FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 06 2014

BY [signature] ERIKA MONTES, DEPUTY

STATE of CALIFORNIA, COUNTY of SAN BERNARDINO, SW 14 - 1075

DECLARATION and REQUEST FOR ORDER SEALING SEARCH WARRANT DOCUMENTS

Your Affiant, Police Officer / Investigator Joseph Steers, relates that this Search Warrant sought pursuant to this Search Warrant / Affidavit, Statement of Probable Cause and the Return to Search Warrant and all documents relevant to this Search Warrant relate to an on-going investigation of a Homicide. It is expected that additional Search Warrants will be sought relating to this matter. If information contained in the above listed documents is made public, it would compromise this investigation and make it impossible to continue.

Your Affiant requests that the Search Warrant / Affidavit, Statement of Probable Cause and the Return to Search Warrant and all documents relating to this Search Warrant be ordered to be sealed. And that the Search Warrant / Affidavit, Statement of Probable Cause and the Return to Search Warrant and all documents relating to this Search Warrant remain sealed and in the custody of the clerk of the court until order of this court or other competent court having jurisdiction over this matter.

I declare under penalty of perjury that the related foregoing is true and correct to the best of my knowledge.

[signature] , *4th day of AUGUST, 2014 at* 1545 ☐ *A.M* ☒ *P.M.*

(Signature of Affiant)

POINTS & AUTHORITIES

People v Sanchez (1972) 24 Cal. App. 3d 664, 678; People v Greenstreet (1990) 218 Cal. App. 3d 1516; Swanson v Superior Court (1989) 211 Cal. App. 3d 332.

ORDER

Based upon the foregoing Declaration and Request and a reading of the original Affidavit, Search Warrant, Statement of Probable Cause, and the Return to Search Warrant thereof referred to above, it is hereby ordered that the Affidavit, Search Warrant, Statement of Probable Cause and the Return to Search Warrant thereof, be sealed and maintained in a secure location in the custody of the clerk of the court until further order of this court or other competent court having jurisdiction over this matter.

[signature] , *4th day of AUGUST, 2014 at* 350 ☐ *A.M* ☒ *P.M.*

(Signature of Magistrate)

Judge of the Superior Court of California, County of San Bernardino, Central District

Annemarie G Pace

(Printed Name of Magistrate)

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 06 2014

BY _____
ERIKA MONTES, DEPUTY

SBSW 14 - 1075

IN THE SUPERIOR COURT DISTRICT, CENTRAL DIVISION

COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

RETURN TO SEARCH WARRANT

The following personal property was taken from ***3473 Avocado Vista Lane, City of Fall brook,*** *County of San Diego, State of California, by virtue of a Search Warrant dated the 4th day of 2014, and executed by the Honorable A. Pace, Judge of the Superior Court of the Central Judicial District, County of San Bernardino, State of California.*

ITEMS TAKEN:

1) *DNA Swabs*

2) *A piece of tan colored carpet from the stairs.*

I, Joseph Steers, Detective for the San Bernardino County Sheriff's Department, by whom this Search Warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me under the Warrant.

It is further requested, for the purposes of retaining custody of this property and conducting further investigation and/or analysis of the property seized, that the Court order the San Bernardino County Sheriff's Department to retain the property until it is brought before the Court for hearing or other disposition, and that the San Bernardino County Sheriff's Department may release the property to appropriate investigators, victims, and/or laboratories for further investigation and analysis without further order of this Court.

_____
JOSEPH STEERS, DETECTIVE
SAN BERNARDINO COUNTY SHERIFF'S DEPT.
SPECIAL INVESTIGATIONS DIVISION-HOMICIDE

It is hereby ordered that the above-mentioned property is to be retained by San Bernardino County Sheriff's Department and may be released to a laboratory for testing, and then be released to its rightful owner or disposed of, in accordance with the law, upon adjudication of the case.

August 6

Subscribed, sworn, and so ordered before me this _____ day of _____ 2014.

