

63617-1

63617-1

NO. 63617-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRENT T. STARR,

Appellant.

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STATE OF WASHINGTON
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BRIEF OF RESPONDENT

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I. ISSUES

The State adopts the issues set out in its brief in the companion case of State v. Canady, no. 63626-0-1 (hereinafter “Canady Resp. Brief”). Canady Resp. Brief at 1. The following additional issues relate to the points raised by the appellant Brent Starr:

(3) A police officer testified that he sent a copy of a search warrant to the company that possessed the records sought. He then told a representative of that company to send only the records identified in the warrant. Does this testimony support the trial court’s finding that no law enforcement officer did anything to direct the company to send records outside the scope of the warrant?

(4) In response to his request, the officer received a file containing documents that purported to be those named in the warrant. Did the officer act outside the scope of the warrant when he examined those documents?

(5) If this examination was beyond the scope of the warrant, does it invalidate a subsequent search warrant, where even without any improperly-obtained information, the affidavit in support of the second warrant shows the suspects’ motive for the murder and their false statements concerning exchange of text messages?

II. STATEMENT OF THE CASE

The State adopts the Statement of the Case set out in its brief in the Canady appeal. Canady Resp. Brief at 1-6.¹ The following additional facts relate directly to Starr's culpability:

Starr told police that on his way to work on the morning of June 26, he stopped at the Red Barn in Monroe. Ex. 159. Police obtained a surveillance video from a motion-activated surveillance camera at the Red Barn. It shows Starr arriving in the parking lot at 4:00 a.m.. He sat in the car for three or four minutes, got out and walked around, and then got back onto the car. At this point, the video stopped recording for 16 seconds. When it came back on, Starr was wearing a different shirt. 5 RP 645-46.

III. ARGUMENT

A. THE STATE INCORPORATES ITS ARGUMENTS IN THE CANADY APPEAL.

Starr's brief incorporates all of the arguments raised by his co-defendant Canady. Starr Appellant's Brief of at 12, 25, 26. In response, the State incorporates the arguments raised in its brief in

¹ The report of proceedings for the two appeals is identical, but the clerk's papers are separate. Appendix A sets out the corresponding numbering for key documents in the two appeals.

the Canady case. Canady Resp. Brief at 6-18. The following additional arguments address points raised by Starr.

B. THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT POLICE DID NOT IMPROPERLY SEEK RECORDS OUTSIDE THE SCOPE OF THE FIRST SEARCH WARRANT.

Starr assigns error to the trial court's finding that no law enforcement officer did anything to direct Verizon to send records outside the scope of the warrant. Starr Appellant's Brief at 1, assignment of error 2. This finding should be upheld if it is supported by substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

The evidence in this case shows that police faxed a search warrant that clearly identified the records sought. The detective also testified that he called the person who was responsible for providing the records and told him to send only the records by the warrant. 3 CP 215; 2 RP 193-94. The trial court was entitled to believe this testimony. Credibility determinations are a matter for the fact finder, not the reviewing court. State v. Gibson, 152 Wn. App. 945, 951, 219 P.3d 964 (2009).

In challenging this finding, Starr raises two points. First, he points out that the police asked Verizon to *preserve* all of the relevant phone records. A request to *preserve* records is not

equivalent to a request to transmit them. This distinction was clear to everyone – no records were transmitted in response to the request for preservation. Starr cites no authority indicating that police conduct an illegal search by requesting a private party not to destroy potential evidence.

Second, Starr points to the subpoena duces tecum, which asked for records beyond those covered by the first search warrant. 3 CP 225-26. This subpoena was sent *after* Verizon had responded to the warrant. 2 RP 199. Verizon's decision to send the records was not a response to the subpoena. The evidence supports the trial court's finding.

C. THE INVESTIGATING OFFICER ACTED PROPERLY IN REVIEWING RECORDS THAT HAD BEEN IDENTIFIED AS THE ONES COVERED BY THE SEARCH WARRANT.

Starr also claims that the police conducted an unlawful search by examining the records provided by Verizon. As the State's previous brief points out, a search warrant authorizes police to search items that are plausible repositories for the objects named in the warrant. Canady Resp. Brief at 11, citing Hill, 123 Wn.2d at 643. When the warrant is for specific documents, police may examine documents to determine whether they are the ones authorized to be seized. State v. Stenson, 132 Wn.2d 668, 694-95,

940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008 (1998). Thus, contrary to what Starr suggests, police do not automatically act “outside the scope of the warrant” when they examine documents that turn out not to be listed in the warrant. To the contrary, such examination is frequently necessary. Id. at 694. A search warrant authorizes a search, not merely a “find.”

In this case, the investigating detective served a search warrant that requested certain specific documents. When he received back a file containing documents, it was reasonable for him to believe that these documents were the ones named in the warrants. It was therefore proper for him to examine those documents. Starr cites no authority requiring the detective to go through the file line-by-line rather than going directly to the significant portions.

