way, contact which he later minimized in interviews with law enforcement. The evidence suggests he was aware of Ms. Smart's level of intoxication after seeing her laying on the ground in front of the house as the party was breaking up. The evidence suggests he

volunteered to join the small group walking her to the dorms and that he later encouraged Cheryl Anderson to leave after asking her for a huge and a kiss and being denied.

Apparently, the last time Kristin Smart was seen alive by anyone other than Paul Flores was as she was walking up Perimeter Drive with him towards the red brick dorms at Cal Poly. At that time, the evidence suggests she was very intoxicated and needed help standing up. She had been leaning on Tim Davis and was leaning on Paul Flores, in other words, dependent on them for movement. Paul Flores's dorm room in Santa Lucia Hall was close to where he was last seen with Kristin Smart. No one saw him from the time that Cheryl Anderson left him and Kristin Smart until he went to dinner the next day with friends in the evening.

In the Court's view, the evidence suggests Ms. Smart never returned to her room. Her important belongings remained on her bed undisturbed. Jana Schrock, the young woman who slept in the other bed in Ms. Smart's room that night, did not see her return, although Ms. Schrock was also apparently under the influence of alcohol or had been consuming alcohol. It was not to the point where she was unable to hear Ted Munley knocking or to smoke a cigarette with him later or to let him in.

The court did not hear of any credible sighting of Ms. Smart after that night. I understand there were times in the past when Ms. Smart was unaccounted for a day or two. That behavior does not explain a 25-year disappearance. And for the purposes of preliminary hearing, there was probable cause, that is, a strong suspicion to believe that Ms. Smart is deceased.

Paul Flores had a black eye in the days after Kristin Smart went missing. And although there is some dispute about when that black eye appeared, defense counsel argues it could have happened during a basketball game on Memorial Day in 1996. But Paul Flores admitted to investigators when he said he got the black eye playing basketball. He minimized the lying and said it was a small lie, but he admitted that that was not how he got the black eye, and he late said he got it working on his car.

A friend, Jeromy Moon, said he saw the black eye before playing basketball on Labor Day. One reasonable interpretation of this evidence is that Paul Flores was caught in a lie, and there is an inference of consciousness of guilt that he somehow got the black eye during a struggle with Ms. Smart. It's not the only inference, but it is an inference, a reasonable inference, and this is preliminary hearing.

On June 29, 1996, the Santa Lucia dorm was searched by dog handlers with dogs trained to alert on human remains. Four dogs independently alerted on Paul Flores's dorm room and when let into that dorm room, the dogs alerted on items on his side of the room, including on the mattress when it was in the room, and the bed frame area. There were no alerts or interest in any other area of the dorm.

I understand that no human remains, blood, or trace evidence was found in the room. The room had apparently been cleaned after Mr. Flores and his roommate moved out. The defense argues that this made the room stale or contaminated, but in People v. Westerfield, a 2019 case, that's 6 Cal.5th 632, the California Supreme Court held that the 5th Malgren factor requiring proof that the trail has not become stale or contaminated is not an independent requirement for admission of dog trailing evidence. So, in the Court's view, an adequate foundation was laid under Malgren as to all the dogs and the dog handlers.

There was extensive cross-examination of the dog handlers, and I understand from the questions asked that there may be different expert view regarding the significance of the cadaver dog evidence. But at preliminary hearing, no opposing expert was called to dispute the evidence. One reasonable interpretation is that human remains were recently in Paul Flores's dorm room. And I should note for the record that I did not rely on the cadaver dog evidence alone in reaching the holder order. It is one part of the evidence that I considered in finding probable cause had been established. The totality of the other evidence provides some corroboration.

That brings us to the more recent excavations at 710 White Court where Ruben Flores lived that happened in March and April of this year. There was evidence of a change in

behavior of two dogs handled by Kristine Black and Karen Atkinson under the deck there. I used that evidence only to explain where the archaeologist chose to excavate, not as proof of the human remains under the deck.

If we are going to trust the integrity of cadaver dog evidence, then there has to be a clear line between an alert indicating positive for human remains and a non-alert. So in the Court's view, trying to morph a change in behavior into the same significance as a positive alert clouds the issues.

But in any event, archeologist and ground penetrating radar specialist, Philip Hanes, surveyed under the deck with his instruments and identified an anomaly, disturbance in the soil the size of a human body. The area was excavated by Cindy Arrington, another archaeologist with expertise in identifying burial sites. She found soil staining, which she said was in a pattern consistent with decomposition of a body or what she referred to as cadaver soaked. The staining had been disturbed as if the source had been removed after the staining happened, in her opinion. She said, in her opinion, this was a good indication of a burial at that location.

I know that the defense argues or asks the question how do you dig out a body without also digging out the staining, in other words, arguing that the staining occurred after the soil disturbance occurred. But both Ms. Arrington and Shelby Liddell testified that the staining had been disturbed in areas and was discontinuous. And when questioned closely about the photographs of the soil staining by Mr. Sanger, Liddell was careful to say that the staining in the photographs had not been disturbed. There was nothing in her testimony, in the court's view, that eliminated the possibility of a body having decomposed in the area of the anomaly, which was later dug up in a way that eliminated some but not all of the decomposition staining.

These soil samples from the staining later tested positive for human blood at depths that make it unlikely that the blood was there accidentally. I understand the testing does not eliminate other primates or ferrets or weasels, but this is preliminary hearing. A reasonable

interpretation of the evidence and more likely, quite frankly, is that the staining contained human blood. There was no DNA evidence found. That fact did not change Serologist Angie Butlers opinion that human blood was present in the soil samples. Of course, the lack of DNA also means there's no way to say definitely who the human blood came from. Nothing links it definitively to Ms. Smart. But for preliminary hearing purposes, there's enough to support a strong suspicion that a burial site existed under the deck at Ruben Flores' house." (RT: page 6304-6309, lines 9 -22)

The court actually made a record of its rational basis and a review of the transcript shows that every item of evidence mentioned by the court was presented at Preliminary Hearing. As the court stated, the evidence provides a strong suspicion that a crime was committed and the defendant was the one who committed it.

B. Judge Van Rooyen had a rational basis for holding defendant Ruben Flores to answer for Count 2

In addition to the quote above from the holding order as to Paul Flores, Judge Van Rooyen added the following: "So as to Ruben Flores then, the evidence suggests that this burial site was in an area he exerted control over and was protective of. A reasonable inference as to Ruben Flores is that he had knowledge of what or who was buried there that caused the staining and the presence of human blood. And given the other evidence, there is a strong suspicion it was Ms. Smart's remains, therefore, given the totality of the evidence, there is probable cause to hold Ruben Flores to answer as an accessory." (RT: page 6309-6310, lines 23-4) In its discussion of this holding order, the court mentions other evidence. This includes the fact that Paul Flores called defendant Ruben Flores on the morning of Sunday, May 26, 1996. This was the only phone call made from the dorm room that weekend. In the summer of 1996 Ruben Flores threatened Stan Smart when Mr. Smart came looking for his daughter. When Angie Doe came to the back of the house, Ruben and Paul Flores immediately directed her away from the area between the deck and avocado trees. Ruben Flores was observed in February 2020, shortly after a search by law enforcement,

around a travel trailer parked just next to the burial site in his back yard. This trailer was parked all night, and later had a positive Bluestar reaction to a location just inside its side door. This reaction also happens with chlorine-based cleaning agent and the rest of the trailer was filled with items. A reasonable interpretation is that the portion of the travel trailer on which lay the remains of Ms. Smart was later scrubbed clean with a chlorine-based cleaning agent. It would be illogical for someone to clean just a portion of a trailer with a chlorine-based cleaning agent, while leaving the rest of it filthy and filled with items. Additionally, Ruben Flores' statement to Clint Cole about the DNA buccal swab and he being the only one who committed a felony is an admission and further consciousness of guilty. Given the totality of evidence introduced at preliminary hearing, Judge Van Rooyen had a rational basis for his holding order on count 2.

C. <u>Judge Van Rooyen correctly held that the Court did not need to make a determination as to theory of murder, and indeed the People do not have to present a theory of murder at preliminary hearing</u>

In defense's moving papers Section 2A, defense argues that the Prosecution's lack of coherent theory is insufficient to support a finding of probable cause. However, the case law is clear.

Murder is "the unlawful killing of a human being ... with malice aforethought." (Pen. Code, § 187, subd. (a).) Malice does not require that the perpetrator harbor any ill will or hatred toward the victim. (*People v. Cruz* (1980) 26 Cal.3d 233, 244; *People v. Matta* (1976) 57 Cal.App.3d 472, 480.) Once the evidence establishes that a killing was proximately caused by a defendant, the law generally presumes—for the purposes of indictment or information—that the killing was performed with malice.

To sustain a conviction of either degree [first or second] of murder, therefore, it must be proved at the trial that the homicide was committed by the accused with the state of mind known in law as "malice aforethought." But it does not follow that the same showing must be made before the grand jury to support a mere accusation of murder. [¶] ... [T]he rule is

derived that "When the killing is proved to have been committed by the defendant, and nothing further is shown, *the presumption of law is that it was malicious and an act of murder* ... ." (Italics added.) [Citations.] (*Jackson v. Superior Court* (1965) 62 Cal.2d 521, 525; see also *People v. Superior Court (Day)* (1985) 174 Cal.App.3d 1008, 1020-1021; *Roads v. Superior Court* (1969) 275 Cal.App.2d 593, 598.) Thus, when the defendant is proved to have assaulted the victim in such a manner as to endanger life and death results, " 'malice is implied from such assault in the absence of justifying or mitigating circumstances.' [Citations]" (*Jackson v. Superior Court*, *supra*, 62 Cal.2d at p. 526.)

II

THE COURT PROPERLY ADMITTED THE TESTIMONY OF THE DOG HANDLERS AND EVIDENCE OF CANINE ALERTS

Cadaver dogs are trained to scent and alert to decomposing human remains. (*People v. Peterson* (2020) 10 Cal.5th 409, 419, fn. 5.) An alert ... is nothing more than the dog's signal to its handler that it has detected an odor it has been trained to locate. A dog can accomplish this by either a passive or aggressive alert. A passive alert generally consists of the dog merely sitting and looking at the area where it detects the source of the odor. An aggressive alert, as the name suggests, generally consists of the dog scratching or using some other active indication to the area where it detects the odor. (Mark E. Smith, *Going to the Dogs: Evaluating the Proper Standard for Narcotic Detector Dog Searches of Private Residences*, (2009) 46 Hous. L. Rev. 103, 115.) Certified cadaver dogs and their handlers go through months of constant training to become a reliable search team. The admissibility of their alerts requires evidence of their training and reliability; however, the case-specific nature of dog scent evidence and its decades-long use places it outside the scope of the requirements of *People v. Kelly* (1976) 17 Cal.3d 24.

1. The *Kelly* Test

The admissibility of expert testimony based on a new or novel scientific technique is governed by rules adopted in the leading cases of *Frye v. United States* (D.C. Cir. 1923) 293

Fed. 1013 and *People v. Kelly* (1976) 17 Cal.3d 24 (abrogated by statute on another point as explained in *People v. Wilkinson* (2004) 33 Cal.4th 821, 845-848). Federal courts have since abandoned *Frye*. (*Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 U.S. 579; *People v. Cowan* (2010) 50 Cal.4th 401, 469, fn. 22.) But California has retained the *Kelly* test despite *Daubert*. (*People v. Leahy* (1994) 8 Cal.4th 587, 598-604, 612.)

Under the *Kelly* test, the proponent of the evidence must establish (1) the reliability of the method—that it is " 'sufficiently established to have gained general acceptance in the particular field in which it belongs,' " (2) that the witness is an expert qualified to give an opinion on the subject, and (3) that correct scientific procedures were used. (*Kelly, supra*, 17 Cal.3d at p. 30.) "The first and third prongs can be confused; the *Kelly* first-prong analysis applies only to a new technique or procedure, whereas the third prong is case specific. [Citation.]" (*People v. Stevey* (2012) 209 Cal.App.4th 1400, 1410.) "In determining whether there has been 'general acceptance,' '[t]he goal is not to decide the actual reliability of the new technique, but simply to determine whether the technique is generally accepted in the relevant scientific community.' [Citation.]" (*People v. Morganti* (1996) 43 Cal.App.4th 643, 656.) The purpose of these threshold requirements, often referred to as the *Kelly* test, is to protect against the risk of unproven or experimental science garnering an aura of certainty. (*Kelly, supra*, 17 Cal.3d at p. 32.)

Not all new scientific testing procedures or instruments are subject to the *Kelly* test. "The *Kelly* rule is frequently inapplicable to expert testimony because the testimony is often neither based on a new scientific technique nor likely to convey an aura of certainty. '[A]bsent some special feature which effectively blindsides the jury, expert opinion testimony is not subject to *Kelly*.' " (*In re O.D.* (2013) 221 Cal.App.4th 1001, 1006-1007, citing *People v. Stoll* (1989) 49 Cal.3d 1136, 1157.) The *Kelly* rule only applies to scientific instruments, machines and testing devices, not to other forms or types of tests or analyses normally performed by experts.

//

2. Dog Tracking and Dog Scent Evidence is Not a "Newly Developed Scientific Technique"

The admission of dog-trailing or dog-scent evidence was first approved more than forty years ago in *People v. Craig* (1978) 86 Cal.App.3d 905 (*Craig*), where the Court of Appeal explained that dog trailing does not involve standardized techniques and inanimate, fungible instruments whose accepted use in the scientific community may be established; rather, it involves the use of individual dogs, whose "ability and reliability [should] be shown on a case-by-case basis." (*Craig, supra*, 86 Cal.App.3d at p. 915; see also *People v. Westerfield* (2019) 6 Cal.5th 632, 706.) "As such, *Kelly* does not apply; the evidence is admissible if proper foundation is laid concerning the present ability of a particular well-trained dog to trail a human. This 'is a fact which, like other facts, may be proven by expert testimony.' " (*People v. Peterson* (2020) 10 Cal.5th 409, 444, citing *Craig, supra*, 86 Cal.App.3d at p. 915.)

In *People v. Jackson* (2016) 1 Cal.5th 269, the California Supreme Court agreed with the analysis in *Craig* when it found that dog scent evidence (specifically, scent trailing) did not require a *Kelly* hearing. (*Id.* at p. 320.) The Court found that scent trailing evidence is not "new," and is not so foreign that it would be unusually difficult for a factfinder to evaluate, as "[j]urors are capable of understanding and evaluating testimony about a particular dog's sensory perceptions, its training, its reliability, the experience and technique of its handler, and its performance in scent trailing, such as performed in this case." (*Id.* at pp. 317, 320.) It is unlikely a factfinder would believe dogs are scientifically infallible, which was a risk that the *Kelly* (and *Daubert*) procedure was designed to address. (*Id.*)

In 2019, the California Supreme Court referred to this evidence more expansively as "dog scent" evidence when it affirmatively cited *Craig* and *Jackson* and analyzed the appropriateness of the jury instruction (CALJIC No. 2.16) for dog scent evidence overall and specifically for dog scent evidence involving cadaver dogs. (*People v. Westerfield* (2019) 6

Cal.5th 632, 706-709.)[3] In 2020, the California Supreme Court affirmed its ruling in *Jackson* that dog trailing evidence does not require a hearing under the *Kelly* test. (*People v. Peterson* (2020) 10 Cal.5th 409, 444-446.)[4]

Based on the logic of *Craig*, *Jackson*, and *Peterson* and the expansive language of the California Supreme Court in *Westerfield*, dog scent evidence is not subject to the *Kelly* test given the animate nature of the dog and the case-by-case basis for admission of dog scent evidence. For dog scent evidence to be admissible in this case, the People must meet foundational requirements to demonstrate the training and reliability of the individual dog and its alert(s).

3. Foundational Requirements for Dog Scent Evidence

After the Court of Appeal in *Craig* held that dog scent evidence is not subject to the *Kelly* test, the Court of Appeal in *People v. Malgren* (1983) 139 Cal.App.3d 234 (*Malgren*) elaborated on the foundation necessary for dog scent evidence. Specifically, the *Malgren* court identified five foundational requirements for the admissibility of dog trailing evidence:

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[3] The relevant current jury instruction for dog tracking evidence is Judicial Council of California Criminal Jury Instruction (CALCRIM) number 374, which states,

> You have received evidence about the use of a tracking dog. You may not conclude that the defendant is the person who committed the crime based only on the fact that a dog indicated the defendant (or a location). Before you may rely on dog tracking evidence, there must be:
>
> 1. Evidence of the dog's general reliability as a tracker;
> AND
> 2. Other evidence that the dog accurately followed a trail that led to the person who committed the crime. This other evidence does not need to independently link the defendant to the crime.
>
> In deciding the meaning and importance of the dog tracking evidence, consider the training, skill, and experience, if any, of the dog, its trainer, and its handler, together with everything else that you learned about the dog's work in the case.

(*Id.*)

[4] Other jurisdictions have almost uniformly held that dog scent evidence from cadaver dog alerts is admissible subject to the proper foundation of the training and reliability of the individual dog. (See *Torrez v. State* (Fla. Dist. Ct. App. 2020) 294 So.3d 390, 402; *Castillo v. Commonwealth* (Va. Ct. App. 2019) 70 Va.App. 394, 436 [827 S.E.2d 790, 811]; *People v. Lane* (Mich. Ct. App. 2014) 308 Mich.App.38, 53 [862 N.W.2d 446, 457]; *Trejos v. State* (Tex. App. 2007) 243 S.W.3d 30; *Clark v. State* (Md. Ct. Spec. App. 2001) 140 Md. App. 540, 579 [781 A.2d 913, 936]; *State v. Brown* (1999) 266 Kan. 563 [973 P.2d 773, 780]; *People v. Lifrieri* (N.Y. App. Div. 1996) 230 A.D.2d 754 [646 N.Y.S.2d 172].)

(1) the dog's handler was qualified by training and experience to use the dog; (2) the dog was adequately trained in tracking humans; (3) the dog has been found to be reliable in tracking humans; (4) the dog was placed on the track where circumstances indicated the guilty party to have been; and (5) the trail had not become stale or contaminated.

(*Id.*, at p. 238.)

When the issue was presented to the California Supreme Court in *Jackson* in 2016, the Court approved the admission of dog-scent evidence upon a sufficient showing of the first four *Malgren* requirements, holding that the fifth *Malgren* factor "is not an independent requirement; it is satisfied by evidence that establishes the other four factors." (*Jackson, supra*, 1 Cal.5th at p. 325-326.) "If a well-qualified handler trains a dog who has reliably trailed human scent and is well trained in ignoring or forgetting past smells and in indicating negative trails, then the dog will not trail if the scent on the scent item is stale or nonexistent, or if there is no trail that matches the scent on the scent item." (*Id.* at p. 325.) Evidence of the first four *Malgren* requirements ordinarily will suffice to support admission of dog trailing evidence. (*People v. Peterson, supra*, 10 Cal.5th at p. 445.)

In this case, the dog handlers will each testify to the dogs' training, reliability, and certification by CARDA, as well as the handlers' own training and the specific circumstances that led to the independent alerts by each dog.

The court properly applied the Malgren factors and outlined its rational basis for doing so during the hearing for each handler.

V.

THE DEFENDANT WAS NOT IN CUSTODY FOR ANY OF HIS INTERVIEWS THAT WERE INTRODUCED AT PRELIMINARY HEARING

The court overruled defense's Miranda objection during the Preliminary Hearing and had a rational basis to do so. The People introduced a portion of the recorded interview and transcript. The court made the following ruling: "In the court's view, based on the totality of the circumstances, a reasonable person in his position would not feel like he was under

arrest, and so I don't find that there was a Miranda violation by not advising him of his Miranda Rights. Again, this is just a ruling on the first 48 minutes of the interview, and I'm not making a ruling on the rest of the interview." (RT: page 3054, lines 13-25)

"It is settled that *Miranda* advisements are required only when a person is subjected to 'custodial interrogation.' [Citations.]" (*People v. Davidson* (2013) 221 Cal.App.4th 966, 970.) "[S]tatements made in a noncustodial setting are admissible against the speaker" even when they are not preceded by *Miranda* warnings. (*People v. Battaglia* (1984) 156 Cal.App.3d 1058, 1065.)

Custodial interrogation has long been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (*Miranda v. Arizona* (1966) 384 U.S. 436, 444; *People v. Salinas* (1982) 131 Cal.App.3d 925, 935.)

In *Oregon v. Mathiason* (1977) 429 U.S. 492 the United States Supreme Court held:

[P]olice officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited. (*Id.* at p. 495.)

When determining whether a suspect is in "custody" for purposes of *Miranda*, the court must take into account all of the circumstances surrounding the questioning. "[T]he ultimate inquiry is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." (*California v. Beheler* (1983) 463 U.S. 1121, 1125; see also *Stansbury v. California* (1994) 511 U.S. 318, 322; *People v. Stansbury* (1995) 9 Cal.4th 824, 830.)

The test is entirely objective. (*People v. Davidson*, *supra*, 221 Cal.App.4th at p. 971.)

Whether a person is in custody depends on the objective circumstances of the interrogation rather than on the subjective view of either party. (*Stansbury v. California*, *supra*, 511 U.S. at p. 323.) Where no formal arrest takes place, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." (*Berkemer v. McCarty* (1984) 468 U.S. 420, 442, fn. omitted.)

In this case, as the court observed, Paul Flores was never handcuffed, never in custody and participated voluntarily the entire time. He repeatedly told the officers that he had no problem speaking with them again and again. In the June 19th interview, the interview door was open, he was uncuffed, and he had open access to the door to leave at any time. Judge Van Rooyen ruled that a reasonable person in his position would not feel they were under arrest and based on the evidence he had a rational basis to do so.

III.

CONCLUSION

Ample evidence was presented for the charges and rulings. This court should deny defense's 995 motion because there is a rational basis for Judge Van Rooyen's holding order and denial of the defense's various motions.

Date: January 14, 2022

Respectfully submitted,

Dan Dow
District Attorney

By Christopher Peuvrelle
Deputy District Attorney

PROOF OF SERVICE

Code of Civil Procedure §1031a; CRC Rule 2006(d)

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned as a citizen of the United States and a resident of the County of San Luis Obispo over the age of 18 years and not a party to the within entitled action. My business address is Court House Annex, 4th Floor, San Luis Obispo, California 93408.

On January 14, 2022, I served the foregoing document(s) described as:

PEOPLE'S POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS COUNT 1 OF THE INFORMATION
(*People v. Paul Ruben Flores and Ruben Ricardo Flores*; Case No. 21F-02402-A, B)

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

ROBERT M. SANGER
21F-02402-A
EMAIL: RMSTEAM@SANGERSWYSEN.COM

HAROLD V. MESICK
21F-02402-B
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[XX] BY EMAIL TRANSMISSION: By use of San Luis Obispo County issued email, I caused such document(s) to be transmitted to the addressee(s) email account noted above. The County issued computer used complies with Rule 2.251 and the transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 14, 2022, at San Luis Obispo, California.

Alyssa Muckey, Legal Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

REPLY TO OPPOSITION TO MOTION TO SET ASIDE THE INFORMATION (PENAL CODE § 995)

Date: January 21, 2022
Time: 8:30 a.m.
Dept.: 1

Hon. Jacquelyne H. Duffy

Defendant Paul Flores respectfully submits the following Reply to the prosecution's Opposition to Defendant's Motion to Set Aside the Information (Penal Code § 995):

INTRODUCTION

First, Mr. Flores timely filed his Motion to Set Aside the Information on December 17, 2021. The prosecutor took almost a full month to respond and filed its Opposition late. The Opposition is 47 pages and includes a lengthy

statement of facts which is incomplete, at best. In addition to being late, the Opposition was served by email at the end of the day on Friday, January 14, 2022 before a three-day weekend. This afforded the defense only two working days to draft a Reply.

Second, however, the date set for the hearing on the Motion, January 21, 2022, was set well before the Motion was filed. It was set to give the prosecutor ample time for an Opposition. It was also set specifically to make sure that the case would advance. Paul Flores is in jail and has expressed through counsel and personally on the record that he wants his case to either be dismissed or go to trial as soon as practicable. He is being held on a scattershot case that has no more actual evidence than existed twenty five years ago.

The prosecutor may have placed the Court in an untenable position. The Court also must read and evaluate the prosecutor's 47 pages and will not have the benefit of a Reply that would be more detailed if time permitted. We want the Court to carefully consider the matter. If the Court needs additional time to consider it or wishes to give the defense additional time to file a more detailed Reply, the defense would request that Paul Flores be released on his own recognizance pending the extended proceedings.

I. THE PROSECUTION'S STATEMENT OF FACTS IS INCOMPLETE

The parties have been informed that the Court commenced reading of the transcripts in this matter even before receiving the Motion itself. The defense submitted a comprehensive summary of the facts and would request that the defense summary be considered in conjunction with the Court's own reading. With two working days to respond to the Opposition, there is simply no time to go through the prosecution's version line by line. However, even a cursory review of the prosecution's version shows that critical facts were

omitted.

For instance, the prosecution fails to mention the actual context in which members of the prosecution team wore purple. The cause for concern about Detective Cole, DDA Peuvrelle, Investigator Camp and the victim witness coordinator wearing purple was not that it was just "Kristin's favorite color." (Opp. at p. 8.) Detective Cole testified that a Facebook page dedicated to seeing Paul Flores convicted of murder directed people to wear purple. (6RT 1511-1513.) This fact was omitted from the prosecution's summary of his testimony.

The prosecution also omits critical portions of the testimony of Faye Springer, the criminalist who did a visual inspection of fibers lifted from underneath the deck of Ruben Flores's house. Springer testified that it would not be unusual to find fibers of this sort near a construction site or where a house would have been built. (15RT 4316.) The red fibers looked "reasonably clean," "fairly intense in color" and did not look as though there was a degradation of the material. (15RT 4320-4321.) Moreover, she testified that the vast majority of the fibers were blue. (15RT 4322.) Springer also testified that one of the fibers could be pink (15RT 4302) and Ed Chadwell, the contractor who built Ruben Flores's home, said that he used pink Mason twine for the layout (16RT 4657).

Finally, the prosecution includes testimony that was admitted solely for the purpose of the hearing on the Motion to Traverse, Quash and Suppress and was not admitted under Proposition 115 for the purpose of determining probable cause to hold the defendants to answer. Since that motion was withdrawn, the conclusionary testimony related the withdrawn motion cannot be considered here.

The instances of the prosecution's mischaracterizations and omissions in its statement of facts is too long to include here. Moreover, the

prosecution's speculation and innuendo has no place in these proceedings. The Court has read the transcript and the statement of facts in the defendant's motion. The defense would request that the defense summary be considered in conjunction with the Court's own reading of the transcripts.

