To: Honorable District Attorney Maggie Fleming

From: Deputy District Attorney Adrian Kamada

Date: April 13, 2020

Re: Memorandum Regarding Issues Raised in *People v. Ryan Tanner* (CR2000814; CR2000969)

Dear District Attorney Fleming,

This memorandum is in response to your April 8, 2020, request for a memorandum regarding my conversation with a confidential informant relating to defendant Ryan Tanner ("Defendant Tanner"), including your specific request for the identity of that informant. Previously, on March 2, 2020, you requested a memo containing only a statement of facts involving in the Ryan Tanner case, which I provided to you on March 4, 2020 (herein referred to as "March Memo"). The March Memo provides the pertinent facts from my conversation this informant. (For your ease of reference, the March Memo is attached.)[1]

On March 5, 2020, you, and Chief District Attorney Investigator Wayne Cox, called me to your office to discuss the March Memo, including the topic of speaking with a confidential informant, as well as your conversations with the Humboldt County Sheriff's Office ("HCSO") regarding the events of February 29 and March 1, 2020.

At that meeting, I explained that my actions were supported by the facts and the law. Because it appears that my explanation was miscommunicated, this memo also documents and addresses other issues raised in the March 5 meeting.

A. Conversation with a Confidential Citizen Informant

Before addressing your central concern, let me state unequivocally, that I understand and will comply with the office policy that you issued on March 18, 2020, regarding "not speak[ing] to a witness 'off the record' nor to someone who states they wish to be 'confidential.'"[2] As I stated in the March 5 meeting, I will always follow your lawful directions in the handling of all cases.

[1] See attached **Exhibit A**: Kamada, A.; 3/3/20; Internal Dist. Atty. Ofc. Memo Re: People v. Tanner.
[2] See attached **Exhibit B**: Copy of signed Dist. Atty. Ofc. Re: CDAA 'Professionalism', and Hum. Co. policies.

1. *My Decision to Speak with the Citizen Informant Was Informed by My Understanding of a Prosecutor's Brady Duties, and by Governing Law Relating to Confidential Informants, and Search Warrants.*

I understand that you are concerned that I spoke with a citizen, who wants to remain confidential, regarding Defendant Tanner, because it could potentially raise a "*Brady* type-issue." I must ensure you that my conduct in this situation does not remotely raise any such issue.

Firstly, as provided in the March Memo, prior to speaking with this confidential citizen informant, I knew what the citizen informant's information was.[3] Briefly stated, Deputy Crotty told me that the citizen's information that the citizen had a friend/acquaintance who is friends with Defendant Tanner. And that the acquaintance told the citizen that he had a conversation with two other people, that the acquaintance identified as being friends of Defendant Tanner, in which they discussed that Defendant Tanner killed and buried a woman on his property.

Thus, before speaking with the citizen, I knew the following: (1) the citizen informant was not an eyewitness, percipient witness or otherwise a material witness; (2) the citizen's information was not directly related to any of the charged offenses against Defendant Tanner; and (3) the information was remote, not material, and not exculpatory.

Secondly, prior to speaking with the citizen, I strongly believed (and still do) that the evidence contained within the HCSO four separate cases,[4] provides significant evidence that Defendant Tanner killed and buried a woman on his property; and that law enforcement should make a meaningful effort to investigate that potential uncharged crime.

Specifically, the evidence that tends to provide credibility to the rumor that Defendant Tanner killed and buried a woman on his property, includes the following. In one case, Defendant Tanner had an open shallow grave next to his residence, and he had an area in which women items were placed in a pattern, and he also appeared to worship a shallow cave he dug into the hillside on his property.[5] In another case, Defendant Tanner, while brandishing an assault rifle,

[3] March Memo at p. 7. (In addition, Deputy Crotty also told me that he had other informants that provided similar second-or-third hand information stating that Defendant Tanner murdered and buried multiple woman on his property.)
[4] HCSO # 201901668, 20200900, 202000921, 202000806
[5] Dep. Pryor; 2/16/20; HCSO #201901668; Supp. 2.; March Memo at p.2.

and pursuing the victims in a vehicle chase, yells, "*Don't come back or I will bury you like the rest of them*."[6] And, in yet another subsequent case, Defendant Tanner shoots Jason Garrett in the head, and then buries his body on his property.

Thirdly, prior to speaking with the citizen, it was clear that no single HCSO officer was aware of the evidence contained in the four separate cases, because there was a fundamental failure in communication within the HCSO regarding Defendant Tanner's various violent crimes, and behavior. And, because I had read the four separate cases, I was in a better position to ask Deputy Crotty's citizen informant informed questions that could divulge facts that collaborate, or are consistent with, evidence that the HCSO had already obtained.