_____
JUDGE OF THE SUPERIOR COURT
CENTRAL DIVISION
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 06 2014

BY Erika Montes
ERIKA MONTES, DEPUTY

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO SW 14-1075

SEARCH WARRANT AND AFFIDAVIT

(AFFIDAVIT IN SUPPORT OF SEARCH WARRANT)

I, Joseph Steers, being an authorized State of California Peace Officer with the San Bernardino County Sheriff's Department, swear by oath, that on the basis of the information contained within this Search Warrant Affidavit and the attached and incorporated Statement of Probable Cause, I have probable cause to believe and do believe that the property described below is lawfully seizable pursuant to California Penal Code Section 1524, as indicated below, and is now located at the location(s) set forth below. Therefore, I (the affiant) request that this Search Warrant be issued.

_____, Night Search Requested: ☐ Yes ☒ No
(Signature of Affiant)

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY SHERIFF, DEPUTY SHERIFF, CONSTABLE OR PEACE OFFICER IN THE STATE OF CALIFORNIA:

Proof, by affidavit, having been made before me this day by Joseph Steers, a duly authorized Peace Officer for the State of California, that there is probable cause to believe that the property described herein may be found at the locations(s) set forth herein and that it is lawfully seizable pursuant to California Penal Code Section 1542 as indicated below by "X"(s) in that it:

☐ was stolen or embezzled.
☐ was used as the means of committing a crime.
☐ is possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
☒ tends to show that a crime has been committed or that a particular person has committed a crime.
☐ tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, has occurred or is occurring.

THEREFORE, YOU ARE COMMANDED TO SEARCH: (Additional locations may be listed in Attachment "A")
3473 Avocado Vista Lane, Fallbrook, California. 92028
Further described as: a two-story single family home located on the west side of Avocado Visat Lane, in a cul-de-sac. The residence has tan stucco, brown trim, and a brown tile roof. The red front door faces east and there is a large white garage door. The numbers, "3473" are affixed to the wall between the garage and the front door. The same numbers are also painted on the curb in front of the residence.

All rooms, attics, basements, cellars, safes, vaults, and other parts therein, surrounding grounds, garage, storage rooms, vehicles, campers, and outbuildings of any kind located therein. All persons present during the service of the Search Warrant, their vehicle in which they are in control of, as well as all incoming phone calls into the residence relating to listed crimes.

FOR THE FOLLOWING PROPERTY:
See Attachment "A"

AND SEIZE IT IF FOUND, and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 4th day of August, 2014 at 350 ☐ A.M. ☒ P.M.

WHEREFORE, I FIND PROBABLE CAUSE FOR THE ISSUANCE OF THIS SEARCH WARRANT AND DO ISSUE IT.

_____, Night Search Approved: ☐ Yes ☒ No
(Signature of Magistrate)

Judge of the Superior Court, County of San Bernardino, State of California

SUPERIOR COURT OF CALIFORNIA

(ATTACHMENT "A")

DR No. 14-1075

ADDITIONAL LOCATIONS TO BE SEARCHED:

(No Additional Locations)

ITEMS TO BE SEIZED & COLLECTED:

AUTHORITY TO RECORD SCENE/EVIDENCE

The granting of this Search Warrant shall specifically authorize the officers or representative to photograph, video tape, sketch/measure and/or take digital images of the location being searched and surrounding areas to preserve the image of the scene, the location of property, and to identify any inhabitants or persons present or arriving at the property during the search. Investigative personnel, sworn or non-sworn are authorized to assist in the search in order identify, document and collect evidence, provided their participation is supervised by a sworn officer.

ITEMS INDICATIVE OF OWNERSHIP-Related or identified to the McStay family.

Personal journals and diaries, telephone records, computer tapes or disks, checkbooks and bank records, travel itineraries, travel brochures, tickets and or departure schedules for airplanes, trains, buses, or ships.