In any event, even if the detective was required to examine the file that way, it would not invalidate the ultimate search. Once the detective realized that he had obtained information beyond the scope of the first search warrant, he obtained a second search warrant. In support of this warrant, he submitted an affidavit setting out all of the information available to him, including the information obtained via the first search warrant. 3 CP 233-44. Even if this

included some improperly-obtained information, it would not necessarily invalidate the warrant. Rather, the second warrant would remain valid if the affidavit contained sufficient facts to establish probable cause independent of any illegally obtained information. State v. Coates, 107 Wn.2d 882, 887, 735 P.2d 64 (1987).

The first search warrant authorized the police to obtain text messages starting at 6:00 a.m. Consequently, the content of all such messages could be used to establish probable cause for a second search warrant. As discussed above, the detective was at a minimum also entitled to view the date and time of other messages, to determine whether they fell within the scope of the warrant.

Attached to this brief as Appendix B is a copy of the second search warrant affidavit (3 CP 233-44). Page 11 (3 CP 243) is the only portion that contains the content of messages beyond the scope of the first search warrant. Without regard to this portion, the affidavit shows that Canady and Starr exchanged text messages on the morning after the crime about the murder investigation. 3 CP 243. This contradicted Canady's denial that there had been no such messages. 3 CP 241. The affidavit also showed that there

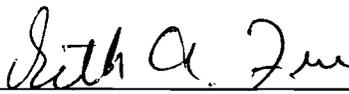
had been text messages (regardless of their content) earlier than 6 a.m. Combined with the other information about the murder and the suspects' relationship, this established probable cause to believe that these text messages would provide evidence of their involvement. Even with the content of the messages removed, the second search warrant was valid. The evidence was properly seized pursuant to that warrant.

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on October 18, 2010.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

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APPENDIX A

**NUMBERING OF SELECTED DOCUMENTS IN
CANADY AND STARR APPEALS**

Document	Numbering in Canady appeal (63626-0-l)	Numbering in Starr appeal (63617-1-l)
Amended Information	1 CP 147-48	1 CP 136-37
Verdicts	1 CP 57-58	1 CP 47-48
1 st search warrant	1 CP 114	3 CP 215
Affidavit for 1 st search warrant	1 CP 115-21	3 CP 216-22
2 nd search warrant	1 CP 131	3 CP 232
Affidavit for 2 nd search warrant	1 CP 132-43	3 CP 233-44

SUPERIOR COURT FOR SNOHOMISH COUNTY

STATE OF WASHINGTON

NO.

ss.

COUNTY OF SNOHOMISH

AFFIDAVIT FOR SEARCH WARRANT

The undersigned on oath states: That affiant believes that:

- Evidence of the crime of Murder ~~First Degree~~
- Contraband, the fruits of a crime, or things otherwise criminally possessed, and
- Weapons or other things by means of which a crime has been committed or reasonably appears about to be committed, and
- A person for whose arrest there is probable cause, or who is unlawfully restrained are located in, on, or about the following described premises, vehicle or person: Cellco Partnership / DBA Verizon Wireless, Custodian or Manager of Records, 180 Washington Valley Road, Bedminster, New Jersey 07921. Phone records for cellular phone numbers (425) 239-2999 and (425) 299-2110.

That affiant's belief is based upon the following facts and circumstances:

I, Patrick VanderWeyst, have been a commissioned deputy with the Snohomish County Sheriff's Office for more than eighteen years. Since March of 2004 I have been assigned as a detective with the Major Crimes Unit and have been involved in the investigation of approximately 30 homicides. Prior to that I was assigned to the Special Investigations Unit. I have investigated homicides, felony assaults and have assisted other detectives in the investigation of such crimes. I worked as a detective in the Special Investigations Unit for over five years and during that time I investigated approximately 500 cases involving suspected child sexual/physical abuse as well as sex crimes involving adults. I have also completed the initial investigation on numerous adult sex crimes while working in the capacity as a patrol deputy. I have applied for and served search warrants relating to homicides, sex crimes and felony assaults and have also assisted other detectives in the service of such warrants.

I have completed the 440-hour Basic Law Enforcement Training Academy, which included a block of instruction on sexual assault investigations. I have attended in-service training on those same topics and have attended a three-day training program sponsored by the Washington State Training Commission on

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APPENDIX B

investigation of child abuse, both sexual and physical. In 1999 I attended several training seminars related to the investigation of sex crimes. This included a one day seminar sponsored by the Providence Sexual Assault Center on investigative techniques and protocols in adult sexual assault cases, a four day seminar on sexual offender profiling and risk assessment of sexual offenders, and a five day seminar sponsored by the Office of Juvenile Justice and Delinquency Prevention on Child Sexual Exploitation Investigations. In 1999 I also attended a three-day training program on computer forensics and in 2002 I attended a week long seminar on Undercover Investigations for Sexual Exploitation of Children on the Internet. In 2003 I attended a week long seminar on blood spatter analysis and in 2004 I attended a week long seminar on Basic Homicide Investigation and another week long seminar on Sex Related Homicide Investigation. In 2005 I attended a week long seminar on Advanced Practical Homicide Investigation. In February of 2007 I attended and completed the fire/arson class at the National Fire Academy.