II. THE PROSECUTOR HAS A DUTY OF CANDOR TO THE COURT AND CANNOT PRESENT FACTS THAT IT HAS REASON TO BELIEVE ARE FALSE

The prosecution states that it does not have a duty to settle on a theory of the case. That is true where, for instance, there may be alternative legal theories that can be offered in good faith to support a conviction. However, a prosecutor cannot ethically present evidence that is non-sensical, in a scattershot fashion.

For instance, the prosecutor knew that Steven Fleming was the only person who claimed, and only years later, that Paul Flores dated Kristin Smart or that he was seen around her dorm. The prosecution knew that none of her friends, roommates, or anyone else said that. Fleming was the only person who claimed that Paul Flores was reported to the Residence Assistant at the dorms. The prosecution knew that the person who was either stalking Smart or stalked by her was a person named something like "Yanish."

In addition, there was no good faith basis to submit the testimony of Jennifer Hudson. The prosecution knew that Detective Cole did everything he could to corroborate her extremely unlikely testimony. He admitted he could not find anyone who could. But, worse yet, the prosecution knew that there were multiple witnesses who disputed her testimony. Paul Flores was not a skateboarder, Hudson's boyfriend never saw him, the crude and callous remarks attributed to Mr. Flores years later by Hudson when she was heavily intoxicated were totally out of character. And, there was ample evidence that the obsessed podcaster had fed Hudson information, some of

which had been deliberately fed to him by law enforcement, and that she repeated what she was told – such as her certainty that he was in a truck that was a four wheel drive – in a way that made it clear that she was repeating inaccurate information and was not telling the truth.

The prosecution also knew that Hudson's testimony was completely preposterous. Contrary to all other evidence and trying to make good on a story told to her friend in a drunken stupor ten years after Kristin Smart went missing, Hudson claims that she met Paul Flores not once but twice and that he told her where "he buried the body." That location happened to be in a rural part of the County in Huasna and happened to be down the road from where she was living. In *Napue v. Illinois* (1959) 360 U.S. 264 (*Napue*) the United States Supreme Court held that prosecutors are prohibited from putting on false testimony that they have reason to believe is false. Thus, it is a violation of the defendant's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution if a prosecutor introduces false and material testimony that the prosecution knew or should have known was actually false. (*Soto v. Ryan* (9th Cir. 2014) 760 F.3d 947, 958.)

Even more troubling is the fact that Hudson's scenario makes no sense in the context of other testimony that the prosecution asked the magistrate to believe. There is a difference between offering different legal theories and arguing for the truth of testimony that cannot be true. The prosecutor knew that Hudson's testimony was false but offered it to claim that it was the "new" evidence that caused them to arrest Mr. Flores after all these years.

The problem was that the prosecution also wanted to argue that the body was buried under the deck at Ruben Flores' house. The prosecution claimed to have new evidence that the body had been moved in Michael McConville's trailer after Ruben Flores's house was searched. To begin with,

there was no credible evidence that any of that was true. This is another example of the scattershot approach of offering untrue testimony as if it were true. There is no time to restate the evidence carefully set forth in the Motion but, suffice it to say, the evidence does not support the contentions. The anomalies in the soil could not have been burial sites. What was tested as blood (using a test that was not validated for use in soil) seeped down into the anomaly and was deposited *after* the alleged disturbance in the soil. The alleged body stain in McConville's trailer was not blood and whatever DNA was in the trailer belonged to McConville and not to Kristin Smart, Paul Flores or Ruben Flores.

Most disturbingly is that all of this non-evidence was totally inconsistent with anything but a wild conspiracy theory that could not have existed in the real world. The prosecution's theory would have to be that Kristin Smart was killed and her body was buried in Huasna within a month of her disappearance. The prosecution's theory would then be that the body was still buried in Huasna when Hudson went down her country road with her skateboarder friends some months later. The body would not be bleeding then as the body does not bleed after the heart stops pumping. Of course, after false dog alerts and multiple excavations, no evidence of a burial was found. Nevertheless, the prosecution's theory goes that while Paul Flores was named publicly as a person of interest and while his father was being assailed by the public at his house, Paul Flores and his father decided to move the body to a place under Ruben Flores's deck where the body miraculously continued to bleed profusely. And then, after twenty-five years, the prosecution's theory goes, the body was placed in McConville's trailer where it continued to bleed – albeit for which there is no evidence but a stain that was not blood and DNA that was not Kristin Smart's.

The bottom line is that the prosecution has not only failed to present a

single coherent theory of the case, it has also failed to present any evidence that supports its theories and has in fact presented false evidence to attempt to support its speculation and innuendo.

III. THE DOG HANDLER TESTIMONY HAD NO EVIDENTIARY VALUE

Without repeating what is stated in detail in the motion (at pp. 67-76), one of the fundamental problems with the dog handlers' testimony, which the prosecution does not address in its Opposition, is that there is no scientific basis for evidence of dog behavior itself unless it actually leads to physical evidence such as a fleeing individual or an actual body. Under *People v. Jackson* (2016) 1 Cal.5th 269 (*Jackson*) and *People v. Malgren* (1983) 139 Cal.App.3d 234, 238 (*Malgren*), there must be evidence that corroborates the dog scent evidence. With respect to the search of the dorm room, the prosecution did not present any independent evidence to corroborate the dog scent evidence. No evidence, biological or otherwise, was found at the dorm. No evidence was presented at all that Kristin Smart was in the dorm room at any point. Thus, not only did the dog handlers' testimony fail to satisfy the standards for expert testimony under *Sargon, Daubert, Kumho Tire,* Evidence Code sections 801 and 802 and *Malgren*, but the testimony itself had no evidentiary value since the alerts themselves cannot be accorded evidentiary value under the *Jackson/Malgren* criteria.

The testimony relating to the search of Ruben Flores's house also has no evidentiary value. There, the dogs did not alert, they only had a "change in behavior" which is not evidence. As the Court found in *People v. Willis* (2004) 115 Cal.App.4th 379, 386, "[s]howing interest in locations is a far cry from tracking a suspect and giving an unambiguous alert that the person has been located." Therefore, the dog behavior has no evidentiary value in determining whether to hold either defendant to answer.

IV. ON JUNE 19, 1996, PAUL FLORES WAS SUBJECTED TO A CUSTODIAL INTERROGATION WITHOUT BEING ADVISED OF HIS *MIRANDA* RIGHTS IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

The prosecution focuses on whether Paul Flores was in custody. However, the prosecution omits the critical portions of the interview where Paul Flores was told he was not free to go. As quoted in the motion (at pp. 80-81), the investigators interrogating Flores repeatedly told him he could not leave. Moreover, throughout the interview, the investigators were confrontation and accusatory. The investigators repeatedly asked what happened to Kristin Smart and told Flores to assume she was deceased; they questioned and challenged Flores about his statements about what happened after the party that night; they repeatedly asked him to take a polygraph despite Flores responding that he needed to speak with his parents first; and the investigators repeatedly threatened Flores with statements to the effect that this case will never go away and that the investigators do not believe him. (Exhibit 33.)

Throughout the interview, Flores was subjected to a law enforcement-initiated interrogation by two officers who "dominated and controlled the course of the interrogation" and "manifested a belief that the person was culpable" and were "aggressive, confrontational, and/or accusatory." (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162.) Therefore, the June 19, 1996 questioning was a custodial interrogation. Paul Flores was not informed of his *Miranda* rights and his statements and the observations of the investigators are inadmissible and should not be considered.

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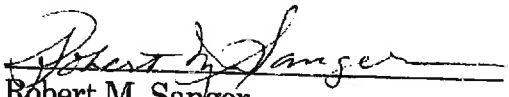
CONCLUSION

Ultimately, this is a case in which there has been no new credible evidence for over 20 years. At the preliminary hearing, the prosecution presented material that is not evidence that withstands the most cursory look, let alone that establishes probable cause to hold either defendant to answer. For the foregoing reasons and those set forth in the Motion, the defendant respectfully requests that the Court set aside the Information.

Dated: January 19, 2022

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On January 19, 2022, I served the foregoing document entitled: **REPLY TO OPPOSITION TO MOTION TO SET ASIDE THE INFORMATION (PENAL CODE § 995)** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

X **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed January 19, 2022, at Santa Barbara, California.

Jake Swanson

Jake Swanson

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Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

CONDITIONALLY UNDER SEAL

CONFIDENTIAL EX PARTE APPLICATION FOR CONFIDENTIAL EX PARTE SUBPOENA DUCES TECUM PROCESS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBERT M. SANGER; [PROPOSED] ORDER

[Penal Code § 1326 & 1327]

(Subject to Application to File Under Seal)

Dept.: 5

Hon. Craig B. Van Rooyen

TO THE HONORABLE CRAIG B. VAN ROOYEN:

Defendant Paul Flores applies ex parte for an order that the defendant, through counsel, be permitted to subpoena materials without disclosing the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith, pursuant to Penal Code section 1326 and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 1, 7 and 15 of the California Constitution, including, specifically that:

1. The Clerk of the Court shall segregate and keep confidential and not disclose to the prosecution any materials pertaining to the subpoena, including but not limited to returns, documents and other materials returned in response to said subpoena;
2. The Clerk of the Court shall permit counsel for the defendant to subpoena materials to the Court on days and times at which the case itself is not on calendar for other purposes;
3. Persons or entities subpoenaed by the defendant, the fact that they have been subpoenaed and the nature of the subpoena shall not be disclosed directly or indirectly to the prosecution;
4. Any appearance, objection, compliance, or other communication by a party subpoenaed by the defendant shall be filed under seal;
5. Unless the Court determines that a hearing on the release of subpoenaed materials under Penal Code section 1326, subdivision (c) is necessary, the Clerk of the Court shall permit counsel for the defendant to inspect and copy the subpoenaed materials;
6. At any hearing held pursuant to Penal Code section 1326, subdivision (c), defense counsel shall be provided with the

opportunity to make a showing in camera that the defense is entitled to receive the documents; and

7. Any other such relief as the Court may deem just and proper.

This application is based on this confidential ex parte application, the Memorandum of Points and Authorities and Declaration of Robert M. Sanger attached hereto, the papers, records and files in this case and such other matters as may be received by the Court at or after the hearing scheduled on this application.

Dated: February 18, 2022

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 

Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE DEFENSE IS ENTITLED TO SUBPOENA THIRD PARTY RECORDS DIRECTLY TO THE COURT

Under Penal Code section 1326, the defendant's attorney of record may subpoena the books and records of a third party who is not a party to the criminal proceedings directly to the court using a subpoena in the form set forth in Penal Code section 1327 and the procedure set forth in Evidence Code section 1560. (Pen. Code, § 1326, subds. (a)(4), (b)-(c).) The records are to be delivered to the court, which may order an in camera hearing to determine if the records should be released to the defendant. (Pen. Code, § 1326, subd. (c).) Furthermore, "[t]he court may not order the documents disclosed to the prosecution except as required by Section 1054.3." (Pen. Code, § 1326, subd. (c).)

II. THE PROSECUTION HAS NO ROLE IN THIRD PARTY DISCOVERY UNLESS AND UNTIL THE COURT DECIDES TO HOLD A HEARING ON THE RELEASE OF SUBPOENAED MATERIALS PURSUANT TO PENAL CODE SECTION 1326(c)

There is no authority in the statutes or the case law that defense counsel must provide notice to the District Attorney of the mere issuance of a subpoena duces tecum. Instead, the third-party discovery procedure contemplated by Penal Code section 1326 is that the defendant first serves a subpoena on the third party in the manner specified in Evidence Code section 1560, subdivision (b). The third party then delivers the records to the court. The court then has the discretion to order an in camera hearing to determine whether or not the defense is entitled to receive the documents. (Pen. Code, § 1326, subd. (c).)

Pursuant to *Kling v. Superior Court* (2010) 50 Cal.4th 1068 and *People*

v. Superior Court (Humberto S.) (2008) 43 Cal. 4th 737, the trial court has the discretion to determine whether the District Attorney is entitled to notice of the hearing and an opportunity to present argument. However, these cases do not support the proposition that the District Attorney is entitled to notice before records have been produced to the court in response to the subpoena and the court has decided to conduct a hearing under section 1326, subdivision (c).

The Court in *Kling* addressed the question of what role the prosecution has at a hearing held pursuant to Penal Code section 1326, subdivision (c). (*Kling, supra*, 50 Cal.4th 1068, at 1071.) The Court addressed whether the trial court, in determining whether to produce to the defense subpoenaed evidence *already in the custody of the court*, may give notice to the prosecution and reveal the identity of the party responding to the subpoena and the nature of the subpoenaed evidence so that they may weigh in on disclosure. (*Kling, supra*, 50 Cal.4th 1068, 1071-1072.)

If, after receiving the subpoenaed documents, the court decides to hold a hearing, the *Kling* Court found that Penal Code section 1326, subdivision (c) provides the defendant with several "special protections." (*Kling, supra, at 1075.*) First, if there is an objection to the production of the evidence or the judge otherwise thinks it necessary, the trial court may hold a hearing to determine whether the evidence should be disclosed to the defense. This hearing may be conducted in-camera. (*Id.*) "[T]he defense is not required, on pain of revealing its possible strategies and work product, to provide the prosecution with notice of its theories of relevancy of the materials sought, but instead may make an offer of proof at an in camera hearing." (*Id.* (quoting *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1045-46).) Second, "the [trial] court may not order the [subpoenaed] documents disclosed to the

prosecution except as required by Section 1054.3," the Penal Code section governing reciprocal discovery. (*Id.* (quoting § 1326(c)).) In other words, the subpoenaed "records will not be disclosed to the prosecution unless or until the defendant intends to offer them as evidence at trial." (*Id.* at (citing §§ 1326, subd. (c) & 1054.3, subd. (a)).)

These procedures only apply when the trial court has decided to conduct a hearing under Penal Code section 1326, subdivision (c) to determine whether to produce subpoenaed evidence to the defense. In the average case, such a hearing may not occur – either because the relevance of the evidence is obvious to the judge, no issues of privacy or privilege exist, or because the subpoenaed party makes no objection – and the trial court simply provides the information to the defense.

III. DEFENDANT IS CONSTITUTIONALLY ENTITLED TO AN EX PARTE SUBPOENA DUCES TECUM PROCESS AND AN ORDER THAT HE BE PERMITTED TO SUBPOENA MATERIALS WITHOUT DISCLOSING THE NATURE OF THE SUBPOENA, THE PERSON OR ITEMS SOUGHT BY THE SUBPOENA, OR THE RESPONSE TO THE SUBPOENA AND ANY MATERIALS RETURNED THEREWITH

The defendant has constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 1, 7 and 15 of the California Constitution when compelling the production of witnesses and evidence. Specifically, he is not required to disclose potential defense strategies or work product to the prosecutor as a condition of receiving documents produced pursuant to a subpoena duces tecum. (See *Teal v. Superior Court* (2004) 117 Cal.App.4th 488, 492 (*Teal*); *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1320.)

The defendant may not, however, subpoena the records directly; he must direct the producing party to bring the records to the court for a judicial determination that the defendant is entitled to receive them. (*Barrett, supra,* 80 Cal.App.4th at p. 1316.)

Unless the Court protects the entire subpoena duces tecum process from the prosecutor's gaze, the public nature of the process would render Mr. Flores's constitutional rights meaningless. Therefore, the Court should order that the defendant be permitted to subpoena materials without disclosing to the prosecution the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith.

A. A Defendant in a Criminal Case Must Be Allowed to Present His Relevancy Explanation in an In Camera Hearing in Order to Protect His Fifth Amendment Right Against Self-Incrimination, Sixth Amendment Right to Counsel and Attorney Client Privilege and Attorney Work Product and for the Same Reason, the Prosecution Is Not Entitled to the Records Subpoenaed

In *Barrett, supra,* 80 Cal.App.4th 1305, the appellate court recognized that the defendant has a right to some protections when compelling the production of witnesses and evidence. (*Id.* at p. 1320.) Specifically, when a third party produces records pursuant to a defendant's subpoena duces tecum, the defendant is entitled to make her or his relevancy arguments to the Court in an in camera hearing. (*Id.* at pp. 1320-1321.) The court reasoned that requiring the defendant to argue the potential relevance of subpoenaed documents in the prosecutor's presence would violate the defendant's Fifth Amendment right against self-incrimination and Sixth

Amendment right to counsel because it would,

> "give [the defendant] the Hobson's choice of going forth with his discovery efforts and revealing possible defense strategies and work product to the prosecution, or refraining from pursuing these discovery materials to protect his constitutional rights and prevent undesirable disclosures to his adversary." (*Ibid.*)

In *Teal, supra*, 117 Cal.App.4th 488, the Court of Appeal found that the reasoning in *Barrett* required greater protections. In *Teal*, the defendant issued third party subpoenas seeking material to assist in his defense. (*Id.* at p. 490.) After an in camera review of the produced records, the trial court allowed defense counsel to obtain the records. (*Ibid.*) The trial court then ordered the defendant to provide copies of the records to the prosecution, even though the defense did not yet know whether the records would be used at trial. (*Id.* at p. 491.) On review, the appellate court found that this order gave the defendant the same unconstitutional choice that the trial court gave the defendant in *Barrett*: to compel the production of witnesses and evidence and reveal possible defense strategies and work product or to refrain from doing so in order to protect his constitutional rights and prevent undesirable disclosures to the prosecution. (*Id.* at p. 492.) Because the trial court's order placed the defendant in this untenable position, the appellate court found that the order violated the defendant's rights under the Fifth and Sixth Amendments to the United States Constitution. (*Ibid.*)

B. Unless the Court Grants the Relief Sought, Mr. Flores' Constitutional Rights under *Teal* and *Barrett* Are Meaningless

If defendant decides to invoke his right to compel the production of witnesses and evidence and subpoena records from third parties, he risks revealing possible defense strategies. The identities of persons or entities subpoenaed, the nature of the materials subpoenaed, and the nature of

materials provided in response to defense subpoenas will disclose potential defense strategies or work product. Without the relief sought, that privileged information would be readily accessible to the prosecution.

A public subpoena duces tecum process presents Mr. Flores with the same unconstitutional "Hobson's choice" that the *Barrett* and *Teal* courts found untenable: to compel the production of witnesses and evidence, thereby revealing possible defense strategies and work product, or to refrain from doing so in order to protect her constitutional rights and prevent undesirable disclosures to the prosecution. Therefore, under *Teal* and *Barrett*, this Court should order that Mr. Flores be permitted to subpoena materials without disclosing the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith.[1] As set forth above, it is not until the Court decides to hold a hearing under Penal Code section 1326, subdivision (c) that *Kling v. Superior Court* (2010) 50 Cal.4th 1068 and *People v. Superior Court (Humberto S.)* (2008) 43 Cal. 4th 737 suggest that the prosecution is entitled to notice of that hearing.

This Court should also grant a protective order that the third parties do not disclose directly or indirectly to the prosecution and/or its investigatory team and/or law enforcement the fact that the defendant has subpoenaed records pursuant to Penal Code section 1326 and do not disclose directly or

---

[1] Subpoenaed documents would still be produced to the Court for in camera inspection before being released to the defendant. The subpoenaed party would have an opportunity to assert its rights in opposition to the production or release of the subpoenaed records. In short, the subpoenaed party would still enjoy all the protections that the otherwise-public process affords.

directly the records produced.

CONCLUSION

For all the foregoing reasons, defendant Paul Flores respectfully requests an order that he be permitted to subpoena materials without disclosing the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith, or provide any other such relief as the Court may deem just and proper.

Dated: February 18, 2022

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the State of California and am attorney of record for defendant Paul Flores.

2. Mr. Flores's defense team intends to subpoena documents as part of the preparation of the Motion for Change of Venue to be heard on March 30, 2022. The subpoena is attached as Exhibit A.

3. The identities of persons or entities subpoenaed, the nature of the materials subpoenaed, and the nature of materials provided in response to defense subpoenas will disclose potential defense strategies or work product.

4. Without the order of the Court requested herein, the identities of persons or entities subpoenaed, the nature of the materials subpoenaed, and the nature of materials provided in response to defense subpoenas would be readily accessible to the prosecution.

I declare under penalty of perjury that the foregoing is true and correct and that this was executed on this 17th day of February, 2022, at Santa Barbara County, California.

Robert M. Sanger

EXHIBIT A

CR-125/JV-525

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Robert M. Sanger, SBN 058214 SANGER SWYSEN & DUNKLE 222 E. Carrillo St., Ste. 300 Santa Barbara, CA 93101 TELEPHONE NO.: 805-962-4887 FAX NO. (Optional): 805-963-7311 E-MAIL ADDRESS (Optional): rmsTeam@sangerswysen.com ATTORNEY FOR (Name): Paul Ruben Flores	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO STREET ADDRESS: 1050 Monterey Street MAILING ADDRESS: CITY AND ZIP CODE: San Luis Obispo, CA 93408 BRANCH NAME: Criminal Branch	
CASE NAME: PEOPLE OF THE STATE OF CALIFORNIA V. PAUL RUBEN FLORES	
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: **Subpoena/Subpoena Duces Tecum**	CASE NUMBER: 21F-02402-A

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1. To: *(name or business)* Arroyo Grande Police Department - Custodian of Records
2. You must follow the court order(s) checked below:
   a. [ ] Attend the hearing.
   b. [x] Attend the hearing and bring all items checked in c. below.
   c. [x] Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
      (1) SEE ATTACHMENT
      (2)
      (3)
      [x] *If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."*
   d. [ ] If someone else is responsible for maintaining the items checked in c, that person (the Custodian of Records) must also attend the hearing.
   e. [x] If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order,** you do not have to attend court if you follow the instructions in item 5.
3. **Court Hearing Date:**
   Date: 3/3/2022 Time: 8:30 a.m.
   Dept.: 5 Rm.:
   The court hearing will be at *(name and address of court):*
   1050 Monterey Street, San Luis Obispo, CA 93408
   Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.
4. The person who has required you to attend court or provide documents is:
   Name: Robert M. Sanger Phone No.: 805-962-4887
   Address: 222 E. Carrillo St., Ste. 300
   Number, Street, Apt. No.
   Santa Barbara, CA 93101
   (City): *(State):* *(Zip):*

   FOR COURT USE ONLY

   Date: 2/17/2022 Signature ▶ Robert M. Sanger
   Name and Title

CASE NAME:	CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA V. PAUL RUBEN FLORES	21F-02402-A

5. a. Put all items checked in item 2c and a completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
   b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
      (1) Case name
      (2) Case number
      (3) Your name
      (4) Hearing date, time, and department
   c. Seal and mail the envelope to the Court Clerk at the address listed in ☐ in item 3 or ☐ the court address in the caption on page 1. You must mail these documents to the court within five days of service of this order.
   d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*. *Do **not** include a copy of the documents.*

___ The server fills out the section below. ___

Proof of Service of Form CR-125/JV-525

1. I personally served a copy of this subpoena on:
   Date: _____ Time: _____ ☐ a.m. ☐ p.m.
   Name of the person served: _____
   At this address: _____
   After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on *(date)*: _____
   Mailed from *(city)*: _____

2. I received this order for service on *(date)*: _____ and was not able to serve *(name of person)* _____ after *(number of attempts)* _____ attempts because:
   a. ☐ The person is not known at this address.
   b. ☐ The person moved and the forwarding address is not known.
   c. ☐ There is no such address.
   d. ☐ The address is in a different county.
   e. ☐ I was not able to serve by the hearing date.
   f. ☐ Other *(explain)*: _____
3. Server's name: _____ Phone no: _____
4. The server *(check one)*
   a. ☐ is a registered process server.
   b. ☐ is not a registered process server.
   c. ☐ is a sheriff, marshal, or constable.
   d. ☐ works for a registered process server.
   e. ☐ is exempt from registration under Business and Professional Code section 22350(b).
5. Server's address: _____
   If server is a registered process server
   County of registration: _____ Registration no.: _____

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: _____

▶ _____
TYPE OR PRINT NAME OF SERVER

▶ _____
SIGNATURE OF SERVER

PROVIDE THESE ITEMS

Any and all information, however preserved, relating to incidents or calls for services at Susan Flores' house (529 E. Branch Street, Arroyo Grande, CA 93420) and Ruben Flores' house (710 White Court, Arroyo Grande, CA 93420) relating to Paul Flores, Ruben Flores, Mike McConville, or relating to the properties at 529 E. Branch Street and 710 White Court, including without limitation, calls for service regarding trespassers, protestors and people disturbing the peace.

ELECTRONICALLY
FILED
2/18/2022 11:07 AM
SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SANGER SWYSEN & DUNKLE
Robert M. Sanger, SBN 058214
Sarah S. Sanger, SBN 322722
222 E. Carrillo Street, Suite 300
Santa Barbara, CA 93101
Tel.: (805) 962-4887
Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

EX PARTE APPLICATION TO FILE CONFIDENTIAL EX PARTE APPLICATION FOR CONFIDENTIAL EX PARTE SUBPOENA DUCES TECUM PROCESS UNDER SEAL

Dept.: 5

Hon. Craig B. Van Rooyen

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Paul Ruben Flores, by and through his attorneys Robert M. Sanger, Sarah S. Sanger and Sanger Swysen & Dunkle, hereby request that the Court permit Defendant to file under seal his Confidential Ex Parte Subpoena Duces Tecum Process and [Proposed] Order Granting Confidential Ex Parte Subpoena Duces Tecum Process, in accordance with California Rules of Court, rules 2.550 and 2.551 and the

statutory procedures set forth in 1326, subdivision (c) which require a sealing order or the statutory purposes would be defeated, and under the attorney-client privilege and work product doctrine, and to protect the Defendant's right to counsel and privacy under the Sixth and Fourteenth Amendments to the United States Constitution and articles I, section 1 and 15 of the California Constitution. This application is made on the grounds that the records contain confidential information in which Defendant has a right to privacy.

This application is based on the attached memorandum of points and authorities, all the papers and records on file in this action and on such further oral and documentary evidence that may be presented at a hearing of this application.

Dated: February 18, 2022

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, hereby declare:

1. I am an attorney at law, duly licensed to practice in the State of California, and I am the attorney of record for the Defendant herein, Paul Ruben Flores.
2. We are concurrently filing Confidential Ex Parte Application for Confidential Ex Parte Subpoena Duces Tecum Process and [Proposed] Order Granting Confidential Ex Parte Subpoena Duces Tecum Process conditionally under seal. The statutory procedures set forth in 1326, subdivision (c) require a sealing order or the statutory purposes would be defeated. Furthermore, these documents include information that is protected by the attorney-client privilege and work product doctrines, and the defendant's right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and article 1, sections 15 of the California Constitution.
3. I am respectfully requesting that the Confidential Ex Parte Subpoena Duces Tecum Process and [Proposed] Order Granting Confidential Ex Parte Subpoena Duces Tecum Process be filed under seal so that the information contained therein is not divulged to the public or to the San Luis Obispo County District Attorney's Office.