Handwritings, fingerprints, documents and effects tending to show possession, dominion and control over said premises including: photographic negatives, undeveloped film, homemade video or audio tapes, answering machine tapes or digital devices, video or digital images, computers, and any items or papers bearing a person's name, social security number, driver's license number, or other forms of identification.

BIOLOGICAL

Blood droplets, smears, spray, puddles and stains.

Latent prints.

Hair and fibers

Saliva

Semen and Vaginal Secretions.

Skin, muscle and fat tissues and any connective tissue found in whole or in part.

Bone, ligament and tendon or other skeletal remains found in whole or in part.

Deoxyribonucleic acid (DNA) found on a person or item.

Items soiled with body fluids to include but not limited to: clothing, bedding, toiletry items, towels, wash cloths, paper towels, mattresses, walls and furniture. Items showing evidence of being used to clean, wipe, or contain the body fluids or residue of body fluids.

Tools, instruments, or objects with any of the above listed biological materials on it.

WEAPONS / INSTRUMENT

A cutting instrument consisting of a sharp blade fastened to a handle.
An instrument with a sharpened edge or tip.
An instrument with a pointed end capable of stabbing.
Solid or hardened object used to strike the victim to include: baton, mace, mallet, rod, sling, bottle, sap, brick, rock, or can.

ELECTRONIC STORAGE DEVICES & HARDWARE-identified as owned or related to the McStay family.

Electronic storage devices consist of all equipment which can collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, optical, or similar transmission, reception, collection and storage of data.

Electronic storage device includes (but is not limited to) any wireless/cellular telephone, cordless telephone, pager, fax machine, digital camera, audio recorder, video recorder and any data-processing device e.g. central processing units, memory typewriters, self- contained "laptop", "notebook", "mini-notebook", or "personal data assistant" computers.

Internal and external storage devices e.g. fixed disks (hard drives), memory cards, floppy disk, LS-120, zip drive, jazz drive, Orb drive, CD drive, DVD drive, diskettes, tape drives, optical storage devices, transistor-like binary devices, and other memory storage devices including the storage media used in the devices.

Peripheral input/output device e.g. as keyboards, printers, scanners, plotters, video display monitors, optical readers.

Related communication devices e.g. modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices, and electronic tone-generating devices. Any device, mechanism, or parts that can be used to restrict access to electronic storage devices e.g. physical keys and locks bio metric readers, retinal scanners, facial recognition, signature verification, smart card or voice authentication.

Software

Computer/Equipment software (digital information) can be interpreted by electronic storage device equipment, computers and any of its related components to direct the way they work. Software is stored in electronic, magnetic, optical or other digital form. It commonly includes programs to run operating systems, applications (like word-processing, graphics, or spreadsheet programs), utilities, compilers, interpreters, and communication programs.

Documentation

Electronic storage device documentation consists of written, recorded, printed, or electronically stored material that explains or illustrates how to configure or use electronic storage device hardware, software, or other related items.

Passwords and Data Security Devices

Electronic storage device passwords and other data security devices are designed to restrict access to or hide software, documentation, or data. Data security devices may consist of hardware, software, or other programming code.

A password (a string of alphanumeric characters) usually operates as a sort of digital key to "unlock" particular data security devices.

Data security hardware may include encryption devices, chips, dongles, biometric readers, retina scanners, facial recognition systems, voice authentication systems, hand writing authentication systems and circuit boards.

Data security software or digital code may include programming code that creates "test" keys or "hot" keys, which perform certain pre-set security functions when touched. Data security software or code may also encrypt; compress, hide, or "booby-trap" protected data to make it inaccessible or unusable, as well as reverse the process to restore it.

AUTHORITY TO DUPLICATE ELECTRONIC MEDIA AND/OR STORAGE DEVICES:

It is further authorized that a forensic technician or other qualified agent, sworn or non-sworn, is granted authorization to examine and make duplicate images/copies of the above mentioned electronic media and/or storage devices and to determine if evidence of the offenses enumerated in this warrant are contained therein. Evidence copies of the items relating to these offenses will be created and retained for further proceedings and made available to the authorities. Only those items recovered under the Search Warrant and relating to the offenses will be retained. The master copy will be kept in evidence storage for later discovery and trial purposes. Electronic media and/or storage devices consist of all equipment which can collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, optical, or similar types of data.