On the morning of June 26th, 2008 the Snohomish County Sheriff's Office major crimes unit, of which I am a member, was called out to investigate an apparent homicide at the address of 12814 311th Avenue Southeast, Sultan, Washington. After arriving at the scene I was briefed on the incident by Snohomish County Sheriff's Deputy Willoth and found out the following: Debra Canady lived at the residence with her ex-boyfriend, David Grimm. Also living at the residence in a downstairs room was Debra's mother, Judy Henning. The prior night Debra spent the night at her new boyfriend's who lived in Gold Bar, Washington. Debra came back to her house that morning at around 6:00 AM and found David dead in his room. There was a blanket on top of David and Debra pulled it off of his back area and felt his body. His body felt warm but he was not breathing. Debra then called 911.

Sultan Police Officer Vimpany responded to the scene and found David lying on the bed naked. There was a blanket around his head area and it appeared he had three stab wounds to his back. He also observed blood spatter on the wall above the bed. Fire personnel entered the room and confirmed that David was deceased. Officer Vimpany noticed that there were no signs of forced entry to the residence. Debra's mother, Judy Henning, was found to be okay inside of the residence.

I reviewed the statements provided by fire personnel who responded to the scene. From reading those statements I found out that aid personnel found David's body to be warm, pink in color with no signs of lividity or rigor mortis. These are indications of a recent death.

Both Judy Hennings and Debra Canady were interviewed by Snohomish County Detectives. From being briefed on Debra's interview I found out the following: She and David had lived in the house together for the past three years. It was her house but David's name was on a second mortgage they had taken out together. Also living at the house was Debra's mother, Judy Henning, along with Debra's daughter, Jacey Canady, and Debra's granddaughter, Courtney. Jacey was eighteen years old and often stayed at her boyfriend's house in Everett. Courtney was the daughter of Debra's other daughter and only stayed on the house once in awhile. Both Jacey and Courtney stayed elsewhere the previous night and therefore were not there. The only person who was in the house the previous night with David was Judy.

Debra and David ended their relationship about three months prior but still lived in the same house together and even still shared the same bed. For the past several months Debra had a new boyfriend, Brent Starr, who was much younger than her. David expressed to Debra his dislike of her having a boyfriend. Brent lived in a trailer in Gold Bar with his five year-old daughter and Debra stayed with him there a few times a week. Brent would also stay at the house and when he did so she and he would sleep on a hide a bed while David slept in the room. Debra had tried to get David to move out and around

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three weeks prior he finally did. After David had been out of the house for about a week there was a night when Brent was at the house with Debra and they were sleeping in the bedroom. David came home drunk and had a bad cut on his hand which was bleeding. Debra cared for the cut and washed it off in the sink in the bathroom off of the master bedroom. David remained in the house after that and moved back in. David took over sleeping in the master bedroom. This meant that Debra went back to sleeping in the same bed with him when she was there. This also meant that when Brent came over she and him had to revert to sleeping back on the hide a bed with David looming in the master bedroom. This created tension and several weeks prior there was an incident when David told Brent he wanted to talk to him outside. Brent refused to go out with him and David became enraged. David ended up retrieving a handgun slamming it down on a table, saying to go ahead and shoot him.

Debra provided information about David and which included that he had no friends and spent time on the computers in the residence. Debra provided information that the previous day her and David were instant messaging each other through their Yahoo accounts and David made a comment that he should just go off and die somewhere.

According to Debra, the night before she found David dead she got home from work at around 6:00 PM. David was home at that time and was busy working on the addition he was constructing to the back deck. Debra talked with David while she was there and he knew she was headed off to Brent's for the night. Debra left at around 7:30 PM and drove directly to Brent's trailer in Gold Bar. Debra stayed at the trailer and she and Brent went to bed at around 10:30 PM. At around 1:30 AM Debra got up and went into the house the trailer is parked by to use the bathroom. The homeowner, Mike, was having a cigarette and Debra talked with him a bit. The people who were in the house at that time were still asleep and she used the bathroom. Debra walked back to the trailer and went inside. Brent then came into the trailer and said that he had gone to the bathroom as well and did so outside. They both fell back asleep and Debra awoke to Brent kissing her good bye. Debra didn't actually look at a clock to verify the time but assumed it was 3:45 AM when that occurred because that was the time she knew Brent to leave for work. Debra provided no information about her noticing what time Brent awoke, only about him kissing her good-bye prior to leaving. Brent left and Debra remained in the trailer, sleeping. Later on Debra woke up and drove Brent's daughter to a daycare which was in the same neighborhood. This was around 5:30 or 5:40 AM. Debra then drove to her house and found the front door unlocked. She went inside for a few minutes and then walked back to the bedroom to take a shower. After walking into the bedroom she saw David lying on the bed, covered by a blanket, and saw blood spatter on the wall. Debra pulled the blanket off of David's back and put her hand on his back. Debra felt that he was warm but saw that he was not breathing. Debra made no further efforts to attempt find out the extent of David's condition or to render any aid such as CPR and she instead left the room and called 911. Debra also made no effort of checking on her mother Judy prior to calling 911. Debra stated that she did want to check on her mother but the 911 operator told her not to. The police arrived and both Debra and Judy were brought out of the house. Debra was placed in a patrol car and denied communicating with anyone over her cellular phone, telling them that she had found David dead, prior to talking with detectives.