I declare under penalty of perjury that the foregoing is true and correct and that this was executed on February 18, 2022, at Santa Barbara County, California.

Robert M. Sanger

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. FILING CONFIDENTIAL EX PARTE SUBPOENA DUCES TECUM PROCESS AND [PROPOSED] ORDER GRANTING CONFIDENTIAL EX PARTE SUBPOENA DUCES TECUM PROCESS IS NECESSARY TO PREVENT CONFIDENTIAL INFORMATION FROM BEING DIVULGED TO THE PUBLIC

Pursuant to California Rule of Court 2.550(d), the Court has the authority to order a record be filed under seal if it 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 exist to achieve the overriding interest. (California Rule of Court 2.550(d).)

The information included in the Confidential Ex Parte Subpoena Duces Tecum Process and [Proposed] Order Granting Confidential Ex Parte Subpoena Duces Tecum Process relates to the defense function is subject to the statutory procedures set forth in 1326, subdivision (c) which require a sealing order or the statutory purposes would be defeated. Furthermore, these documents are protected by the attorney-client privilege and work product doctrine as well as Mr. Flores's right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and article I, section 15 of the California Constitution. We respectfully submit that it is necessary to file the Confidential Ex Parte Subpoena Duces Tecum Process and [Proposed] Order Granting Confidential Ex Parte Subpoena Duces Tecum Process under seal to protect Mr. Flores's constitutional rights and this overriding interest satisfies the requirements of Rule of Court 2.550(d)

CONCLUSION

For the above-state reasons, the Court should grant this application.

Dated: February 18, 2022

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Sarah S. Sanger

By: 
Robert M. Sanger
Attorneys for Defendant
Paul Ruben Flores

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FILED:02/24/2022
San Luis Obispo Superior Court
By: Goossens, Michelle

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

~~[PROPOSED]~~ ORDER GRANTING CONFIDENTIAL EX PARTE APPLICATION FOR CONFIDENTIAL EX PARTE SUBPOENA DUCES TECUM PROCESS

Hon. Craig B. Van Rooyen

GOOD CAUSE APPEARING, it is hereby ordered that the Clerk of the Court shall permit defendant Paul Flores by and through his counsel to subpoena materials without disclosing the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith.

It is further ordered, without limiting the generality of the foregoing, that:

1. The Clerk of the Court shall segregate and keep confidential and

not disclose to the prosecution any materials pertaining to the subpoena, including but not limited to returns, documents and other materials returned in response to said subpoena;

2. The Clerk of the Court shall permit counsel for the defendant to subpoena materials to the Court on days and times at which the case itself is not on calendar for other purposes;

3. Persons or entities subpoenaed by the defendant, the fact that they have been subpoenaed and the nature of the subpoena shall not be disclosed directly or indirectly to the prosecution;

4. Any appearance, objection, compliance, or other communication by a party subpoenaed by the defendant shall be filed under seal;

5. Unless the Court determines that a hearing on the release of subpoenaed materials under Penal Code section 1326, subdivision (c) is necessary, the Clerk of the Court shall permit counsel for the defendant to inspect and copy the subpoenaed materials;

6. At any hearing held pursuant to Penal Code section 1326, subdivision (c), defense counsel shall be provided with the opportunity to make a showing in camera that the defense is entitled to receive the documents.

Dated: February 24, 2022

Craig Van Rooyen

The Honorable Craig B. Van Rooyen
Judge of the Superior Court

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FILED:02/24/2022
San Luis Obispo Superior Court
By:Goossens, Michelle

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

~~[PROPOSED]~~ ORDER GRANTING EX PARTE APPLICATION TO FILE CONFIDENTIAL EX PARTE APPLICATION FOR CONFIDENTIAL EX PARTE SUBPOENA DUCES TECUM PROCESS UNDER SEAL

Hon. Craig B. Van Rooyen

THE COURT MAKES THE FOLLOWING FACTUAL FINDINGS:

1. The Court finds that the documents submitted by Defendant contain confidential information subject to the statutory procedures set forth in 1326, subdivision (c) which require a sealing order or the statutory purposes would be defeated. Furthermore, the documents contain confidential information in which Defendant has an overriding right to privacy under article I, section 1 of the California Constitution and the

information is protected by the attorney-client privilege, the work product doctrine and right to counsel and due process under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 7 and 15 of the California Constitution which overcomes the right of public access to the documents which overcomes the right of public access to the documents;

2. Defendant's overriding statutory and constitutional rights in his information supports sealing the record;

3. A substantial probability exists that Defendant's constitutional rights will be prejudiced if the documents are not sealed;

4. The proposed sealing is narrowly tailored; and

5. No less restrictive means exist to protect Defendant's overriding right to privacy in his information.

IT IS HEREBY ORDERED THAT:

1. Confidential Ex Parte Subpoena Duces Tecum Process and [Proposed] Order Granting Confidential Ex Parte Subpoena Duces Tecum Process are sealed and lodged with this Court;

2. No other sealing is ordered pursuant to Defendant's request; and

3. No one other than Paul Flores's counsel and the Court are permitted to view the sealed records.

Dated: February 24, 2022

Craig Van Rooyen

The Honorable Craig B. Van Rooyen
Judge of the Superior Court

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3/9/2022 4:52 PM

SAN LUIS OBISPO SUPERIOR COURT
By: M. Goossens,
Deputy Clerk

SANGER SWYSEN & DUNKLE
Robert M. Sanger, SBN 058214
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222 E. Carrillo Street, Suite 300
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Tel.: (805) 962-4887
Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

DECLARATION OF JAKE SWANSON IN SUPPORT OF MOTION FOR CHANGE OF VENUE (PEN. CODE, § 1033)

Date: March 30, 2022
Time: 8:30 a.m.
Dept.: 5

Hon. Craig B. Van Rooyen

///
///
///

DECLARATION OF JAKE SWANSON

I, Jake Swanson, declare:

1. I am a legal assistant at the law firm of Sanger Swysen & Dunkle, attorneys for the defendant herein, Paul Flores.
2. The local television news station, KSBY, has a channel on YouTube with many videos regarding the disappearance of Kristin Smart. Attached hereto as Exhibits DDD-HHH and KKK-RRR are true and correct copies of videos I downloaded from the KSBY YouTube channel.
3. The San Luis Obispo Tribune has a channel on YouTube with many videos regarding the disappearance of Kristin Smart. Attached hereto as Exhibit III is a video I downloaded from the SLO Tribune YouTube channel.
4. The local television news station, KEYT, has a channel on YouTube with many videos regarding the disappearance of Kristin Smart. Attached hereto as Exhibit JJJ is a video I downloaded from the KEYT YouTube channel.
5. Sheriff Ian Parkinson, District Attorney Dan Dow and the San Luis Obispo District Attorney each have their own profiles on Facebook.com. Attached hereto as Exhibits SSS, XXX-ZZZ and BBBB are true and correct copies of posts I viewed on said profiles.
6. The San Luis Obispo Sheriff's Office and San Luis Obispo District Attorney each have their own profiles on Instagram.com. Attached

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hereto as Exhibits TTT-WWW and AAAA are true and correct copies of posts I viewed on said profiles.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 9th day of March, 2022 in Santa Barbara County, California.

Jake Swanson

EXHIBIT DDD

Exhibit DDD is a digital file and will be lodged with the Court separately.

EXHIBIT EEE

Exhibit EEE is a digital file and will be lodged with the Court separately.

EXHIBIT FFF

Exhibit FFF is a digital file and will be lodged with the Court separately.

EXHIBIT GGG

Exhibit GGG is a digital file and will be lodged with the Court separately.

EXHIBIT HHH

Exhibit HHH is a digital file and will be lodged with the Court separately.

EXHIBIT III

Exhibit III is a digital file and will be lodged with the Court separately.

EXHIBIT JJJ

Exhibit JJJ is a digital file and will be lodged with the Court separately.

EXHIBIT KKK

Exhibit KKK is a digital file and will be lodged with the Court separately.

EXHIBIT LLL

Exhibit LLL is a digital file and will be lodged with the Court separately.

EXHIBIT MMM

Exhibit MMM is a digital file and will be lodged with the Court separately.

EXHIBIT NNN

Exhibit NNN is a digital file and will be lodged with the Court separately.

EXHIBIT OOO

Exhibit OOO is a digital file and will be lodged with the Court separately.

EXHIBIT PPP

Exhibit PPP is a digital file and will be lodged with the Court separately.

EXHIBIT QQQ

Exhibit QQQ is a digital file and will be lodged with the Court separately.

EXHIBIT RRR

Exhibit RRR is a digital file and will be lodged with the Court separately.

EXHIBIT SSS

Ian Parkinson, Sheriff

I am deeply honored to have received the endorsement from the family of Kristin Smart. Stan Denise. Matthew and Lindsey. I thank you for your trust and for believing in me. We at the Sheriffs Office are dedicated and committed to making a difference. We will never give up.



SAN LUIS OBISPO.COM

Family of Kristin Smart urges re-election of Sheriff Ian Parkinson

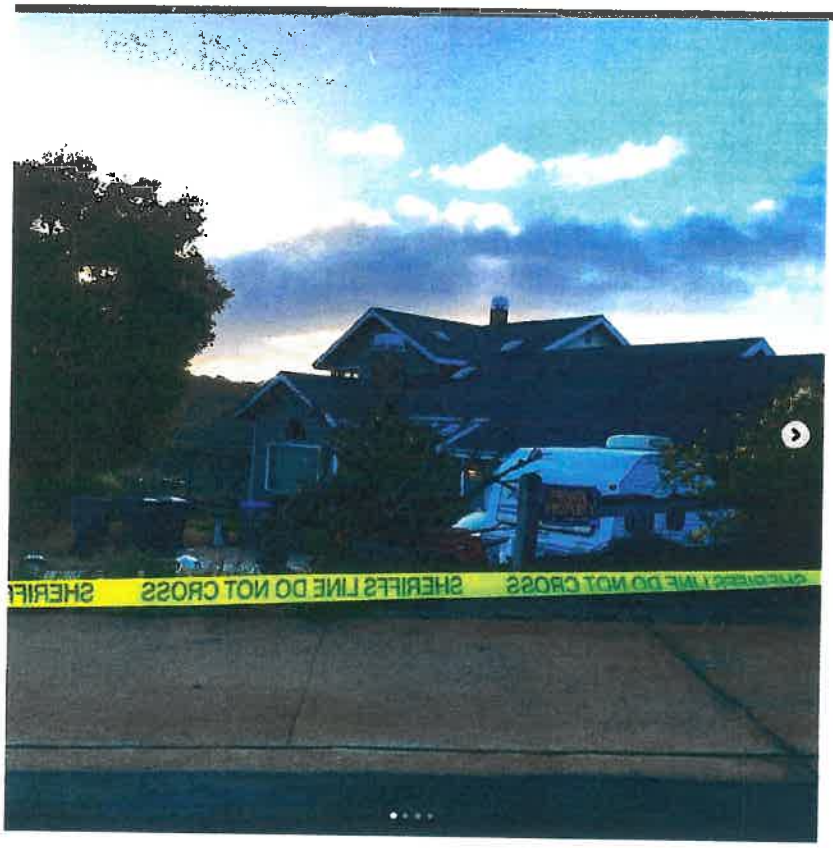
The family of Kristin Smart, the Cal Poly student who disappeared from campus 22 years ago i

184

6 Comments 36 Shares

Like Comment Share

EXHIBIT TTT



slosheriff • Follow

slosheriff Smart Investigation Search Warrant: The Sheriff's Office is announcing today that it has served a search warrant at the Arroyo Grande home of Ruben Flores. Flores is the father of Paul Flores, who remains the prime suspect in the disappearance of Kristin Smart in 1996. The Sheriff's Office has been authorized to utilize cadaver dogs and ground penetrating radar (GPR) during the course of the search. This process could potentially take one to two days to complete. Traffic in the area may be impacted with vehicle access for non-residents restricted. The search warrant has been sealed. As a result, we are precluded by law from disclosing any further details regarding it. This is an active and on-going investigation. The Sheriff's Office will not be commenting any further and no additional information will be released at this time.

nikiinnapa Finally

judisherwood

Liked by **almii** and **3,095 others**

EXHIBIT UUU

San Luis Obispo County Sheriff's Office
January 16, 2015

The following is a message from the San Luis Obispo County Sheriff's Office in response to a publication regarding the Kristin Smart case. Immediately after that is a statement from the Smart family.

January 16, 2015 - A publication was just mailed to San Luis Obispo residents titled "California Register." This publication is owned and published by David Smallwood. This publication has done a series of stories on the Kristin Smart disappearance and the investigation. In the previous publication Mr. Smallwood stated that Kristin had been found. This was not only untrue but the Smart family reached out to Mr. Smallwood himself and asked that he not publish the story. He refused, which prompted the Smarts to write a response refuting the story which they posted on one of Kristin Smart's Facebook accounts.

The most recent story once again contains many inaccuracies, speculation and innuendo. Because of this, the Sheriff's Office feels compelled to respond. We want to share what factual information we can at this point in the investigation and restate Sheriff Parkinson's and the Sheriff's Office commitment to the Smart family and the community to finding Kristin and prosecuting the person or persons responsible.

Most of what is published centers around Mr. Smallwood bringing in a former Mammoth Lakes Police Officer and his dog to conduct their own investigation. After several area searches, including next door to the home of the mother of subject Paul Flores, they believe they found positive evidence that Kristin was there. They believe that this possible evidence was ignored and/or discounted. They were well aware of the fact that the residence had been searched three times. As a matter of fact, a cadaver dog was used in the first search that was conducted and specialty ground penetrating radar was used in all three searches. None of this information was ignored; however the information along with facts that are known must be evaluated. To provide any further information on the prior searches or history of the location would only serve to damage the case and could potentially jeopardize prosecution

The San Luis Obispo County Sheriff's Office believes in the use of cadaver dogs and has had them for many years. Certified cadaver dogs were used in this case from the very beginning of the investigation. The Sheriff's Office not only has certified cadaver dogs but we host a cadaver dog training every year that is attended by law enforcement agencies from all over the United States and the world. This is a valuable investigative tool that the Sheriff's Office is committed to using and will continue to use in the future.

There are many facts about the search at the Arroyo Grande residence that the publisher does not know and has only speculated about. The search warrants were sealed by the court. They were sealed because the disclosure of information contained within the search warrants would only harm potential prosecution. Mr. Smallwood has requested the warrants on this active investigation, with the intention of publishing the information, which would provide the sensitive information to the suspect(s) in the case. It defies any law enforcement training or experience to tell the suspect in a case what types of information or evidence law enforcement has or doesn't have against them.

The "California Register" continues to publish information on this case, which is not only inaccurate and misleading but also damaging to the investigation.

Over the past four years the Sheriff's Office has committed a significant amount of time and money toward solving this case. This has included a significant excavation of a possible site, involving the help of a forensic team, a specialized anthropology team from a major university and a significant number of investigators. This search was based on investigative leads and the use of a Sheriff's Office certified cadaver dog. Unfortunately this search was unsuccessful. The cost of such a dig is irrelevant because the Sheriff is committed to whatever it takes to find justice.

Also over the past four years the Sheriff's Office has utilized the assistance of the FBI, California Department of Justice, National Center for Missing and Exploited Children, the San Luis Obispo DA's Office, the Ventura Sheriff's Office and numerous Detectives from the San Luis Obispo County Sheriff's Office.

From the very beginning of his term, Sheriff Parkinson has committed to whatever he can to bring this 19-year-old case to a conclusion. The action that has been taken over the past four years has been with a purpose and a plan. Our new DA, Dan Dow, has recently assigned a Deputy District Attorney to the case. This is a commitment that will assist with future prosecution. The DDA has started the process of reviewing 19 years of reports and investigation.

The Sheriff's Office will not try this case in the media. Our commitment is to assemble enough evidence to prosecute the person(s) responsible in front of a jury. We cannot obtain a conviction based on what we believe; it must be based on what we can prove. The Sheriff's Office cannot and will not engage in name calling and responding to innuendo with Mr. Smallwood, nor provide information that he will in turn publish and disclose to the person(s) responsible.
The Sheriff and the Sheriff's Office remain committed to doing whatever it can to bringing the person responsible to justice and return Kristin to her family. We continue to communicate with the Smart family and are assured they have confidence in our efforts.

STATEMENT FROM THE SMART FAMILY

We acknowledge the recent California Register article that our daughter Kristin s remains have been located. We wish to clarify that our daughter s remains have NOT been located. After learning of the existence of this article we requested that it not be published. The article consists of assumptions and opinions of people that are not authorized to be involved in Kristin s case. Although they mean well the information and opinions have no bearing on the case itself. Any names that are mentioned in that article are used without authorization or permission of the persons, with the exception of the person providing the information

The unauthorized article is damaging to the on-going investigation. The yard mentioned was previously searched several years ago and did not produce positive results. Any information that is creditable about locating our daughter s remains will come from the SLO Sheriff Office. For the past four years we have been in regular contact with Sheriff Ian Parkinson and the SLO Sheriff Office. We would request that anyone with creditable information in the future provide it directly to the SLO Sheriff Office. Private investigations only injure the current on-going investigation.

We are truly grateful to the SLO community for your continued support. Words cannot truly express how your support has lifted our hearts and hopes over the last eighteen years. We hope and pray that there will be a time when our daughters remains will be located and she will be returned to our family.

Thank you
Stan & Denise Smart

A message from the

SAN LUIS OBISPO COUNTY
SHERIFF'S OFFICE

226 44 Comments 148 Shares

Like Comment Share

EXHIBIT VVV

San Luis Obispo County Sheriff's Office

September 2, 2016

NEW DEVELOPMENTS IN THE KRISTIN SMART DISAPPEARANCE INVESTIGATION

On 9-6-16 the Sheriff's Office, in conjunction with the FBI, began an excavation project on the Cal Poly campus. The purpose of the excavation was to determine if the remains of Kristin Smart were buried on that property. Kristin is the Cal Poly student who went missing in May, 1996. This is one of several locations being looked at, and is being disclosed because of the high profile location. The Sheriff's Office will not be discussing other locations at this time.

After a comprehensive review of the Smart case, a lead was developed over the past two years that strongly suggested the remains of Kristin might be buried on the hillside near the Cal Poly "P" landmark. Human Remains Detection dogs were brought in from FBI headquarters in Virginia to search the area in January of this year. These specially trained FBI canines independently alerted on locations of interest in this area of campus.

In the past five years, the Sheriff's Office has utilized the services of the FBI, California Department of Justice, Ventura County DNA Lab and the San Luis Obispo County District Attorney's Office.

Cal Poly President Jeffrey Armstrong has been informed and has been very supportive of this project. Being mindful of the impact to Cal Poly, the Sheriff's Office chose to conduct the excavation before the fall quarter began.

Also realizing the potential impacts to the environment, the Sheriff's Office contacted the state department of Fish and Wildlife for guidance to minimize the environmental impact during the project and for direction on site restoration when we are finished.

The Smart family has been kept apprised and is supportive of this new development.

The Sheriff's Office has invested thousands of investigative hours and thousands of dollars for this case over the past five years. It is our hope this will lead us to finding Kristin and bring closure to her family and to the community.

A message from the

SAN LUIS OBISPO COUNTY
SHERIFF'S OFFICE

186

30 Comments 56 Shares

EXHIBIT WWW

San Luis Obispo County Sheriff's Office

THE FOLLOWING IS A STATEMENT FROM THE FAMILY OF KRISTIN SMART REGARDING THE 20TH ANNIVERSARY OF HER DISAPPEARANCE

May 25, 1995 the day our daughter Kristin's life was taken. A college freshman at Cal Poly, she walked home with others from an off campus party, never to be seen again. It seems impossible that twenty years later our journey continues and we are still searching and praying for the recovery of our beautiful daughter.

Our family is eternally grateful and thankful beyond measure for the outreach and support of so many in the community and beyond who have shared their hearts, time and energy to keep Kristin's memory, story and quest for justice alive. The twenty-year journey to bring Kristin home has been more difficult than anything we could have ever imagined. It is only through your support that our HOPES are still alive.

The fight and quest will not end until she is home, but our family has made the decision that it is time to move forward and focus our efforts on honoring and celebrating Kristin's life. She was a girl with dreams and visions for the future. We plan to find a way for them to live on. Plans to publicly honor and celebrate her memory and visions during the coming year will be forthcoming.

In that light, our faith and trust to bring Kristin home and prosecute the person responsible continues to lie with Sheriff Parkinson and his department. We are grateful for their unwavering commitment to our family and their efforts to recover our daughter. We are grateful for those who have come forward and continue to encourage those who may hold a piece of the puzzle to contact the Sheriff's Office. You can make a difference.

Anticipating this twenty-year mark continues to be a difficult and stressful time for our family. In that light, we are choosing to observe this anniversary privately, and will be out of town and communication and will not be taking requests for media interviews.

Thank you for understanding and honoring our request to observe this moment in time privately and for your unwavering support of our family as we continue on this journey to bring our Kristin home.

Stan and Denise Smart and family



SMART FAMILY STATEMENT

A message regarding the 20th anniversary of Kristin Smart's disappearance

44

3 Comments 10 Shares

Like Comment Share

EXHIBIT XXX

Dan Dow
February 20, 2018 · Templeton ·

Happy Birthday Kristin Smart. Born February 20, 1977. Disappeared May 25, 1996 while a vibrant student at Cal Poly. There is a group of committed law enforcement professionals and community members that are still working hard to find out and prove what happened to you. #JusticeForKristin #NeverForgotten



YOUTUBE.COM

Kristin Smart-A life cut short

Kristin was an adventurous fun loving young woman whose childhood was rich and filled wi...

John Lindsey and 78 others

1 Comment 4 Shares

Like Comment Share

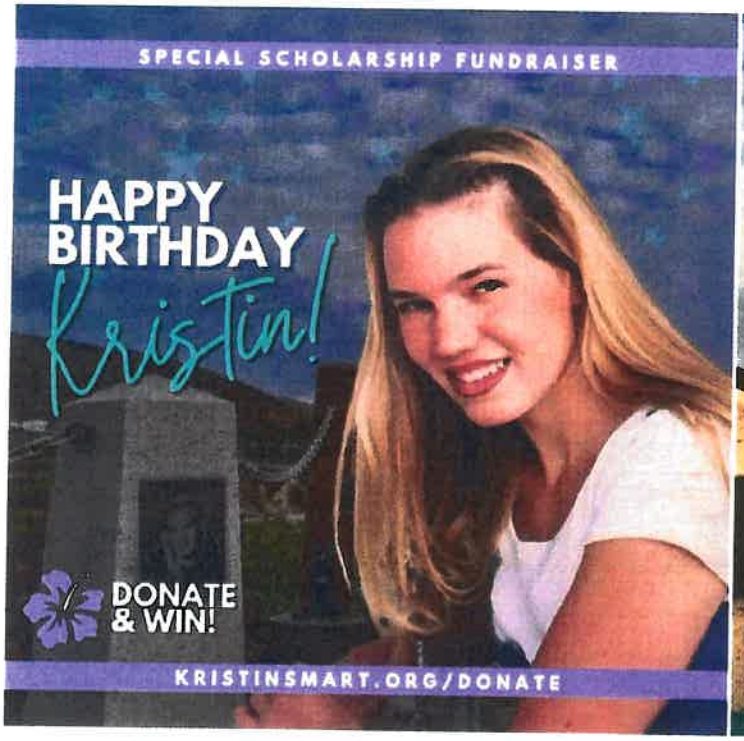
EXHIBIT YYY

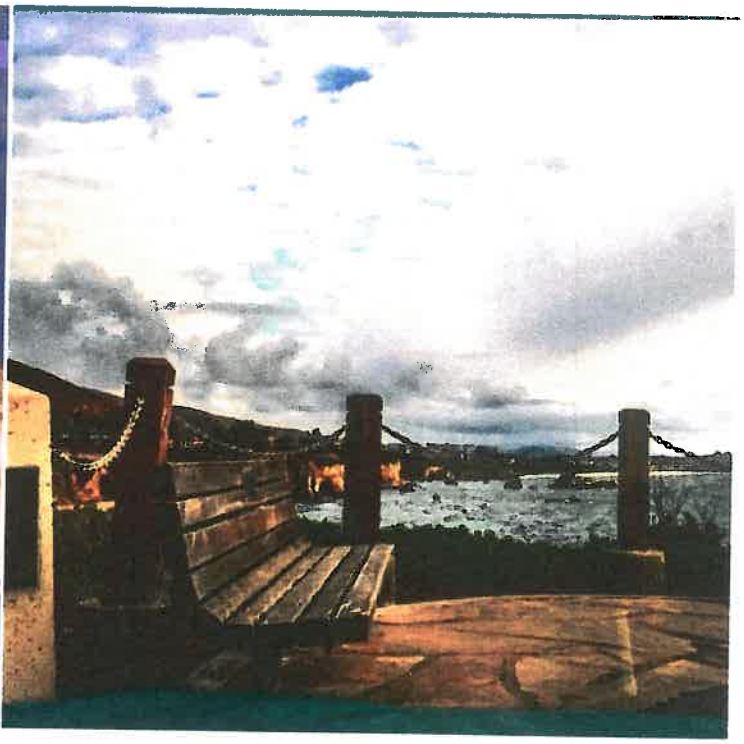
Dan Dow
February 20, 2021 ·

Today Kristin would have turned 44. She lives on in our hearts and in the memories of her family and loved ones. We shall never forget Kristin Smart and we won't stop our quest to bring her justice.

Please consider making a charitable donation to the Kristin Smart scholarship fund today in honor and in memory of Kristin.

#justiceforkristin





Justice For Kristin
February 19, 2021 ·

💜💜 DONATE & WIN! 💜💜
💜💜 SPECIAL SCHOLARSHIP FUNDRAISER 💜💜

Kristin would be turning 44 this Saturday, February 20. The Kristin Smart Scholarship is a way to celeb... **See more**

40 4 Comments

Like Comment Share

EXHIBIT ZZZ

Dan Dow
[illegible]

Twenty-five years ago this evening 19 year old Kristin Smart, a vibrant young woman with a very promising future, disappeared on her way back to her Cal Poly dorm room. My heart goes out to the Smart family as I can only imagine the depth of pain that they have felt for 25 years. We will #NeverForget as we seek #JustSeekKristin.

To learn about the Kristin Smart Scholarship and ways to support it you may visit this link: https://www.kristinsmart.org

This picture hangs on the wall in my office right next to my computer monitor so that every day I think of Kristin and seeking justice on her behalf.