OFF-SITE SEARCH AUTHORIZATION:

For the following reasons, the execution of this warrant may take a great deal of time and require a secure facility, special equipment, and software:

1. It is unknown what operating system is running the computer(s) or devices that are to be collected in this warrant, therefore, it will take time to determine how the operating system permits access to data stored within.
2. The amount of data that may be stored in the hard drives and removable storage devices can be enormous, and the number or size of the hard drives and removable storage devices that will have to be searched pursuant to this warrant is not known.
3. The data to be seized may be located anywhere on the hard drives and removable storage devices, including hidden files, program files, and "deleted" files that have not been overwritten.
4. The data may be encrypted, or inaccessible without a password, and may be protected by self-destruct programming, all of which may take time to bypass.
5. Because data stored on a computer can be destroyed and/or altered rather easily, either intentionally or accidentally, the search must be conducted carefully and in a secure environment.
6. To prevent alteration of data and insure the integrity of the search, clones (master copies) of all data storage devices will be made. The clones (master copies) will then be searched and this process will take time and special equipment.

(STATEMENT OF PROBABLE CAUSE)

On Monday, November 11th, 2013, at about 1000 hours, Deputies from the Victorville Sheriff's station responded to a call of possible human remains found in the desert area near Stoddard Wells Road and Quarry Road, Victorville. Coroner Investigator Andy Avery responded to the scene and identified what appeared to be the partial skull of a child. The partial skull was bleached white due to exposure to the elements for an undetermined amount of time. The skull contained the upper portion of the orbital sockets and nasal cavity. Based on this information, Avery requested the assistance of Forensic Anthropologist Dr. Alexis Gray. Avery and Gray conducted an area search and found additional human remains exposed to the elements and two shallow graves. The Sheriff's Department Homicide Detail was notified and assumed the investigation on Tuesday, November 12th, 2013.

Homicide investigators and Coroner's personnel excavated the two graves and found the remains of three additional bodies. The human remains of the four bodies were later matched and identified to Joseph McStay, Summer McStay, Gianni McStay and Joseph McStay Jr [The McStay Family] through dental records and deoxyribonucleic (DNA) comparison. Found in one of the graves was a sledgehammer.

The McStay family lived at 3473 Avocado Vista Lane, Fallbrook, CA. 92028 and were reported missing to the San Diego Sheriff's office on February 15th, 2010. Joseph Sr. had an Internet fountain business named Earth Inspired Products (EIP).

On Wednesday, November 13th, 2013, San Diego Sheriff's Office (SDSO) investigators met with San Bernardino County Sheriff's Department (SBCSD) investigators. During the meeting, SDSO Sergeant Patrick Gardner called SDSO lead investigator of the missing persons' investigation, Detective Troy DuGal, and put him on speaker. DuGal briefed SBCSD homicide investigators and Gardner provided us a copy of their missing persons report related to the McStay family. SDSO investigators conducted an extensive search for the McStay family to no avail. SDSO investigators authored and served a search warrant at the McStay residence of 3473 Avocado Vista Lane, days after the original missing persons report was taken. The investigators did not believe there were signs of a struggle inside the residence. The investigators photographed the residence to document how it looked at the time they served the search warrant and took items of evidence, such as electronic media devices and cameras that could be examined for additional evidence. SDSO investigators were investigating a missing family case and did not process the residence as a crime scene for latent evidence such as blood stains.