Debra had her cellular phone with her which was taken as evidence. The phone number to that phone was confirmed as (425) 239-2999. (I later confirmed that to be a Verizon Wireless phone number, a company that conducts business in the State of Washington.) Snohomish County Sheriff's Detective P. [redacted], who was involved in the interview of Debra, told me that there was a photograph on her phone of a handgun. When asked about this Debra stated that the photograph had been sent to her from Brent the past weekend.

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Judy Henning was interviewed by Snohomish County Sheriff's Detectives and from being briefed on that interview I found out the following: The previous night it had been just her and David home. They watched television and David went into his room at around 10:00 PM. Judy stated that it was routine for David to go into his room at night and come out later to lock the doors. Judy went to bed a short while later and assumed that David followed his same routine that night of locking the door. Judy did not hear anything during the night or early morning but described how it was common for her to sleep through loud events. Judy confirmed that Debra and David shared the master bedroom in the house.

As a part of the investigation there was a neighborhood canvas which yielded information, possibly related to this case. One neighbor stated that David was supposed to meet him at 4:30 AM to pick up a vehicle. David did not show and the neighbor went on without him. A neighbor stated that his dog started barking at something around 4:15 AM. There was another person who lived on the same street who stated he heard a car driving out of the area at around 3:00 AM. That neighbor later stated that he was familiar with cars and that car he heard sounded like it had a four cylinder engine. We later found out that Brent drove a Ford Escort, a vehicle that most likely had a four cylinder engine.

Det. Willoth and I went to the address where Brent's trailer was and saw that it was a small travel trailer parked next to a residence. We made contact with the occupants inside of the house and talked with Jason Weiss and Kimberly Minx who told us that Brent was at his workplace in Woodinville. We did not disclose the details of the case.

Det. Willoth and I drove to Woodinville and made contact with Brent at his workplace. I noticed that Brent was wearing a dark colored sweatshirt and dark colored Carhart type pants. Detective Willoth interviewed Brent and during the course of that interview he told us the following: He and Debra had been boyfriend/girlfriend for the past couple of months. During this time Debra lived at her house with her ex-boyfriend, David. Brent would, at times, spend the night at Debra's and when he did so they would have to sleep on the hide a bed while David slept in the bedroom. About one night a week Debra would spend the night with him in his trailer and when she did so she would drop off his daughter at daycare when she left. Brent was not happy about David still living with Debra and he knew that David was not happy about him being with Debra. Brent described how David had an "issue" with him being with her. Brent described how he and David had an altercation around a month and a half prior with David having a fit and expressed how he felt about him and Debbie. When asked about the altercation Brent stated that David wanted to talk with him outside but Brent didn't want to. David then got verbal with Brent. Brent did not say anything about David bringing out a handgun. The next day David apologized. Brent acknowledged that when he was over at Debra's house there was tension and David would be quiet around him and he could sense he was bothered about him being there. Debra had been trying to get David to move out but he wouldn't. David wanted a relationship with her but Debra didn't. There was a time that David left for about a week but he ended up coming back and resumed living at the house.

Brent didn't think Debra and David were still having any type of physical relationship. When asked if it bothered him that David was still in the house Brent responded that what bothered him was that Debra found him dead and that "someone came into their house and did something they shouldn't have." We had not shared with Brent any details of the case including how David died or whether it was a homicide, suicide or a natural death. He was then asked what he thought happened. Brent responded "all I know, she told me that he was dead." Brent went on to describe how David had been complaining of breathing

problems and chest pains lately. Brent added that he imagined that being there was an investigation there was a lot more than him having a heart attack.

Brent was asked if he had ever been inside of David's bedroom and he said yes that he had been inside to wash his hands and use the bathroom. When asked when that last time was he was in David's room and he said this past Tuesday. Brent volunteered information that he had gone into the room to use the bathroom. Brent was asked why he didn't use any of the other bathrooms in the house and he said that the girls were in the upstairs bathroom so he asked Debra if he could use the bathroom in David's room and she said yes.

Brent acknowledged that he had purchased a handgun at a gun show in Monroe this past weekend. When asked why he purchased a handgun Brent stated that for no real reason other than he had always wanted one and went there with the purpose of buying one. Brent was asked if he had ever owned any handguns before and he said no, that this was his first one. Brent acknowledged that he sent a photograph of that handgun to Debra's cellular phone and that he took it out the next day and fired it.

As far as the previous night Brent stated that Debra had come over to stay the night with him and they went to sleep at around 10:00 or 10:30 PM. Brent left for work at 3:45 AM and pointed out on his own that he made it to his normal stop off point in Monroe, the Red Barn store before continuing on to work. Brent did wake up earlier in the morning at around 2:00 AM when Debra crawled over him to go to the house to use the bathroom. Brent woke up with her and went outside and went to the bathroom on the backside of his trailer. He came back into the trailer and he and Debra fell back asleep.