423 33 Comments 34 Shares



da_slocounty • Follow

da_slocounty San Luis Obispo County District Attorney Dan Dow announces criminal charges filed against Paul Flores and his father Ruben for the 1996 murder of Kristin Smart.

To access the complete press release, visit our website: https://www.slocounty.ca.gov/Departments/District-Attorney/Latest-News/2021/April/Paul-Flores-and-His-Father-Ruben-Charged-for-1996.aspx

j.connerbooks Thank you for your persistence.

monami.crepebar Why did it take so long to figure this out?

lisalisa231 It's sad, he got to enjoy another 25 years of his life, not being caught sooner.

133 likes

San Luis Obispo County District Attorney [illegible] Dan Dow

Apr 13 2021

Yesterday SLO County District Attorney Dan Dow held a press conference to announce criminal charges were filed against Paul Flores and his father Ruben for the 1996 murder of Kristin Smart and concealing her body. Both men are scheduled to be arraigned in Department 6 at 8:30am this morning. Livestreaming will be available at www.slocourts.ca.gov

The DA's Office is also seeking the public's assistance in providing information about this case or information on other potential crimes believed to have been perpetrated by Paul Ruben Flores including assault or other acts. Flores was known to frequent bars in the San Pedro area from 2005 to present. Individuals with any information are encouraged to contact San Luis Obispo County Crime Stoppers at 805-549-7867 or go to www.slocrimestoppers.org.



[illegible]

[illegible] Comments [illegible] Shares

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On March 9, 2022, I served the foregoing document entitled: **DECLARATION OF JAKE SWANSON IN SUPPORT OF MOTION FOR CHANGE OF VENUE (PEN. CODE, § 1033)** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

_X_ **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

____ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed March 9, 2022, at Santa Barbara, California.

Jake Swanson

Jake Swanson

SERVICE LIST

Christopher Peuvrelle
Deputy District Attorney
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San Luis Obispo, CA 93408-1000
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haroldmesick@gmail.com
Via Email Only

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SANGER SWYSEN & DUNKLE
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Santa Barbara, CA 93101
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Fax: (805) 963-7311
Email: RMSteam@sangerswysen.com

Attorneys for Defendant
Paul Ruben Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PAUL RUBEN FLORES,

Defendant.

Case No. 21F-02402-A

DECLARATION OF SARAH S. SANGER IN SUPPORT OF MOTION FOR CHANGE OF VENUE (PEN. CODE, § 1033)

Volume 1 of 4

Date: March 30, 2022
Time: 8:30 a.m.
Dept.: 5

Hon. Craig B. Van Rooyen

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DECLARATION OF SARAH S. SANGER

I, Sarah S. Sanger, declare:

1. I am an attorney at law duly licensed in the State of California and am an attorney of record for the defendant herein, Paul Flores.
2. A column written by San Luis Obispo County Sheriff Ian Parkinson titled "Behind the Badge" appeared in the January 2022 edition of the Central Coast Journal. Attached hereto as Exhibit A is a true and correct copy of Sheriff Parkinson's column.
3. The local television news station, KSBY, has a tab on the homepage of its website that is dedicated to articles regarding the disappearance of Kristin Smart. The homepage can be found at https://www.ksby.com/. Attached hereto as Exhibit B is a true and correct copy of the articles that appear under the KSBY "Kristin Smart Case" tab.
4. Attached hereto are Exhibits A through CCC and QQQQ through CCCCC, which have all been obtained from public sources.
5. I obtained Exhibits C through HH from the San Luis Obispo Tribune website at https://www.sanluisobispo.com. These exhibits are true and correct copies of the articles I viewed on said website.
6. I obtained Exhibits QQQQ through RRRR and TTTT-CCCCC from the Atascadero News website at https://atascaderonews.com/. These exhibits are true and correct copies of the articles I viewed on said website.
7. I obtained Exhibits II through OO from the A-Town News website at https://atowndailynews.com. These exhibits are true and correct copies of the articles I viewed on said website.
8. I obtained Exhibits PP through YY from the Paso Robles Daily News website at https://pasoroblesdailynews.com/. These exhibits are true and correct copies of the articles I viewed on said website.

9. Through court process, the defense has received voluminous records from the Arroyo Grande Police Department indicating dozens of calls for service relating to incidents where the Flores family was being harassed as a result of Paul Flores' being targeted by the community as a suspect in this case. The records are not attached to this motion in light of the fact that they contained addresses and other potentially confidential information.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 9th day of March, 2022 at Santa Barbara County, California.

Sarah S. Sanger

Sarah S. Sanger

EXHIBIT A



BEHIND THE BADGE:

SLO County Sheriff's Office

BY IAN PARKINSON, SAN LUIS OBISPO COUNTY SHERIFF

Before I begin this column, I want to first wish everyone a very happy, safe, and prosperous 2022!

That's how I began my column last year. That's my usual greeting for the new year. But I have to qualify that statement by saying 2021 has been anything but usual. That's because we are still dealing with the challenges of the pandemic. I think we were all hoping once we hit 2021, all of the problems and issues with COVID would be over. However, it has mutated, and now several different variants have spread around the world. That's made the challenge of dealing with this pandemic even more difficult. We've all been affected in some way or another. If not physically, then certainly emotionally or maybe financially. But it is my firm belief that there will be a better tomorrow. And with that note of optimism, I present to you my fourth annual State of the Sheriff's Office.

There probably was no bigger story this past year than we made an arrest in the almost 25-year-old case of missing Cal Poly student Kristin Smart. I would like to talk to you more about this; however, I am still bound by the court's gag order in the case. All I can say at this point is that this case is now proceeding to trial. The trial is expected to start in April.

Another homicide case, no less important than the Smart case but not nearly as well-publicized, was solved last year. A suspect was arrested for the 2019 murder of Larry Bross in Oceano. The 90-year-old Bross was found murdered in his home on January 24, 2019. The suspect, David Krause of Grover Beach, was arrested on April 8, 2021. That homicide was one of six the Sheriff's Office investigated in 2019. As I mentioned at the time, we typically don't have six homicides in one year. But 2019 was a very unusual year. With the arrest of Krause, all six of the homicides investigated by the Sheriff's Office in 2019 have been solved.

But it's not just the big cases that make the headlines. It's sometimes stories like neighbors in North County reporting a person who dumped a load of trash at the entrance to the Los Padres National Forest. The suspect was caught and made to clean up his mess. Or the story about how $10,000 in rare train parts were stolen from Santa Margarita Ranch. But because of the great work of our Deputies, the parts were recovered before they were recycled, and the suspect was arrested. And one more story: one of my favorites of the year, when two of my Deputies, Nick Dreyfus and Cliff Pacas, who were involved in a shootout in 2020 with a gunman in Paso Robles, were honored for their heroism by the County Board of Supervisors.

I'm extremely grateful to the men and women of the Sheriff's Office who, day in and day out, provide safety and security to all who live in San Luis Obispo County. And I am thankful to you, the community, for making the place we call home a better place to live.

So, here's to a new year. Be good. And be good to one another. ■





EXHIBIT B

ADVERTISEMENT



ORG.
AT ME.

Kristin Smart Case



KRISTIN SMART CASE

Defense requests change of venue for Paul, Ruben Flores trial

KSBY Staff 9:15 AM, Feb 02, 2022



LOCAL NEWS

Pretrial conference today in Kristen Smart murder case

Genelle Padilla 7:21 AM, Feb 02, 2022



KRISTIN SMART CASE

Judge rules against defense motion to dismiss trial in Kristin Smart case

KSBY Staff 12:24 PM, Jan 21, 2022



LOCAL NEWS

Flores' defense to ask court to throw out judge's ruling

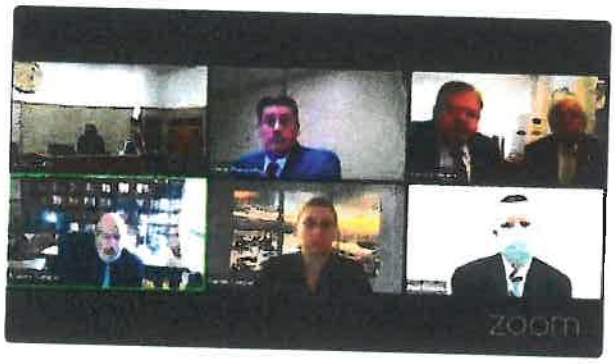
Genelle Padilla 4:20 AM, Jan 21, 2022



KRISTIN SMART CASE

Flores attorney seeks to throw out judge's ruling in preliminary hearing

Katherine Worsham 1:30 PM, Jan 13, 2022



KRISTIN SMART CASE

Paul, Ruben Flores appear in court via Zoom

Katherine Worsham 1:27 PM, Dec 06, 2021

ADVERTISEMENT



KRISTIN SMART CASE

"Dateline" to feature Kristin Smart case Friday night

Katherine Worsham 12:42 PM, Oct 29, 2021



KRISTIN SMART CASE

Paul, Ruben Flores plead not guilty, trial set for April 25

Ashton McIntyre 8:02 AM, Oct 20, 2021



KRISTIN SMART CASE

Ahead of Flores trial, vendors raise money for Smart family

Bethany Reeves 2:58 PM, Oct 15, 2021



KRISTIN SMART CASE

Judge rules Paul, Ruben Flores can be tried in Kristin Smart case

Katherine Worsham 7:10 AM, Sep 22, 2021



KRISTIN SMART CASE

Testimony in Kristin Smart case preliminary hearing wraps up

Katherine Worsham 12:09 PM, Sep 20, 2021



KRISTIN SMART CASE

Forensic specialist continues testimony in Flores preliminary hearing

KSBY Staff 9:08 AM, Sep 09, 2021



KRISTIN SMART CASE

Human blood found in multiple soil samples taken from Flores home, forensic expert testifies

KSBY Staff 9:16 AM, Sep 08, 2021



KRISTIN SMART CASE

Archaeologists testify anomaly found in soil at Flores home was consistent with burial site

KSBY Staff 10:57 AM, Sep 07, 2021



KRISTIN SMART CASE

Preliminary hearing for Paul, Ruben Flores to resume this week

KSBY Staff 8:46 AM, Sep 06, 2021



KRISTIN SMART CASE

Preliminary hearing for Paul, Ruben Flores on hold until next week

Kathrene Herndon 8:44 AM, Sep 03, 2021



KRISTIN SMART CASE

Canine handlers, forensic specialist detail March search of Ruben Flores's home

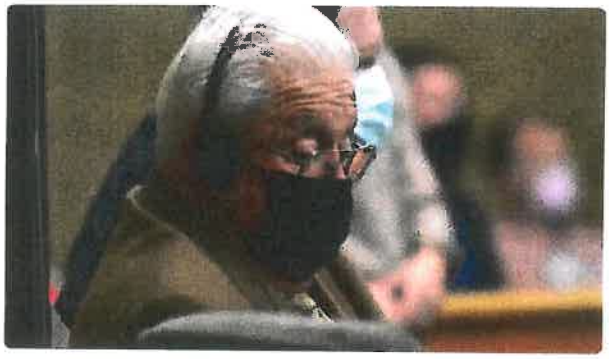
KSBY Staff 9:30 AM, Sep 02, 2021



KRISTIN SMART CASE

Detective in Kristin Smart case testifies human blood, suspicious staining found in soil at suspect's home

KSBY Staff 10:30 AM, Sep 01, 2021



KRISTIN SMART CASE

Detective in Kristin Smart case testifies Ruben Flores admitted to felony

KSBY Staff 8:59 AM, Aug 31, 2021



KRISTIN SMART CASE

Objection over Chris Lambert's subpoena in Flores preliminary hearing to be heard next week

KSBY Staff 8:25 AM, Aug 30, 2021



KRISTIN SMART CASE

Chris Lambert files objection to subpoena in Flores preliminary hearing

KSBY Staff 10:22 AM, Aug 27, 2021



KRISTIN SMART CASE

Judge denies defense motion to disqualify prosecution in Flores preliminary hearing

Katherine Worsham 11:03 AM, Aug 25, 2021



KRISTIN SMART CASE

Week 4 of Flores preliminary hearing kicks off with testimony from former investigator

KSBY Staff 8:29 AM, Aug 23, 2021



KRISTIN SMART CASE

Preliminary hearing for Paul, Ruben Flores continues Friday

KSBY Staff 8:30 AM, Aug 20, 2021



KRISTIN SMART CASE

Flores preliminary hearing continued again

KSBY Staff 8:48 AM, Aug 18, 2021



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Flores preliminary hearing continued until Wednesday

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KRISTIN SMART CASE

Witness in preliminary hearing believes she heard Paul Flores confess to burying Kristin Smart

KSBY Staff 7:51 AM, Aug 12, 2021



KRISTIN SMART CASE

Expert testifies her cadaver dogs 'strongly alerted' to dorm room in search for Kristin Smart

KSBY Staff 7:55 AM, Aug 11, 2021



KRISTIN SMART CASE

Former friends of Paul Flores testify at his preliminary hearing

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Defense questions detective about other men in Kristin Smart investigation

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'Why did I let her go by herself?' Friend of Kristin Smart testifies during Flores preliminary hearing

KSBY Staff 8:25 AM, Aug 05, 2021

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Sheriff's detective, retired police investigator testify during hearing for Paul, Ruben Flores

Kathrene Herndon 8:22 AM, Aug 04, 2021

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Witnesses recall seeing Kristin Smart, Paul Flores at party before her disappearance

Kathrene Herndon 8:17 AM, Aug 03, 2021

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Here's why the court hearing in the Kristin Smart murder case is not being broadcast live

Katherine Worsham 4:30 PM, Aug 02, 2021

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Denise Smart called as first witness in preliminary hearing of Paul, Ruben Flores

Kathrene Herndon 12:27 PM, Aug 02, 2021

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Preliminary hearing for Paul, Ruben Flores begins Monday

KSBY Staff 7:43 AM, Aug 02, 2021

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What to expect during the preliminary hearing for Paul and Ruben Flores

Megan Healy 5:30 PM, Jul 29, 2021

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Unsealed documents in Kristin Smart case reveal details of backyard search

Alexa Bertola 4:19 PM, Jul 15, 2021

KRISTIN SMART CASE

Judge denies motion to add rape charges to criminal complaint against Paul Flores

KSBY Staff 4:24 PM, Jul 14, 2021

KRISTIN SMART CASE

Paul, Ruben Flores to make first in-person court appearance

KSBY Staff 9:27 AM, Jul 14, 2021

KRISTIN SMART CASE

Paul Flores makes first of 2 court appearances this week

KSBY Staff 7:41 AM, Jul 12, 2021

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Judge rejects protective order against attorney representing Kristin Smart's family

Katherine Worsham 5:12 PM, Jul 07, 2021

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Kristin Smart Case



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New evidence hearing date set in Kristin Smart murder case

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Evidence hearing in case against Paul, Ruben Flores delayed

Kathrene Herndon 9:39 AM, Jun 30, 2021

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UPDATE: Wednesday court appearance for Paul, Ruben Flores canceled

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Paul, Ruben Flores due back in court Monday

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Arroyo Grande businesses raise more than $4k for Kristin Smart Scholarship

KSBY Staff 4:46 PM, Jun 07, 2021



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2021 Kristin Smart Scholarship winners announced

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Arroyo Grande family creates Kristin Smart chalk art

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Village of Arroyo Grande going purple to support Kristin Smart Scholarship

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Walk held at Cal Poly in honor of Kristin Smart

Dusty Baker 9:16 AM, May 26, 2021

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How Cal Poly student journalists covered the disappearance of Kristin Smart

Richard Gearhart 7:57 PM, May 25, 2021

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Community members continue to seek justice for Kristin 25 years later

Neil Hebert 7:26 PM, May 25, 2021

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"Your Own Backyard" podcaster plans to continue telling Kristin Smart's story

Alexa Bertola 5:56 PM, May 25, 2021

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Kristin Smart: 25 Years Later

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Search for Kristin Smart continues 25 years later

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Kristin Smart Scholarship supports local college-bound women

Megan Healy 12:56 PM, May 25, 2021

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Family celebrates Kristin Smart's life, legacy on 25th anniversary of her disappearance

Katherine Worsham 10:30 AM, May 25, 2021

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Preliminary hearing for Paul, Ruben Flores will take 12 days, prosecution says

KSBY Staff 8:38 AM, May 17, 2021

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Susan Flores served with civil lawsuit in connection with Kristin Smart disappearance

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Kristin Smart family's civil attorney names Susan Flores and boyfriend in lawsuit

Megan Healy 12:27 PM, May 10, 2021

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Kristin Smart Collective creating new proposal for memorial

Kaitlyn Little 11:38 PM, Apr 27, 2021

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Lawsuits naming Paul, Ruben Flores likely to move forward after criminal case

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Smart family civil attorney alleges Ruben Flores moved Kristin Smart's remains after 2020 searches

Megan Healy 1:04 PM, Apr 22, 2021

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Ruben Flores released from jail after posting bail

KSBY Staff 11:11 PM, Apr 21, 2021

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Police respond to report of burglary at Paul Flores's San Pedro home

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Defense criticizes evidence in Kristin Smart slaying arrests

Brian Melley, Associated Press 12:09 PM, Apr 20, 2021

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Attorneys explain potential court process for Paul,

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Meet the attorneys in the Kristin Smart criminal case

Megan Healy 6:52 PM, Apr 19, 2021

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Paul, Ruben Flores enter not guilty pleas in Kristin Smart case

Kathrene Herndon 8:36 AM, Apr 19, 2021

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Community holds vigil for Kristin Smart and family in Paso Robles

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Update: Smart Family will not attend Paso Robles vigil for Kristin Smart

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James Murphy plans to file lawsuit against Ruben Flores on behalf of Kristin Smart's family

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Updated Kristin Smart billboard now visible in Arroyo Grande

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Investigators do not know where Kristin Smart's remains are located, sheriff says

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Legal expert believes DA has tight case against Paul Flores

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Smart family releases statement following arrest of Paul Flores, father

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CRIME

Kristin Smart may be buried near Cal Poly 'P,' sheriff says as excavation begins

TRIBUNE STAFF

UPDATED SEPTEMBER 06, 2016 10:07 PM



The remains or evidence relating to the disappearance of Kristin Smart, the Cal Poly freshman who went missing over Memorial Day weekend in 1996, may be buried on the hillside near the university's "P" landmark, the San Luis Obispo County Sheriff' BY DAVID MIDDLECAMP

Investigators in the Kristin Smart case have begun excavating sites on a hillside near the Cal Poly "P," saying a new lead "strongly suggests" the former Cal Poly freshman's remains may be buried there, the San Luis Obispo County Sheriff's Office announced Tuesday.

Members of the Sheriff's Office and 25 agents and support staff from the FBI set up a command center on the northeastern boundary of the campus Tuesday and will spend the rest of the week excavating "locations of interest" on the hillside.

Smart has been missing since Memorial Day weekend in 1996 after she was last seen walking back to her dorm after an off-campus party.

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Sheriff Ian Parkinson said the locations on campus are among several areas of interest in the county, but he would not reveal specifics.

"We're not sure where this is going to take us," Parkinson said at a news conference Tuesday, cautioning that "we must manage our expectations." He added, "We will not give up to find Kristin."

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Despite secrecy surrounding the 20-year-old investigation, Parkinson said the excavation was announced to the public because of the location's "high visibility." He declined to discuss the other locations at this time.

Parkinson said the campus dig was the result of a lead that was developed during a comprehensive review over the past two years by a new sheriff's detective assigned to the case full time. That lead indicated that Smart's remains could still be on the

hillside, an area searched by about 400 volunteers on foot over two days in June 1996.

In January of this year, the Sheriff's Office requested special "human remains detection dogs" be brought in from the FBI headquarters in Virginia to search the hillside. The dogs alerted investigators to several specific areas of interest there, Parkinson said.



FBI Special Agent in Charge Sean Ragan talks about how the Bureau is partnering with the SLO County Sheriff's Office in the Kristin Smart investigation, which includes bringing in specially-trained dogs and the excavation process. BY DAVID MIDDLECAMP

The search of the hillside is expected to last four days, with major excavations beginning Wednesday, said FBI Special Agent In Charge Sean Ragan, who is heading the FBI's efforts in the case. Depending on what they find, Ragan said, they expect the search to be completed Friday, before students begin returning for the start of fall quarter on Sept. 22. Excavation began late Tuesday afternoon.

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Sheriff's Office spokesman Tony Cipolla said following the news conference that officials have not conducted excavations at the other locations of interest outside of the Cal Poly campus, and are not currently doing so.

Asked about the significance of the timing of the dig shortly before the start of fall quarter classes, Cipolla said it was a matter of coordinating the agencies involved, which also includes the California Department of Fish and Wildlife, the California Department of Justice, the San Luis Obispo County District Attorney's Office and the university.

"There was a very narrow window there to make sure we got the FBI there and their equipment. We can't just call them up and they're here the next day," Cipolla said. "It

takes a lot of coordination."

Unlike the initial search of the area in 1996, Parkinson said, this time efforts will be more site-specific and will use precise tools. Investigators will initially dig about 3 feet or deeper, if needed.

Officials would not disclose details about the lead. But when asked, Cipolla called it the case's "most promising lead we've had in years." Parkinson, however, noted that there have been other leads in the course of the 20-year investigation.

The last person to be seen with Smart in the early morning of May 25, 1996, was Paul Flores, a student who had met Smart at a party late the night before. Smart was seen walking with Flores at the intersection of Perimeter Road and Grand Avenue, toward her dorm at Muir Hall.

Flores remains a "person of interest" in the case, Parkinson said Tuesday, adding that officials have not had any recent communication with Flores or his family.



Cal Poly student Kristin Smart disappeared on Memorial Day weekend in 1996 after walking back to campus from a party. This is the route she took the night she was last seen. BY JOE JOHNSTON

If she was alive today, Smart would be 39 years old. The 20-year anniversary of the disappearance passed early this year with no new information regarding how the Stockton resident went missing, despite Parkinson adding the new detective to the case to bring "fresh eyes to the investigation."

"It's like going to work with a blank sheet of music," Parkinson told The Tribune in May. "We really wanted an unbiased view of what's been done to date."

Parkinson noted that a combined $65,000 reward remains on the table for information leading to the conviction of the person responsible.

The DA's Office has also assigned a new deputy prosecutor to the Smart case, and that investigator meets regularly with the detective, Assistant District Attorney Lee Cunningham told The Tribune in May.

Smart's disappearance also changed the way universities report crimes. Criticism of the university police response to the case resulted two years later in the passage of the Kristin Smart Campus Safety Act, which was championed by the Smart family and supported by the Cal Poly administration.

The measure, signed into law by then-Gov. Pete Wilson, requires publicly funded universities to immediately contact designated outside assisting law enforcement agencies when violent crimes occur or are suspected to have occurred on a college campus. The law requires that schools have written agreements designating responsibilities of assisting agencies, as well as specific geographical boundaries for those agencies, in cases of homicide, rape, aggravated assault and robbery.

Smart's parents, Stan and Denise Smart of Stockton, could not be reached for comment Tuesday. Jim Murphy, the Smarts' Arroyo Grande-based attorney who is representing them in their civil lawsuit, was out of town and could not immediately be reached.

Parkinson asked that members of the public stay away from the excavation site.

Anyone with information about the Smart case is urged to call the Sheriff's Office at 805-781-4550 or leave an anonymous tip at Crime Stoppers at 805-549-STOP.

Matt Fountain, Cynthia Lambert and Kaytlyn Leslie contributed to this report.

This story was originally published September 6, 2016 1:21 PM.

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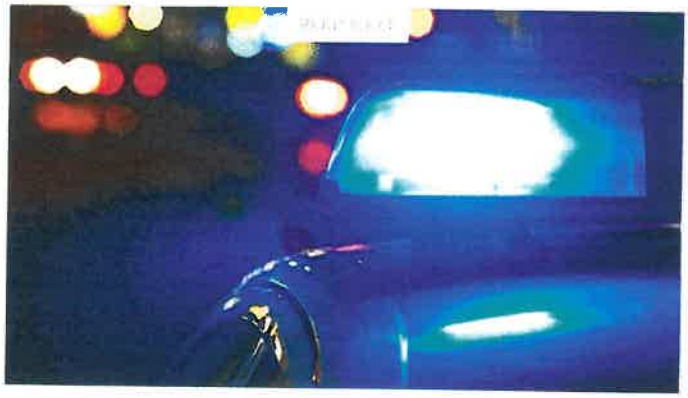
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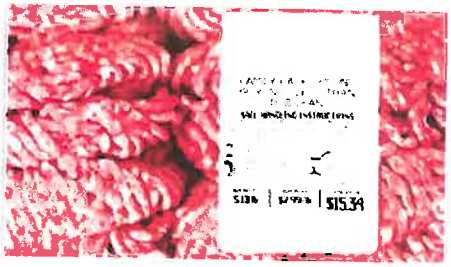


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BY THE PENNY HOARDER

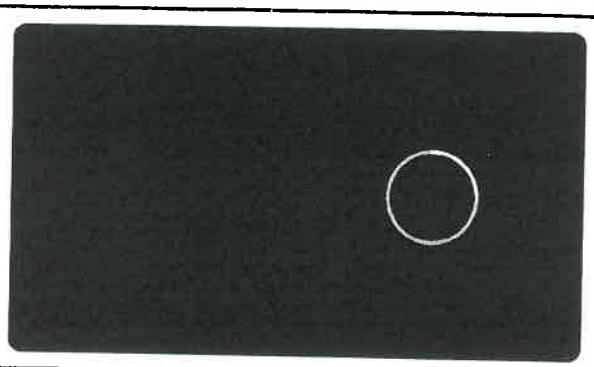
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THE TRIBUNE



CRIME

Searches for Kristin Smart spanned from Cal Poly to Paul Flores' home

By Cynthia Lambert

clambert@thetribunenews.com

UPDATED SEPTEMBER 07, 2016 12:29 PM



The remains or evidence relating to the disappearance of Kristin Smart, the Cal Poly freshman who went missing over Memorial Day weekend in 1996, may be buried on the hillside near the university's "P" landmark, the San Luis Obispo County Sheriff' BY DAVID MIDDLECAMP

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Over the past 20 years, investigators have conducted other searches for remains or more clues about Kristin Smart's disappearance. The Cal Poly freshman, who was 19 at the time, was last seen May 25, 1996.

▪ **June 29-30, 1996:** Nearly 400 volunteers turned out for a massive campus search. Dogs trained to search for human remains were brought in, and four dogs independently reacted to Paul Flores' dorm room at Santa Lucia Hall. The dogs went immediately to a mattress in the room and showed interest in a wastebasket that was left in the room. Flores and his roommate had moved out of the room before campus investigators secured it June 10, 1996.

A two-day search was also conducted at Cold Canyon Landfill, where investigators dug through 18 feet of refuse in an approximately 100-square-foot area.