The lack of communication was clear from my conversations with Deputy Crotty, Sgt. Deputy Brian Taylor, Deputy Justin Pryor, Investigator Jennifer Taylor, and Lt. Sam Williams.[7] The breakdown in communication is underscored by the fact that Lt. Williams, in defending leaving a sawed-off shotgun at Defendant Tanner's residence, explained that he and the rest of Criminal Investigation Division ("CID") were "there to investigate a homicide," and that the illegal shotgun was "not part of that case."[8] This is even though Deputy Pryor, who was also present during that search, asked to retrieve that shotgun, as it matched the description of the shotgun Tanner used to assault another victim.[9] The HCSO apparently has acknowledged the failure of their internal communication in this case, based upon Chief Cox's statement during our March 5 meeting, in which he stated that "if there is one good thing about this [incident] is that [HCSO] is going to improve their internal communications," referring to a discussion he had with you, Sheriff Billy Honsal, and Lt. Williams.

Because I was most familiar with the scope and particular details of Defendant Tanner's violent crimes, it was logical for me to speak directly with Deputy Crotty's citizen informant to see if any of the third-hand information was consistent with some of the details included in the HCSO's numerous case reports. For example, in two of the separate HCSO cases, Defendant Tanner stated a strikingly similar phrase: "*look into my eyes so I can kill you*," in each different

[6] Dep. H. Esget; 2/16/20; HCSO # 20200900 p.5.
[7] Refer to March Memo for details.
[8] March Memo at p. 10.
[9] Per statements by Inv. J. Taylor on 2/28/20; and Dep. J. Pryor on 3/1/20.

incident, while aiming a firearm, and threatening to kill the victim.[10] Because I was aware of such details, like the above modus operandi example, I was in a position where I could ask Deputy Crotty's citizen informant questions that nobody else would know to ask due to HCSO internal communication breakdown.

Fourthly, prior to speaking with citizen informant, I understood the difference between a prosecutor speaking with a confidential citizen informant, who is not a percipient witness for the purpose of developing probable cause, and speaking with a percipient witness who has first-hand information that could be called to testify.

My understanding in the difference is demonstrated in the March Memo,[11] in which I explain that on March 1, 2020, I conducted a walkthrough of Defendant Tanner's property with Deputy Pryor and Devin Stebbins, a witness and a victim. Mr. Stebbins stated that Chris Champagne told him that "*he and Tanner rape and kill girls on this [Tanner's] propert*y."[12] And, because I was unsure whether Deputy Pryor heard that statement, I asked Mr. Tanner to repeat what he told me to Deputy Pryor. I expressly told Deputy Pryor to include that statement in his report because it was exculpatory information, because Mr. Champagne is the eyewitness in the murder of Jason Garrett.[13]

That example illustrates that I understood the importance of a prosecutor having a credible third-party witness, such as an investigator or officer, when speaking with a witness that could be called to testify in court.

Fifthly, prior to speaking with the citizen informant, I had a well-informed understanding of the laws relating to confidential informants. As you know, one of my assigned duties—since approximately March 2016—is reviewing search warrants, which is the area in which issues involving confidential informants generally arises. Furthermore, over the years, I have successfully litigated opposition to defendants' motions to disclose the identity of a confidential informant.

[10] March Memo at p. 1, 5; HCSO #201901668, 20200092.
[11] March Memo at p. 12.
[12] Id.
[13] I told Deputy Pryor this while on scene on Mar. 1, 2020, and repeated to him in my office on Mar. 2, 2020.

As you know, unlike many of the confidential informants we often see in drug cases, who are generally motivated by some form consideration, a confidential citizen informant is generally motivated to help the community, not by a self-serving interest, and are presumed reliable. (*People v. Ramey* (1976) 15 Cal.3d.263) A confidential informant is generally only revealed if the he or she is a material witness on the issue of the defendant's guilt in the charged offense. (*People v. Wilks* (1978) 21 Cal.3d. 460, 469) It is only where a confidential informant may have exculpatory or exonerating evidence that he or she may be subject to disclosure. (*People v. Bradley* (2017) 7 Cal.App.5th 607, 621).

Lastly, hypothetically, if when speaking with the confidential citizen he had provided any material information, then I would have brought in Deputy Crotty to be the credibly third-party witness, similar to what I did in the situation involving Mr. Stebbins, and Deputy Pryor. This would avoid making me a witness and would satisfy with my *Brady* obligation to disclose such information to the defense. Then I would also be prepared to oppose any motion to disclose that citizen informant to protect the citizen informant's identity.

In sum, it is under the above-stated factual circumstances, and context, that I spoke with Deputy Crotty's citizen informant.