Brent was asked about any contact with Debra that morning and he said that he sent her a text message from his cellular phone to her cellular phone at around 7:00 AM asking how the morning went. Debra texted him back saying that she was being detained and questioned by the police. Brent asked what for and awhile later she texted him back saying that she had found David dead. (At this point David asked if I could roll down the window further in the detective vehicle we were sitting in due to him becoming hot.) Brent was asked how he would describe David and he said he was "controlling." Brent added that David reminded him of his ex-girlfriend being that both of them were a "control freak." Brent was asked if he had a key to the residence and he said yes. Brent said that he never had to use it being that the front door was usually left unlocked.

Brent stated that he his handgun was currently in the glove box of his vehicle which was parked in the parking lot of his workplace. Brent agreed to provide his voluntary permission for us to search his vehicle as well as obtain his handgun. Brent provided his cellular phone number which was (425) 299-2110. (I later confirmed that this was a Verizon Wireless phone number, a company that conducts business within the State of Washington)

I waited with Brent outside of his vehicle while Detective Willoth obtained the necessary paperwork for him to fill out. Brent asked to stand near the vehicle while the search was underway and appeared to be nervous as he did so. I engaged in conversation with Brent while we stood outside of his vehicle and he seemed distracted as we talked

Brent stood outside of his vehicle while I searched it and seemed to pay very close attention to what I was doing. At that point we have very limited information on the circumstances surrounding David's death and the search was basically for anything obvious, such as blood and weapons. There were numerous items within the vehicle and the interior was dirty with various staining on the carpet. Nothing obvious

was found. The search was completed and Brent appeared to be relieved. Brent was thanked for his cooperation and we left.

Detective Willoth and I returned to the scene and found that a search warrant had been obtained for the residence, property, outbuildings and David's truck which was parked in the driveway. I read over a copy of the warrant and found that the items we were authorized to search for were any firearms, ammunition, spent bullets and/or casings, any weapons or instruments capable of producing puncture wounds, any items with possible blood on the same, to include clothing and bedding, DNA, trace evidence including blood, hair, and fibers, latent prints, computers, cellular phones, digital cameras, letters/documents showing occupancy, scene documentation to include video recording and photographs.

It had been arranged for the Washington State Patrol crime scene response team to respond to process the bedroom where David's body was found and they arrived on the scene to do so.

The search warrant was served and the crime scene processed. The exterior of the residence was examined and there were no signs of forced entry. There was also no signs of forced entry to the front door. There were wood steps leading up to the wood front porch outside the front door. Just outside the front door on the wood porch were what appeared to be two blood droplets. There was also what appeared to be a spot of dried blood on the door near the outside door knob and a small amount of blood on the interior of the screen door.

David's bedroom was located at the second level on the southeast corner. The bedroom had a walk-in closet as well as an attached bathroom. David's naked body was lying perpendicular on the bed near the head of the bed. David was lying on his stomach with his head area covered by a blanket. David's head appeared to be hanging over the side of the bed and resting on a chair that was next to the bed. There was a nightstand on the side of the bed near his head. On the nightstand was a knocked over glass. There was also a lamp with a bent lampshade and a cordless phone in its holder. On the wall above the headboard was a concentration of what appeared to be medium velocity blood spatter going in several directions. There were smaller amounts of blood spatter found on other walls of the bedroom and on the ceiling as well. It did not appear that any kind of struggle took place inside of the bedroom. Other than the glass knocked over and the lampshade askew, everything else appeared to be in place. Nothing appeared to be gone through or missing as well. The closet was in order and the two safes inside did not appear to have been tampered with. The rest of the house was gone through with the same observation of no signs of a struggle and nothing appearing to be missing. With these observations and the conditions of the house it did not appear that any theft or robbery occurred.

David's bedroom was processed by the Washington State Patrol crime scene response team. During the course of the processing a bloody smudge mark was found on a window blind as well as on the door to the bedroom. There was evidence found in the sink of the bathroom in the bedroom that was consistent with the killer cleaning up after the murder. There was also urine in the toilet consistent with someone having gone to the bathroom and not flushing afterwards. There was a concentration of blood on a portion of the bed which was consistent with David lying in a position for a period of time while he bled. It appeared there was the possibility that at some point he was able to move across the bed, towards the area of the phone, where he died. There was blood on his feet and legs as if he moved his body across this portion of blood on the bed. Crime scene personnel also noted that there appeared to be a possible void in the room where there was no blood spatter. This void was on the west wall between the closed door and a bookcase. This possible void indicated that some person or object may have been in that area when the injuries were being inflicted upon David.

Doctor Wigren from the Snohomish County Medical Examiner's Office arrived on scene and conducted a on scene investigation. During the course of that investigation the blanket was removed from the area of David's head. While doing this it was found out that David had a portion of the blanket clenched tightly in his hand. Once the blanket was removed a closer look revealed what appeared to be several lacerations to David's face. David's head area and hair were very bloody and Doctor Wigren felt his head and advised that it appeared he sustained blunt force trauma to his head. There were no obvious weapon found in the bedroom as well as the rest of the house which indicated the killer most likely transported it out of the residence. Based on the scene and the condition of David's body that weapon would most likely have blood on it. It also appeared that David was attacked while in bed and there was no evidence that suggested he fought back. David's body was removed from the scene and placed in the Snohomish County Medical Examiner's Office vehicle to be transported to their office.