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▪ **July 1996:** A search of the Flores home in Arroyo Grande didn't yield any clues to Smart's whereabouts.

▪ **Nov. 1, 1996:** Sheriff's detectives searched a "confined" area in Huasna, assisted by dogs specially trained to detect human remains, but the search failed to turn up any new leads.

▪ **March 3, 1997:** Authorities searched the Arroyo Grande property belonging to Flores' parents at the request of attorney James Murphy, who represents Smart's parents, Stan and Denise Smart. Murphy was assisted by the Sheriff's Office and dogs trained to detect the scent of human remains. Tenants who rented the house granted permission for the search. It did not turn up any new leads.

▪ **May 7, 1999:** Sheriff's deputies, following up on leads the department had received, sifted through dirt under the Student Academic Services Building between Mountain Road and Santa Lucia Hall. No new evidence was found.

▪ **June 19, 2000:** Investigators searched for buried evidence at Flores' mother's Arroyo Grande home using ground-penetrating radar to get electromagnetic pictures of where objects might be buried. No remains or other evidence was found.

▪ **May 22, 2007:** A dig for Smart's remains was conducted behind the Flores home. Sheriff's officials were not involved; the dig was arranged by the Smart family's attorney and the attorney for Susan Flores, who had filed a civil suit against the Smart family for emotional distress. No new evidence was found.





The remains or evidence relating to the disappearance of Kristin Smart, the Cal Poly freshman who went missing over Memorial Day weekend in 1996, may be buried on the hillside near the university's "P" landmark, the San Luis Obispo County Sheriff' BY DAVID MIDDLECAMP

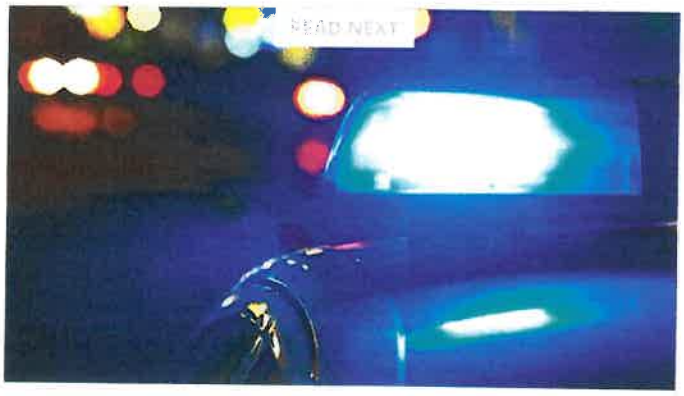
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CRIME

New 'item of interest' found in Kristin Smart search

By Lindsey Holden

lholden@thetribunenews.com

UPDATED SEPTEMBER 09, 2016 8:55 PM



As more 'items of interest' are found in the hunt for clues in the 1996 disappearance of the Cal Poly freshman, SLO County sheriff's spokesman Tony Cipolla explains how the finds will be analyzed BY LAURA DICKINSON

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Investigators on Friday found another "item of interest" while excavating a Cal Poly hillside in their search for clues to the 1996 disappearance of Kristin Smart.

FBI personnel and San Luis Obispo County Sheriff's Office deputies dug up the third and final campus location marked for excavation during an operation that began Tuesday and was expected to wrap up Friday evening. All three sites were situated on the steep, golden hill that's home to the Cal Poly "P," the landmark concrete letter overlooking the state university campus.

Smart, who was 19 at the time, was last seen early May 25, 1996, when she walked back toward her dorm room with Paul Flores, a fellow student, after attending an off-campus party. Smart and Flores were said to have been walking near the intersection of Perimeter Road and Grand Avenue toward Muir Hall, where she lived.

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Flores remains a "person of interest" in the 20-year-old case. Smart, a Cal Poly freshman at the time of her disappearance, was declared legally dead in 2002.

Preparations for the excavation began Tuesday. Earthmovers and other heavy equipment could be seen Wednesday and Thursday digging ravines while investigators used shovels and hand tools to sift through the dirt. Investigators dug about 3 feet into the hillside and excavated areas within a 90-foot radius at all sites.

Friday's search was confined to a third site higher up the hill, in a small wooded area. Investigators periodically emerged from the cluster of trees, but most of the operation was hidden from view.

Sheriff's Office spokesman Tony Cipolla said investigators on Friday had uncovered an "item of interest" at the third site. Several other finds were also discovered at the first site, excavated Wednesday, and the second site, where investigators dug Thursday.

"I can't really elaborate on what the items were," Cipolla said. "I can tell you that they are being analyzed by forensic anthropologists to determine if they are related to either humans or animals."

Cipolla said it may take "days or weeks or even months" to figure out whether the finds are significant. Some items will be sent to FBI labs in Quantico, Virginia, for further analysis, he said.

Law enforcement have uncovered "many items of interest and physical evidence" during the course of the investigation that has spanned two decades, Cipolla said.

Asked whether any earlier finds had led detectives closer to solving Smart's disappearance, Cipolla didn't answer directly, saying only that investigators "can't quantify or qualify one item over another," especially because the significance of the most recent finds has yet to be determined.

San Luis Obispo Sheriff Ian Parkinson said Tuesday that investigators had identified several other undisclosed areas of interest in San Luis Obispo County.

It's unclear whether those sites will be excavated, Cipolla said, but the search would not take place immediately after the dig on Cal Poly's campus.

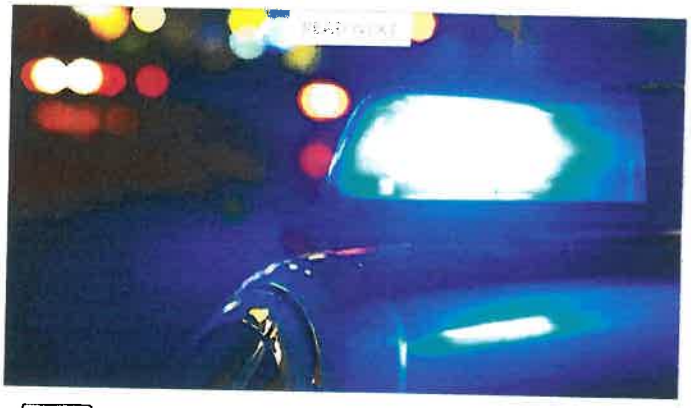
Although investigators have remained optimistic about the campus search, they've also been trying to manage expectations, he said.

"Even if we don't find Kristin's remains here, it is beneficial," Cipolla said. "We can cross another location off our list."

Plans for a sunset memorial for Smart at Dinosaur Caves Park in Shell Beach on Friday evening was posted on a "Sunset with Kristin" Facebook page.

Lindsey Holden: 805-781-7939, @lindseyholden27

This story was originally published September 9, 2016 12:59 PM.



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Man on stolen motorcycle leads officers on high-speed chase from Los Osos to Atascadero

BY KAYTLYN LESLIE
MARCH 04, 2022 5:23 PM

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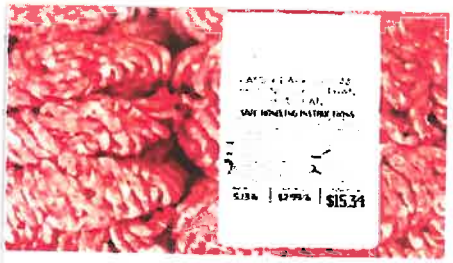
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SLO County sheriff issues 4 search warrants in Kristin Smart investigation

BY NICK WILSON AND MATT FOUNTAIN
UPDATED FEBRUARY 06, 2020 9:37 AM



San Luis Obispo County Sheriff's Office and FBI representatives serve a search warrant at the Arroyo Grande, California, home of Susan Flores. Her son, Paul Flores, is a person of interest in the 1996 disappearance of Cal Poly student Kristin Smart. BY DAVID MIDDLECAMP

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Update: Cal Poly student Kristin Smart went missing 23 years ago. Here's what's happened since

• • •

The San Luis Obispo County Sheriff's Office has served search warrants in two states related to the investigation of missing Cal Poly student Kristin Smart, who disappeared more than 20 years ago.

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The Sheriff's Office issued warrants in two locations in San Luis Obispo County, one in Los Angeles County and one in Washington state, according to an agency news release Wednesday.

On Wednesday morning, members of the Sheriff's Office and FBI were seen outside the Arroyo Grande home of the mother of Paul Flores, and posted caution tape to keep people out.

About 15 spectators gathered across the street from the house to watch the investigators work, some shouting "Dig her up."

Flores was the last person Smart was seen with in 1996 after she left a party to return to her dorm. He is considered a person of interest in the case, but has never been charged with a crime in connection with it.

A little after 9:30 a.m. Wednesday, sheriff's investigators emerged from the house, which belongs to Susan Flores, with armloads of evidence they placed in a van, including a computer, a brown paper bag and a storage bin. They then took down the caution tape and left the scene.



Members of the Los Angeles County Sheriff's Department remove items after a searching a home in connection with a cold case Wednesday, Feb. 5, 2020, in Los Angeles. Search warrants were served Wednesday at locations in California and Washington state in the investigation of the disappearance of Kristin Smart, the Cal Poly student who disappeared in 1996. Marcio Jose Sanchez *AP*

Also on Wednesday, Los Angeles TV news stations ABC7 and KTLA reported that the Sheriff's Office served a search warrant at a home in the 900 block of West Upland Avenue in San Pedro. Flores has lived in that neighborhood since 2010, according to public records databases.

Authorities also searched two vintage vehicles at the San Pedro home, the Associated Press reported, and took "several electronic devices" out of the house.

An Associated Press photographer captured images of deputies rummaging through the trunk of what is believed to be Flores' car, just feet away from reporters.

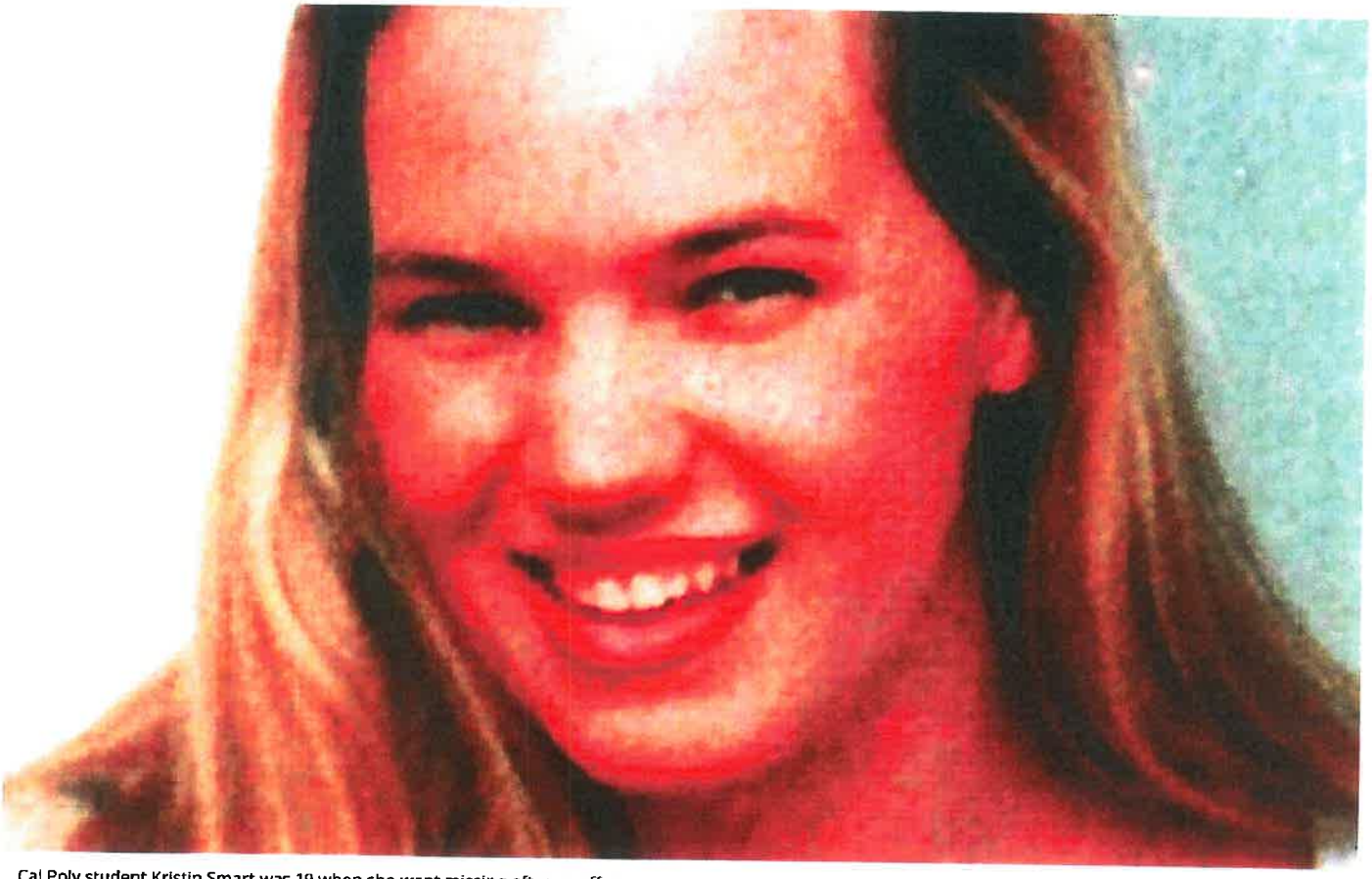
Flores was detained during the service of the search warrant in San Pedro, according to Sheriff's Office spokesman Tony Cipolla.

Although it's not clear where the fourth search warrant was served, Chris Lambert, the creator of a podcast about Kristin Smart's disappearance, said Flores has relatives in Everett and Bothell, Washington, north of Seattle.

According to the Sheriff's Office, the search warrants served Wednesday are limited in scope and sealed by the court.

"As a result, we are precluded by law from disclosing any further details about them," the release stated. "This is an active and on-going investigation. The Sheriff's Office will not be commenting any further and no additional information will be

released at this time, nor do we anticipate any additional news releases regarding this investigation.



Cal Poly student Kristin Smart was 19 when she went missing after an off-campus party on Memorial Day weekend in 1996. Courtesy photo

SHERIFF'S OFFICE HAS SERVED 18 WARRANTS SINCE 2011

On Jan. 29, the Sheriff's Office announced it had taken two trucks into evidence that belonged to members of the family of Paul Flores in 1996.

While Flores now resides in San Pedro, his parents still live in Arroyo Grande.

Since 2011, the Sheriff's Office said it has served 18 search warrants, conducted physical evidence searches at nine locations, submitted 37 evidence items from the early days of the case for modern DNA testing, recovered 140 new items of evidence, conducted 91 in-person interviews and written 364 supplemental reports.

The Smart family spokesperson, John Segale, told The Tribune on Tuesday that the Smarts would have "no statement."

"We won't have a statement until there's an announcement from the sheriff," Segale said. "That could be days, weeks, months time."



The Smart family, seen here in a photo from Kristin's childhood, have been waiting 23 years for answers. "I just pray that before we die, we'll know (what happened to Kristin)," her mother, Denise Smart, says in the podcast. Kristin is pictured in the front with brother Matt and sister Lindsey, held by father Stan. Courtesy Chris Lambert

THE DISAPPEARANCE OF KRISTIN SMART

Kristin Smart was last seen leaving a house party at 135 Crandall Way near the Cal Poly campus about 2 a.m. May 25, 1996, with Flores and friend Cheryl Anderson.

Anderson later told investigators that she left Smart with Flores at the intersection of Perimeter Road and Grand Avenue, and continued to her dorm at Sierra Madre Hall.

Smart was to supposed to walk back to her Muir Hall dorm room, and Paul Flores later told police he and Kristin Smart parted ways near his own room at Santa Lucia Hall.

Two days later, a friend of Smart's called the Cal Poly University Police Department to report her missing. But due to a jurisdictional fumble between that agency and the San Luis Obispo Police Department, a search didn't begin until May 30, 1996.

Organized searches were conducted on and around the campus, and Cal Poly police and county District Attorney's Office investigators interviewed Flores.





FBI Special Agent in Charge Sean Ragan talks about how the Bureau is partnering with the SLO County Sheriff's Office in the Kristin Smart investigation, which includes bringing in specially-trained dogs and the excavation process. BY DAVID MIDDLECAMP

But it wasn't until June 5, 1996, that police searched Kristin Smart's dorm room and Flores' room on June 10, 1996.

By then, the academic quarter had ended and Flores had moved all of his belongings out of the room.

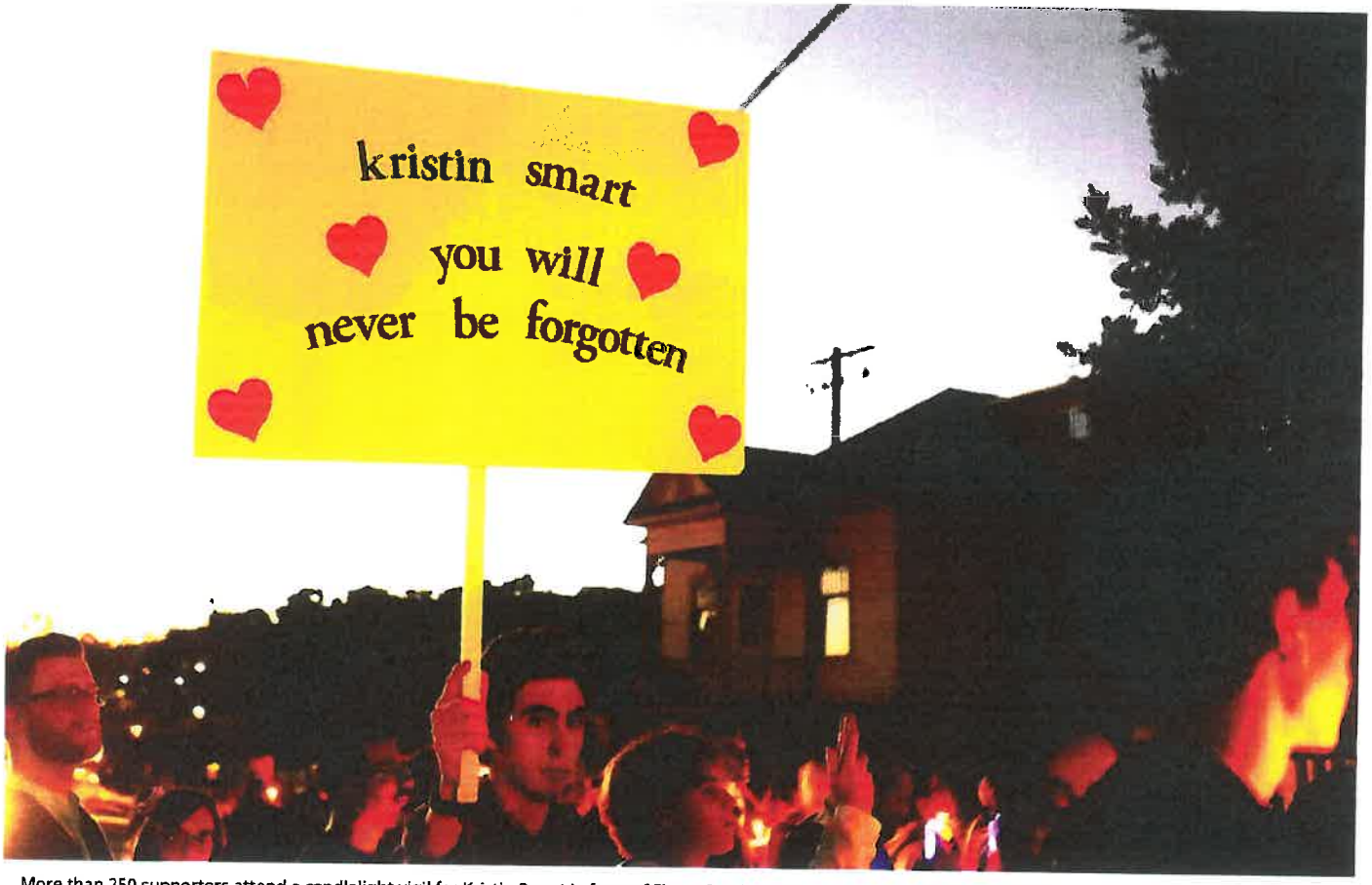
In a taped interview, Flores admitted to previously lying to investigators when he told them he received a black eye playing basketball. He reportedly told investigators he received the injury while fixing his truck, then abruptly ended the interview and refused to answer any more questions.

After a month went by and criticism from the Smart family and their supporters grew, the San Luis Obispo County Sheriff's Office took over the case.

Over the weekend of June 29, 1996, about 400 volunteers turned out for a large-scale search of the campus. Investigators also searched Flores' parents' Arroyo Grande home, which did not yield any clues.

The Smarts filed a $40 million wrongful death lawsuit against Paul Flores in November 1996, alleging that Flores murdered Kristin at Cal Poly. The Smarts would later add Cal Poly to the lawsuit, alleging the university failed to keep their daughter safe.

That lawsuit remains in legal limbo due to the Sheriff's Office's ongoing criminal investigation. The Smart family's attorneys have requested Sheriff's Office records necessary to prove their civil case, but those records remain confidential.



More than 250 supporters attend a candlelight vigil for Kristin Smart in front of Flores family home in Arroyo Grande. Laura Dickinson *LDICKINSON@THETRIBUNENEWS.COM*

Former San Luis Obispo County Sheriff Ed Williams previously said "there are no other suspects" than Paul Flores in Kristin Smart's disappearance.

In September 2016, the Sheriff's Office and the FBI conducted a joint excavation of a hillside on the Cal Poly campus after announcing new information strongly suggested that Smart's remains could be buried in an area near the Cal Poly "P" that had been searched by about 400 volunteers in June 1996.

Between Sept. 6-10, 2016, the agencies sifted through approximately 20,000 cubic feet of dirt, taking away bones and a possible "item of interest" to a facility out of the county for analysis.

Though the Sheriff's Office called the dig "beneficial," it has not said what, if anything, the effort revealed.

Lambert's podcast, Your Own Backyard, was launched in September 2019 and has brought renewed public interest in the case.



More than 250 supporters attend a candlelight vigil for Kristin Smart in front of Paul Flores' family home in Arroyo Grande on Sunday, Nov. 17. Marie Inman, center, and her husband Chuck Inman, right, read the Lord's Prayer to the crowd in front of the Flores family home. Laura Dickinson *LDICKINSON@THETRIBUNENEWS.COM*

Lambert, who lives in Santa Maria, has interviewed dozens of people associated with the investigation, and looked at potential locations for Smart's whereabouts — speculating whether her body could have been buried in Flores' mother's backyard in Arroyo Grande.

Cadaver dogs were alerted to Smart's scent when brought near Susan Flores' property, according to the podcast.

Lambert also spoke to women who have come into contact with Flores since Smart's disappearance, including a former coworker who said that years ago Flores scared her after she entered his home and he repeatedly tried to kiss her and didn't want her leave until he did.

In November 2019, hundreds of people gathered in the Arroyo Grande Village in a candlelight vigil in Kristin Smart's memory.

Interest around the case has been growing even more in recent weeks, after the Stockton Record broke a story Jan. 18 stating the Smart family was contacted by the FBI, and told to be ready for "a development."

The family later clarified that that information came from "a former FBI agent," not the FBI as reported.

This story was originally published February 5, 2020 8:25 AM.

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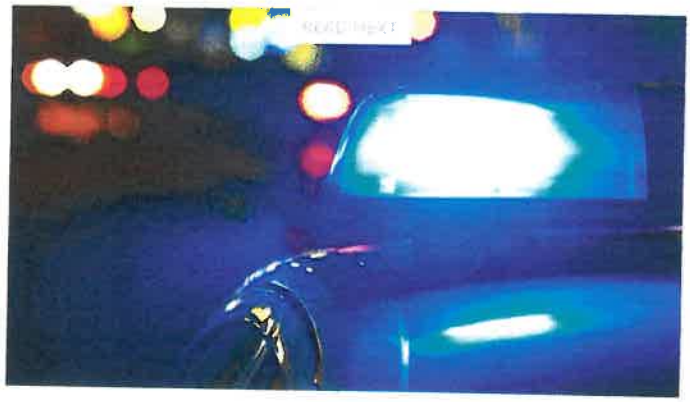
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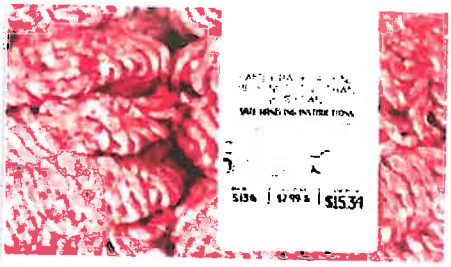
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CRIME

SLO County sheriff searches home tied to suspect in Kristin Smart's disappearance, car seized

BY SARAH LINN AND MATT FOUNTAIN
UPDATED MARCH 16, 2021 12:30 PM



The San Luis Obispo Sheriff's Office served a search warrant on Monday at the Arroyo Grande home of the father of Paul Flores, the sole person of interest in the disappearance of missing Cal Poly student Kristin Smart. BY DAVID MIDDLECAMP

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Update to this story >> >> Investigators search under deck at home tied to suspect in Kristin Smart disappearance

The San Luis Obispo Sheriff's Office served a search warrant on Monday at the Arroyo Grande home of the father of Paul Flores, the sole person of interest in the disappearance of missing Cal Poly student Kristin Smart.

Ruben Flores is the father of Paul Flores, who "remains the prime suspect" in Smart's disappearance in 1996, the Sheriff's Office said in a news release.

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"The Sheriff's Office has been authorized to utilize cadaver dogs and ground-penetrating radar during the course of the search," the agency said in the release. "This process could potentially take one to two days to complete."

"Traffic in the area may be impacted with vehicle access for non-residents restricted," the Sheriff's Office said.

According to the agency, the search warrant has been sealed, meaning that the Sheriff's Office is "precluded by law from disclosing any further details regarding it."

Smart's family issued a statement through their spokesman Monday morning.

"We are encouraged by the news of today's search of Ruben Flores' property," the family wrote, according to their public relations representative, John Segale. "We appreciate the vigilance and professionalism of Sheriff Ian Parkinson and his department and our family looks forward to learning more in the hours and days ahead."



K-19 units with the San Luis Obispo County Sheriff's Office search behind the Arroyo Grande home of Ruben Flores on Monday, March 15, 2021. Flores is the father of Paul Flores, the sole person of interest in the disappearance of missing Cal Poly student Kristin Smart. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

SLO COUNTY SHERIFF'S OFFICE SEARCHES ARROYO GRANDE HOME

At the scene Monday morning, three people who appeared to be residents of the home in the 700 block of White Court in Arroyo Grande were seen standing outside as deputies walked in and out of the property with K-9s.

More than a dozen Sheriff's Office deputies were at the house, but local reporters did not see any FBI agents present, unlike past recent searches related to the case.

A large number of those officers were searching in the rear of the property, out of sight from the street where reporters had gathered.

A tow truck also towed away a red, older model Volkswagen Cabriolet from the driveway of the home.

The car, which had a registration sticker dated October 2010 and was covered in a thick layer of dust, also had a Cal Poly decal on the rear window.

According to the DMV, the car is registered to both Ruben and Susan Flores, and was last registered as planned non-operational in October 2010.

Officials have said the search could take days, and two portable toilets were dropped off on the sidewalk in the cul-de-sac.



The home of Reuben Flores in the 700 block of White Court in Arroyo Grande was searched by Sheriff's deputies on March 15, 2021, in relation to the 1996 disappearance of Cal Poly student Kristin Smart. Flores is the father of Paul Flores, the only suspect in the case. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

SEARCH FOLLOWS ARREST OF PERSON OF INTEREST PAUL FLORES

The search of Ruben Flores's home takes place about a month after his son was arrested in Los Angeles.

Paul Flores, a San Pedro resident, was arrested Feb. 11 in the harbor area of Los Angeles on suspicion of being a felon in possession of a firearm.

"The arrest originated as a result of information obtained during our search warrants last year at the home of Paul Flores as part of the Kristin Smart investigation," Sheriff's Office spokesman Tony Cipolla said in a statement then.

Flores, 43, was released from Los Angeles County Jail shortly thereafter and a court date has been scheduled for June in Los Angeles Superior Court.



Representatives of the San Luis Obispo County Sheriff's Office and FBI conduct a warrant search of the home of Susan Flores in the 500 block of East Branch St. in February 2020. Sheriff's Office Cmdr. Keith Scott, head of the detective bureau, is on the right. Flores is the mother of Paul Flores, a person of interest in the disappearance of missing Cal Poly student Kristin Smart. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

SEARCH WARRANTS SERVED IN KRISTIN SMART DISAPPEARANCE IN 2020

In February 2020, the San Luis Obispo County Sheriff's Office and the FBI served search warrants at several residences in San Luis Obispo and Los Angeles counties, as well as a home in Washington State, related to Paul Flores.

One of the searches took place at the Arroyo Grande home of Susan Flores, Paul's mother. Investigators were seen leaving the house with armloads of evidence they placed in a van, including a computer, a brown paper bag and a storage bin.

They then took down the caution tape and left the scene.

At the time, Los Angeles TV news stations ABC7 and KTLA also reported that the Sheriff's Office served a search warrant at a home in the 900 block of West Upland Avenue in San Pedro.

Flores has lived in that neighborhood since 2010, according to public records databases.

Authorities also searched two vintage vehicles at the San Pedro home, the Associated Press reported then, and took "several electronic devices" out of the house.

An Associated Press photographer captured images of deputies rummaging through the trunk of what is believed to be Flores' car, just feet away from reporters.

Flores was detained during the service of that search warrant in San Pedro, but wasn't taken into custody.

Officials have not released details on what, if anything, of substance was found, saying the sealed warrant precludes them from commenting on the search.



Paul Flores, second from left, talks to authorities after being pulled from a Los Angeles County Sheriff's Department vehicle outside of a San Pedro home being searched in connection with the case Wednesday, Feb. 5, 2020, in Los Angeles. Search warrants were served Wednesday at locations in California and Washington state in the investigation of the disappearance of Kristin Smart, the Cal Poly student who disappeared in 1996. Marcio Jose Sanchez *AP*

MAN WAS LAST PERSON SEEN WITH MISSING CAL POLY STUDENT

Flores was the last person seen with Smart on an early morning in 1996 as he reportedly walked Smart back to her dorm room following a house party.

Flores has refused to cooperate with authorities since an initial interview with investigators at the time of Smart's disappearance.

He did not reveal details in a 1996 appearance before a San Luis Obispo grand jury, nor a 1997 deposition in which he repeatedly cited his right against self-incrimination, according to Tribune archives.

"There are no other suspects," then-Sheriff Ed Williams said in 1997.

Public interest in the long-standing case has been reignited in large part due to the popularity of "Your Own Backyard," a true crime podcast by Nipomo resident Chris Lambert.

Since the podcast began, the Smart case was also featured on CBS TV's "48 Hours" in November.

This story was originally published March 15, 2021 8:28 AM.

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Paul Flores, person of interest in Kristin Smart's disappearance, arrested in Los Angeles

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MATT FOUNTAIN

(805) 781-7909

Matt Fountain is The San Luis Obispo Tribune's courts and investigations reporter. A San Diego native, Fountain graduated from Cal Poly's journalism department in 2009 and cut his teeth at the San Luis Obispo New Times before joining The Tribune as a crime and breaking news reporter in 2014.



CRIME

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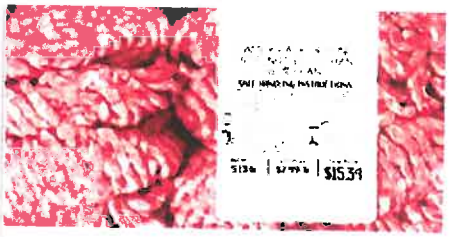
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Update: Kristin Smart investigators wrap up search of Ruben Flores' home after 2 days

BY MATT FOUNTAIN AND NICK WILSON

UPDATED MARCH 16, 2021 8:58 PM



The San Luis Obispo County Sheriff's Office wrapped up their second day of searching the Arroyo Grande property of Ruben Flores. His son Paul Flores was the last person to see Cal Poly student Kristin Smart alive in 1996. BY DAVID MIDDLECAMP | NICK WILSON

Update, 5:30 p.m.: Several onlookers passed by the Flores home to try to observe what they could, including some motorists who came by after Sheriff's officials ceased their search.

Dana Hanhart, of Orcutt, said she was eating lunch in the Village at Branch Street Deli on her day off and the talk of the restaurant was the Kristin Smart case.

As a lifelong resident of the Central Coast, and avid follower of the news of the case as well as the "Your Own Backyard" podcast, Hanhart decided visit the house in time to see Ruben and Susan Flores return to the home, along with Susan's boyfriend.

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"I just want to see justice brought," Hanhart said. "I'm curious. That's why I'm here. It's curiosity and wanting resolution."

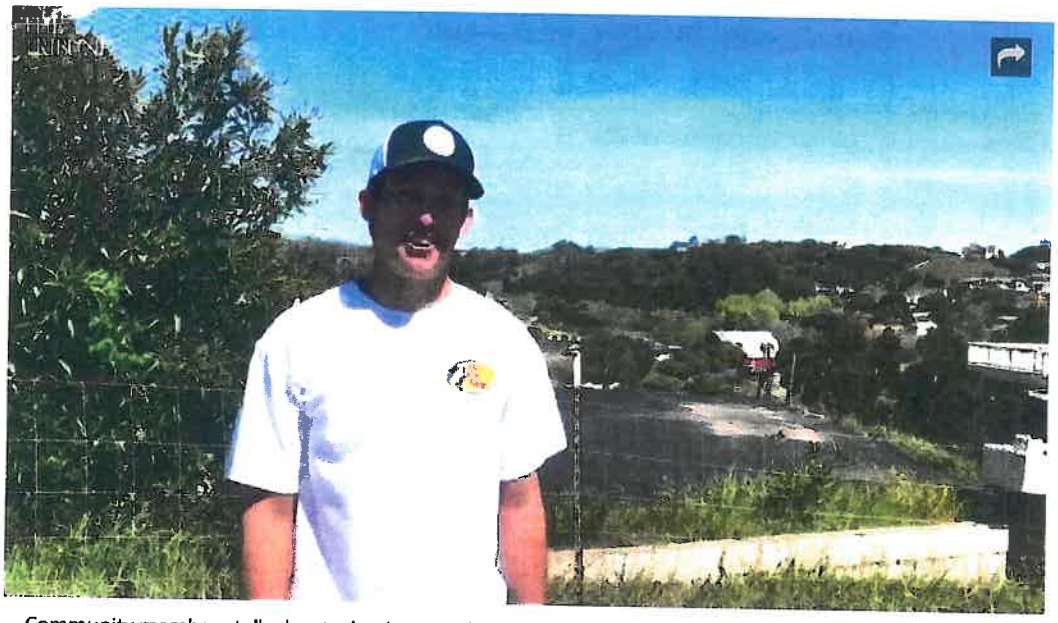
Keaton Biallas, a Grover Beach resident, said he observed a "lot of digging and moving parts" earlier in the day as part of the search warrant activities.

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"It has taken 25 years and taken a long time (to get to this point)," Biallas said. "...There have been a lot of rumors and things that have been said. I think there's way too much activity (for the case not be solved soon). I think the case will be solved soon. It's a matter of time."



Community members talk about why they watched San Luis Obispo County Sheriff's Office search the Arroyo Grande home of Ruben Flores. He's the father of Paul Flores, a suspect in missing Cal Poly student Kristin Smart's disappearance. BY NICK WILSON

Update to this story >> >> After nearly 25 years, Paul Flores named 'prime suspect' in Kristin Smart disappearance

Update, 2:20 p.m.:

Investigators with the San Luis Obispo County Sheriff's Office wrapped up their search of the Arroyo Grande property of Ruben Flores around 2 p.m. Tuesday.

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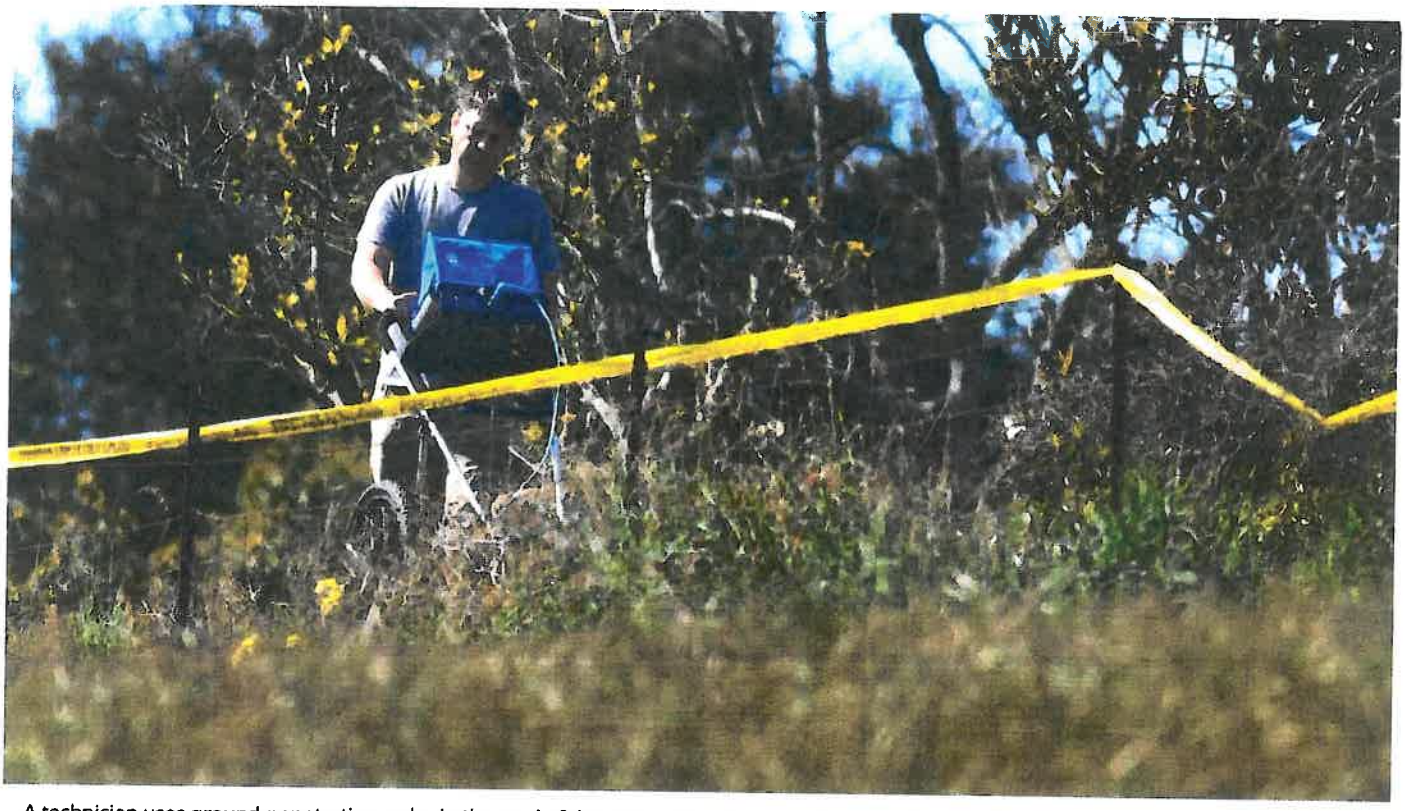
Ruben Flores is the father of Paul Flores, who has been named the prime suspect in the disappearance of missing Cal Poly student Kristin Smart in 1996.

"The Sheriff's Office has concluded its warrant service at the home of Ruben Flores in Arroyo Grande," the agency posted on its Facebook page at 1:48 p.m. Tuesday. "As

with any active investigation, we will not be commenting on what, if any, evidence has been discovered. No further information will be released at this time."

Officials could be seen Tuesday afternoon rolling up caution tape and driving away from the scene.

Ruben and Susan Flores, Paul Flores's mother, arrived at the home around 2:20 p.m. and went in together.



A technician uses ground-penetrating radar in the yard of the Arroyo Grande home of Ruben Flores on Tuesday, March 16, 2021, as the San Luis Obispo County Sheriff's Office searches the property for a second day. Flores is the father of Paul Flores, now considered the prime suspect in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

Update, 1 p.m.:

Two longtime neighbors of Ruben Flores stood outside their adjoining properties along Tally Ho Road in Arroyo Grande on Tuesday, looking up a hillside as the San Luis Obispo County Sheriff's Office searched Flores's property.

Sarah Araya, a resident of the 300 block of Tally Ho, has lived in her home since 1989.

"I remember right after (Smart disappeared), (her mother) Denise Smart was posting signs right outside our street," Araya said. "I can't remember exactly what they said but they were about her missing daughter. It was just her out here."

"I just want this case resolved," Araya said. "It has been stressful for everyone."

Araya and her neighbor Debbie Odbert said area residents talk often about Smart's disappearance.



Investigators under a blue shade tent outside the Arroyo Grande home of Ruben Flores on Tuesday, March 16, 2021, as the San Luis Obispo County Sheriff's Office searches the property for a second day. Flores is the father of Paul Flores, now considered the prime suspect in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

They said that living close to the Flores family home, the site of multiple law enforcement searches and widespread speculation over the years, has been a

strange experience.

"I feel a sense of relief it may be coming to an end because I feel for the Smart family," said Odbert, who has lived in her home since 1989. "I've also really had some feelings for the Flores family, like 'What if they didn't do it?' "

Odbert said she thinks it "will be good for it to be over with."

"Then I think it will bring everyone peace," she said.

Both neighbors said they haven't had any significant interaction with the Flores family in recent years. They have seen Susan Flores drive up and down the street, particularly of late.

Susan Flores drove by and waved to them on Tuesday morning.

Arroyo Grande resident Rayfield Dilonardo came to the White Court property on Tuesday to watch authorities using ground-penetrating radar.

He went to high school with Chris Lambert, whose podcast "Your Own Backyard" examines Smart's disappearance, and wanted to observe what he could.

"Everyone I know is super interested in this case," Dilonardo said. "My friends and I have all listened to the podcast and watched this unfold."



Investigators with the San Luis Obispo County Sheriff's Office use ground-penetrating radar equipment in their search under a deck of the Arroyo Grande home of Ruben Flores on Tuesday, March 16, 2021. Flores is the father of Paul Flores, now considered the prime suspect in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

Update, 12:05 p.m.:

Around 11:30 a.m. Tuesday, two deputies with the San Luis Obispo Sheriff's Office emerged from under Ruben Flores's Arroyo Grande home with shovels. Minutes before, buckets were removed from under the house's porch.

Agency personnel started using radar equipment in the yard around noon.

"We are continuing to use ground-penetrating radar to identify any areas of interest on the property," Sheriff's Office spokesman Tony Cipolla said Tuesday. "It's likely we will be out here most of the day."

Original story:

The San Luis Obispo County Sheriff's Office continued its search Tuesday of an Arroyo Grande home linked to Paul Flores, who has been named the prime suspect in the disappearance of missing Cal Poly student Kristin Smart.

Investigators appeared to be focusing on the area under a deck.

The property in the 700 block of White Court is the home of Ruben Flores, whose son, Paul Flores, who was the last person to see Smart alive prior to her disappearance in 1996.

The Sheriff's Office served a search warrant at approximately 7:15 a.m. Monday, the agency said, noting that the search could take multiple days to complete.

Investigators left the property overnight, leaving a small number of deputies behind to keep the scene secure.

By 8 a.m. Tuesday, roughly two dozen deputies and people in civilian clothes were back at the property, including a person who appeared to be a contractor operating a handheld radar device. At one point, investigators were seen carrying buckets under the deck, and later, two emerged carrying shovels.



An unidentified radar operator examines earth below the Arroyo Grande home of Ruben Flores, father of Paul Flores, "prime suspect" in the 1996 disappearance of Cal Poly student Kristin Smart, on March 16, 2021. Courtesy of San Luis Obispo County Sheriff's Office

A photographer at the scene estimated roughly a half-dozen Sheriff's Office officials and unidentified people in civilian clothing were spread around the exterior perimeter of the property, with more than a dozen personnel inside the property. Access to the home was blocked off with caution tape.

Cadaver dogs were also seen Tuesday being brought on and off the property, which is located next to a vacant lot in a quiet rural neighborhood.

At one point, a deputy was seen pulling a few items, including a broom, from a forensics van in the driveway.

Shortly after 11 a.m., Ruben and Susan Flores, Paul Flores' mother, drove by the scene in a red SUV.

SEARCH OF ARROYO GRANDE HOME TIED TO PAUL FLORES BEGINS

On Monday morning, three people who appeared to be residents of Ruben Flores's home were seen standing outside as deputies walked in and out of the property with K-9s.

More than a dozen Sheriff's Office deputies were at the house, with a large number of those officers searching in the rear of the property.

Also on Monday, a tow truck hauled away a red, older model Volkswagen Cabriolet from the driveway of the home.

The car was covered in a thick layer of dust and had a Cal Poly decal on the rear window. According to the state Department of Motor Vehicles, the car is registered to both Ruben and Susan Flores, and was last recorded as planned non-operational in October 2010.

"The Sheriff's Office has been authorized to utilize cadaver dogs and ground-penetrating radar during the course of the search," the agency said Monday in a news release. "This process could potentially take one to two days to complete. Traffic in the area may be impacted with vehicle access for non-residents restricted."

According to the Sheriff's Office, the search warrant has been sealed. "As a result, we are precluded by law from disclosing any further details regarding it," the agency said in the release.

Sheriff Ian Parkinson, who was at the property Tuesday morning, said the agency would be releasing an updated statement in the morning.



San Luis Obispo County Sheriff Ian Parkinson, at center in dark glasses, talks to investigators on Tuesday, March 16, 2021, as investigators search the Arroyo Grande home of Ruben Flores, the father of Paul Flores, now considered the prime suspect in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

SEARCH FOLLOWS ARREST OF SUSPECT IN KRISTIN SMART'S DISAPPEARANCE

The search of Ruben Flores's home takes place about a month after his son was arrested in Los Angeles.

Paul Flores, a San Pedro resident, was arrested Feb. 11 in the harbor area of Los Angeles on suspicion of being a felon in possession of a firearm.

"The arrest originated as a result of information obtained during our search warrants last year at the home of Paul Flores as part of the Kristin Smart investigation," Sheriff's Office spokesman Tony Cipolla said in a statement then.

Flores, 43, was released from Los Angeles County Jail shortly thereafter and a court date has been scheduled for June in Los Angeles Superior Court.

This story was originally published March 16, 2021 10:16 AM.

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MATT FOUNTAIN (805) 781-7909

Matt Fountain is The San Luis Obispo Tribune's courts and investigations reporter. A San Diego native, Fountain graduated from Cal Poly's journalism department in 2009 and cut his teeth at the San Luis Obispo New Times before joining The Tribune as a crime and breaking news reporter in 2014.

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BY CHLOE JONES

MARCH 08, 2022 5:21 PM

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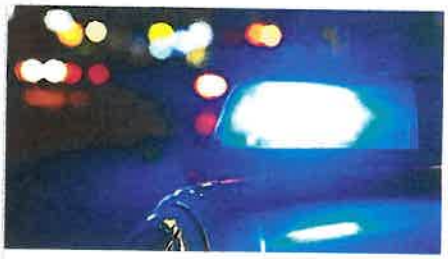
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CRIME

Remains, clothes, weapon? Here's what Kristin Smart investigators were likely searching for

BY NICK WILSON

UPDATED APRIL 15, 2021 7:51 PM



The San Luis Obispo County Sheriff's Office wrapped up their second day of searching the Arroyo Grande property of Ruben Flores. His son Paul Flores was the last person to see Cal Poly student Kristin Smart alive in 1996. BY DAVID MIDDLECAMP | NICK WILSON

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Forensics and archaeology have moved back to the forefront of the Kristin Smart missing person investigation after the San Luis Obispo County Sheriff's Office spent nearly two days examining the home and yard of the prime suspect's father.

On Monday and Tuesday, Sheriff's Office officials used ground penetrating radar, cadaver dogs and shovels to search for possible evidence at the Arroyo Grande property owned by Ruben Flores. They also seized a 1985 Volkswagen in connection with the case.

This story is a subscriber exclusive

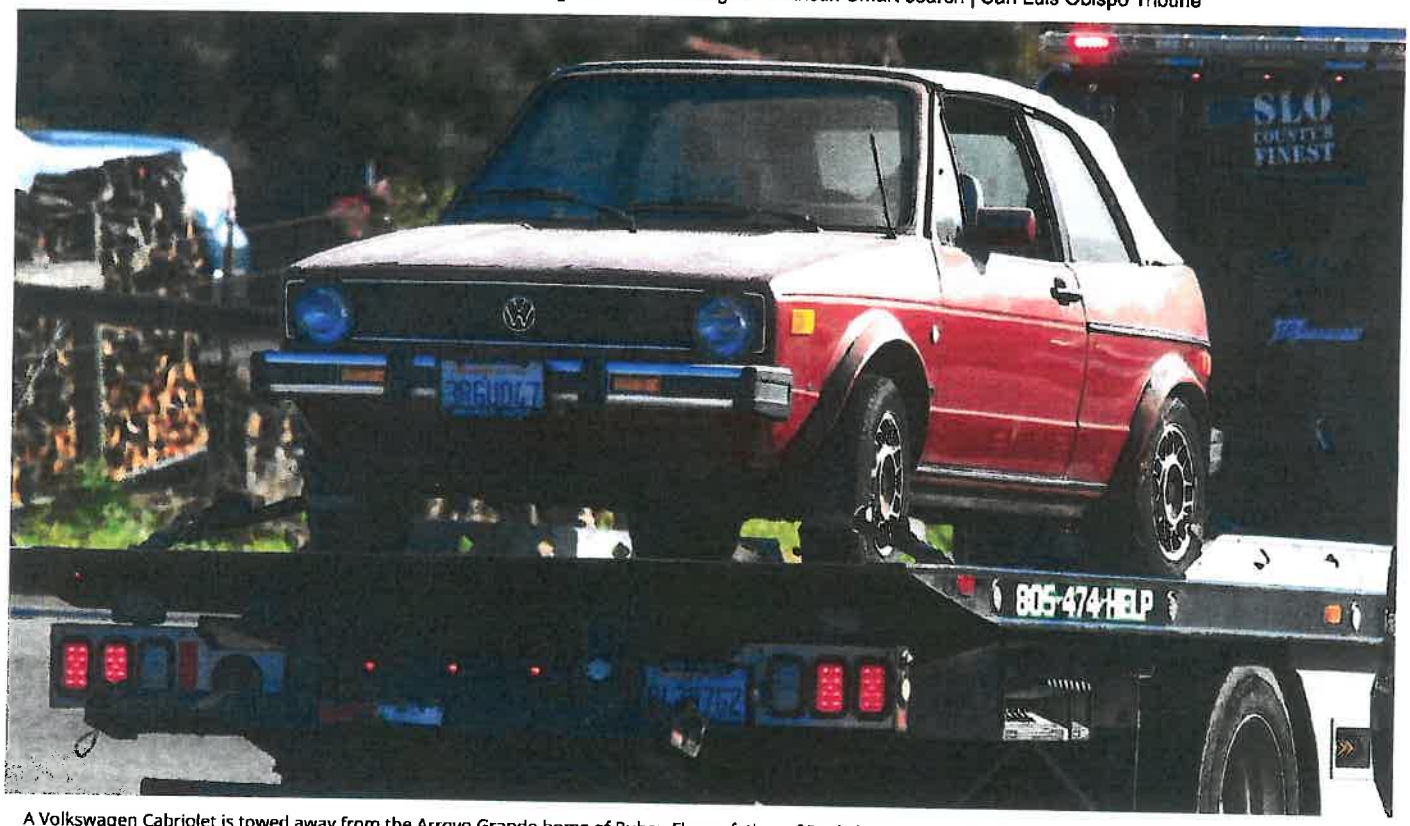
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Smart went missing May 25, 1996, while walking back to her Cal Poly dorm room from an off-campus party and was last seen with Ruben Flores' son, Paul Flores.

While authorities aren't commenting on what they may have found, national and local experts in forensics, ground-penetrating radar and archaeology spoke with The Tribune about generally what investigators are looking for when they search underground for clues and human remains.

"In forensic searches, ground-penetrating radar is a powerful, non-invasive, and relatively rapid method for investigating subsurface soil conditions," said Peter Leach, an archaeology and forensics specialist with New Hampshire-based Geophysical Survey Systems "Combined with other forensic methods, like informant information, cadaver dog hits, probing, or other techniques, GPR is an ideal way to refine the search area."



A Volkswagen Cabriolet is towed away from the Arroyo Grande home of Ruben Flores, father of Paul Flores, suspect in the 1996 disappearance of Cal Poly student Kristin Smart, on March 15, 2021. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

POSSIBLE CLUES FROM CADAVER DOGS

At this point, the only publicly known piece of evidence removed from the property was a red 1985 Volkswagen Cabriolet, which hasn't been registered for use in more than a decade.

Investigators haven't said why they confiscated the car, but Chris Lambert, the creator of the eight-part podcast series "Your Own Backyard," believes it's because cadaver dogs searching the property reacted to the vehicle.