2. The Information Provided by the Confidential Citizen Informant is Not Brady Material

At your direction, the name of the citizen informant is [redacted]. I do not know what [redacted] last name is. During our conversation, [redacted] asked that [redacted] be confidential because [redacted] is frightened that if [redacted] name is exposed, [redacted] may be placed in danger by Defendant Tanner. After my conversation with [redacted], Deputy Crotty text messaged me repeating that [redacted] wanted to remain confidential. As mentioned above, I provided the pertinent facts from my conversation with [redacted] in the March Memo,[14] but nevertheless will repeat them here.

On February 28, 2020, I received a phone call from [redacted] who said [redacted] name is [redacted] told me that Deputy Crotty had asked [redacted] if [redacted] would call me regarding Ryan Tanner. [redacted] stated that [redacted] works [redacted] said that the information [redacted] had regarding Defendant Tanner was "second-hand." [redacted] said that [redacted] did not personally know Defendant Tanner, but that [redacted] had an acquaintance who was friends with

[14] March Memo at p. 7-8.

Defendant Tanner. [redacted] said that [redacted] ran into a person who [redacted] stated was a "friend, but more of an acquaintance" about 10 days prior (i.e. about February 19, 2020).

During that run-in, the acquaintance told [redacted] that, sometime within the last two-years, [redacted] was hanging-out with two men, whom the acquaintance described as being friends of Defendant Tanner. The two men discussed in-front of the acquaintance how Defendant Tanner had killed a French woman that had gone to Tanner's property to trim cannabis. According to [redacted] relaying of the acquaintance's story, the two men discussed that Defendant Tanner buried the woman's body on Tanner's property. [redacted] did not know how Tanner's friends knew that Tanner killed and buried the woman. [redacted] did not know anything else, such as any specific details, including the cause of woman's death.

[redacted] stated that this acquaintance would not speak with law enforcement out of fear of retaliation from Tanner and being labeled a "snitch." [redacted] did not tell me the name of this acquaintance. [redacted] described this acquaintance as having no criminal record but is a drug user, primarily uses methamphetamine. [redacted] stated that the acquaintance's drug use is the reason that he was friends with Defendant Tanner, who [redacted] said is known to be a heavy drug user.

[redacted] did not have any other specific information regarding Defendant Tanner but stated that [redacted] knows Tanner to have a violent reputation in the Shelter Cover community [redacted] stated the [redacted] had heard that Defendant Tanner started physical fights with people in the community, including once at the local bar in Shelter Cove "that did not end well for the other person."

[redacted] stated that [redacted] needed to get the information that this acquaintance told [redacted] "off [redacted] chest," because it was weighing on [redacted] that someone's daughter could be buried on Defendant Tanner's property. [redacted] said therefore [redacted] told Deputy Crotty, and me what the acquittance had told [redacted] added that "I know you guys [law enforcement] had limitations on what we could do." [redacted] asked me if anyone else had come forward involving the death of the woman, and I told [redacted] that I am not aware of any person coming forward and would nevertheless be unable to provide any information in an on-going case.

Towards the end of the conversation, [redacted] stated [redacted] wanted to remain confidential out of fear that Defendant Tanner would identify and cause harm to [redacted]. I agreed. [redacted] also mentioned that [redacted] knew I was a hard worker, because [redacted] had attended all the hearings, and the jury trial, in a

homicide case that I prosecuted a couple years ago against Eric Lively. (The victim in that case, Jesse Simpson, had many of supporters that attended court, and I do not specifically recall which [redacted])

In sum, [redacted] did not provide any specific details to compare to the facts gathered by the HCSO, such as modus operandi or manner of death. Since that conversation, I have not spoken to[redacted], or any other person that wished to be confidential.

My conversation with [redacted], and agreeing to keep [redacted] identity confidential, does not raise any *Brady* concerns. Due process requires disclosure of material evidence favorable to a criminal defendant that is material either to guilt or to punishment. (*Brady v. Maryland* (1963) 373 US 83, 87; *US v. Bagley* (1985) 473 US 667, 676). This constitutional obligation of discovery includes disclosure of evidence that would impeach the testimony of a material witness. (*US v. Bagley, supra,* at 676) Under the *Brady* rule, evidence is "material" when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. (*Cone v. Bell* (2009) 556 YS 449, 469)

The information [redacted] provided relates to an uncharged allegation of murder, and not directly to the charges in the cases. Additionally, the information is not material, but rather a third-hand recitation of a purported discussion amongst Defendant Tanner's friends, which does not contain any sourced information relating to those friends' source of how they know Defendant Tanner committed the acts they discussed. Furthermore, the information is not exculpatory, because what minuscule probative value it may possess, does the opposite. It is inculpatory. It suggests that Defendant Tanner is a serial killer. Finally, there is no reasonable basis suggesting that [redacted] would be a witness called to testify in the charged cases in which [redacted] statement would be relevant for impeachment purposes.