The search of the residence continued with several computers, digital cameras and cellular phones being collected as evidence. Also collected from David's bedroom were swabs of blood and a sample of the urine in the toilet. There was a large gun safe inside of the closet of David's bedroom that was searched.

The combination to the safe had been provided by Debra and there were numerous pornographic photographs found inside. These photographs appeared to have been taken with a digital camera and printed off of a computer printer. Several of these photographs depicted both Debra and David engaged in explicit sexual acts with a dog. A search of David's truck had been completed and a briefcase was found inside. Inside of this briefcase were similar photographs of Debra engaged in sexual acts with a dog. The photographs appeared to have been taken at the residence. There were five dogs at the residence and the dog depicted in the photographs appeared to be a dog that was currently present in the rear yard area. I believed it was possible that these photographs were being kept by David as a means to force Debra to allow him to keep living in the house.

On June 27th, 2008 I went to the Snohomish County Medical Examiner's Office and viewed the autopsy of David performed by Doctor Wigren. I was in the viewing area watching as the hair was shaved off of David's head. As the hair was removed I viewed numerous wounds to David's head. The wounds appeared to cover most of his head. The autopsy assistant came up to the viewing room and asked Snohomish County Sheriff's Detective Bilyeu and I if we wanted to come into the room to get a closer look at the wounds. We said yes and did so. Doctor Wigren pointed out the wounds to us and explained that it appeared they were from blunt force trauma by an object. Doctor Wigren pointed out linear striations imprinted on the skin around the wounds and explained that the object used would have similar striations. From what the wounds looked like it appeared to be consistent with a tool, possibly a hammer, which had striations on it. There were other wounds to David's head which appeared to have been caused by the claw of a hammer. All in all there were around 15 or so wounds to the head which meant there had been at least that many blows to his head. Doctor Wigren also pointed out that David's skull had been fractured.

I went back to the office and assisted Detective Willoth in preparing an additional search warrant affidavit requesting court authority to search Debra's house again for a type of instrument, such as a hammer, that could have caused the wounds to David's head. Also, for any photographs depicting an adult engaged in explicit sexual acts with an animal. An additional warrant was requested to search David's cellular phone which had been collected as evidence.

The search warrant was approved by Judge Lyon and was served that night at Debra's residence. Despite the obvious violent death David suffered the previous night the family was inside of the residence as if it was a normal evening. This included Brent and his daughter. Brent agreed to accompany Snohomish County Sheriff's Detective Scharf and me to the Sultan Police Department for an additional interview. Debra agreed to accompany Detectives Willoth and Pince to the Sultan Police Department for an interview as well.

During the course of the second interview we talked again about how despite he and Debra being boyfriend/girlfriend how she was still sleeping in the same bed with David when she was at the residence. Brent was asked if he knew if Debra and David were having a sexual relationship and he said that he knew David was wanting a sexual relationship with her but he would tell him no. Brent also made references to how David being in the house stood in the way of him and Debra's relationship. Debra had wanted David to move out and he did for a short while and then moved back in. Brent talked about how he had been at the house one night with Debra when David came home drunk with a cut finger. Debra cared for his finger and David moved right back in. Brent was asked if he knew anything about Debra and David's previous sexual relationship and he said no.

Brent acknowledged again that he had a key to the house and also that he knew beforehand that Judy and David were the only ones in the house that night. Brent knew that Judy slept downstairs with her door closed but was not sure of her ability to hear things at night. Brent went over again how he and Debra had gotten up at around 2:00 AM. Debra used the bathroom in the house and Brent went to the bathroom outside. Brent left at around 3:45 AM to go to work and this time told us that as he drove down his road he sent a text message to Debra that he loved her. Brent stated he drove on Highway 2 through Sultan on his way to work and made no stops until he reached the Red Barn store in Monroe. From there he went to work.

Brent went over again the text messaging that went on between him and Debra that morning. Brent stated it was on his 7:00 AM break that he sent a text message from his cellular phone to her cellular phone asking how the morning went. Debra sent a text message back telling him that she was being detained by the police. Brent asked what for and she texted back for questioning. Brent texted her asking what she was being questioned about and he did not receive a response right away. He then went back to work and when he checked his phone at his 9:00 AM break he had a text message from Debra. In the text message Debra stated that she got home and found David dead.

There came a point in the interview where Detective Scharf asked Brent if he would be willing to take a polygraph examination in reference to if he killed David or had any knowledge what happened. Brent at first said he would but when faced with the possibility of taking one that night he changed his mind and said he wouldn't. There came a point in the interview when it became accusatory, us telling Brent we believed he was involved in or had information pertaining to David's murder. Brent did not get agitated and his denials were weak. There reached a point where Brent told us that he was done talking and wanted to go home.