Lambert told The Tribune he observed the investigation from nearby areas and saw the dogs respond.

One dog barked and another sat in a pronounced way, Lambert said.

Lambert acknowledged he didn't get an explanation from the handlers about exactly what may have caused the dogs to react, adding he has no information from sheriff's officials about why they took the vehicle.

"I was not on the (Flores property) site, but I did observe them from a clear vantage point of a neighboring area," Lambert said.

Cadaver dogs are trained to alert to the scent of human decomposition and pinpoint locations where people have died, with the ability to pick up decomposition scents dating back decades, according to a California forensic expert who agreed to speak with The Tribune off the record.



Dogs trained to alert at the scent of human remains were brought in to search. San Luis Obispo County Sheriff's Office is searching the Arroyo Grande home of Ruben Flores under a warrant, father of Paul Flores, the sole person of interest in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

"I have even worked with dogs that have been alerted to the scent of decomposition at the Donner Pass (where 42 people died in the 1840s in a harsh winter storm in the Sierra Nevada mountain range)," said the expert, adding he's familiar with the Smart case. "How the dogs alert depends on the handler, and what they're trained to do, whether it's to sit or bark or point their nose and hold their position where they identify a scent of decomposition."

Cadaver dogs typically don't have the ability to identify a specific person's corpse, just the scent of human decomposition in general, the expert said. But they can differentiate between humans and animals.

The expert said dogs can alert mistakenly at times when no human decomposition is present (sometimes because they're tired or frustrated with not finding the scent of a dead body, as they're trained to do).

But he said that multiple cadaver dogs often are used to avoid the possibility of a false notification. And evidence ultimately must be gathered through digging and other means, such as DNA testing or dental records matching, to confirm the hunch.

For their part, sheriff's officials have remained tight-lipped on the search.

They issued a news release Monday noting: "The search warrant (at the Flores home) has been sealed. As a result, we are precluded by law from disclosing any further details regarding it. This is an active and ongoing investigation."

WHAT TYPES OF RESULTS CAN A PROBE YIELD

The use of ground-penetrating radar suggests investigators are looking for physical remains, materials like clothing, a weapon or areas where the earth has been

disturbed.

Ground-penetrating radar can yield results depending on a number of factors and what types of objects or remains investigators are looking for, experts told The Tribune.

That might include the type of clothing, whether it was natural fiber or synthetic and the chemistry of the soil, said Max Houck, a former FBI forensic anthropologist and chemist, now with Florida International University's National Forensic Science Technology Center, in an email response to questions.

Most synthetic fibers, like nylon or polyester, last a long time; cotton fibers could be preserved as well, depending on the soil conditions and how far down they were buried, Houck said.



Investigators with the San Luis Obispo County Sheriff's Office use ground-penetrating radar equipment in their search under a deck of the Arroyo Grande home of Ruben Flores on Tuesday, March 16, 2021. Flores is the father of Paul Flores, now considered the prime suspect in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

"Bones should fare well except in the most acidic soil conditions," Houck said. "Teeth preserve best, as the enamel covering them is the hardest material our bodies make. Think of all the chewing and grinding over a lifetime."

The human remains themselves may not appear as a target, but the disturbance of soil materials indicates that possible digging has occurred, said Leach, the archaeology and forensics specialist.

"A ground-penetrating radar operator looks for evidence of subsurface soil disturbance or other anomalous signatures that could indicate locations where a hole has been excavated and filled in," Leach said.

Houck said that radar searches sometimes identify where graves have been dug.

"If you find the edge of a grave, where the soils were removed and shoveled back in, the soil will be less dense and you'll get less resistance (the probe goes in easier)," Houck said. "... Excavation is, of course, the ultimate check on any method of clandestine grave detection."

HOW WELL PRESERVED IS 25-YEAR-OLD DNA?

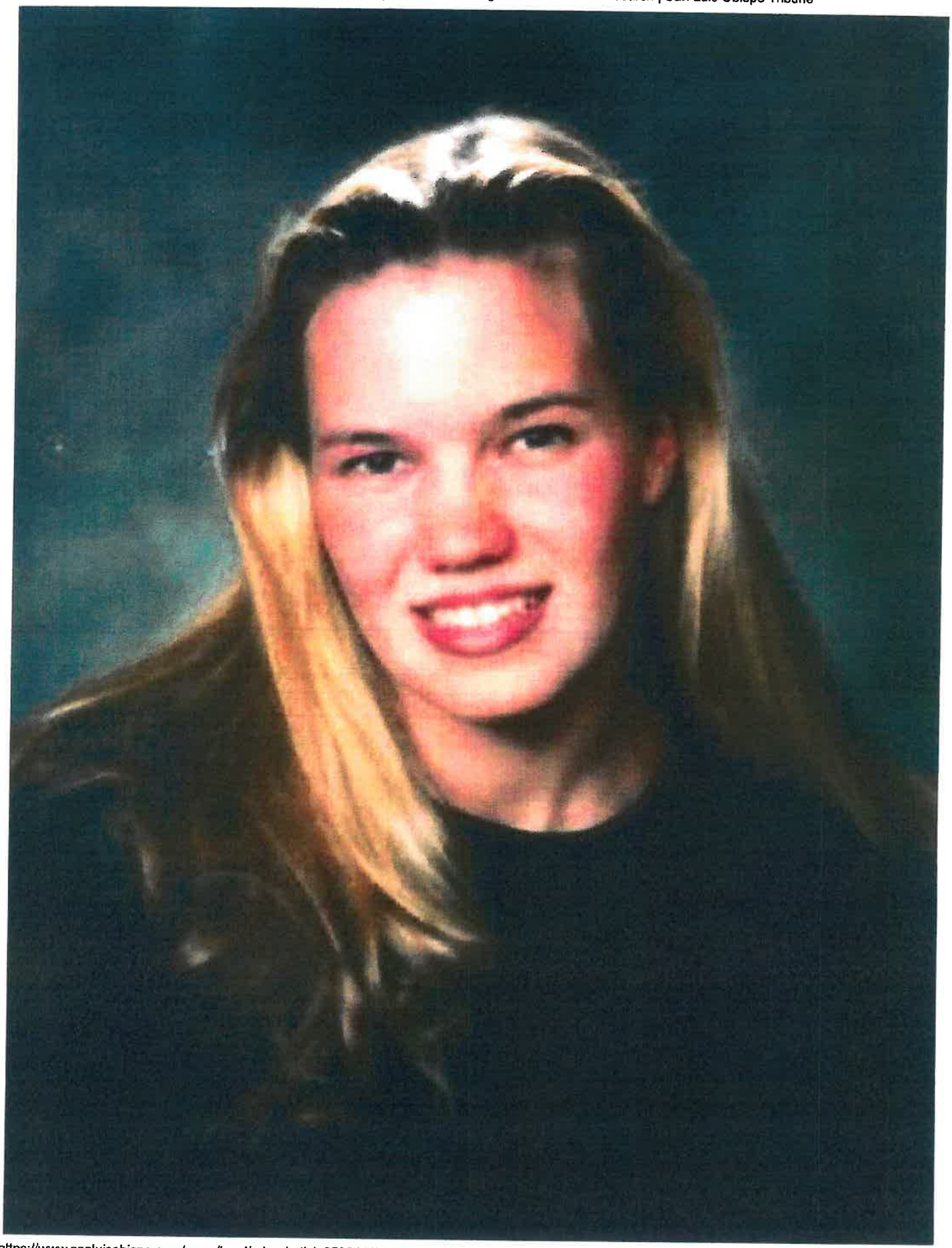
If investigators find human remains, how useful might they be after so many years?

The type of DNA used to identify a person would not be as well preserved in a case that's nearly 25 years old compared with a more recent burial of evidence, whether that's human remains or other materials, experts said.

"At this time depth (25 years), the only type of DNA analysis that would be possible is mitochondrial DNA analysis," Houck said.

Houck said that mitochondrial DNA (mtDNA) is inherited through mothers, and all siblings generally have the same mtDNA. Some mtDNA sequences repeat in non-related individuals.

But while that type of DNA wouldn't necessarily yield as high of a probability of identifying someone, it's helpful in excluding possibilities and narrowing the search.





Kristin Smart was last seen walking back to her dorm from an off-campus party on May 25, 1996. She was 19 and finishing her freshman year at Cal Poly. Courtesy photo

"Because mtDNA is present in much higher quantities than nuclear DNA and doesn't degrade as quickly as autosomal DNA (no two people except for identical twins have the same autosomal DNA), mtDNA is useful for identifying missing persons or unidentified remains," according to the National Forensic Science Technology Center's project website, "A Simplified Guide to Forensic Science."

Weight-bearing long bones such as the femur or tibia are preferred for forensic genetic testing, "primarily because of their compact/dense nature; the more dense/compact the bone, the better protective barrier there is for the DNA contained within," said Angie Ambers, an associate professor in forensic science in the Connecticut-based Henry C. Lee College of Criminal Justice and Forensic Sciences, in an email.

"The resultant bone (or tooth) powder is mixed with a series of chemicals to extract the DNA," Ambers said. "Once the DNA is extracted, tests are performed to confirm the quantity of DNA recovered and then DNA profiling (STR genotyping) ensues."

Ambers said the length of a DNA match test "depends on the type of DNA testing performed, the existing backlog of cases in the lab, resources, and personnel availability. DNA testing on skeletal remains can take several weeks or even months to complete."

Ambers said other types of testing and research can help determine paternal lineage, hair and eye color, skin tone and race.



A radar operator examines earth below the Arroyo Grande home of Ruben Flores, father of Paul Flores, who has been named the "prime suspect" in the 1996 disappearance of Cal Poly student Kristin Smart, on March 16, 2021.

SLO COUNTY PRIVATE INVESTIGATOR OFFERS INSIGHTS

Local private investigator and former San Luis Obispo County Sheriff's Deputy Alan Bond said that typically ground radar searches are capable of identifying potential evidence down a few to 100 feet.

In his experience, teeth and bones are often the body parts used to identify someone in a years-old excavation.

Other evidence can be impacted by wetness and soil quality, affecting its composition.

Bond, who also served in law enforcement roles in Orange County, said that evidence can be affected over time, depending on whether animals may tamper with it and the quality of the soil itself, such as how wet it becomes.

"It really depends on the conditions (about how much they can recover)," Bond said. "Artifacts in the Middle East have been recovered that are 2,000 years old."

Bond, who has taught investigation techniques at Cal Poly and UCSB, said that he believes sheriff's deputies are digging at the Flores family home for a specific reason.

Bond said he believes the investigators were tipped off in the Smart case to something they were looking for and were likely targeting specific spots on the property.

"Usually law enforcement digs for a specific reason to collect physical evidence," Bond said. "The key question is, 'Why now?'"

This story was originally published March 21, 2021 5:00 AM.

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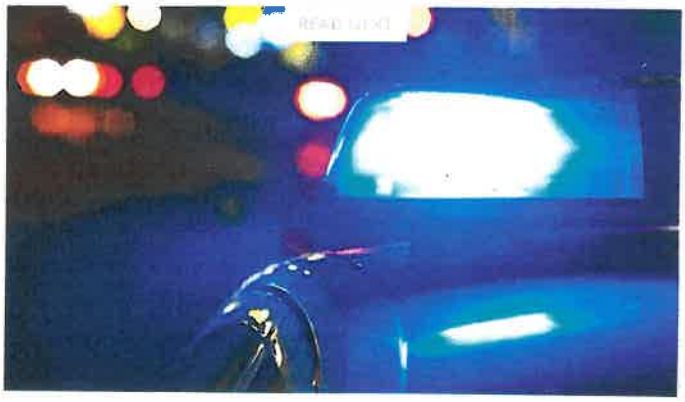


NICK WILSON

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Nick Wilson covers the city of San Luis Obispo and has been a reporter at The Tribune in San Luis Obispo since

2004. He also writes regularly about San Luis Obispo, Morro Bay and Los Osos, as well as sports. He is a graduate of UC Santa Barbara and UC Berkeley and is originally from Ojai.



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BY JANENE SCULLY *NOOZHAWK.COM*
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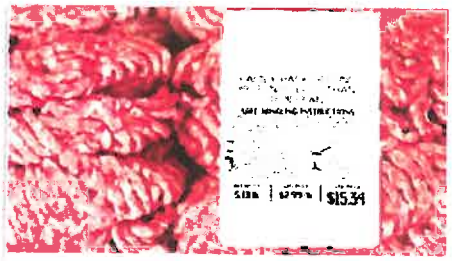
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CRIME

Searches for Kristin Smart spanned from Cal Poly to Paul Flores' home

By Cynthia Lambert

clambert@thetribunenews.com

UPDATED SEPTEMBER 07, 2016 12:29 PM



The remains or evidence relating to the disappearance of Kristin Smart, the Cal Poly freshman who went missing over Memorial Day weekend in 1996, may be buried on the hillside near the university's "P" landmark, the San Luis Obispo County Sheriff' BY DAVID MIDDLECAMP

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Over the past 20 years, investigators have conducted other searches for remains or more clues about Kristin Smart's disappearance. The Cal Poly freshman, who was 19 at the time, was last seen May 25, 1996.

• **June 29-30, 1996:** Nearly 400 volunteers turned out for a massive campus search. Dogs trained to search for human remains were brought in, and four dogs independently reacted to Paul Flores' dorm room at Santa Lucia Hall. The dogs went immediately to a mattress in the room and showed interest in a wastebasket that was left in the room. Flores and his roommate had moved out of the room before campus investigators secured it June 10, 1996.

A two-day search was also conducted at Cold Canyon Landfill, where investigators dug through 18 feet of refuse in an approximately 100-square-foot area.

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• **July 1996:** A search of the Flores home in Arroyo Grande didn't yield any clues to Smart's whereabouts.

• **Nov. 1, 1996:** Sheriff's detectives searched a "confined" area in Huasna, assisted by dogs specially trained to detect human remains, but the search failed to turn up any new leads.

• **March 3, 1997:** Authorities searched the Arroyo Grande property belonging to Flores' parents at the request of attorney James Murphy, who represents Smart's parents, Stan and Denise Smart. Murphy was assisted by the Sheriff's Office and dogs trained to detect the scent of human remains. Tenants who rented the house granted permission for the search. It did not turn up any new leads.

• **May 7, 1999:** Sheriff's deputies, following up on leads the department had received, sifted through dirt under the Student Academic Services Building between Mountain Road and Santa Lucia Hall. No new evidence was found.

• **June 19, 2000:** Investigators searched for buried evidence at Flores' mother's Arroyo Grande home using ground-penetrating radar to get electromagnetic pictures of where objects might be buried. No remains or other evidence was found.

• **May 22, 2007:** A dig for Smart's remains was conducted behind the Flores home. Sheriff's officials were not involved; the dig was arranged by the Smart family's attorney and the attorney for Susan Flores, who had filed a civil suit against the Smart family for emotional distress. No new evidence was found.



The remains or evidence relating to the disappearance of Kristin Smart, the Cal Poly freshman who went missing over Memorial Day weekend in 1996, may be buried on the hillside near the university's "P" landmark, the San Luis Obispo County Sheriff' BY DAVID MIDDLECAMP

This story was originally published September 6, 2016 5:35 PM.

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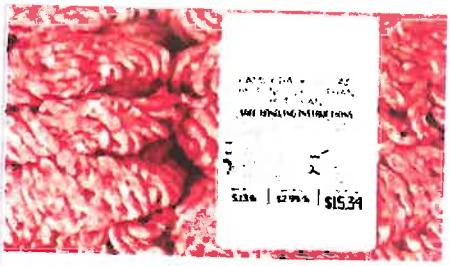
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'I literally burst into tears.' SLO County residents react to Kristin Smart arrests

BY KATHE TANNER

UPDATED FEBRUARY 05, 2022 12:38 PM



Cal Poly student Kristin Smart was 19 when she went missing after an off-campus party on Memorial Day weekend in 1996. COURTESY PHOTO

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Where were you in 1996?

A pipe bombing attack hit Atlanta's Centennial Olympic Park during the Summer Olympics. "Everyone Loves Raymond" debuted on television and TV show and the original "Mission: Impossible" movie premiered in theaters.

President Bill Clinton defeated Bob Dole in the presidential election. The Unabomber was arrested in a Montana cabin.

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And, on Christmas, 6-year-old Jon Benet Ramsey was found dead in her parents' home. That murder case was never solved.

Over the past 24 years, it seemed like the disappearance of Cal Poly freshman Kristin Smart, who went missing Memorial Day weekend 1996, would come to the same heartbreaking conclusion.

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There were strong suspicions and a lot of search warrants, but no arrests.

That changed this week, when the San Luis Obispo County Sheriff's Office announced that it had arrested Paul Flores, the last person seen with Kristin before she vanished, and his father, Ruben Flores.

Paul Flores, 44, was taken into custody Tuesday in San Pedro and charged with murder. Ruben Flores, 80, was arrested Tuesday at his Arroyo Grande home and charged with being an accessory to that crime.

As of Wednesday, both men were being held in San Luis Obispo County Jail.

But the investigation isn't over yet. Kristin's body still hasn't been found, although Sheriff Ian Parkinson vowed Tuesday to "continue to focus on finding her remains."

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CAL POLY STUDENT GOES MISSING

For those of us who were living and working in San Luis Obispo County in late May 1996, the past quarter century has been an emotional roller coaster.

"For some reason, Kristin has 'been with me' since she went missing," said Judith Larmore, events coordinator at Cambria's Old Santa Rosa Chapel. "There have been others who have suffered similar fates, but Kristin, Kristin was different."

I asked my stalwart troop of online and personal friends about how they reacted when they heard the news about Kristin's disappearance. Some said they shed tears.

Kim Miller of Cambria said she remembers the 1996 Memorial Day weekend "really well."

"I worked at Cal Poly and I was going to take photographs that Saturday evening at the big opening gala for the Performing Arts Center, so I was on campus," she recalled.

"I heard a student went missing," she said, "but it was kind of low-key at first."

There also were construction projects then, Miller recalled. "There was talk that maybe she fell in or she was killed and her body was put there and then cemented over.

"Through the years," she added, "it was surreal to be on campus knowing Kristin went missing, possibly from the very campus."

At the time of Kristin's disappearance, Cal Poly professor Dan Eller said, "I was living in Cambria and working in San Simeon."

"I was worried about the welfare of my family and the community," he said. "My wife worked over the hill in Paso Robles, and I felt she was safe, but only up to a point."

When news broke about two years later that serial killer Rex Krebs had kidnapped, raped and murdered two San Luis Obispo college students, "the magnitude of these two cases had me on edge, even outside of the city of San Luis Obispo," Eller said.

In the 16 years since he started teaching at Cal Poly, he added, "These cases are always part of my classroom discussions concerning student safety, on and off campus."

Former state Sen. Sam Blakeslee said he remembers "feeling so angry and helpless to see these women disappearing off our streets."

"Yes, Krebs was caught quickly, but Flores not so much," Blakeslee said, adding that Krebs, who is on death row, "still sits in a cell unpunished for his crimes. Makes one long for a simpler time when justice was meted out quickly and unequivocally."



Blakeslee, a former state assemblyman, is the founding director of Cal Poly's Institute for Advanced Technology and Public Policy.

Retired Cambria librarian Kristen Barnhart said she, her 6-year-old daughter and another daughter attending Cal Poly were living in San Luis Obispo when Kristin disappeared in 1996.

"Both my kids felt at risk," their mom recalled.

Jennifer Franco Smith, co-owner of Harvey's Honey Huts in Cambria, said her firm was "indirectly involved in the searches through the canyons off campus," providing services to the horse-mounted searchers.

When the call came in requesting the company's services, she said, "I cried. I can't ever forget that moment."

Former Tribune reporter Danna Dykstra Coy, now a well-known landscape photographer, worked with fellow journalist Carol Roberts on early coverage of the search for Kristin.

"I wrote the first (story) from the Cal Poly police ... who put me in touch with the Smarts," Dykstra Coy said. "They let me know then they were not happy with Cal Poly police not taking Kristin's disappearance seriously."

After Kristin failed to return home as planned, the Smart family drove down from Stockton and launched a full-bore search for their daughter, Dykstra Coy said.

Denise Smart, Kristin's mom, rejected the University Police Department's theory that Kristin was with a boyfriend or spending the Memorial Day weekend with friends, Dysktra Coy recalled, saying that "Kristin would never, ever leave without saying goodbye."

Former Tribune photographer Jayson Mellom was working his second day at the newspaper when then-editor Mike Stover assigned him to capture photos of Ruben Flores as he went into a grand jury hearing that October.

"Ruben turned and used his point-and-shoot camera to take a picture of me taking a picture of him," Mellom said.

"It was the weirdest thing," he added, calling it "crazy that in the middle of all that" Flores would have had the presence of mind to bring a camera with him and then use it.

The case hit home hard for Mellom, then a newlywed.

His wife's University of Georgia sorority sister had been murdered, and "they never caught the guy," he said, sadly. "Now, I'm just floored. I think everybody who was here then was amazed" by the recent arrests.

SLO COUNTY RESIDENTS REACT TO ARRESTS OF PAUL FLORES, FATHER

When news of the arrests of Paul and Ruben Flores broke, some people said they cried.

Singer-songwriter Jude Johnstone, a former Cambria resident, said "I don't imagine there was a dry eye in SLO County among people our age after that news. .... I literally burst into tears."

She called the news "incredible" and "a long time coming."

Larmore said that, when she heard the news, "I cried ... for her family and I cried for Kristin, who I hope can now come home."

Miller expressed hope that the latest development in Kristin's case "will lead to finding her body and finally justice."

"I think the investigation was messed up at the beginning," Miller added, by investigators "not searching (Paul Flores') dorm room right away. I have to say, this will be interesting as it unfolds."

Former San Luis Obispo wedding coordinator Susan Smitty Price, who also worked for The Tribune for a time, said, "It's nice to finally see him (Paul Flores) in custody! Twenty-five years is a long time to hold something like that in. Kudos to the relentless quest to get to this point."

"We have always felt that Paul Flores was certainly withholding information if not downright guilty," said Sharon McCartney, a longtime Cambria resident. "At this time of his arrest, we are just a little let down in that we still don't have closure for Kristin's family, and we still probably have a very lengthy trial with an unknown verdict coming."

Added photographer Michele Sherman, "It has been difficult to imagine how an ordinary student (allegedly) found a way to outfox law enforcement for so long."

"Without any premeditated planning, how did he manage to expertly destroy key evidence which could have resulted in a quick arrest?" she asked. "How did he expertly hide a body without premeditated planning? It is baffling."

Some San Luis Obispo County residents said the discussion of Kristin's possible fate made them think about their own families.

Cambria businessman Aaron Wharton said he lived near where Kristin disappeared, "albeit a year before."

"And now having a freshman daughter age 19 in college, it did make me think about the case and how college is supposed to be a safe place ... one of the first places our children get to go and be on their own," he said.

"Having attended Cal Poly shortly after (Kristin's) disappearance, and during the Rex Krebs reign of terror, today brought a relative amount of closure," said Carrie Ann Yaple, a former Cambria resident who now lives in Paso Robles. "Like Aaron, I thought a lot about my daughter and all of our children's safety."

"This is all so sad. Many of the headline stories are breaking our hearts, and I hope there is a resolve for the families," Barbara Della-Bitta of Cambria said. "I cannot imagine the loss of a child."

This story was originally published April 14, 2021 2:55 PM.

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KATHE TANNER

805-781-7904

Kathe Tanner has been writing about the people and places of SLO County's North Coast since 1981, first as a columnist and then also as a reporter. Her career has included stints as a bakery owner, public relations director, radio host, trail guide and jewelry designer. She has been a resident of Cambria for more than four decades, and if it's happening in town, Kathe knows about it.

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BY KATHE TANNER

MARCH 01, 2022 5:00 AM

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LOCAL

It took 24 years for an arrest in the disappearance of Kristin Smart. Here's how it happened

BY KAYTLYN LESLIE, MATT FOUNTAIN, LINDSEY HOLDEN, AND NICK WILSON

UPDATED APRIL 15, 2021 7:49 PM



Cal Poly student Kristin Smart went missing almost 25 years ago. San Luis Obispo County Sheriff Ian Parkinson announces the arrests of Paul Flores, considered the prime suspect in Smart's 1996 disappearance, and his father, Ruben Flores. BY DAVID MIDDLECAMP

Only have a minute? Listen instead

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00:00 1.0x 14:32

For nearly 25 years, the case of missing Cal Poly student Kristin Smart has remained unsolved.

There were no suspects under arrest. No body to recover. And no end in sight for her family.

That changed Tuesday.

Suspect in Isla Vista sexual assaults arrested in Lompoc

Just after 2 p.m., under the beige arches of Cal Poly's Orfalea College of Business, the San Luis Obispo County Sheriff's Office announced it had made its first arrests in the missing persons case.



San Luis Obispo County Sheriff Ian Parkinson answers questions at a news conference on Tuesday, April 13, 2021, where he announced the arrests of Paul Flores and Ruben Flores in connection with the disappearance of Kristin Smart. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

There, Sheriff Ian Parkinson announced Paul Flores — the last person to be seen with Smart before her disappearance in 1996 — had been arrested on suspicion of murder.

Paul Flores' father, Ruben Flores, was also arrested and booked into San Luis Obispo County jail on suspicion of a charge of accessory.

"We're beginning here today because this is where it all began, on the campus of Cal Poly university," Parkinson said during the news conference at the San Luis Obispo university. "It's been 24, almost 25, years since Kristen went missing. Twenty-four years without a resolution. Until today."

On Tuesday afternoon, Parkinson confirmed that Paul Flores and Ruben Flores had been arrested that morning thanks to new evidence the department acquired in the past two years — putting a partial end to more than two decades of speculation around the case.



A large portrait of Kristin Smart in graduation attire is on display at a candlelight vigil for the missing woman in Arroyo Grande. Laura Dickinson *LDICKINSON@THETRIBUNENEWS.COM*

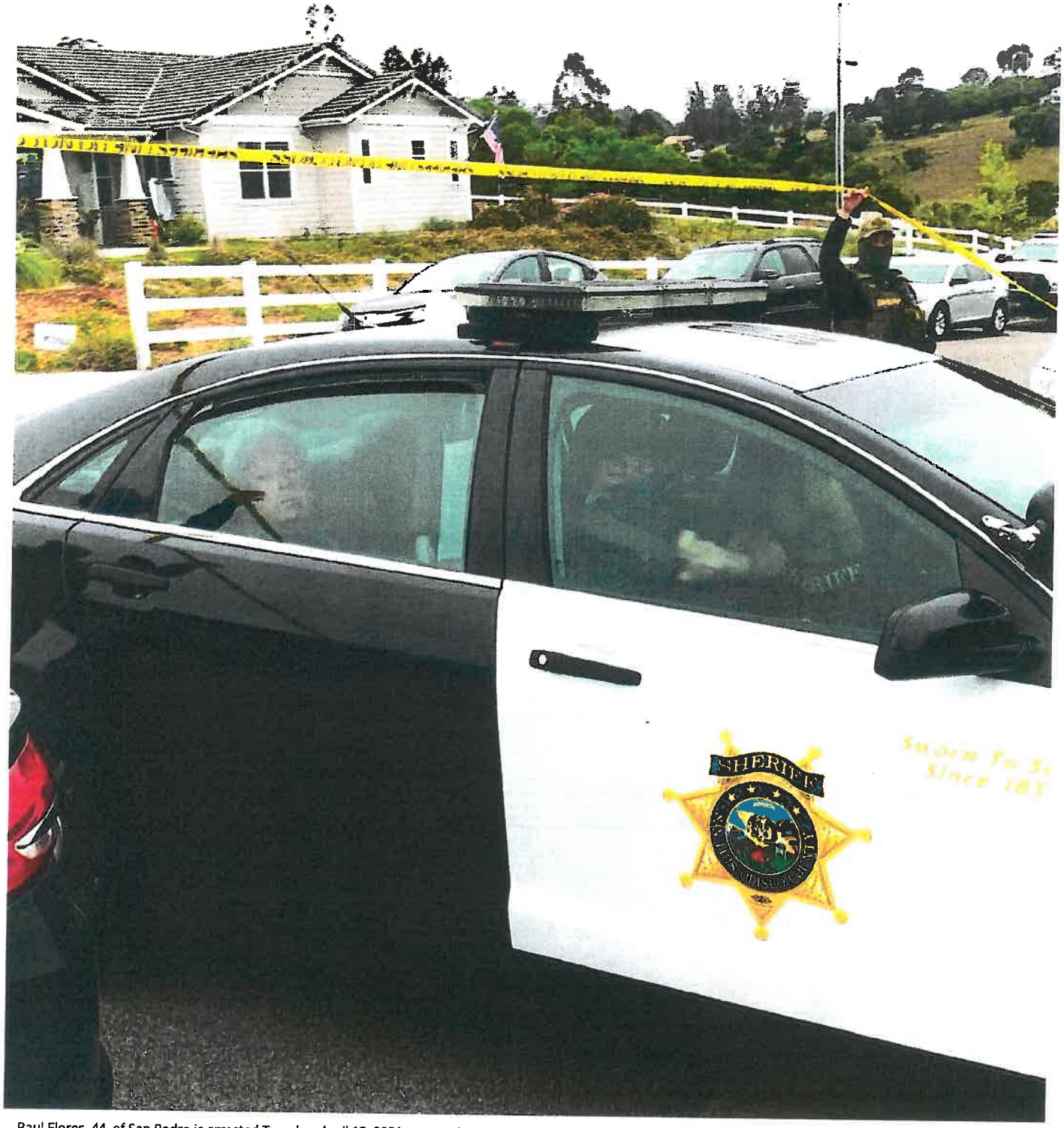
Though many applauded what felt like a resolution to a decades-long mystery on the Central Coast, Parkinson noted there is still much to be done.

That includes finding Smart's body.

"We have not recovered Kristin," he said. "We will continue to focus on finding her remains, regardless of any court action. ... We know that's an important part or an important issue with the family."

He said the Smart family had expressed "a bit of relief," but "until we return Kristin to them, this is not over."

"It's my hope we can take the first steps for justice for this family," Parkinson said.



Paul Flores, 44, of San Pedro is arrested Tuesday, April 13, 2021, on suspicion of murder in connection to the disappearance of missing Cal Poly student Kristin Smart. San Luis Obispo County Sheriff's Office

DEPUTIES 'ASSEMBLING THE PUZZLE' OF EVIDENCE IN 1996 DISAPPEARANCE

Smart went missing from San Luis Obispo in May 1996 after attending a Memorial Day weekend house party.

Paul Flores has long been a person of interest in the case, but was only recently upgraded to the Sheriff's Office's "prime suspect."

On Tuesday, the Sheriff's Office arrested Paul Flores at his San Pedro home, and his father, Ruben Flores, at the latter's Arroyo Grande home.

Parkinson said thanks to new information, and recent searches of the Flores father and son's homes, the department was able to recover new forensic physical evidence it believes ties Paul Flores to the murder of Smart.

The Sheriff's Office also secured a court order for surveillance of Paul Flores' electronic communications, including cell phone and text message records.

"We're assembling the puzzle," Parkinson said of the new electronic evidence. "It's a very slow process to find each of those little (missing) pieces."



Paul Flores is arrested in San Pedro on Tuesday, April 13, 2021, on suspicion of murdering Kristin Smart in 1996. San Luis Obispo County Sheriff Office

Since 2011, Parkinson said 41 search warrants have been served and 16 locations searched. The Sheriff's Office has re-examined all the evidence in the case, he said.

In total, investigators have secured 193 new pieces of evidence, and filed more than 500 police reports.

Ahead of the news conference, San Luis Obispo County Jail logs showed both Paul and Ruben Flores were booked into County Jail on Tuesday.

Paul Flores was booked on suspicion of a charge of murder, while Ruben Flores was booked on suspicion of a charge of accessory. The elder Flores' bail was set at $250,000, but as of Tuesday evening, no bail for Paul Flores was listed on the jail site.

The case has been turned over to the San Luis Obispo County District Attorney's Office for review.

San Luis Obispo County District Attorney Dan Dow issued a brief statement following the announcement of arrests Tuesday, saying his office is evaluating the investigation.

"We are carefully reviewing the evidence and will provide more information as it becomes available," he wrote. A news conference from the District Attorney's Office is expected sometime Wednesday.



Investigators with the San Luis Obispo County Sheriff's returned to the Arroyo Grande house of Ruben Flores on Tuesday, April 13, 2021. Flores is the father of Paul Flores, considered the prime suspect in the disappearance of missing Cal Poly student Kristin Smart. The back yard was marked with crime scene tape as the search for Smart resumed at Ruben Flores's house. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

'YOUR OWN BACKYARD' PODCAST BREAKS NEWS OF ARRESTS

Parkinson said the arrests were due in part to new information brought forth by the "Your Own Backyard" podcast, created by Orcutt resident Chris Lambert, including at least one new witness who had not been previously interviewed by police.

"He took a local story and generated it internationally," Parkinson said. "It did produce some information that I believe was useful."

To date, Lambert's podcast, which dove into the disappearance and subsequent investigation, has been downloaded nearly 7 million times.

Lambert had another role to play in the Smart missing persons case Tuesday morning. For many people, he was also the person who broke the news of the arrests of Paul and Ruben Flores.

Around 8:30 a.m. Tuesday, Lambert streamed live video from near Ruben Flores' home in Arroyo Grande, showing Sheriff's Office deputies searching the property

and removing a deck from the back of the house.



Investigators with the San Luis Obispo County Sheriff's Office stand outside the Arroyo Grande home of Ruben Flores on Tuesday, April 13, 2021. Ruben Flores and his son, Paul Flores, were arrested in the disappearance of Cal Poly student Kristin Smart in 1996. Paul Flores was arrested on suspicion of murder. Investigators were executing a new search warrant at the home. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

Later in the day, after being publicly name-checked by the Sheriff's Office for his help in the case, Lambert told The Tribune that he "felt good about the case at this point."

"I know what (evidence) I gave them, so I know what they've moved forward with, but they probably don't want me to share the details," Lambert said. "I feel good about the case at this point. But I've felt good about it for a long time. It was just a matter of the way the machinery works.

"You just have to wait awhile for things to get done — the District Attorney's Office, the Sheriff's Office and who's going to do which part. I've been waiting for a long, long time to come to some sort of resolution."

Lambert said he did have one more major priority, however: finding Smart's body.

"My concern is just in locating a body," he said. "So, at the point it gets in front of a jury and all of the stuff that comes along with that, I'm not as interested in that as in locating her body. Whatever happens, that's the result of it."





Community members talk about why they watched San Luis Obispo County Sheriff's Office search the Arroyo Grande home of Ruben Flores. He's the father of Paul Flores, a suspect in missing Cal Poly student Kristin Smart's disappearance. BY NICK WILSON

COMMUNITY RESPONDS TO ARRESTS IN KRISTIN SMART CASE

A crowd of onlookers spent much of Tuesday morning outside Ruben Flores' Arroyo Grande house trying to catch a glimpse of investigators at work.

Witnesses outside the home could hear loud cutting machinery and see sparks coming from the garage, and a forensics tent was set up nearby.



Spectators gather and make videos of the investigation scene at the Arroyo Grande home of Ruben Flores on Tuesday, April 13, 2021. Flores is the father of Paul Flores, considered the prime suspect in the disappearance of missing Cal Poly student Kristin Smart. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

Investigators could be seen wheeling in ground-penetrating radar, similar to what was used during the investigation of the backyard when investigators searched the property on March 15 and 16.

Eventually, a Sheriff's Office vehicle parked at the end of the street to prevent more vehicles from clogging the road. Even so, people wandered up on foot, bringing strollers and dogs with them.

Arroyo Grande resident Ali Anderson, who was sitting in her car Tuesday morning, said she heard about what was happening through texts from her friends.



Raw video shows investigators searching the home of Ruben Flores in Arroyo Grande on April 13, 2021, in the disappearance of Cal Poly student Kristin Smart, who's been missing since 1996. BY NULL

"Our community is so small," she told The Tribune. "Everyone is so connected and had a good idea of what was going to happen this week."

Anderson said the arrests of the two Flores men give her "excitement and hope." Anderson said she hopes the Smart family can get some closure.

Some bystanders on Tuesday said they'd been following the case since childhood and couldn't remember a time before billboards with Smart's face hadn't been displayed prominently in the Village of Arroyo Grande.

Lisa Gibson of Arroyo Grande said her sister went to Cal Poly when Smart was there and has followed the missing woman's case for many years.



Cars line up near the Arroyo Grande home of Ruben Flores, who along with his son Paul Flores, was arrested in connection with the 1996 disappearance of Cal Poly student Kristin Smart. People from around the area flocked to the home on Tuesday, April 13, 2021, to watch officials search the house. Lindsey Holden *LHOLDEN@THETRIBUNENEWS.COM*

Gibson spent Tuesday morning at the Flores house reporting what she saw on a Zoom call until her phone battery dipped too low.

"I think it's awesome," Gibson said of the arrests and activity at the house.

"Personally, I don't think she's here anymore. I think she's been moved," Gibson said of Smart.

On Tuesday, Lori Ralls of Atascadero walked near the Arroyo Grande house and watched the activity with a thermos of coffee. She said she's been very invested in the Smart case and Lambert's podcast.

As a parent, she can't fathom the pain Smart's family has dealt with during the past few decades.

"No parents should ever have to go through what these people have gone through," Ralls said.

She said she hopes Tuesday's developments mean the Smarts will be able to lay their daughter to rest.

"I get butterflies in my stomach thinking about how they must be feeling right now about getting closure after 30 years," Ralls said.



A green Forensic Services tent can be seen next to a blue tent in the backyard of Ruben Flores' Arroyo Grande home on Tuesday, April 13, 2021. Flores is the father of Paul Flores, named the prime suspect in the 1996 disappearance of missing Cal Poly student Kristin Smart. Ruben and Paul Flores were arrested Tuesday in connection with the case. Lindsey Holden *LHOLDEN@THETRIBUNENEWS.COM*

MISSING STUDENT'S FAMILY RESPONDS TO FLORES ARRESTS

Soon after the news of the arrests broke, the Smart family released a preliminary statement early Tuesday, saying they would not be meeting with reporters or conducting interviews "in the foreseeable future."

After Tuesday's conference, the family released a lengthier statement thanking the Sheriff's Office, and specifically Parkinson and cold case Detective Clint Cole, for their hard work on their daughter's case.



Cal Poly student Kristin Smart was 19 when she went missing after an off-campus party on Memorial Day weekend in 1996. Courtesy photo

They also thanked Lambert for his "exceptional skills, indefatigable work and unselfish dedication," in the production of his podcast regarding Smart's disappearance.

"For over 24 years, we have waited for this bittersweet day," read the statement. "It is impossible to put into words what this day means for our family; we pray it is the first step to bringing our daughter home."

The Smart family also said that it was now putting its "faith in the justice system."

"The knowledge that a father and son, despite our desperate pleas for help, could have withheld this horrible secret for nearly 25 years, denying us the chance to lay our daughter to rest, is an unrelenting and unforgiving pain," the family said in the statement. "We now put our faith in the justice system and move forward, comforted in the knowledge that Kristin has been held in the hearts of so many and that she has not been forgotten."



More than 250 supporters attend a candlelight vigil for Kristin Smart in front of Flores family home in Arroyo Grande. Laura Dickinson *LDICKINSON@THETRIBUNENEWS.COM*

WHAT'S HAPPENED IN KRISTIN SMART CASE OVER YEARS?

Kristin Smart, a 19-year-old college freshman, was last seen Memorial Day weekend 1996, leaving a house party at 135 Crandall Way near the Cal Poly campus at about 2 a.m. on May 25 with Paul Flores and a friend.

The friend later told investigators that she left Smart with Flores at the intersection of Perimeter Road and Grand Avenue so that Smart could walk back to her Muir Hall dorm room.

Flores later told police the two parted ways near his room at Santa Lucia Hall.

On May 27, 1996, a friend of Smart's at Muir Hall, reported Smart missing to the Cal Poly University Police Department.

Over the coming months, numerous local police agencies would become involved in the search, but Smart was never located.

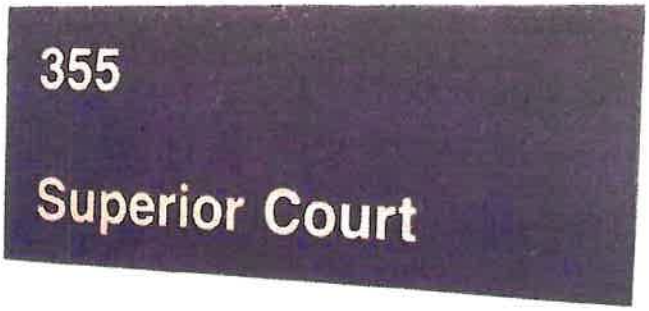
Critics accused Cal Poly and later agencies of bungling the investigation early on to the point where it was unsure if the case would ever be solved.

On Tuesday, Parkinson also acknowledged "missteps" in the investigation early on, long before his agency took it over, but did not elaborate.

The Smarts filed a $40 million wrongful death lawsuit against Flores in November 1996, alleging that Flores murdered Kristin on the Cal Poly campus. The Smarts later

added Cal Poly to the lawsuit, alleging the university failed to keep their daughter safe.





On Oct., 17, 1996, Paul Flores testified before the county grand jury about Cal Poly student Kristin Smart's disappearance. Flores was the last person seen with Smart, who hasn't been seen since Memorial Day weekend, 1996. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

Cal Poly President Jeffrey Armstrong, who was not at the university at the time of Smart's disappearance, on Tuesday thanked authorities for bringing "a measure of relief and hope for resolution" to the Cal Poly community.

"Our Cal Poly and Central Coast communities have watched the case of Kristin Smart's disappearance closely and hoped for justice for Kristin and resolution for the family for years," Armstrong said. "The news today of arrest in connection with this, with the case, brings sadness, but also a measure of relief and hope for resolution."

Over the years, the case has run mostly lukewarm, never officially going cold.



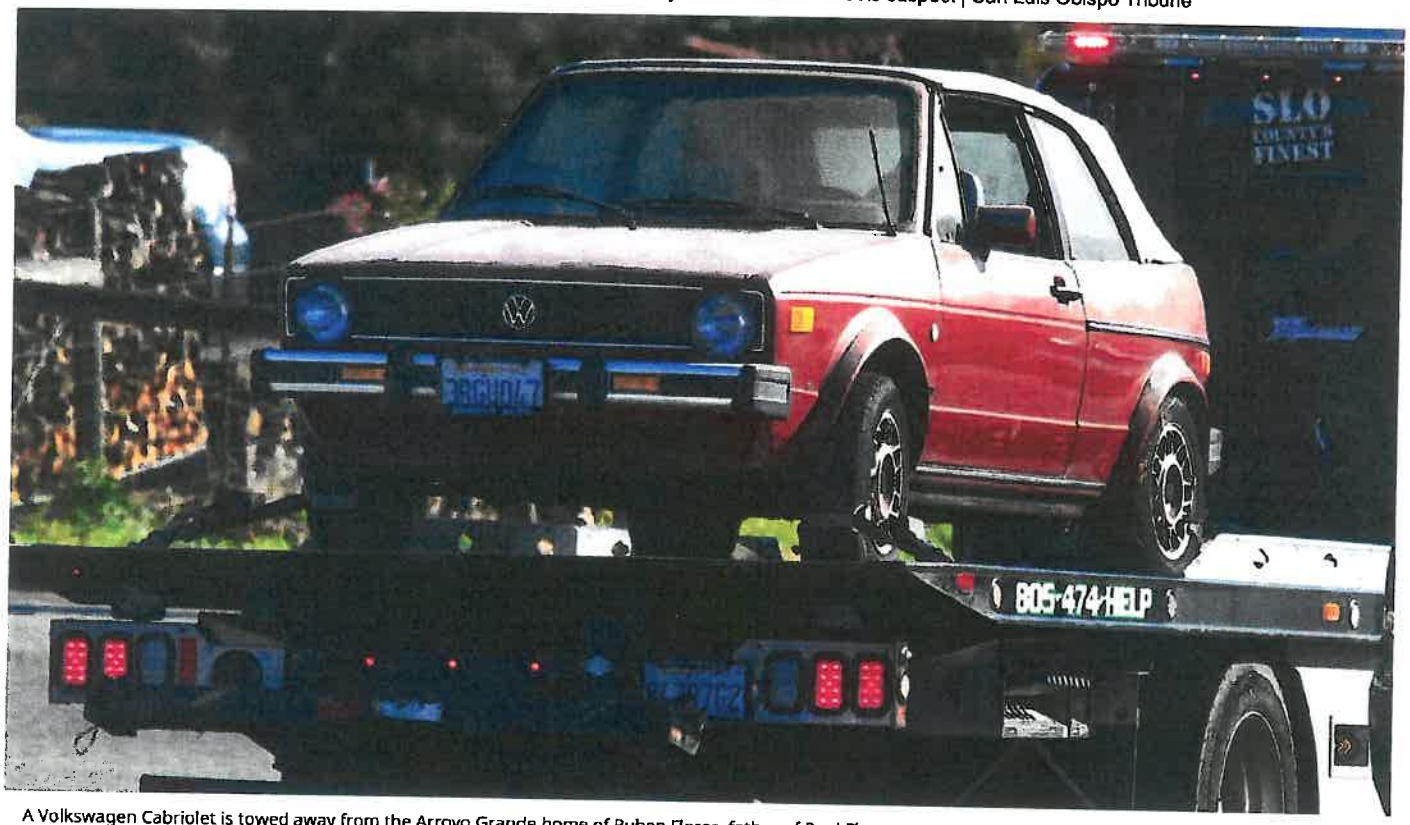
Cal Poly President Jeffrey Armstrong speaks at a news conference on Tuesday, April 13, 2021, announcing the arrests of Paul Flores and Ruben Flores in the disappearance of Cal Poly student Kristin Smart in 1996. San Luis Obispo County Sheriff Ian Parkinson stands in background and interpreter Robin Babb is at right. The photo at right shows Paul Flores being arrested at his home in San Pedro. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

In 2002, Smart was declared legally dead. In 2016, the SLO County Sheriff's Office and the FBI excavated a hillside at Cal Poly, saying a tip "strongly suggested" Smart was buried on the campus property. Officials later called the dig "beneficial" but declined to disclose what was found.

In 2019, Lambert launched his "Your Own Backyard" podcast examining the case, sparking new attention.

Tuesday's arrests come nearly a month after the Sheriff's Office searched the Arroyo Grande house of Ruben Flores.

On March 15 and 16, the Sheriff's Office searched Ruben Flores' property, confiscating a Volkswagen Cabriolet from the driveway and using cadaver dogs and ground-penetrating radar under a porch and in the backyard.



A Volkswagen Cabriolet is towed away from the Arroyo Grande home of Ruben Flores, father of Paul Flores, suspect in the 1996 disappearance of Cal Poly student Kristin Smart, on March 15, 2021. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

The search of the home took place about a month after Paul Flores was arrested in Los Angeles on suspicion of being a felon in possession of a firearm.

That arrest "originated as a result of information obtained" during the service of several search warrants in 2020, including one at Flores' home in San Pedro, Sheriff's Office spokesman Tony Cipolla said at the time.



Members of the media listen and others listen during a news conference Tuesday, April 13, 2021, at Cal Poly announcing the arrest of Paul Flores and Reuben Flores in connection with the disappearance of Kristin Smart. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

WHY WERE ARRESTS MADE 24 YEARS AFTER DISAPPEARANCE?

Over time, the department has faced questions regarding why the case was still unsolved, despite numerous attempts.

On Tuesday, Parkinson said the reason the case has lingered over decades is because arrests cannot be based on "what we might believe, it has to be based on physical evidence."

The department was able to get some of that physical evidence due to recent searches, Parkinson said, leading to the arrests. Parkinson declined to disclose what manner of physical evidence had been found, saying only that it is "forensic physical evidence" and ties the Flores men to Kristin Smart.

"Yes, we believe it's linked to Kristin, and, yes, we did find physical evidence at at least two homes," he said.



Dogs trained to alert at the scent of human remains were brought in to search. San Luis Obispo County Sheriff's Office is searching the Arroyo Grande home of Ruben Flores under a warrant, father of Paul Flores, the sole person of interest in missing Cal Poly student Kristin Smart's disappearance. David Middlecamp *DMIDDLECAMP@THETRIBUNENEWS.COM*

Meanwhile, one major loose end remains: Where is Kristin Smart's body?

At the news conference Tuesday, Parkinson said deputies had yet to recover Smart's remains, but would continue to work to find them.

Parkinson said he believes the agency is closer to recovering Smart's body now than it has been previously.

"I believe we are, but only time will tell," he said. "It's safe to say we are checking everywhere possible."

This story was originally published April 13, 2021 6:20 PM.

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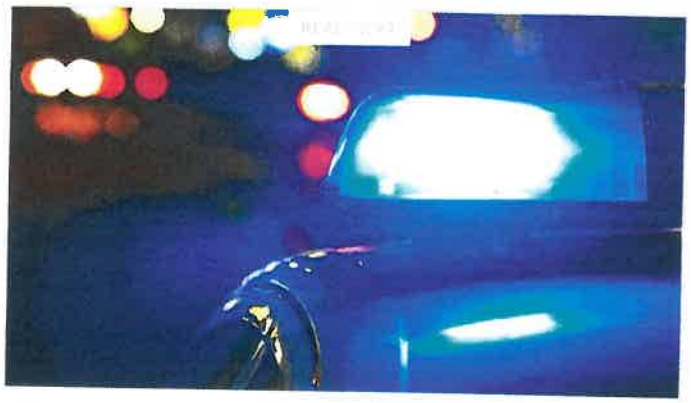
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KAYTLYN LESLIE

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Kaytlyn Leslie writes about business and development for The San Luis Obispo Tribune. Hailing from Nipomo, she also covers city governments and happenings in the South County region, including Arroyo Grande, Pismo Beach and Grover Beach. She joined The Tribune in 2013 after graduating from Cal Poly with her journalism degree.



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BY JANENE SCULLY *NOOZHAWK.COM*
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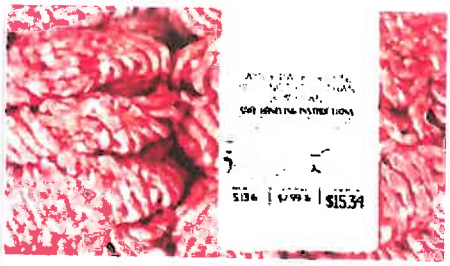
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Fifteen years after Cal Poly student Kristin Smart disappeared, her family remains waiting, fighting for closure.

Stan and Denise Smart — who had their daughter declared legally dead in 2002, six years after she vanished — just want answers. They want someone to tell them where their daughter is buried so they can bring her home.

"This is our child," Denise Smart said from her home in Stockton. "We can't change what happened, but we can do something more to honor her. The last gift we can give her is to bring her here. She doesn't belong under some junk pile ... She deserves to come home."

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There have been multiple leads investigated, several searches conducted and an inundation of community volunteers willing to help over the years.

There's also been an ongoing legal battle with the last person seen with the then 19-year-old Smart — Paul Flores — on May 25, 1996.

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But no arrest has been made.

"It is painful enough to lose a child but to have to navigate this nightmare for 15 years — always trying to be the band leader — is frustrating," Denise Smart said. "It's exhausting."

San Luis Obispo County Sheriff Ian Parkinson has pledged to create a cold case unit, comprised of a current detective and a part-time reserve officer, to look into unsolved homicide cases, including Smart's.

Yet without secured funding, it has yet to happen.

Parkinson said Tuesday that the Sheriff's Department recently completed a plan to re-examine all the evidence involved in the case and will start that process sometime within the next month.

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The hope, he said, is that advances in DNA processing will turn up something that wasn't discovered 15 years ago.

"Being a father, I can definitely understand how frustrated they are," Parkinson said. "There are a number of homicides dating back that I have inherited, and they are all very important."

Denise Smart said the biggest frustration comes from not knowing where the case is.

"We just want ongoing communication," she said. "Just for someone to call us every once in a while — even if it is only twice a year — and let us know that they are still working on it."

Kristin's absence is felt daily by her family, on average days and on bigger days — such as the recent wedding of her brother. And still, they are left waiting.

"I know they are frustrated, but they are not the only ones frustrated," Parkinson said. "The investigators who have worked on this case all of these years are as well, and there is nothing they would like more than for this case to be solved."

This story was originally published May 24, 2011 9:51 PM.

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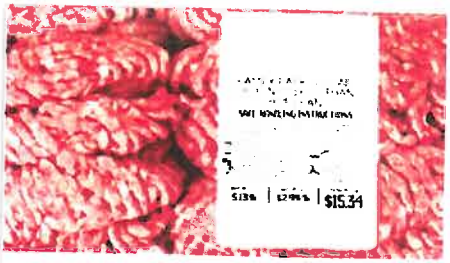
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I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On March 9, 2022, I served the foregoing document entitled: **DECLARATION OF SARAH S. SANGER IN SUPPORT OF MOTION FOR CHANGE OF VENUE (PEN. CODE, § 1033)** on the interested parties in this action by depositing a true copy thereof as follows:

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Executed March 9, 2022, at Santa Barbara, California.

Jake Swanson

Jake Swanson

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