On Thursday and Friday, November 14th and 15th, 2013, Dr. C. Changsri conducted an autopsy of Joseph Sr., Summer, Gianni, and Joseph McStay Jr. Changsri ruled Joseph, Summer, and Gianni McStay's cause of death to be blunt force and multiple blunt force trauma to the head. The manner of death was determined to be homicide. During the autopsy, digital photographs were taken of all the victims, including the clothing and items found with them. Joseph had been wrapped in a blanket or large sturdy cloth material. Summer was wearing only her brazier, sweat bottoms, and panties. Summer was covered in a terry cloth towel or robe. Further examination of Summer's brazier revealed a small stain which was possibly paint. The stain travelled across the brazier horizontally, instead of vertically as if Summer was painting a wall. The stain was more consistent as if Summer was lying on her side, when the possible paint stain dripped onto her brazier.

The McStay family were thought to have been missing since February 4th, 2010 based on the last communications with family, Joseph's co-workers, and their cell phone activity, but were not reported missing until February 15th, 2010. Joseph McStay was found to own and use a T-Mobile cell phone (949) 295-7451. Summer McStay was found to own and use an AT&T cell phone (949) 295-6411.

During the missing person investigation, San Diego County Sheriff's investigators interviewed Charles "Chase" Merritt. Merritt, Joseph, and Daniel Kavenaugh partnered together in Joseph's business, Earth Inspired Products (EIP). EIP was a water fountain design and distribution company started by Joseph. Merritt was hired as a designer/builder of the custom fountains sold by EIP.

During the missing person investigation, San Diego County Sheriff's investigators learned the McStay's Isuzu Trooper was found and towed on February 8th, 2010, in a parking lot in San Ysidro. Investigators towed the vehicle and authored a search warrant for the vehicle, during which they collected DNA swabs, fingerprint lifts and searched the vehicle.

Through investigation conducted by San Diego County Sheriff's and San Bernardino County Sheriff's investigators, it was learned Merritt was the last person to see and talk to Joseph alive. On Thursday February 4th, 2010, Merritt met with Joseph at the, "Chick-Fil-A" restaurant, in Rancho Cucamonga. Merritt told investigators he and Joseph discussed business dealings. Cell phone records indicated Joseph left the meeting and drove to his residence in Fallbrook. At approximately 2028 hours, Joseph called Merritt. Per cell phone records, this was the last activity on Joseph's cell phone. Merritt claimed he attempted to call Joseph several times in the days following the McStay family disappearance, but could not locate them. Merritt was the first person to respond to the McStay residence after their disappearance, in an attempt to locate them on either February 9th or 10th, 2010, but was unable to locate them.

On Thursday, February 20th, 2014, Detective Armando Avila received a DNA analysis result report, for DNA swabs collected from the McStay's Isuzu Trooper. San Bernardino County Sheriff's criminalists analyzed DNA samples collected from various items of evidence, including swabs collected from the Trooper. During the analysis, criminalists matched DNA collected from the Trooper to Merritt. Merritt's DNA was collected during the missing person investigation by San Diego County Sheriff's Detective Troy DuGal, via buccal swab. The DNA swabs matching Merritt were collected from the steering wheel, 4x4 shifter, and radio/AC control panel.

Merritt was interviewed several times by San Diego County Sheriff's investigators during the missing person investigation. During an interview on February 17th, 2010, Merritt told San Diego County Sheriff's investigators he was last in the Isuzu Trooper approximately 6 weeks prior to the McStay family disappearance. Merritt rode with Joseph in the Trooper and sat in the front passenger seat. Merritt told investigators he had never driven the Trooper. Merritt had a fresh injury to his hand, which he claimed happened when he cut his hand on sheet metal. Merritt made several statements about Joseph in past tense, including "Joseph was," leading investigators to believe Merritt knew Joseph and the family were deceased.

In subsequent interviews with Merritt, he told San Diego County Sheriff's investigators he did not like Summer. Merritt also told investigators he did not like Kavanaugh and stated, "If I were ever going to commit murder, it would be with him," referring to harming Kavanaugh. At the time of Merritt's statement, no evidence of foul play was found in the McStay family disappearance which would warrant a statement from Merritt. According to Kavanaugh, Joseph lent Merritt $30,000 to pay a gambling debt Merritt incurred. Kavanaugh told San Diego County investigators Joseph planned to fire Merritt.

During the investigation, it was discovered Merritt had a sister who lived only a few miles from the gravesites where the McStay family was discovered. Merritt was the last person to talk with Joseph and the last person to see Joseph. Merritt is the only person in the investigation with known direct knowledge of the high desert. Cell phone records and the investigation revealed the McStay family was last in the area of Fallbrook (San Diego County), when they disappeared.

During the investigation, investigators spoke with McGyver McCargar. McCargar was a personal friend of both Joseph and Summer. The McStay family paid McCargar to paint the inside of their residence while they were remodeling the home. McCargar was inside the McStay residence days prior to the family disappearing. McCargar indicated he tried to contact Summer on her cell phone on the day the family disappeared, February 4th, 2010, and the day after February 5th, 2010. McCargar was scheduled to finish painting inside the house.

In one of the interviews with McGargar, he stated he went to the McStay residence around February 17th, 2010, at Susan Blake's request because she did not want to be there alone. Blake was Joseph's mother. Blake was cleaning the residence which struck McCargar as odd because he felt it could destroy evidence. This was after the report of the missing family, but prior to SDSO obtaining a search warrant for the residence. As McCargar walked through the house with Blake, three things struck him as being odd or out of place. The first was a missing futon cover in the dining / family room area, he remembered the futon had a cover. The second was the dried paint in one of the paint trays. McCargar taught Summer how to line the tray with foil to make clean up quicker because Summer complained about cleaning the trays and brushes. The final thing was the clothes all over the floor in the upstairs bedroom. McCargar did not know if Summer was messy, but knew Joseph was not messy based on them being roommates in the past and he would not leave that type of mess.

On Monday, August 4th, 2014, investigators reviewed the digital photographs taken by SDSO when they originally served the search warrant at 3473 Avocado Vista Lane. The cause of death for the McStay family was ruled as blunt force trauma. The presence of a sledgehammer in the graves with the bodies of the family indicated the sledgehammer was possibly one of the weapons used to murder the family. Based upon my training and experience, inflicting injury through blunt force trauma typically creates a large amount of blood stains and blood stain patterns within the crime scene. Investigators had not been able to locate a crime scene that showed where the McStay family was murdered.

Upon reviewing the digital photographs taken by SDSO of the McStay residence, a futon was pictured in the living room of the residence at 3473 Avocado Vista Lane. The futon did not have a cover and there was only one pillow on the futon, also missing the cover. Numerous photographs were reviewed of the McStay family from photographs downloaded from cameras taken by the SDSO investigators at the time of the original investigation. One of the photographs showed the McStay children sitting on the futon, which was covered with a sturdy cream colored cloth cover. There were also a total of four matching pillows with the futon. These photographs were taken around Christmas of 2009. A review of the SDSO photographs showed three of the pillows from the futon were missing at the time of the search warrant. Another photograph showed a terry cloth robe hanging in the master bathroom of the residence. There was an empty hook next to the hanging robe, consistent with the location of the terry cloth found with Summer at her grave. Investigators compared the photograph of the missing futon cover from Christmas 2009 and the blanket used to wrap Joseph McStay. Both items have the same stitched seam and weave pattern within the cloth.

Based upon the totality of the above information, my training and experience, there is probable cause to believe the residence of 3473 Avocado Vista Lane is the crime scene for this murder investigation. The futon cover was used to wrap Joseph McStay and three pillows were missing along with all of the pillow covers. The clothing inside the residence was all over the floor. The presence of dried paint inside the paint tray after McCargar had already cleaned up the tray from the last time he painted and had also taught Summer how to line the paint tray for easier clean up. The possible paint stain on Summer's brazier, consistent with her laying on her side when the paint dripped on her and her being found with a robe without a shirt, consistent with her having the robe on at the time of the paint spilling on her. All of these items indicate the crime scene for this murder occurred at the above residence.