I later talked with Detectives Willoth and Pince about their interview with Debra and I later reviewed the transcript of that interview. From that I found out the following: Debra acknowledged that she and David's sexual history included group sex and him taking sexual photographs of her. Debra provided information that David went to porn sites on his computer as well as websites for singles. Debra acknowledged that David had his dog lick his penis but she did not mention anything about her engaging in any sexual acts with the dog. Debra talked about how David had been following her and Brent and

brought up an incident that occurred after she had gotten back from Leavenworth the weekend before David died. When Debra got back home a neighbor told her and Brent that her white van was seen driving in front of Brent's trailer early one morning that weekend at around 5:30 AM. Debra said it couldn't have been her because she was out of town. Debra confronted David about it and he admitted to doing so and said he was looking for a friend's house.

Debra also stated she was not sure what time Brent had left the morning in question but assumed it was 3:45 AM being that was the normal time he left. Debra again denied her and Brent sending any text messages to each other and that she had communicated in any way with Brent that David was dead. This was even after being confronted with how Brent provided details about the texting.

Once back at the house Brent was asked if he would be willing to provide his voluntary permission for us to search his vehicle, which was currently parked in Debra's driveway. Brent said yes and signed the voluntary permission to search form. Brent chose to go inside of his residence and I saw that he positioned himself in an upstairs window. Detective Scharf and I put on gloves and, with the aid of flashlight, began a close examination of the driver's side door for any possible blood transfer. We had only been 30 seconds or so into this process when Brent told us that was good on the car. I asked him what he meant and he said he wanted us to stop searching. The service of the warrant was completed and numerous hammers were collected, none with any obvious blood on them. Also collected were the photographs of Debra engaged in explicit sexual conduct with a dog. One of the hammers was collected from the front passenger floorboard of David's vehicle. That vehicle was searched during the service of the first search warrant and it was believed that the hammer was not in there at that time.

On June 28th, 2008 I accessed Debra's cellular phone and looked at what records existed for any text messages received or sent. There were previous text messages on her phone from previous days but none that coincided with what Brent had stated about Debra stating she was being detained by the police and that she found David dead. If there indeed had been text messages between Debra and Brent that morning it appeared they had been deleted off of Debra's phone. On the other hand Brent may have not been truthful about his versions of events.

On June 30th, 2008 Detectives Willoth and Wells interviewed a subject by the name of David West who worked with David and was his friend. West stated that two Friday's before David was killed they were at a barbeque together. While there David told West that Brent had threatened to kick his ass and he was nervous about the situation.

On June 30th, 2008 I went to the house where the trailer was that Brent lived in. While there I made contact with Jason Weiss. I asked about the night in question and Jason stated that he was home all night and saw when Debra had come over to Brent's. Jason was up early in the morning, around 1:30 AM or so, when Debra came into the house to use the bathroom. Debra left the house to go back into the trailer and Jason went to sleep at around 2:30 AM. Jason did not see Brent when Debra came into the house and had no idea if he left the house or not in his vehicle. Jason told us that after Detective Willoth and I had made contact with him that morning he telephoned Brent to tell him the police were asking about him. Brent told Jason that Debra had found David dead. Jason had gone to Eastern Washington for the weekend and telephoned Brent this past Sunday. In that conversation Brent told Jason that David had been beat in the head with a hammer. (By Sunday the warrant had been served and it was listed on the inventory return form that hammers were taken.)

The owner of the house, Michael Ward, was interviewed and he stated that he come outside at around 1:00 or 1:40 AM to wait for his ride to work. While outside Debra came out of the trailer and into the house to use the bathroom. Michael did not see Brent at all and did not know for sure if Brent's vehicle was there or not. Michael's ride picked him up before Debra came back out of the house. Michael stated that it was his trailer that Brent lived in and it was only supposed to be temporary. He also said that Brent spent more time at Debra's house than at the trailer. Michael stated that Brent had free access to his house and Brent did have a tool box of his own in the garage.

The daycare was contacted which was located in the same neighborhood as Brent's trailer. It was confirmed that Debra dropped off Brent's daughter at around 5:30 or 5:40 AM on the morning in question.

The surveillance video from the Red Barn was viewed and a copy collected. The surveillance video showed Brent pulling into the parking lot of the Red Barn at around 4:03 AM. Brent remains inside of his vehicle for about four minutes while parked at the store and it was unknown what he was doing. Brent then got out of his vehicle, went into the store, makes a purchase and immediately leaves. While in the store it is clear that the shoelaces to the boots he wearing were untied and dragging on the floor. He also had the sleeves to his long sleeved sweatshirt rolled up.

On July 1st, 2008 I talked with Doctor Wigren about the autopsy. Doctor Wigren stated that there were additional injuries found around the area of David's clavicles and back of neck. Doctor Wigren stated he did not know for sure but the types of injuries found were consistent with David being held down.

On July 2nd, 2008 I talked with Tim Anderson who was the plant manager where Brent worked. Tim told me that on Thursday morning, July 26th, 2008, Brent clocked into work at 5:00 AM. Tim also said that in his job Brent used tools that were provided by them. Brent did have a locker at the workplace. Tim stated that he was not sure what Brent kept in his locked but it was common for workers to keep an extra change of clothes and/or tools in their lockers.