Simply put, this situation does not raise any issues relating to a prosecutor's *Brady* obligations. And, as demonstrated above, I understand the difference between a non-eyewitness confidential citizen informant, and a witness providing material information that could be called to testify. And I would never speak to the latter without an investigator present, let alone agree to permit such a situated person to provide any information confidentially to me directly.

B. *Brady* Material that Must be Discovered in this Case

In this case, our obligations under *Brady* does require that we make certain disclosures to defense counsel regarding the conduct of the HCSO's handling of this case. First, Lt. Sam Williams statements regarding the decision to leave sawed-off shotgun at the defendant's residence, and the related material omission from the March 1, 2020, search warrant. Second, the primary investigating officer for the murder charge may have committed moral turpitude acts.

1. Lt. Williams Statements Regarding Sawed-off Shotgun, and a Material Omission from the March 1, 2020, Search Warrant

First, we must disclose Lt. Williams statements regarding the decision to leave a sawed-off shotgun at Defendant Tanner's residence on February 17-18, 2020, and the related issue involving a material omission from the HCSO's March 1, 2020 search warrant. As stated below, you acknowledged that leaving the illegal shotgun goes to the fundamental credibility of the HCSO's investigation of the entire case.[15] The facts relating to this issue are contained in the March Memo,[16] but I will summarize the facts again here in greater detail.

On February 15, 2020, Devin Stebbins provided a statement to Deputy Pryor that included the various assaults, false imprisonments, and other criminal acts he endured at the hands of Defendant Tanner during an approximately two-and-a-half-week period in late March 2019 on Tanner's property.[17] One of incidents included Defendant Tanner pointing a sawed-off shotgun at Mr. Stebbins, and asking him if he "*was ready to die for real*," and that "*he was dead, and no one was ever going to find him*." Mr. Stebbins described the sawed-off shotgun as black in color, pump-action, with the barrel cut off behind the magazine tube.[18]

On February 17-18, 2020, the HCSO served a search warrant at Defendant Tanner's property. Deputy Pryor saw a shotgun on the kitchen counter of Defendant Tanner's residence matching Mr. Stebbins's description. The following photograph was taken during the search warrant.

[15] Meeting in DDA Kamada Office: Feb. 28, 2020: DA Fleming stated that this type of error goes not just to the fact that they left the gun, but it effects the way jurors view the investigation.
[16] March Memo at p. 10
[17] Dep. Pryor; 2/19/20; HCSO #202000921.
[18] Dep. Pryor; HCSO #202000920;

Later, on February 28, 2020, HCSO Investigator Jennifer Taylor informed me that the HCSO did not collect that sawed-off shotgun, as evidence, or otherwise.[19] Specifically, Investigator Taylor stated that HCSO Sgt. Deputy Brian Taylor ordered that the gun not be collected despite Deputy Pryor requesting it be collected, because it was the firearm used in Defendant Tanner's assault of Mr. Stebbins.[20] Moreover, Investigator Taylor stated that it was unlikely that the shotgun was still at Defendant Tanner's residence, because people had been stealing from Tanner's property since the time after the search warrant was executed.[21]

Within about an hour after my conversation with Investigator Taylor, you and I discussed this problem in my office. You stated that HCSO needed to immediately go to the property and retrieve the firearm. I explained that it was unlikely still there because Investigator Taylor stated that people had been looting Defendant Tanner's residence, and that Dist. Atty. Investigator Marvin Kirkpatrick learned the same information while monitoring the defendant's jail calls. You expressed your dismay and stated that "they have been doing bone-headed things like that for 30 years."

You further explained that these types of mistakes raise concern with jurors about the overall credibility of the police investigation. I asked if I could speak with the undersheriff about this

[19] March Memo at p.
[20] Id.
[21] Id.

issue, and you replied, "no," and that I should request Supervising Dist. Atty. Investigator Steven Dunn to contact the HCSO regarding an effort to retrieve the illegal firearm.

Following your direction, I emailed the Supervising Dist. Atty. Investigator Dunn to contact HCSO in trying to locate the illegal shotgun.[22] In that email, I state that, "The chances that [the gun] are still in the murderer's home are slim-to-none, but the [defendant's] girlfriend Vanessa Womack, her son Chris Champagne, or the neighbors, may know where the gun is at." In other words, contact the people that are known to access Defendant Tanner's property, because there is no longer probable cause to believe the sawed-off shotgun is longer there.

Chief Cox then contacted HCSO CID Lt. Williams.[23] We have no information as to the internal communications of the HCSO office; however, Deputy Pryor stated that Sgt. Deputy Brian Taylor told him he must write and serve a search warrant at Defendant Tanner's residence for the firearm that weekend.[24] The search warrant was approved by the court on February 29, and executed on March 1, 2020.[25]

On the night of February 29, 2020, HCSO CID Lt. Sam Williams told me, over the phone, that the only purpose of the March 1, 2020, search warrant was to search for the sawed-off shotgun left on the counter.[26] I told Lt. Williams his department knows the shotgun is unlikely there, and that the effort appeared to be attempted to say they tried to comply with my request. Lt. Williams then downplayed the significance of leaving the shotgun stating that it was "old and taped together." He further excused the leaving of the shotgun by saying "they were to investigate a homicide," and that the shotgun was "not part of that case." These statements raise the first *Brady* issue.

To affirmatively order that an illegal sawed-off shotgun not be collected and leave it on the kitchen counter of a person who the HCSO says used another firearm to shoot and kill a person in the head is a grossly negligent act. Lt. Williams above-referenced statements excusing this

[22] See attached **Exhibit C** for copy of the email.
[23] Per SDAI Dunn, although my email request was to him, Chief Cox contacted Lt. Williams directly.
[24] Pryor told Dep. Dist. Atty. Kamada this during a phone call on Feb. 29, 2020.
[25] See attached **Exhibit D** for copy of the search warrant.
[26] March Memo at 10.

demonstrates a lack of understanding this basic search and seizure rule, specifically the plain-view contraband. (See *Skelton v. Superior Court* (1969) 1 Cal.3d 144, 157.)

The second potential *Brady* issue raised by these facts is that Lt. Williams ordered his subordinates to seek a search warrant for the "only purpose" of searching for the sawed-off shotgun at Defendant Tanner's residence.[27] This is even though his direct subordinate, Investigator Taylor, reported to us earlier that the shotgun was no longer going to be there, and which I repeated in my email request to locate the shotgun to Chief Cox, and Supervising Dist. Atty. Investigator Dunn. The result of is that the search warrant omitted material facts that tended to negate the item sought to be seized would be at the place to be seized. (See *Franks v. Delaware* (1978) 438 US 154, 156; *People v. Lee* (2015) 242 Cal.App.4th 161, 171.)

Fortunately, the affiant of that search warrant, Deputy Pryor broadened his search warrant to include other deadly weapons that Mr. Stebbins described that Defendant Tanner had used to assault him, including a hammer, and samurai sword.[28] And , therefore there was probable cause to believe that those items remained at Defendant Tanner's property.

Sure enough, on March 1, 2020, the sawed-off shotgun was no longer on the kitchen counter of Defendant Tanner's residence, and officers did not locate the firearm. However, Dist. Atty. Investigator Kirkpatrick did find a blade of a sword halfway buried in the ground.

While the omission of theft at the Defendant Tanner's property between February 18, and February 28, is unlikely to result in the granting of a motion to quash the search warrant, it nevertheless goes to Lt. Williams's credibility, and the information should be turned over so defense counsel can decide whether it is an issue to they wish to raise.

Furthermore, relating to the effort to located the sawed-off shotgun, on March 6, 2020, Investigator Kirkpatrick and I met with Defendant Tanner's neighbor, Jeffrey Kondos, who is a victim and a material witness in this case, in our office's law library.[29] During that interview, we did what I had requested in my February 29 email—we asked a person with knowledge of Defendant Tanner and his property whether he knew where the shotgun was, and if not, whether he could assist in tracking it down. We provided the photograph of the shotgun (shown above) to

[27] March Memo at p.10.
[28] There is no reason to believe that Deputy Pryor knew of the information, and purposefully omitted it.
[29] See Dist. Atty. Inv. M. Kirkpatrick's report # DA20-068, Supp. #1, including audio recording of the interview.

Mr. Kondos, who stated he did not know the shotgun's whereabouts, but said he would ask around for us. Investigator Kirkpatrick gave Mr. Kondos his card with his mobile phone number and told him if he can locate the firearm, call him so he can retrieve it. On April 2, 2020, Mr. Kondos contacted Investigator Kirkpatrick and stated he found and recovered the shotgun, and Investigator Kirkpatrick then retrieved that critical piece of evidence.[30]

2. [redacted] *May Have Committed Acts of Moral Turpitude.*

We must disclose that HCSO CID [redacted] may have committed acts of moral turpitude involving the fraud and/or forgery of official public documents. In this type of situation, it is my obligation under *Brady* to share with defense counsel any information our office has obtained from the HCSO about the possibility of *Brady* information being contained in the police files. (*People v. Superior Court* (Johnson) (2015) 61 Cal.4th 696, 705) With that disclosure I would satisfy my *Brady* duty, and it would be up to the defense to decide whether to pursue the information, such as filing a *Pitchess* motion for the discovery of a police witnesses personnel file. (*Id*.)

The problem here is that I do not know what specific information that the HCSO has turned over to this office. On the day you assigned me this case, February 17, 2020, I raised my concern to Chief Cox that [redacted], facing serious allegations, was assigned as [redacted] for the charge of the murder of Jason Garret. Chief Cox stated that the HCSO internal investigation had essentially recently concluded, and that Sheriff Honsel was in the process of deciding what remedial action to take, if any.

On February 18, 2020, I raised this issue directly with you in your office, and you informed me that it remained with the sheriff. I again raised my concern during the March 5 meeting with you and Chief Cox, in which I was specifically concerned because [redacted] is the affiant on many of the search warrants in this case, and that my bar card was on the line regarding what I need to disclose to defense counsel; however, neither you nor Chief Cox responded directly to my concern. Instead, you replied that the concern for my bar card should be regarding talking with the confidential citizen informant stated above.

[30] Dist. Atty. Investigator M. Kirkpatrick; 04/03/2020; DA20-68, Supp. #2.

As of this writing, I have not been given any information on the status of Sheriff Honsel's decision, or whether [redacted] personnel file contains *Brady* information. However, I have subsequently learned that [redacted] may be under another investigation for using the jail call monitoring system to gain information for a personal matter.

At this point, I am left without any official information regarding the rumor I heard of [redacted] alleged conduct. I do not wish to repeat unverified information; however, prosecutors must resolve any doubtful questions involving potential *Brady* information in favor of disclosure. (*U.S. v. Agurs* (1976) 427 US 97, 108.) A prosecutor's failure to disclose such information, even if not intentional, can result in a reversal. (*Armado v. Gonzalez* (9th Cir. 2014) 758 F3d 1119, 1136.)

C. Other Issues Raised During the March 5, 2020 Meeting.

In addition to the issues discussed above, it is prudent to document some of the other issues that you, Chief Cox, and I addressed during the March 5 meeting in your office. This section addresses the following issues:

1) *The HCSO Failure to Respond to Victim's Warnings that Defendant Tanner is Violent and is Likely to Kill Someone.*
2) *The March 1, 2020 Search Warrant Does Not Expressly Authorize Victim Devin Stebbins Presence.*
3) *Request for Assistance During March 1, 2020 Search Warrant.*

1. The HCSO Failure to Respond to Victim's Warnings Regarding Defendant Tanner.

It is difficult to imagine how the Jason Garrett's parents, and other loved ones, feel that had the HCSO adequately responded to other assault victims' repeated reports warning that Defendant Tanner was threatening to kill someone, it may have prevented Mr. Garrett's murder.

I initially raised the issue of HCSO's response in this case on March 3, 2020, in your office, and emailed you copy of the HCSO report.[31] I again raised this issue during the March 5 meeting. The underlying facts are contained in the March Memo.[32]

[31] See **Exhibit E**: Email from DDA Kamada to DA Fleming, with attached report.
[32] March Memo at p. 3-4.

In summary, Jeffrey Kondos and Larry Kirk, reported to HCSO at 2:30 a.m. on February 11, 2020, that Defendant Tanner had pointed an AK-47 and threaten to kill them. Mr. Kirk expressly stated that the Tanner "*was going to kill him or someone else if nothing was done about it."* At 8:00 a.m., Mr. Kondos and Mr. Kirk, then drove from their home in Ettersburg to Eureka to report Defendant Tanner to the HCSO main station because, as Mr. Kondos puts it, "*I guess they* [HCSO Garberville] *did not believe me*."[33] Mr. Kondos reported his concern at the Eureka office 1:30pm.

The following day, Defendant Tanner kidnaps, cuts Mr. Garrett's throat, falsely imprisons him, then eventually shoots him in the head with his assault rifle and buries him beneath a water tank. It is not until a week from the initial report that HCSO responds.

We need to get more information on relating to the timing and the response, including a report from the 1:30 p.m. report on February 11, 2020. This goes to the credibility of the agency's response; as well as the credibility of Mr. Kondos, who we anticipate that Defendant Tanner will implicate in the murder of Garrett.

2. *The March 1, 2020 Search Warrant Does Not Expressly Authorize Victim Devin Stebbins Presence*.

During our meeting, you raised the concern that the search warrant did not authorize victim Devin Stebbins to be present during the search at Defendant Tanner's property on March 1, 2020.

As I explained during the meeting, even though the search warrant was apparently the result of my request to locate the sawed-off shotgun, I was not informed by Chief Cox or anyone else that the HCSO intended to serve a search warrant at Defendant Tanner's residence to search for that firearm. Thus, I did not review the search warrant prior to it being approved by the court.

By happenstance, Deputy Crotty mentioned the search warrant over the phone on February 29, while we were discussing the information regarding Defendant Tanner murdering and burying woman on his property. When I learned of the search warrant, I asked Deputy Pryor if I could tag

[33] Audio recorded interview w/ CID Inv. S. Hicks

along on the service of the warrant, and he agreed. I then asked him to send me a copy of the search warrant, which he did later that day via email.

I did read over the search warrant that day, but as I stated previously, it was not with the critical eye that I do when reviewing search warrants, because it had already been approved by the court. I incorrectly assumed, as it was an electronic search warrant on a Saturday, that you may have reviewed it as you did the other warrants in this case. Nonetheless, when I read over the warrant, it appeared to have adequate form and probable cause for the items he sought to seize (except for sawed-off shotgun as explained above).

As I tried to reassure you during the meeting, the fact that the search warrant does not expressly authorize Mr. Stebbins to assist in the service of the warrant, is not a significant concern. As I pointed out, Deputy Pryor's search warrant includes the language under Penal Code section 1530 that provides authorization for the officer to bring "whatever professional or expert assistants or consultants that he/she considers necessary in order to…conduct…re-enactments."[34]

Undoubtably the warrant would be stronger with the additional of one sentence that expressly authorized Mr. Stebbins, but I am confident that we will prevail in the unlikely chance that the defense raises a challenge on those grounds.

3. *Request for Assistance During March 1, 2020 Search Warrant*

Another issue raised during the March 5 meeting was my request for a cadaver dog, a metal detector, and making an offhand invitation to HCSO Evidence Technician Andrew Campbell. More specifically, that I did not use the standard practice of requesting such assistance by making my request through Chief Cox.

Prior to serving the search warrant,[35] Deputy Pryor told me no investigators from CID were attending the search warrant. He stated that is was only him, Deputy Hal Esget, and Sgt. Deputy Conan Moore, who was attending for the purposes of opening a gun safe that the officers were unable to search during the February 17-18 search warrant service.

[34] **Exhibit D**, at p. 3.
[35] See March Memo at p. 9-12.

Because the search warrant included weapons that may be buried, Investigator Kirkpatrick suggested that we should bring a metal detector. I called HCSO Evidence Technician Andrew Campbell and asked if we could borrow one, and he agreed. I then made an offhand comment inviting E.T. Campbell. It was a mistake to ask E.T. Campbell to join, and I should have gone through a Dist. Atty. Investigator to make that request to his supervisor.

Nevertheless, his supervisor, Lt. Williams made it clear that neither E.T. Campbell nor their metal detector would be made available for the search warrant, because, as addressed above, the only purpose of the search warrant, from his perspective, was to search for the sawed-off shotgun.

Lt. Williams also made it clear that the HCSO would not assist in brining a cadaver dog. At my request, Sgt. Deputy Moore obtained a certified cadaver dog from a citizen who is a member of the Sheriff's search and rescue team, but Lt. Williams ordered Sgt. Moore to not bring a cadaver dog to assist. As I explained in our March 5 meeting, it occurred to me that it would be wise to at least try to run a cadaver dog on Defendant Tanner's property if we were going through the trouble of being there.

As I explained in that meeting, and previously to Lt. Williams, running a cadaver dog on the property does not constitute a search under the Fourth Amendment, unless it goes within a structure, or the curtilage thereof. This is because of the well-established open-field rule, as well as, there being no reasonable expectation to the air when sniffed by a dog. (*Oliver v. U.S.* (1984) 466 US 170, 179; *People v. Bautista* (2004) 115 Cal.App.4th 229, 235)

Lt. Williams stated essentially if we brought a cadaver dog, and it did not hit on anything, then it could prohibit us from obtaining a search warrant in the future where law enforcement had more specific information involving bodies being buried on the property. During the March 5 meeting, you reasserted this argument. Surely, any such probable cause statement would need to disclose that fact, but with more specific information, it would not negate probable cause. (Besides, as previously stated, the vast majority of the property would not constitute a search.)

In short, I understand the standard practice of requesting follow-up investigation through our district attorney investigators. And in the future will not ask for any resources directly from HCSO and follow the established procedure. Here, Chief Cox was involved, as he put me

directly in touch with Lt. Williams on February 29. Also, sometimes the standard follow-up investigation procedure results in miscommunication, and/or loss of pertinent information through the chain, as demonstrated in the situation of my request for HCSO to make an effort to find the sawed-off shotgun, as explained above.

D. Conclusion

The above stated facts, as applied to applicable law, clearly establishes that my conversation with Deputy Crotty's confidential citizen informant does not raise any issues involving material, and/or exculpatory information.

Moreover, my intentions were only to seek a meaningful investigation, and good faith effort to search Defendant Tanner's property for a potentially murdered woman's remains, based on the significant evidence supporting that fair probability. My methods were guided by an informed understanding of the facts, and of the applicable law relating to a prosecutors *Brady* obligation, search warrants, and confidential informants. It is unfortunate that this situation put you in a position in which you feel that I distressed the relationship that you cultivated with the sheriff's department.[36]

On a personal note, although I understand that you have a duty to properly investigate my actions in this situation, it is perplexing how my previously explanations regarding this incident, including the statement of facts provided in the March Memo, and our numerous conversations, unsuccessfully communicated that my actions in this case are consistent with the law, and a prosecutor's fundamental duty to seek the truth and do justice.

Based on the issues raised in the March 5 meeting, and documented in this memo, it appears that you and Chief Cox were asserting weak accusations of misconduct against me. Meanwhile, the well-founded concerns I raised, regarding the HCSO's missteps in this case, were met with a defensive response, or ignored.

This is confounding because my actions are supported by the applicable law and duties as a prosecutor. Whereas, the issues I brought to your attention involving the HCSO's serious

[36] During the March 5 meeting, you stated that you had just come from a meeting with Sheriff Honsal and Lt. Williams, and had to apologize to them for my conduct on Feb. 29 in this case. Also, you asked why I wanted to "poke" the HCSO. Further you stated that you had worked hard to rebuild the relationship with the Sheriff's Department following the status it was left from the previous D.A. administration.

mistakes are irrefutable: from inadequately responding to victims warning of the defendant's likelihood to kill, to purposefully leaving a sawed-off shotgun on the defendant's kitchen counter, to not reading or otherwise communicating regrading the defendant's related crimes, to effectively refusing to make a good faith effort to investigate other potential murders committed by the defendant despite the credible evidence.

As your deputy for more than five years, you must have confidence in my judgment and abilities otherwise you would not promote me, or assign me to prosecute homicides, and other high-profile cases. If you ask my colleagues, opposing counsel, judges, and the officers who I routinely worked with in my former vertical prosecutor position, I am confident that they will tell you that I have a proven ability to be an ethical, fair, and effective prosecutor. However, those people should have to tell you that. As my direct supervisor for more than half-a-decade, I hope that you would see that I embody those characteristics, and know that I work hard every day to the best I can be at this profession.

I make mistakes as a prosecutor, but I hold myself accountable for them by learning from the experience so that mistake not repeated in the future. In this case, I made a mistake by requesting a metal detector, and inviting the evidence technician to come along the search warrant. That was not my place, and I should have made that request through a Dist. Atty. Investigator. I also should not have, and it was completely of my professional character, to use rude language towards the end of my conversation with Lt. Williams, despite my frustration for his lack of accountability. Those are the mistakes in this incident, and I own them. But what I did not do, is commit any act that could be considered *Brady* material.

As you are the chief law enforcement officer of this county, I hope that you are taking the necessary steps to hold the HCSO accountable for their malfeasance in the handling of this case, because that is what our community and what victims Defendant Tanner's deserve. Like the citizen informant stated, it is hard to sleep when you know of facts suggesting that someone's daughter may be buried on Defendant Tanner's property.

Sincerely,

Adrian Kamada
Deputy District Attorney

EXHIBIT B

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Maggie Fleming
District Attorney

Deputy District Attorneys and District Attorney Investigators in the Humboldt County District Attorney's Office must follow the ethical guidelines in the California District Attorneys' Association (CDAA) publication on "Professionalism" (2019 edition).

In addition to the guidelines in the "Professionalism" publication, the Humboldt County District Attorney's Office adopts the following policy on interacting with witnesses:

A prosecutor will not speak to a witness "off the record" nor to someone who states they wish to be "confidential." The District Attorney's Office has a duty to provide information to the defense pursuant to *Brady v. Maryland*, and a prosecutor should at all times avoid becoming a witness in their own case.

A prosecutor may not grant a witness transactional or use immunity without the approval of the District Attorney or Senior Deputy District Attorney.

I have read the CDAA "Professionalism" publication and understand that I must follow its guidelines and the two Humboldt-County-specific policies stated above.

Signature _____ Date 4/13/20

Exhibit C

From: Kamada, Adrian
To: Dunn, Steven
Cc: Kirkpatrick, Marvin; Cox, Wayne; Fleming, Maggie
Subject: P v. Ryan Tanner (PC 187 etc) CR2000814, CR2000969
Date: Friday, February 28, 2020 10:58:00 AM
Attachments: image001.png

DAI Dunn,

Can you ask HCSO CID to please explain to me how they do not collect a sawed-off shotgun from the home of a person we are charging with murder by use of a firearm? While it was not the gun used to kill Jason Garrett, it makes absolutely zero sense to leave an illegal firearm behind at a crime scene in any circumstances. Did we want to make sure Tanner had another gun if he posted bail and return home?

Moreover, that shotgun is described by Devin Stebbins as the weapon Tanner used in a previously assault of him on the property.

HCSO CID needs to find that gun. The chances that are still in the murderer's home are slim-to-none, but the girlfriend Vanessa Womack, her son Chris Champange, or the neighbors may know where the gun is at.

This type of mistake bleeds into to the overall credibility of the investigation.

Respectfully,

Adrian Kamada
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