On July 2nd, 2008 Detective Willoth and talked with Darrel Jones who lived in the residence next to Debra's house. Darrel stated that just a few hours after we were done with the first search warrant Debra came back to the house. Darrel further stated that later on that day, Friday, at around noon he looked outside and Brent was washing and vacuuming out his vehicle, the brown Ford Escort, specifically the driver's seat area. Darrel thought that was suspicious being that he had never seen him wash that vehicle before and it was a beater type vehicle anyway. I asked Darrel if he saw Brent washing any other of the vehicles that day and he said no. Darrel also stated that this washing occurred prior to the second search warrant served at the residence. He also stated that Brent and his daughter had been at Debra's house since and from all appearances that activity coming from the house was as if nothing had happened.

On July 3rd, 2008 I completed a search warrant affidavit under the crimes of murder and making a false statement requesting court authority to obtain phone records for both Debra and Brent's cellular phones. The records requested were for subscriber information and the detail and content of any text messages for the date of Thursday June 26th, 2008 0600 hours through Thursday, June 26th, 2008 1200 hours. The search warrant affidavit and search warrant were reviewed by DPA Stemler and approved by Judge McCleeman.

AFFIDAVIT FOR SEARCH WARRANT PAGE 11 OF 12

On July 3rd, 2008 I faxed the search warrant to Verizon Wireless. After the fax went through I telephoned Verizon Wireless and spoke with Brent. I explained to Brent that despite the records having previously been preserved, the search warrant was only authorized for the times of 0600 to 1200 on the date of June 26th, 2008 and that is the only information I requested be sent to me as soon as possible.

On July 3rd, 2008 I was down in the office of the computer forensics unit which is separate from my office. I was reviewing surveillance video when I received the phone records, via e-mail, from Verizon Wireless. I accessed a computer in the computer forensics unit, logged on with my password and opened up the files that contained the text messages. I have reviewed these types of files before and knew that the content of the text messages was listed in parenthesis on the very last line of each header.. Being anxious about what that content held I went right to the lines that held the content and began reading, scrolling as I went.

The running dialogue of text messages I read was as follows:

"its done"
"I need pants"
"U coming here"
"nevermind, I have a pair. Have a great day. Is messy in yr room, sorry."
" Was it quiet"
"mostly"
"he thought I was kev"
"U may have to toss yr clothes if they come to question you"
"Erase yr phone"
"I left the trailer at 345 ok"
"make sure you lock the door when u lreave please. Love u baby."
"Love you too"

After that exchange the text messages changed into a dialogue that was consistent with what Brent told us in his interviews. This exchange of text messages was obviously an effort made by both to cover their tracks, thinking the previous messages had been erased.

At that point I went back and looked more closely at the information provided in the lengthy header for the text content and found that the first message I read was listed at 06-26-2008 0346 hours. It was then that I realized that I had been sent text message content for the time period leading up to 0600, which wasn't in the search warrant. When initially reading the text messages I had no knowledge that what I was reading was out of the time frame of the search warrant and I had not obtained any information to notify me as such. It was only after reading through the text messages and having knowledge of what that content was that I realized that it was out of the time frame.

With that in mind I believe that probable cause exists for the crime of murder and that this was a planned event by both Debra and Brent. I believe probable cause exists that Debra and Brent communicated more about this crime through text messaging and phone calls to and from their respective cellular phones, numbers (425) 299-2110 and (425) 239-2999, in the days prior to and after the murder and request court authority to obtain those records. Those records to include to include full subscriber information including name, address, date of birth, social security number, employer and any alternate phone numbers. To include call detail to and from these phone numbers to include number called,

AFFIDAVIT FOR SEARCH WARRANT PAGE 12 OF 12

duration, cell site (tower) information including address and direction of connection. Also to include the
content and content of any text messages to and from this phone, including the phone number and the e-
mail address of the sender/recipient. The time period for the phone records requested would be from
Friday, June 20th, 2008 12:01 AM through Thursday, July 3rd 2008.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct, signed in the City of Everett, Snohomish County, on the below listed date.

Date: 07/03/08

[Handwritten Signature]
Affiant

Snohomish County Sheriff, Detective VanderWeyst

Subscribed and Sworn to before me this date: July 3, 2008

Judge [Handwritten Signature]

Issuance of Warrant Approved:

JDA STEMLER
Deputy Prosecuting Attorney
(NAME AFFIXED WITH
PERMISSION BY STEMLER)

257

2010 OCT 19 AM 10:33

COURT OF APPEALS
STATE OF WASHINGTON
FILED

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

BRENT T. STARR,

Appellant.

No. 63617-1-I

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 18th day of October, 2010, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

NIELSEN, BROMAN & KOCH
1908 EAST MADISON STREET
SEATTLE, WA 98122

WASHINGTON APPELLATE PROJECT
1511 THIRD AVENUE, SUITE 701
SEATTLE, WA 98101

containing an original and one copy to the Court of Appeals, and one copy to the attorney(s) for the appellant(s) (Starr/Canady) of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 18th day of October, 2010.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit