

**2018**

**DISTRICT COURT  
CASE 1  
STATE OF MINNESOTA V. BRATTON**

**CASE MATERIALS**

***Murder Trial***

***(Includes pretrial hearing materials  
regarding the 4th amendment and the need for a warrant)***

## FACTUAL BACKGROUND

Jordan “Outside Voice” Bratton grew up in New Prague aspiring to be a successful stand-up comedian. Much of Bratton’s childhood was spent making jokes and working on stand-up comedy routines. Bratton would practice routines on street corners, in parks, during recess, in coffee shops, in shopping malls, at open-mic nights, at talent shows, or just about anywhere else Bratton could get people to listen. Because Bratton acted as the class clown, Bratton usually received below average marks in the classroom. Bratton did not participate in any other activities. Bratton focused exclusively on being a comedian and thought that the comedy business was the only path to success.

In January 2016, Bratton left New Prague behind and moved to Minneapolis to pursue this dream. Many famous comedians got their start at the local comedy clubs. Bratton knew that this was the only opportunity to be successful. In 2017 the comedy business was booming and many comedians were signing lucrative contracts indicative of their promising careers. Bratton’s shows grew from two monthly shows to eight shows a month during this boom. Bratton’s future as a comedian looked promising. In addition to stand-up comedy shows, Bratton had a Twitter account under the username “OutsideVoice.” Bratton used Twitter to get more exposure, tweeting jokes occasionally in an attempt to keep fans laughing and develop a strong fan base. In February 2017, OutsideVoice reached the milestone of 1,000 followers.

Preston Palmer was born and raised in Minneapolis. Palmer had a tough upbringing, where he was made an outcast by the other kids. Insecure about his inability to make friends, Palmer often turned to criticizing and degrading other children in order to attempt to gain his own sense of importance.

Preston Palmer eventually became a famous critic with a strong cult-like following of loyal fans. His entertainment blog criticized celebrities such as actors, actresses, musicians, stylists, athletes, reporters, models, or anyone with enough publicity and exposure to reach celebrity status. Palmer’s comments were often degrading and humiliating. Many of his “victims” lost a substantial number of fans after being insulted in his blog. In 2006, Palmer criticized multi-platinum singer Billy Martin harshly, which led to a rock bottom drop in Martin’s popularity and fortune. Palmer’s blog was so popular and influential that it was named one of the 50 most influential blogs in 2016.

In 2017, Palmer began to broaden the scope of his reviews by becoming a member of YellUp. YellUp is a community-based web site where people can review local restaurants, hotels, night clubs, businesses, theaters, comedy acts, and entertainment events. On YellUp, reviews are publicly posted and can be seen by anybody, but only members of the YellUp community can post comments or rate reviews. Nothing can be purchased on YellUp. YellUp gets all of its revenue from advertising. Palmer immediately became one of the more popular YellUpers with 521 fans and 2,518 friends as of March 26, 2017.

On April 1, 2017, Palmer wrote a severely demeaning review on YellUp about Bratton’s stand-up comedy routine, which had been performed the night before at Minneapolis Comedy Club. The one star review is as follows:

This is probably the most horrifying thing I have ever seen. I felt physical pain watching this. This person is awful. The material is just so terrible it’s awkward watching. Outside Voice played to a dead silent audience. I’ve seen many horrifying attempts at comedy but nothing so pitiful made me cringe in disgust as I did last night. It was as if Bratton went onto the stage without any material. One day, while on my deathbed, if someone asks me if I have any regrets about my life, watching Jo Outside Voice will be my answer. I have lost all respect for the Minneapolis Comedy Club and will never attend anything there again. Any club that hires such worthless talent to do a show will have automatically lost any credibility it has to produce quality comedy. Jo Outside Voice and MCC are both garbage. Take the mic away please.

This review was given 172 useful ratings, 88 funny ratings, and 29 cool ratings. Because of all of the useful ratings, it was featured on YellUp's homepage as the Review of the Day. Business owners subsequently posted many comments about the review. These comments usually stated that the review was useful and that they would never ask Bratton to perform again in fear of losing their reputation and regular attendants.

Almost immediately, Bratton's appointments for future acts were cancelled. By April 10, Bratton had only one act remaining, a non-paying act that Bratton agreed to perform at the carnival as a clown in a dunk tank. Bratton's fan base also began to diminish. OutsideVoice's Twitter followers dwindled down from 1,000 to 27. On April 6, Bratton began to ask businesses why the gigs were lost, and many managers explained that Palmer's review had ruined Bratton's popularity and that any business that books Bratton will ruin its own reputation. Bratton pleaded with the owners to rebook the gigs and tried to explain that the review was wildly erroneous and Palmer only wrote it to promote his own fame. None of the comedy club managers rebooked, and the conversations usually ended with an outburst of rage by Bratton. Bratton could only get gigs at clubs by going to their open-mic nights. But most of the time, even at open-mic nights, the comedy club owners made sure Bratton never got the chance to step on stage.

*[On April 7, a personal message was sent to Palmer's YellUp account. The fuming message was from a user by the name of Tyler "Torcher" T. The message was written as follows:*

*Hi Preston. I am writing you to give you one last attempt to remove the review you posted about Jo Outside Voice's performance. Trust me, you don't want to leave that review up. You are ruining people's livelihood. If you leave that degrading comment up, I will do more than ruin your livelihood.*

*In response to this statement, on April 8, Palmer briefly wrote:*

*I will never take any of my reviews down. I am leaving the review up in hope that no one has to hear one of OutsideVoice's jokes ever again. ]<sup>1</sup>*

After the review, Bratton's jokes became darker and more personally insulting. Many of them were verbal attacks directed toward critics, especially Palmer.

At 5:21 p.m. on April 13, OutsideVoice posted a tweet that stated:

I am going to kill tonight and shut up the critics once and for all.

On April 13, 2017, Preston Palmer wrote his blog at Minneapolis Coffee Shop from 6 p.m. to 9 p.m. At approximately 9:30 p.m., Palmer was seen by Morgan Bernard driving into his neighborhood. Bernard found Palmer strangled on his driveway at 9:50 p.m.

OutsideVoice posted a new tweet at 10:15 p.m. as follows:

I hate being back at the bottom of the game. I waited 3 hours tonight at open mic and didn't even get a chance to tell a joke.

On April 15, Detective Kendal Malone obtained a search warrant for Bratton's home. After the search, Detective Malone arrested Bratton for the murder of Preston Palmer.

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<sup>1</sup> Evidence in brackets is the subject of the pre-trial hearing.

## ADDITIONAL PRETRIAL MOTION FACTS

[These facts are for use in the pretrial arguments only.]

On April 15, 2017, Detective Kendal Malone performed a search of Jordan Bratton's computer. Detective Malone had a search warrant allowing the search of Bratton's home and vehicle seeking "a murder weapon, gloves, and tire treads." In addition, the search warrant allowed for a search of records and information about any possible purchases on "whatever means they may have been created or stored." This section of the warrant read as follows:

1. All records and information relating to the purchase of items possibly involved in the murder of Preston Palmer since January 1, 2017, including evidence of purchases of a murder weapon, gloves, bleach, tires, masks, poisons, ammonia, tracking devices, or any other similar evidence.
2. All bank records, account information, credit card bills, receipts, tickets, and any other similar evidence of purchases related to the murder of Preston Palmer. The terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including:
  - A. Any electrical, electronic, or magnetic form (such as any information on an electronic or magnetic storage device, including floppy diskettes, hard disks, ZIP discs, backup tapes, printer buffers, smart cards, USB storage device, memory calculators, personal digital assistants, as well as printouts or readouts from any magnetic storage device.
  - B. Any handmade form (such as writing, drawing, painting).
  - C. Any mechanical form (such as printing or typing).
  - D. Any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, photocopies).

While performing this search, Detective Malone found a computer in Bratton's backpack and began searching through the files. After searching the hard drives, Detective Malone accessed the Internet. Detective Malone first went to the "favorites" on the Internet, looking for sites commonly visited by Bratton that may contain records indicating purchases of aforementioned items.

Detective Malone next went to the "history" tab of the browser to locate recently visited web sites that may have contained "information" or "records" of purchases. After a few unsuccessful leads, Detective Malone clicked on an "unfamiliar" site called "YellUp." On the homepage of "YellUp" the site indicated that it was a review web site with the purpose of "connecting people to help find great businesses" such as "restaurants, mechanics, doctors, events, and hotels." The homepage already had an email address of "OutsideVoice@gmail.com" filled into the login space and "\*\*\*\*\*" filled into the password space. Detective Malone clicked the login button and accessed Bratton's YellUp account. After logging in the site page said "Welcome Tyler 'Torcher' T." Detective Malone clicked on the "Messaging" tab of the YellUp account. The account's inbox had a message from "Preston Palmer" dated April 8 stating:

I will never take any of my reviews down. I am leaving the review up in hope that no one has to hear one of OutsideVoice's jokes ever again.

Detective Malone clicked on the “Sent” tab and found a message sent from “Tyler ‘Torcher’ T.” to “Preston Palmer” dated April 7 stating the following:

Hi Preston. I am writing you to give you one last attempt to remove the review you posted about Outside Voice’s performance. Trust me, you don’t want to leave that review up. You are ruining people’s livelihood. If you leave that degrading comment up, I will do more than ruin your livelihood.

Detective Malone photographed both messages but the physical evidence is not available.

## **CHARGES**

The prosecution has charged Bratton with Murder in the First Degree

### **DESCRIPTION OF THE CHARGES**

#### **Murder in the First Degree**

Minn. Stat. 609.185(a)(1)

Whoever causes the death of a human being with (1) premeditation and (2) with intent to effect the death of the person or of another is guilty of murder in the first degree and shall be sentenced to imprisonment for life:.

#### **Premeditation Defined**

Minn. Stat. 609.18

For purposes of section 609.185(a)(1) ... “premeditation” means to consider, plan or prepare for, or to determine to commit, the act referred to prior to its commission.

#### **Mental State**

Minn. Stat. 609.02(9)

(1) When criminal intent is an element of a crime in this chapter, such intent is indicated by the term “intentionally, “. the phrase “with intent to,” the phrase “with intent that,” or some form of the verbs “know” or “believe.”

...

(4)““With intent to” or “with intent that” means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.

(5) Criminal intent does not require proof of knowledge of the existence ... of the statute under which the actor is prosecuted or the scope or meaning of the terms used in that statute.

#### ***Jury Instructions regarding the Charge***

##### **First Degree Murder**

The defendant is guilty of first degree murder if the State has proven that the defendant acted (1) with premeditation and (2) with the intent to commit the act that caused the victim’s death.

The defendant acted with premeditation if the defendant considered, planned or prepared for, or determined to commit the act before committing the act that caused the victim’s death. The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.

The defendant acted with intent if the defendant intended to kill the victim or if the defendant knew or believed that the defendant’s actions would result in the death of the victim.

## STIPULATIONS

Both sides stipulate to (agree and admit) the facts that:

1. Preston Palmer died from hypoxia caused by ligature strangulation.
2. Each of the witnesses can be of either sex.
3. The arrest warrant was based on sufficient probable cause and properly issued.
4. Dr. Flenderson and Dr. Scott are qualified expert witnesses and can testify to each other's statements.
5. Dr. Flenderson reviewed and analyzed the crime scene.
6. The absence of lab reports is not in question.
7. The absence of photographs is not in question.
8. All physical evidence and witnesses not provided for in the case packet are unavailable and their availability is not in question.
9. All witness statements were taken in a timely manner.
10. Nothing of relevance was located on Bratton's computer except for the private "YellUp" messages exchanged between Palmer and Bratton.
11. Physical descriptions of the victim, the defendant and of the witnesses are accurate and may not be questioned. For example, Bratton was born April 19, 1993, is left-handed, is 5' 10" tall, and is in average-athletic condition.
12. The horizontal marks on Palmers neck were caused by a smooth, straight, flexible cord. The vertical marks were caused by Palmer's own fingernails.
13. There were no footprints, fingerprints, glove prints, or DNA at the scene of the crime.
14. The only trace evidence located at the scene of the crime was Palmer's skin cells located under Palmer's fingernails.
15. It cannot be determined the exact time the tire tracks were made, but they were created within the 48-hour period provided in the facts.
16. The unpublished case provided for the pretrial is valid, can be used as a persuasive source, and may not be objected to.
17. Bratton signed in at Minneapolis Humors club at 4:30 p.m. and at 7:00 p.m. on April 13, 2017.

**WITNESS STATEMENT**  
**Prosecution Witness**  
**Detective Kendal Malone**

1 My name is Kendal Malone. I am 35 and work as a police officer for the Minneapolis Police Department.  
2 On April 13, at 9:52 p.m., I was dispatched to a possible homicide at the home of Preston Palmer.  
3 Arriving at 9:55 p.m., I was the first officer on the scene. I found Palmer's body face down on the  
4 driveway. I checked the victim for a pulse. There was none.

5 He appeared to have been strangled. The body was still warm so I knew that the death occurred very  
6 recently. I saw a person, later identified as Morgan Bernard, sitting across the street. I immediately called  
7 for Dr. Casey Scott to come investigate the crime scene. I then secured the neighborhood.

8 The victim's lime-green Volkswagen was parked in the driveway. The engine was still warm. Both doors  
9 were locked and shut, and there was no sign of any attempt to enter the car. This indicates that the killer  
10 waited until the victim got out of his car and began walking toward the house. The body was four feet  
11 from the front left tire of the vehicle.

12 The victim was fully dressed. I went through his pockets and found his keys, wallet, and phone. I checked  
13 his wallet, and the driver's license identified the victim as Preston Palmer. There was still \$111 left in his  
14 wallet. He also had a computer bag with his laptop inside. This evidence indicated to me that this was not  
15 a robbery.

16 An ambulance soon arrived and the medical personnel confirmed Palmer's death. I called the other  
17 emergency services on the radio and told them about the homicide. I asked them not to approach the crime  
18 scene because I wanted to preserve the evidence until Dr. Scott and I could investigate the scene.

19 While I was waiting for Dr. Scott, I began to question Morgan Bernard. Bernard was dressed in shorts, a  
20 gray T-shirt, and running shoes. Bernard was carrying keys, an iPhone, and standard Apple headphones.  
21 Although Bernard seemed shaken up, I needed to get a witness statement from Bernard while the  
22 information was fresh. Bernard kept telling me how unbelievable it was that Palmer had been killed when  
23 Bernard had just seen Palmer driving by minutes ago. Bernard told me that Bernard did not see anyone in  
24 the neighborhood before or after the death. I considered Bernard a witness. I found no evidence leading  
25 me to believe Bernard was responsible for the death.

26 Dr. Scott arrived at 10:05 p.m., and we then began our search of the crime scene for evidence. Because  
27 Bernard had not seen a car arriving or fleeing the crime scene, I searched thoroughly behind the home  
28 because it would have been the quickest escape route for the killer. An eight-foot-tall sound and privacy  
29 barrier surrounds the neighborhood and separates Palmer's home from the road. Although this barrier  
30 keeps sounds and cars out, a gate behind Palmer's home would allow a person to walk through with ease.

31 I found tire tracks but no footprints in the soil directly behind the gate. The tracks appeared to be well  
32 defined. I concluded they must have been formed recently, at least since the rain on the night of April 11.  
33 Four tire tracks were exposed so the car must have gone completely off the road. The track width, the  
34 wheelbase, and the radius of the turn determine the exact size of the car frame. The car frame that made  
35 the tracks is 165 inches long and 69.4 inches wide. I made a casting of the impressions for further  
36 examination of the ribs, grooves, sipes, lugs, and slots.

37 I have taken a one-week course in tire track analysis and have three years of experience in the field. Tires  
38 are constantly subjected to wear and tear on the road. As a result, defects make tires unique and  
39 distinguishable from others. Tires wear differently because their alignment and balance are rarely



40 uniform. Cuts, tears, gouges and accumulated debris such as rocks and nails add a unique quality to the  
41 tread impression. Because we had tread marks on all four tires, I knew that if we could locate a car with  
42 matching wear, the probability that the car was the same would be astronomical. But even before  
43 examining individual car treads, the possibilities can be narrowed. I combined the specs of the size of car  
44 frame and the patterns of the tire. I searched through the database and found that the only possible tires  
45 that could have made these impressions are Firetire XFS wheels on a 1992, 1993, and 1994 Buick  
46 Century.

47 During the investigation, Taylor Hudson and Ryan Howard voluntarily came forward with evidence of the  
48 crime. Hudson told me of seeing Bratton's car follow Palmer's car out of the Minneapolis Coffee Shop  
49 parking lot. Hudson also told me of seeing Bratton get into a Buick Century, the same kind of car that  
50 made the tracks behind Palmer's home. When I talked with Howard, I learned Bratton had a motive to kill  
51 Palmer. Palmer had written a scathing review of Bratton's act, which Bratton believed had killed  
52 Bratton's career. I realized Bratton was a possible suspect in the killing of Preston Palmer.

53 When Dr. Scott reported that the murderer was likely 5-foot-nine- to 5-foot-11- inches tall and left-handed  
54 and that the murder weapon could have been a microphone cord, the case against Bratton strengthened. I  
55 knew that if I could search Bratton's home and car, I might find gloves and a murder weapon, and I could  
56 also examine the wear marks on Bratton's car to see whether they matched the tire marks behind Palmer's  
57 home. On April 15, I drafted an affidavit and received a search warrant from the judge to search for a cord  
58 similar to the one described by Dr. Scott. The search warrant allowed me to search the home and vehicle  
59 of Bratton for a murder weapon, gloves, and tire treads that match the tracks at the crime scene.

60 I went to Bratton's home during the afternoon of April 15 and informed Bratton of being under  
61 investigation for the killing of Preston Palmer and of the search. Bratton's maroon Buick Century was in  
62 the garage. It had a joker sticker on the back windshield just as Hudson had described. When I began to  
63 search the car, I found a microphone in the backseat of the car. The microphone was a Sony FV 100 with  
64 a cord attached. I read Bratton the *Miranda* rights and interrogated Bratton about the microphone. Bratton  
65 claimed to use it when performing for the public in parks, in playgrounds, and on busy sidewalks. Bratton  
66 said that the microphone was in the car because Bratton had just used it on April 12 at a show in  
67 Minneapolis Central Park. The amplifier was not in the car. It was in Bratton's bedroom. I seized the  
68 microphone and gave it to Dr. Scott for analysis.

69 In the trunk of Bratton's car, I found two brand-new pairs of brown cotton gloves. The gloves were still in  
70 a three-pack sleeve. Large print on the sleeve said "Three all-purpose work gloves," and in smaller print  
71 the gloves were described as "thick brown cotton gloves for protecting your hands during jobs at home,  
72 office, garage, warehouse, or factory." One set of gloves was missing from the pack, and even after a  
73 diligent search, they were never found. Also with the gloves, we found a receipt that said "3pk Brn Ctn  
74 Gloves" with a purchase date of April 3, 2017 and a price of \$6.57 with tax. The gloves were the only  
75 item on the receipt. I seized the gloves because they had characteristics that matched the description Dr.  
76 Scott had given me. I gave them to Dr. Scott for forensic analysis.

77 I examined the tires of the maroon Century and compared them to the cast that I had obtained from the  
78 crime scene. The patterns of the tires matched perfectly. There were five vertical ribs and four vertical  
79 grooves on the tire with the same width as the mark in the soft soil behind Palmer's home. The lugs were  
80 the same size, and the sipes were the exact same angles.

81 *[While searching Bratton's home, I found a computer in Bratton's backpack and began searching through*  
82 *the files. After a few unsuccessful leads, I clicked on an unfamiliar site called YellUp. The homepage*  
83 *already had an email address of "[OutsideVoice@gmail.com](mailto:OutsideVoice@gmail.com)" filled into the login space and "\*\*\*\*\*"*  
84 *filled into the password space. I clicked the login button and accessed Bratton's YellUp account. The site*

85 *page said “Welcome Tyler ‘Torcher’ T.” I then clicked on the “Messaging” tab of the YellUp account.*  
86 *The inbox of the account had a message from Preston Palmer stating:*

87 *I will never take any of my reviews down. I am leaving the review up in hope that no one*  
88 *has to hear one of OutsideVoice’s jokes ever again.*

89 *I then clicked on the “Sent” tab and found a message sent from “Tyler ‘Torcher’ T.” to “Preston*  
90 *Palmer” stating the following:*

91 *Hi Preston. I am writing you to give you one last attempt to remove the review you posted*  
92 *about Jo Outside Voice’s performance. Trust me, you don’t want to leave that review up.*  
93 *You are ruining people’s livelihood. If you leave that degrading comment up, I will do*  
94 *more than ruin your livelihood.*

95 *I photographed both messages as evidence.]<sup>2</sup>*

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<sup>2</sup> Evidence in brackets is the subject of the pre-trial hearing.

**WITNESS STATEMENT**  
**Prosecution Witness**  
**Dr. Casey Scott, Medical Examiner**

1 My name is Dr. Casey Scott, and I am 62 years old. I am the chief medical examiner-coroner for the  
2 County of Minneapolis. I received my bachelor's degree and medical degree from the University of  
3 Minnesota in Minneapolis. I served a six-year residency in forensic pathology at Hennepin County  
4 Medical Center. I passed my examination and became a licensed pathologist in 1987. In 1988, I was  
5 appointed deputy coroner for Minneapolis County and became the county's chief medical examiner in  
6 1993, which has remained my position to this day.

7 At 10:05 p.m. on April 13, 2017, I examined the crime scene of the death of Preston Palmer. I was the  
8 only crime scene investigator present so Detective Malone and I were solely responsible for evidence  
9 collection and storage. Detective Malone and I both examined the crime scene for evidence and  
10 discovered tire tracks near Preston Palmer's home. Detective Malone performed the analysis and  
11 investigation on the tire tracks. The body was removed to the morgue for analysis.

12 An on-scene analysis at 10:14 p.m. revealed that the body's temperature was 97.8 degrees, lividity had  
13 just begun to set in, rigor was full, and there was no appreciable insect activity. From this evidence, I  
14 concluded that the time of death was about 9:40 p.m.

15 The death was caused by hypoxia, a low level of oxygen in the brain. Hypoxia is the cause of death in all  
16 strangulation cases. The victim had petechiae in the conjunctivae and sclera of his eyes, which is common  
17 in victims of strangulation. These small red dots appear near the eyes when immense pressure is put on  
18 the veins by blocking blood circulation. This pressure causes the blood to leak near the eyes causing the  
19 small red dots.

20 A lot of evidence tended to establish the method of strangulation. Defined horizontal marks wrapped  
21 nearly halfway around the victim's neck. Perpendicular to the marks were vertical scratches from the  
22 victim's fingernails. The strangulation must have been by a ligature, rather than by choking or hanging. If  
23 choking had caused the strangulation, the neck would have had oval or circular bruises on the neck caused  
24 by the assailant's fingertips. The victim lacked these bruises. Because the mark is horizontal below the  
25 thyroid cartilage (Adam's apple) without a rising point or a descending point, it is certain that the victim  
26 was not hanged. In a hanging, the constriction mark is usually above the thyroid cartilage. The victim's  
27 neck had vertical fingernail markings common in many victims. The claw marks are from the victim's  
28 struggles to relieve pressure from the ligature. The claw marks on the victim's neck matched the victim's  
29 own fingernails.

30 The patterns on the victim's neck leave evidence of the type of ligature used. Soft fabric-based ligatures  
31 leave a diffused mark while wires and cords leave a deep and defined mark. The mark left on the victim is  
32 deep and distinct; therefore I determined that a cord was used in the killing as opposed to a rope, wire,  
33 belt, or any other clothing. Furthermore, the way the marks wrap around the neck in a consistent manner  
34 indicates that a flexible item was used rather than a firm item, such as a crowbar. The width of the mark  
35 shows that the item had a diameter of one-eighth inch. Because there is evidence of friction but no fibers  
36 dug into the skin, the weapon had a smooth surface. Moreover, there was not a braided pattern at the area  
37 of constriction. This eliminates the possibility of the weapon being a rope or wire. The mark was straight  
38 and consistent as opposed to wavy, which is found when a telephone cord or a chain is used as the murder  
39 weapon. This narrows the possible murder weapon down to a cord with a smooth surface. Microphone  
40 cords or computer cords are good examples of possible weapons used.

41 The physical characteristics of the microphone cord found in Bratton's home are consistent with the  
42 ligature marks I found on the victim's neck. The width of the cord is approximately one-eighth of an inch  
43 and matches the size of the marks on Palmer's neck. The flexibility of the cord is consistent with the  
44 marks wrapping around the neck. The density of the cord is consistent with the depth of the distinct  
45 patterns. With these similar characteristics and no marks opposing a match, the match is identical.

46 Although Bratton's microphone cord did not contain any skin cell or DNA trace from Palmer's neck, it  
47 could still be the murder weapon. The smooth coating of a microphone cord would allow for easy  
48 cleaning. It is not uncommon for criminals to bleach a murder weapon after it is used. If oxygen bleach is  
49 used, all DNA is removed. The Sony FV100 cord is made with a dense water resistant coating, which  
50 would enable any traces of bleach and DNA to be removed without altering the appearance or damaging  
51 the composition of the cord. Moreover, with a hard, water-resistant surface, any bleach on the cord would  
52 have evaporated within a couple of days.

53 The abrasions on a victim's neck also leave evidence about the assailant. The mark on Palmer is  
54 horizontal below the thyroid cartilage (Adam's apple) without a rising point or a descending point. That  
55 indicates a person similar in height to Palmer was applying the pressure. The person who killed Palmer is  
56 most likely between 5-foot-nine- and 5-foot-11-inches tall. Also, the abrasions on the victim's neck were  
57 more distinct on the left side and wrapped farther back on the neck than on the right side. This means that  
58 more pressure was applied from the left hand, signifying that the killer was most likely left-handed.

59 The only significant trace found was under the victim's fingernails. Under the fingernails, the victim had  
60 a lower layer of the victim's own skin cells, followed by traces of brown cotton fabric, and finally a  
61 thicker layer of the victim's own skin cells. The cotton fiber has an easily recognizable twisted ribbon  
62 pattern. The brown cotton fibers did not match any of the articles that the deceased was wearing or  
63 possessed. When a layered pattern such as this is found, it is critical evidence of the timeline of the  
64 struggle between the assailant and victim. This particular pattern shows that first the victim struggled to  
65 relieve pressure on the neck by digging his fingers under the ligature. Second, the victim attempted to  
66 relieve pressure by weakening the assailant. It is likely that the victim reached back toward the assailant to  
67 grab either the assailant's hands or arms. The third and final move by the victim was a more aggressive  
68 move to dig his fingers under the ligature around his neck. It is highly likely that this fabric comes from  
69 the clothes worn by the attacker. The victim attempted to grab the hands or arms of the assailant in order  
70 to catch a breath, and the fabric from the attacker got under the victim's fingernails. Because of the lack of  
71 the fingerprints at the crime scene, the killer most likely wore gloves when strangling Palmer. The fibers  
72 from the victim's fingernails could have been fibers from the gloves worn.

73 Detective Malone found a pair of gloves in Bratton's car and asked me to analyze the fibers to see if they  
74 matched. I compared the fibers from the gloves and the fibers found on the victim. Although the cotton  
75 fabric found is not unique, the fabrics were consistent in every measurable way. I first examined the fibers  
76 side by side under a stereomicroscope. The diameter, shape, and coarseness of the fibers were the same. I  
77 used the microspectrophotometer to determine that both fabrics had the exact same mix of dye. The  
78 wavelength of the light in each fiber was identical. Colors used in fabrics are typically made out of a  
79 different mixture of dyes. The microspectrophotometer indicated that the brown mixture was created from  
80 two parts yellow #001, one part blue #001, and one part orange #001. This created the dye color brown  
81 #001. When identical mixtures of dye appear in identical matching fibers, there is a very strong likelihood  
82 that they came from the same textile.

83 Based on my examination of these items and coupled with my background, experience, and training, it is  
84 my opinion that it is highly probable that the death was a homicide caused by ligature strangulation.  
85 Specifically, there is a strong match between the microphone cord found in Bratton's car and the weapon  
86 used in the killing of Preston Palmer, there are similar physical characteristics between Jordan Bratton and

87 the person who killed Palmer, and the fibers found under the fingernails of the victim are a strong match  
88 to the type of gloves found in Bratton's car.

**WITNESS STATEMENT**  
**Prosecution Witness**  
**Taylor Hudson, Minneapolis Coffee Shop Server**

1 My name is Taylor Hudson. I am a 17-year-old server at Minneapolis Coffee Shop. The coffee shop is on  
2 the northwest corner of the Minneapolis Shopping Center. Large glass windows make up the outer walls  
3 of the shop and provide the customers and workers with a good view outside. The Minneapolis Coffee  
4 Shop parking lot separates the building from the street. At night, streetlights provide safety lighting to  
5 parts of the parking lot but not all of it.

6 Because our coffee shop was near Palmer's home, he came here almost every night from about 6 p.m. to 9  
7 p.m. to write his blog and reviews. I had been following Palmer's reviews on YellUp ever since he started  
8 writing them. The Minneapolis Coffee Shop received the first and only 5-star review Palmer ever gave.  
9 He often referred to it as his office. Palmer always ordered the Non-Fat Cafe Latte with Hazelnut and sat  
10 at the same two-person table at the back corner of the shop. Because Palmer came in so often, I got to  
11 know him pretty well. He once told me that he became a critic because he was criticized so much as a kid.  
12 He said he started to use his pen as a weapon to attack those who he didn't like. As anyone can see from  
13 his many hateful writings, Palmer didn't like a lot of people.

14 April 12 is the first time I ever saw Jordan Bratton in the Minneapolis Coffee Shop. I recognized Bratton  
15 because I follow Preston's reviews on YellUp. YellUp contains pictures of the users next to their posts. A  
16 picture of Bratton was posted on the page that contained Palmer's review. Bratton came into the coffee  
17 shop around 5:25 p.m. At first, Bratton did not order a drink but oddly looked around the place and  
18 inspected the layout of the shop. Business was slower than usual so I asked Bratton if I could help with  
19 anything. Bratton snapped back at me saying, "When I want something, I'll order it." Bratton came to the  
20 register, bought a bottle of water, stormed out, and got in a maroon 4-door Buick Century. Bratton sat in  
21 the car for roughly 45 minutes until 6:15 p.m. when it then pulled out of the parking lot. I noticed a sticker  
22 of a joker card on the back window. I serve many customers each day at the coffee shop so I tend to forget  
23 most of them, but because Bratton was acting so weird and rude, I remember Bratton clearly.

24 Preston Palmer did not come into the coffee shop on April 12. At least one night a week, Palmer had a  
25 movie premiere or had a juicy lead that occupied his evening. But on April 13, 2017, Palmer returned to  
26 Minneapolis Coffee Shop at 6 p.m. as usual. Nothing seemed new with him, and he stuck to his regular  
27 routine of ordering his Non-fat Cafe Latte with Hazelnut and sat in the back corner of the shop. Palmer  
28 wrote on his blog for three hours and then left the parking lot at 9:15. Palmer arrived and left in his lime-  
29 green Volkswagen Beetle. When he drove away, that was the last time I saw him. I learned of his death  
30 the next morning.

31

32 Although Palmer did not act suspiciously on April 13, there was something out of the ordinary. The same  
33 car that Bratton had driven to the coffee shop the day before had pulled into a dark part of the parking lot  
34 about 8:45 p.m. I noticed the same joker sticker that was on the car window the day before. The sticker  
35 was also in the same place. I couldn't tell who was in the car because it was dark and no one ever got out  
36 of the car. The car stayed in the lot until Palmer's lime-green Beetle pulled out of the parking lot. The  
37 maroon Buick Century left immediately afterward.

38 In addition to Palmer and Bratton, I am also familiar with Ryan Howard. Howard occasionally comes into  
39 the coffee shop in the mornings. I have never seen Howard with either Palmer or Bratton. Whenever I  
40 notice, Howard is in a blue SUV.

**WITNESS STATEMENT**  
**Prosecution Witness**  
**Ryan Howard, Comedy Club Manager**

1 My name is Ryan Howard, and I am the manager of the Minneapolis Comedy Club. I am 32 years old and  
2 have worked as the manager of the club for the past six years. The comedy club targets repeat audience  
3 members by consistently producing entertaining acts. The club tries to give off a traditional vibe by using  
4 an older style set-up with unpainted brick walls, an informal seating arrangement with folding chairs and  
5 card tables to host the audience, a one- foot-tall elevated stage with only a microphone stand, and a single  
6 FV 100 microphone with a cord tracing to an individual PA system. Business had been consistent for the  
7 past six years, except for the huge spike following the crash of the markets in 2016, followed by an even  
8 bigger decline following the review written on YellUp.

9 I was present at the act performed by Bratton and attended by Preston Palmer on March 31, 2017. The act  
10 was not nearly as bad as the review by Palmer said. The sold-out audience had many laughs and gave an  
11 ovation of approval when the performance ended. I read the review, and it seemed to be written out of a  
12 personal problem with the material rather than an overall review of the performance. At the beginning of  
13 the performance, Palmer seemed to be laughing and enjoying Bratton's routine. But I noticed that Palmer  
14 grew uncomfortable when Bratton started bashing critics. Bratton made a series of remarks calling critics  
15 "nobodies" and said that "those who can't do, critique." Bratton took the joke even further by saying that  
16 "critics have all the ego of an actor but none of the talent." At this point, Palmer was so upset that he stood  
17 up, knocked over his chair, and stormed out of the club. The rest of the crowd seemed to enjoy the  
18 performance.

19 I am a YellUp account holder and had a chance to read Palmer's review of Bratton's performance. I  
20 believe that the review was written solely for the purpose of attacking Bratton and my club. As a result,  
21 the Minneapolis Comedy Club unfairly got a bad reputation just for allowing the act. Since the review, the  
22 club has had trouble selling tickets. The club's revenue for the month of April was cut in half from last  
23 year creating a large deficit for the month. This is especially devastating considering that April tends to be  
24 one of our strongest months and that we are in a comedy boom. The bad review came at an awful time for  
25 me. I wanted to sell the club for the past few months in order to pay off some of my debt. I had three  
26 serious buyers looking at buying the club, but they all backed out after the April numbers came in. If we  
27 are not selling tickets and are not making any money, then Minneapolis Comedy Club isn't worth much.

28 As a result of the review, the club certainly couldn't hire Bratton again, so we had to cancel all of the  
29 future bookings we had with Bratton. On April 6, Bratton called me infuriated about my canceling  
30 Bratton's acts. Bratton complained of losing income and the opportunity to be discovered. I had to explain  
31 to Bratton that we didn't cancel because of Bratton's lack of talent but only because of Bratton's bad  
32 reputation among the comedy audiences. I explained how the bad reputation came from Palmer's review.  
33 Furthermore, I had to tell Bratton that Minneapolis Comedy Club already took a big hit in revenue this  
34 month because we had previously hired Bratton and that we could not hire Bratton again because we don't  
35 want to risk another bad review.

36 In addition, we also discussed our shared hatred for Palmer because of how detrimental the review was to  
37 our livelihood. We spoke of how we had a "passionate hate" for Palmer and how we thought scum like  
38 him didn't deserve celebrity status. But Bratton became irate. Bratton made statements such as, "Someone  
39 should shut him up," and "The world is better off without filthy liars like him." Bratton said this so  
40 seriously and passionately that it made me fearful. I didn't say anything to disagree or discourage Bratton  
41 from doing anything over the top. I know a lot of people felt the same way Bratton did.



42 Bratton also has a history of violence in my club. On January 27, 2017, I witnessed Bratton punch a  
43 member of the audience, Nicky Blake. An altercation arose when Blake started to make offensive remarks  
44 toward Bratton during the routine. At first, Bratton responded by returning offensive jokes toward Blake,  
45 but the dispute escalated into Bratton punching Blake after an insult over Bratton's struggling career.  
46 Blake said afterward, "I was just trying to snap quips like on MTV's Wild 'N Loud, but Bratton can't take  
47 a joke." Bratton admitted to getting carried away but said that "Nicky took it too far attacking my  
48 livelihood." No charges were pressed, and no arrests were made. I banned Bratton from the club  
49 temporarily, but I let Bratton perform again once the comedy boom hit.

50 I follow many comedians on Twitter because I like to read what performers think about the club after they  
51 come in for an act. I have been following Bratton's tweets as OutsideVoice since March 25, 2017. After  
52 Palmer's bad review of Bratton on April 1, 2017, Bratton's popularity on Twitter dropped off  
53 substantially. Although OutsideVoice's followers went down from around 1,000 to 27, I continued to  
54 follow Bratton. At 5:21 p.m. on April 13, 2017, the day of Palmer's death, Bratton posted an odd tweet. It  
55 stated "I am going to kill tonight and shut up the critics once and for all." At 10:15 p.m. later that day,  
56 OutsideVoice tweeted "I hate being back at the bottom of the game. I waited 3 hours tonight at open mic  
57 and didn't even get a chance to tell a joke."

**WITNESS STATEMENT**  
**Defense Witness**  
**Dr. Peyton Flenderson**  
**Professor of Forensic Science**

1 My name is Dr. Peyton Flenderson, and I am 63 years old. I attended the University of Minnesota in  
2 Minneapolis, where I received my bachelor's and medical degree. I then served my six-year residency in  
3 forensic pathology at the University of Minnesota Hospital. I passed my examination and became a  
4 licensed pathologist in 1986. In 1987, I became a professor for the Criminal Justice Department at the  
5 University of Minnesota in Minneapolis, where I have continued to study and teach to this day. I have  
6 written many articles for professional and academic journals on crime-scene investigation and medical  
7 examinations.

8 After Bratton's arrest, Bratton's lawyer asked me to re-evaluate the evidence in this case and give my  
9 expert opinion to the court. I discovered that the prosecution case against Jordan Bratton for the murder of  
10 Preston Palmer has many flaws and inconsistencies.

11 I analyzed the forensic data of Preston Palmer on April 16 and came to many of the same conclusions as  
12 Dr. Scott, but I also have several differing opinions. I agree with Dr. Scott that Palmer was killed by  
13 hypoxia caused by ligature strangulation. I also do not dispute the time that the death occurred. The skin  
14 cells under the victim's fingernails certainly indicate that the claw marks on his neck are his own. When I  
15 was examining the corpse, I found skin cells under Palmer's fingernails that came from his own neck. I  
16 agree that the pattern formed by the ligature eliminates many materials from being used. The consistently  
17 distinct marks on Palmer's neck certainly eliminate chains, ropes, clothing, and wire. But the types of cord  
18 that could have been used in this strangulation case are still broad. Although a microphone cord found in  
19 Bratton's car matches the markings on Palmer's neck, many other kinds of cords could also have made  
20 these markings, and hundreds of other Sony FV 100 cords exactly as the one in Bratton's car could have  
21 been used. If the particular cord in Bratton's car had been used in the murder, it would contain traces from  
22 the victim. No trace could be found on the cord.

23 Dr. Scott used the markings on Palmer's neck to determine that the killer was likely left-handed, but this  
24 is not reasonably likely. I have studied many cases when a right-handed killer leaves more distinct  
25 markings on the left side of the victim, and vice versa. Besides having a dominant left hand, causes of a  
26 more distinct mark on the left side can include pressure being relieved on the right side by the victim, an  
27 object being held in the right hand by the assailant, or the victim struggling to the right side to escape,  
28 which allows more pressure to be put on the left side of the neck. Another explanation is that sometimes  
29 killers cross their hands when strangling someone. This would make a right-handed killer create more  
30 distinct marks on the left side of a victim.

31 Dr. Scott is correct that the killer must have been of similar height to the victim because of the horizontal  
32 markings on the corpse. But Dr. Scott's conclusion that the killer must have been 5-foot-nine to 5-foot-11  
33 inches tall is too narrow. Assailants position their hands differently when attacking, and it is not  
34 uncommon for an assailant two inches taller or shorter to make horizontal markings around the neck. This  
35 would put the attacker somewhere between 5-foot-8-inches and 6-feet tall, not just 5-foot-nine- to 5-foot-11  
36 inches tall as Dr. Scott concluded. This creates a broader category of suspects that could have murdered  
37 Preston Palmer.

38 Whenever two people come in contact with each other, they will exchange or transfer trace materials such  
39 as hair, cells, or fingerprints. If Bratton had been present at Palmer's murder, it is most likely that there  
40 would have been traces of Bratton's skin cells, hair, or fingerprints on the victim. When I examined the

41 corpse for trace evidence, I found no hairs, prints, or skin cells belonging to Bratton. Neither did Detective  
42 Malone nor Dr. Scott find any at the crime scene.

43 The only trace evidence found was brown cotton fiber. Cotton is by far the most commonly used natural  
44 fiber. Cotton fabric is used in nearly every type of clothing. Undyed white cotton is so common that it is  
45 of little evidentiary value. Moreover, brown is a common color for cotton. The brown dye used is brown  
46 #001. The brown dye #001 is a common mixture of dye and the most common of all brown dyes. Nearly  
47 all brown dyes are created from yellow, blue, and orange. Since yellow #001 and blue #001 are the  
48 primary base colors, they are the most commonly used dyes for the mixture. Orange #001 is the base  
49 secondary color and is the most commonly used orange dye. The mixture of these three colors creates the  
50 commonly used brown #001 that was found in each of the fibers. Because this fabric is so common, it is  
51 likely that the same mixture is used in many different textiles. Not only could the exact same dye be used  
52 in a completely different fabric by a different manufacturer, but it is likely that the maker of the brown  
53 cotton gloves used the same dye while making its brown cotton T-shirts and socks, too. Additionally, the  
54 only identifiable characteristics in the fabrics found were the diameter, dye color, coarseness, and  
55 classification. Some fabrics must have 15 identifiable characteristics before being considered a match. If  
56 there are not 15 identifiable characteristics, then the fiber is not unique enough to be of value for  
57 comparisons. A brown cotton fabric is certainly not unique.

58 Strengthening the defense case even further, if gloves were used during the murder, glove prints are  
59 sometimes found. In this case, however, no glove prints were found.

60 I have taught two courses in tire-track analysis, and an article I wrote about tire-track analysis was  
61 published in the University of Minnesota in Minneapolis *Journal of Criminal Science*. Using my expertise  
62 in this area, I evaluated the tire tracks. Although the tire mark is a perfect and unique match to the tread on  
63 Bratton's tires, it does not necessarily mean Bratton or Bratton's car was at the crime scene at the time of  
64 the crime. The time the tracks were made cannot be determined because only a cast was made of the  
65 tracks, and no further examinations, such as a soil examination, were made. Therefore it cannot be  
66 assumed that Bratton's car was parked behind Palmer's home at the time of his murder. I am in agreement  
67 with Dr. Scott that the tracks most likely occurred after the rain on the night of April 11, but this leaves  
68 approximately 48 hours when the tracks could have been made. Statistically, it is most likely that they  
69 were not left during the time of Palmer's murder. Furthermore, even if it could be shown that the track  
70 was at the time of the murder, it is not conclusive evidence that Bratton was on the scene, only that  
71 Bratton's car was there.

72 There are many possible murder weapons that would match the markings on Palmer's neck, the likely  
73 characteristics of Bratton's killer are very broad, the fiber found under the victim's fingernails are  
74 common, and the time range for when the tire tracks were made is wide.

## WITNESS STATEMENT

### Morgan Bernard Neighborhood Jogger

1 My name is Morgan Bernard, and I am 29 years old. I moved into the same neighborhood as Preston  
2 Palmer in 2006. Living in the same neighborhood was a demanding experience. Wild fanatics often drove  
3 through the neighborhood trying to get a picture of Palmer in his yard. In addition, occasionally an upset  
4 victim of his articles came by his home looking for revenge. The most extreme instance I witnessed was  
5 in 2007. Someone burned the word “liar” into his lawn. It was always speculated that it was the singer  
6 Billy Martin, but there was never enough proof to press charges. It is unbelievable to me that Palmer  
7 never put a gate or a privacy fence up to protect himself. But I think he craved the attention.

8 I had followed Palmer’s material for the past few years. Among many other things, I read his blogs and  
9 his YellUp reviews. I read the YellUp review that he posted about Bratton. It was very demeaning.

10 It read as follows:

11 This is probably the most horrifying thing I have ever seen. I felt real physical pain  
12 watching this. This person is something awful. The material is just so terrible it’s  
13 awkward watching Outside Voice played to a dead silent audience. I’ve seen many  
14 horrifying attempts at comedy but nothing so pitiful to make me cringe in disgust as I did  
15 last night. It was as if Bratton went on stage without any material. One day, while on my  
16 deathbed, if someone asks me if I have any regrets about my life, watching Jo Outside  
17 Voice will be my answer. I have lost all respect for the Minneapolis Comedy Club and  
18 will never attend anything there again. Any club that hires such worthless talent to do a  
19 show will have automatically lost any credibility it has to produce quality comedy. Jo  
20 Outside Voice and MCC are both garbage. Take the mic away please.

21 Although this review seems particularly hateful, it is not out of the ordinary when looking at what Palmer  
22 commonly wrote. For example, earlier this year Palmer wrote a review about rapper Leslie Lane. The  
23 review said that the album was “wack with lame lyrics” and “a disrespectful affront to rap.” The review  
24 then called Lane a “real clown.”

25 Palmer’s blog sometimes provoked wild, crazy, and even dangerous reactions. It was common for  
26 protesters to wake me up in the morning with screaming and honking on their way to Palmer’s.  
27 Sometimes it scared me, but mostly it was annoying.

28 Despite the danger and annoyance, I stuck to my routine of jogging a three-mile circle around the  
29 neighborhood as part of my daily exercise. The jog always starts and ends at my front door with one of the  
30 two entrances to the neighborhood being my one-mile marker and Palmer’s home being my two- mile  
31 marker. I think part of what kept me sticking to my schedule was the curiosity to see if something new  
32 was going on at Palmer’s house. For example, in February when I jogged by Palmer’s home, the word  
33 “hater” was spray painted in glow-in-the-dark orange on the siding of his home.

34 My jog on April 13 began at 9:15 p.m. from my house as it always does. I saw Palmer’s lime-green Beetle  
35 pull into the neighborhood as I reached my one- mile marker around 9:30 p.m. When I jogged by Palmer’s  
36 home 15 minutes later, I found his body lying in the driveway. The body wasn’t moving and was lying  
37 flat on the surface. I was sure he was dead. Luckily, I had my iPhone with me because I listen to music  
38 when I jog. I immediately dialed 911. I didn’t approach the body because I was alone and feared for my  
39 own life. I just stood across the street and waited for the emergency services to arrive. Detective Malone  
40 arrived first.

41 In the small window between the time I saw Palmer arrive into the neighborhood and the time I found him  
42 dead, I did not witness any suspicious activity. I didn't see any other cars or people in the neighborhood in  
43 that time, and I didn't hear anything loud enough to overcome the music I listen to while jogging. There  
44 certainly wasn't a maroon Buick Century following Palmer to his home.

45 With all of the obsessive and crazy people with easy access to Palmer's home, it could have been  
46 anybody. The hundreds of celebrities and businesses that Palmer has reviewed and critiqued should all be  
47 suspects in this case, not just Bratton.

**WITNESS STATEMENT**  
**Defense Witness**  
**Dani Levinson, Comedian**

1 My name is Dani Levinson. I am 31 years old. For the past 10 years, I have been a struggling comedian  
2 living in Minneapolis. In April 2016, I met Bratton at a comedy club when we were booked to perform on  
3 the same night. I thought Bratton's crude humor was brilliant, and we immediately became friends.

4 I watched Bratton's career grow from struggling amateur to rising star. Then I watched Bratton's career  
5 go from promising to into the gutter in April 2017. During this time, Bratton and I remained close, and we  
6 openly discussed our thoughts on the direction of our careers. Bratton's career went down the drain due to  
7 Preston Palmer's review, but Bratton still never showed any signs of wanting to harm Palmer or get  
8 revenge on him in any way. I would describe Bratton's attitude as saddened but not angry.

9 We have been like family over the past few months. I would do anything for Bratton. We use each other  
10 for support whenever our careers or emotions are down. We would always discuss our feelings if we were  
11 nervous about a big upcoming show or after we bombed an act. If Bratton hated a club manager, didn't  
12 like performing with another comedian, or was upset about something on the street, Bratton would always  
13 tell me about it. If Bratton planned on harming Preston Palmer, Bratton certainly would have told me  
14 about it. Since Bratton never mentioned any dislike of Palmer, Bratton definitely did not hate him enough  
15 to kill him.

16 Since the downfall of Bratton's career, Bratton has been going to open-mic nights and to Minneapolis  
17 Central Park to tell jokes. Open-mic nights don't pay, so Bratton needs to perform at the park from time to  
18 time (where he uses a hat to collect tips), just to make ends meet. I have stopped to watch Bratton perform  
19 before, just to give Bratton moral support. It is common for Bratton to perform at Minneapolis Central  
20 Park in the evenings. Minneapolis Central Park is one of the best-lit parks in the county so it is well  
21 attended after daylight. Bratton used the Sony FV 100 microphone found in Bratton's car. It is typical for  
22 performers to have their own microphones, especially up-and-coming comedians who need to practice  
23 their routines. The microphone helps entertainers become more comfortable with its use and makes a  
24 practice routine feel more like a paid gig. I personally own the exact same microphone for similar uses.  
25 The Sony FV 100 is a common microphone that nearly every club uses.

26 At 5 p.m. on April 13, Bratton came to my house for dinner. I knew it had been a while since Bratton had  
27 eaten a good meal so I thought it would be a nice favor for a friend. I remember letting Bratton use my  
28 computer at approximately 5:21 p.m. to update Twitter. Later that night when I checked my Twitter  
29 account, I saw that Bratton posted, "I am going to kill tonight and shut up the critics once and for all." I  
30 didn't think of this as being a dark remark at all. Bratton was referring to silencing critics by putting on an  
31 outstanding performance. The term "kill" is commonly used in the comedy industry with the meaning of  
32 doing well in a performance and getting positive feedback from the audience.

33 We finished dinner at 6:30 and Bratton left around 6:45 for an open-mic night that we had been talking  
34 about. I stayed home for the remainder of the night.

35 I didn't talk to Bratton again that night, but I did see that Bratton had posted on Twitter after arriving  
36 home. I know that Bratton wasn't tweeting from a mobile device because under the tweet it said "from  
37 web." If a tweet is from a mobile device, it will say "from mobile web" or from a twitter application such  
38 as "twitterberry." Bratton usually tells jokes on Twitter, but after OutsideVoice's followers dwindled  
39 down to only friends, Bratton started tweeting more serious material. As far as I know, all of the things  
40 Bratton said have been true, so whenever Bratton tweeted about being at Minneapolis Humors that night, I  
41 have no reason to think Bratton was lying.

42 From what I know about Palmer, he was a very controversial critic. He ruined people's careers and  
43 reputations with the strike of a pen. Many people probably wanted to harm him. But I never saw anything  
44 to make me think Bratton was one of them.

**WITNESS STATEMENT**  
**DEFENSE WITNESS**  
**Jordan Bratton**  
**Defendant**

1 My name is Jordan “Outside Voice” Bratton. I am 31 years old, 5-foot-10-inches tall, and left-handed. I  
2 consider myself in average athletic condition. I live in Minneapolis where I moved in 2016 to pursue my  
3 career as a comedian.

4 After the economic crash of 2016, my career began to take off. I was getting more and more exposure  
5 through stand-up acts in comedy clubs and through my growing number of followers on Twitter.

6 The growth of my career as a comedian came to a stop and began a sharp decline when Preston Palmer  
7 wrote an unfair review of me on YellUp on April 1, 2017. Although this created a slight setback in my  
8 career as a comedian, I am still pursuing my dream to become a famous stand-up comedian.

9 I was saddened by the loss of a substantial number of fans caused by the review, but I certainly never  
10 wanted to harm Palmer for writing it. I realize that there are other ways to solve this problem without  
11 resorting to violence. I have already started to rebuild my reputation just by telling jokes to anyone who  
12 will listen and by showing people that I have potential to make it in the business.

13 It is true that I was in Minneapolis Coffee Shop on April 12, at roughly 5:25 p.m. I went in to buy a bottle  
14 of water before I went to the park to do a show. When I first walked in, I began to look for a table where I  
15 could work on my material before I went to the park. I began to grow impatient looking for a place to sit  
16 when the server asked me if I needed anything. I decided to buy my bottle of water and work on my  
17 material in the car. I sat in my car until about 6:15 p.m., adding a couple of new jokes and perfecting my  
18 old ones.

19 When I left Minneapolis Coffee Shop at roughly 6:15 p.m., I started to go to my friend Dani Levinson’s  
20 house for dinner. When I was on my way there, I started to think that Dani may have invited me on for  
21 dinner on April 13, not April 12. I keep my schedule in my backpack, so I pulled off of the road so I could  
22 safely access it. When I saw my schedule said that it was on April 13, I went straight to the park to do my  
23 show instead of going to Levinson’s house. If there were tracks of my car left near Palmer’s home, it was  
24 by mere coincidence that I pulled over near Palmer’s home.

25 At 4:30 p.m. on April 13, I went to a comedy club called Minneapolis Humors to sign up for open mic  
26 later that night. When I arrived, the list was already full of acts, but I signed up anyway. I had no other  
27 options.

28 At 5:30 p.m. on April 13, I went to my friend Dani Levinson’s house for dinner. Dani knew that I have  
29 been struggling to pay for groceries after the Palmer review, so Dani wanted to be a good friend and give  
30 me a good meal. While I was at Dani’s for dinner, I used the computer to update my Twitter account. I  
31 was excited about my performance later that night and felt like it would be my breakthrough show, which  
32 would “silence the critics.” My tweet did not mean that I was physically going to “shut up” one critic. In  
33 comedy, “kill” means to perform well and get good feedback. No violence was intended. I left around  
34 6:30 p.m. in my maroon Buick Century and went back to Minneapolis Humors to wait for my turn to  
35 perform.

36 I arrived at Minneapolis Humors around 7 p.m. on April 13, I found parking on the street only two blocks  
37 away. I signed back in when I arrived. The club is big and loud. I needed to work on my material before I  
38 went on, so I chose to wait in a room backstage where I could hear if they called my name but that had



39 enough privacy and silence for me to work on my material effectively. I stayed at the club until 10 p.m.  
40 when the open-mic portion of the night ended. Afterward, I drove home where I remained for the rest of  
41 the night. I did not go to Minneapolis Coffee shop at any time on April 13. When I got home, I even  
42 tweeted that I had been at Minneapolis Humors from 7 p.m. to 10 p.m.

43 Because I stayed alone in the backroom at Minneapolis Humors most of the time, no one can testify that I  
44 was there the entire time. I parked on the street so I don't have a parking slip or anything as proof either.  
45 But I did sign in at the club at 7 p.m., and I was there the whole time.

46 I use a Sony FV 100 microphone and amplifier for my shows in the park. Detective Malone found the  
47 Sony FV 100 microphone in my car when conducting a search of my home. I typically leave the  
48 microphone in my car but carry the amplifier into my house to keep it from getting stolen. Most people  
49 won't steal a microphone. I am sure that every comedian or comedy club has a microphone just like mine.  
50 Ryan Howard's club and my friend Dani have exactly the same microphone as I do.

51 As for the gloves found in my car, I had them there just in case I have to do mechanical work or if any  
52 other reason comes up. I bought them on March 3, 2017, when I was building props for a comedy act.  
53 Sometimes I do shows with props that I create myself. The props may require painting, sawing, and  
54 driving nails, among other things. The package said, "for protecting your hands," so I got them to keep  
55 from cutting and callusing my hands when creating the props. The last pair I had got a lot of paint on  
56 them, and they began to smell bad so I threw them away. The gloves are cheap so I don't even bother  
57 trying to wash them.

58 [I wrote a message to Preston Palmer on YellUp requesting that he take my bad review down. I used a  
59 fake account under Tyler T. because I didn't want to let Preston know that he had gotten to me. He has  
60 always seemed to pick on people more if it bothers them a lot because it just creates more drama and  
61 therefore more press for him. I was very stern with Palmer because I wanted to persuade him to take the  
62 review down. It was an obstacle to my career that would be difficult for me to overcome but easy for him  
63 to remove. I didn't do anything beyond trying to persuade Bratton to take down the review. I knew my  
64 jokes that made fun of critics really offended Palmer. My routine about critics on March 31 caused Palmer  
65 to storm out of the comedy club. When I told him I would do more than ruin his livelihood, I only meant  
66 that I would continue to make fun of his profession and write even more offensive jokes about him  
67 personally.]<sup>3</sup>

68 It is unfortunate that Palmer lost his life. There are a lot of people who did not like him and who were  
69 victims of his degrading reviews. A lot of these people probably would have wanted to harm him, but I  
70 am not one of them. I did not kill Preston Palmer.

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<sup>3</sup> Evidence in brackets is the subject of the pre-trial hearing.

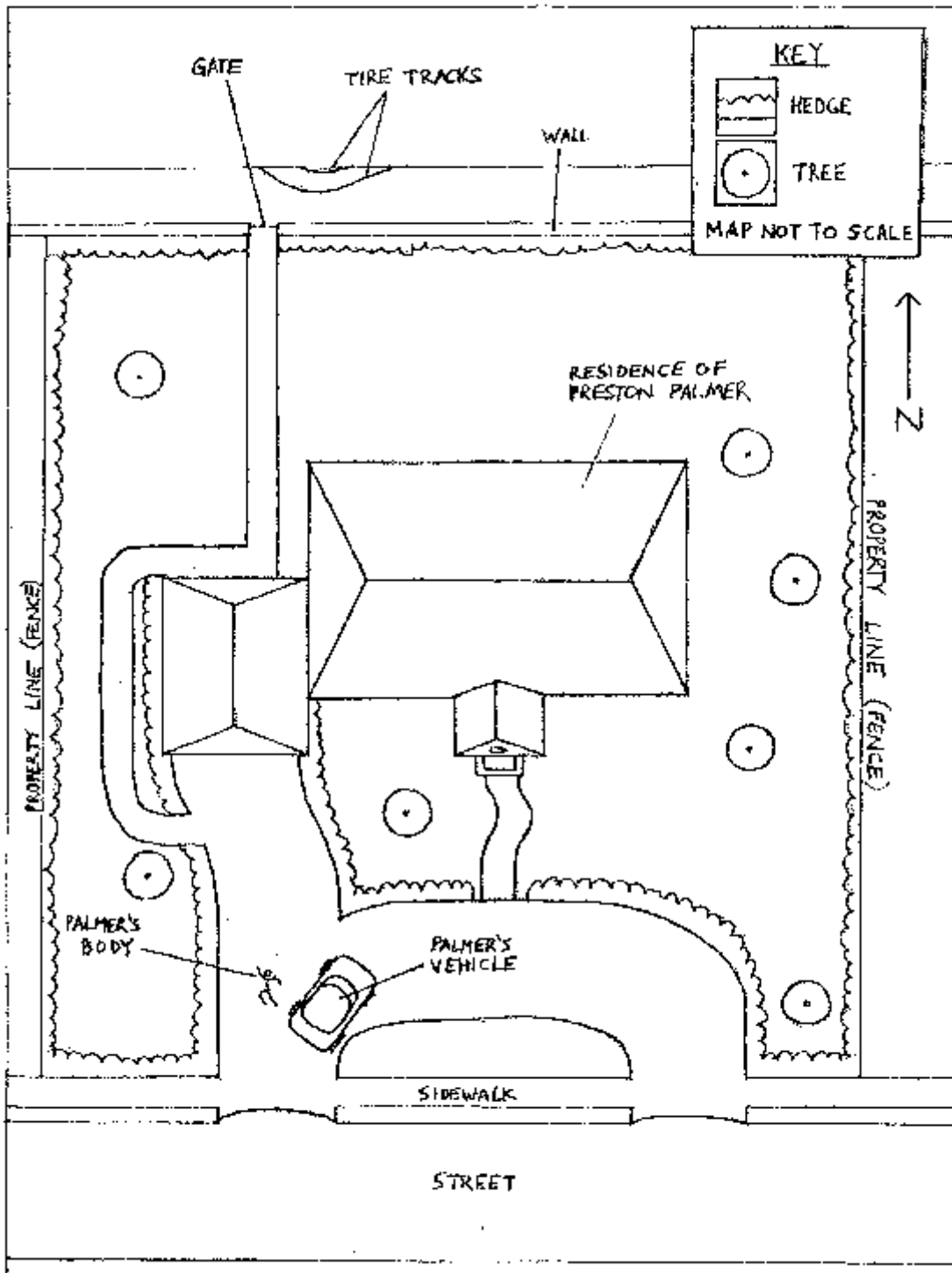
## **PHYSICAL EVIDENCE**

Only the following physical evidence may be introduced at trial:

1. Diagram of Preston Palmer's House and Yard

Exhibit \_\_\_\_

[Diagram of Preston Palmer's House and Yard]



## PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

### Introduction

This section contains materials and procedures for the preparation of a pretrial motion on an important legal issue. The judge's ruling on the pretrial motion will have a direct bearing on the possible outcome of the trial.

The pretrial issue involves the Fourth Amendment protection against unreasonable searches and seizures. The question is whether Detective Malone's search of Jordan Bratton's YellUp account was constitutional. If the search was unconstitutional, the threat sent to Preston Palmer by Bratton on YellUp may not be used at trial. This is the only issue in the pretrial hearing.

The Fourth Amendment protects individuals, their homes, and their belongings (including computers) from unreasonable police searches. Police may, however, make reasonable searches. If police have obtained a valid warrant, they are allowed to make a search *within the bounds* of that warrant. Searches outside of the bounds of a warrant can also be legal. For example, if an item of evidence in plain view is discovered and immediately known to be incriminating, then the evidence may be used at trial.

In this case, the Fourth Amendment issue concerns what the bounds of the search warrant are and whether evidence discovered outside of the bounds of the search warrant may be legally admitted. If the search of the YellUp account was outside of the scope of the warrant and not subject to any exceptions, then the search was unconstitutional. If the search was either inside the scope of the warrant or within the warrantless search exceptions, then the search was constitutional.

The sources cited below will help you determine whether Detective Malone's search of the computer was constitutional.

### Arguments

The prosecution asserts that the search was constitutional because the YellUp account and threat fall under the part of the warrant authorizing the search of the "records and information relating to the purchase of items possibly involved in the murder of Preston Palmer." The prosecution contends that even if the search was outside the bounds of the search warrant, the discovery of the threat on YellUp falls under the "plain view" exception and should therefore be admitted in as evidence.

The defense argues that the search was outside the scope of the warrant. The defense claims that the search was an invasion of Bratton's privacy and right to be secure from unreasonable searches and seizures. While the defense admits that any search of the files involving purchases would be valid, the defense asserts that the scope of the warrant did not encompass a password protected "review web site" used for "connecting people to help find great businesses." It also contends that the plain view exception does not apply here. Therefore, the defense argues that the evidence of the YellUp threat should not be admitted as evidence.

### Sources

The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, Minnesota statutes, edited court opinions, law review articles and the pretrial facts.

The U.S. Constitution is the ultimate source of citizens' protection against unreasonable searches and seizures. Its language is subject to interpretation. The U.S. Supreme Court's decisions are binding and must be followed by Minnesota courts. In addition, the Minnesota Supreme Court and Appellate Court holdings are binding and must be followed by Minnesota trial courts. The federal circuit court decisions,

non-Minnesota state court decisions, and law review journals are persuasive opinions only. In developing arguments for this Mock Trial, both sides should compare or distinguish the facts in the binding cited cases from one another and from the facts in *People v. Bratton*.

Furthermore, each side should use non-binding cases, law, and opinions as persuasive sources.

## **INFORMATION AND PROCEDURES FOR THE PRETRIAL MOTION HEARING**

### **Preparation**

1. **Prior to the opening of the pretrial motion arguments ,the judge will have read the pretrial materials provided in the case packet.**
2. **Be as organized as possible in your presentation .Provide clear arguments so the judge can follow and understand your line of reasoning.**
3. **Arguments should be well substantiated with references to any of the pretrial sources provided with the case materials and any common sense or social-interest judgments. Do not be afraid to use strong and persuasive language.**
4. **Use the facts of your case in your argument .Compare them to facts of cases in the pretrial materials that support your position, or distinguish the facts from cases that contradict the conclusion you desire.**
5. **Review the legal arguments in the legal materials to assist you in formulating your own arguments.**
6. **Your conclusion should be a short restatement of your strongest arguments.**

### **Procedure**

The hearing is called to order.

1. The judge calls the hearing to order.
1. The judge asks the defense to summarize the arguments made in the motion. The judge may interrupt to ask clarifying questions. There is no time limit on arguments (other than the judge's patience).
3. The judge asks the prosecution to summarize arguments made in its opposition motion.
4. The judge offers the defense an opportunity for rebuttal. The rebuttal should be used to counter the opponent's arguments, not to raise new issue.
5. The judge offers the prosecution an opportunity for rebuttal.
6. At the end of the oral arguments, the judge will rule on the motion and decide which charges will be in contention during the trial.

## LEGAL SOURCES FOR PRETRIAL ARGUMENTS

### *US Constitution*

#### **U.S. Constitution, Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### *Minnesota Statutes*

#### **Murder in the First Degree**

Minn. Stat. 609.185(a)(1)

Whoever causes the death of a human being with (1) premeditation and (2) with intent to effect the death of the person or of another is guilty of murder in the first degree and shall be sentenced to imprisonment for life.

#### **Premeditation Defined**

Minn. Stat. 609.18

For purposes of section 609.185(a)(1) ... “premeditation” means to consider, plan or prepare for, or to determine to commit, the act referred to prior to its commission.

#### **Mental State**

Minn. Stat. 609.02(9)

(1) When criminal intent is an element of a crime in this chapter, such intent is indicated by the term “intentionally, “. the phrase “with intent to,” the phrase “with intent that,” or some form of the verbs “know” or “believe.”

...

(4) ““With intent to” or “with intent that” means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.

(5) Criminal intent does not require proof of knowledge of the existence ... of the statute under which the actor is prosecuted or the scope or meaning of the terms used in that statute.

### *Jury Instructions regarding the Charge*

#### **First Degree Murder**

The defendant is guilty of first degree murder if the State has proven that the defendant acted (1) with premeditation and (2) with the intent to commit the act that caused the victim’s death.

The defendant acted with premeditation if the defendant considered, planned or prepared for, or determined to commit the act before committing the act that caused the victim’s death. The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.

The defendant acted with intent if the defendant intended to kill the victim or if the defendant knew or believed that the defendant’s actions would result in the death of the victim.

### *Supreme Court Cases*

#### ***Katz v. U.S., 389 U.S. 347 (1967)***

**Facts:** Police, without getting a warrant, wiretapped a public phone booth to listen to defendant's calls. Defendant placed bets from the phone in violation of federal law. The defendant moved to have the recorded conversations excluded from evidence.

**Issue:** Was the police recording of defendant's calls a search?

**Holding:** Yes. The court defined a search as any governmental intrusion into something in which a person has a reasonable expectation of privacy. Here, the defendant had a reasonable expectation of privacy in the booth. The officer's recording of his conversation constituted a search under the Fourth Amendment. The police did not have any legal justification for the search. Therefore, the search was unconstitutional.

#### ***Arizona v. Hicks, 480 U.S. 321 (1987)***

**Facts:** Investigating a shooting, police without a search warrant legally enter an apartment looking for weapons and the shooter. While inside, an officer spots a high-priced stereo system that seems out of place in the rundown apartment. The officer picks it up, jots down the serial number, puts it down, calls headquarters, and finds out that the stereo is stolen.

**Issue:** Did the officer's actions violate the Fourth Amendment?

**Holding:** Yes. The serial number was not in plain view. Picking up the stereo constituted a search, and since the officer did not have probable cause to believe that stereo equipment was stolen, the search was unreasonable and violated the Fourth Amendment.

#### ***Horton v. California, 496 U.S. 128 (1990)***

**Facts:** A police officer investigating an armed robbery got a search warrant authorizing the search of the accused's home for the stolen property. The officer's search found no stolen property but did discover the robbery weapons in plain view. The officer testified that while he was searching for the stolen property, he also was interested in finding other evidence connecting the accused to the crime.

**Issue:** Should the murder weapons be suppressed from evidence?

**Holding:** No. The plain-view doctrine permits the seizure of an item not listed in the warrant if (1) police lawfully are in a position from which they view the item, (2) its incriminating character is immediately apparent, and (3) the officers have a lawful right of access to the object. Thus items do not have to be discovered inadvertently for the plain view doctrine to be used.

### *Federal Circuit Court Cases*

#### ***U.S. v. Tamura, 694 F. 2d 591 (9th Cir. 1982)***

**Facts:** The FBI got a search warrant to find certain documents, vouchers, and cancelled checks. Finding this material among the thousands of papers in defendant's office was difficult. Agents asked defendant's employees to help, but when they refused, the agents seized and took away 11 cardboard boxes of documents, 34 file drawers of vouchers, 17 drawers of cancelled checks. The FBI searched through the papers at another location. Defendant was convicted on 59 counts of bribery, mail and wire fraud, conspiracy, racketeering, and travel act violations.

**Issue:** Did the seizure of all these documents violate the Fourth Amendment?

**Holding:** Yes. "As a general rule, in searches made pursuant to warrants only the specifically enumerated items may be seized. It is true that all items in a set of files may be inspected during a search, provided that sufficiently specific guidelines for identifying the documents sought are

provided in the search warrant and are followed by the officers conducting the search. However, the wholesale seizure for later detailed examination of records not described in a warrant is significantly more intrusive . . . . “

***U.S. v. Carey, 172 F.3d 1268 (10th Cir. 1999)***

**Facts:** With a search warrant for finding drug trafficking evidence, a police detective searched a hard drive and opened a JPG file, which contained illegal pornography. On discovering this file, the detective spent five hours accessing and downloading hundreds of JPG files searching for more illegal pornography. The government argued that the detective had seized the JPG files properly because their contents were in plain view.

**Issue:** Should the illegal pornography files be excluded from evidence on the grounds that they were beyond the scope of the warrant?

**Holding:** All of the illegal pornography files must be excluded except for the first JPG file the detective discovered. The detective could seize the first JPG file that came into plain view but could not rely on the plain-view doctrine to justify the search for additional JPG files containing illegal pornography. Most of the JPG files featured a sexually suggestive title. After opening the first file and seeing illegal pornography, the searching officer was aware in advance of what the subsequent labels meant. The court rejected comparing a search of a computer to that of a file cabinet because “electronic storage is likely to contain a greater quantity and variety of information than any previous storage method.” Relying on analogies to closed containers or file cabinets may lead courts to “oversimplify a complex area of Fourth Amendment doctrines and ignore the realities of massive modern computer storage.”

***Guest v. Leis, 255 F.3d 325, 335 (6th Cir. 2001)***

**Facts:** A warrant authorized the search and seizure of pornographic images from an electronic bulletin board system. When police asked the operator of the system where the images were located, he denied knowing. Police seized all the computer equipment, which in addition to the images contained e-mails, members’ subscriber information, and other information not related to the offense.

**Issue:** Did the seizure of computer files outside of the warrant violate the Fourth Amendment?

**Holding:** No. “A search does not become invalid merely because some items not covered by the warrant are seized.” When the seizures occurred, no one helped separate relevant files from unrelated files, and the computers had to be taken off-site to sort through the data. Furthermore, officers may legitimately check “to see that the contents of the directories corresponded to the labels placed on the directories. Suspects would otherwise be able to shield evidence from a search simply by ‘misfiling’ it in a directory labeled ‘e-mail.’”

***U.S. v. Adjani, 452 F.3d 1140 (9th Cir. 2011)***

**Facts:** While executing a search warrant at the defendant’s home to obtain evidence of his extortion, agents seized and subsequently searched a computer belonging to the codefendant, who lived with the defendant, even though she was not a suspect and was not named in the warrant. Three e-mails found on the codefendant’s computer contained conversations with the defendant that implicated her in the extortion plot. The warrant authorized seizure of “records, documents and materials which reflect communications with [the defendant].” It authorized seizing and searching any “computer equipment and storage device capable of storing “evidence of the offense . . . .”

**Issue:** Did the seizure and search of the codefendant’s computer violate the Fourth Amendment?



**Holding:** No. Although the warrant did not specifically mention the codefendant or a conspiracy charge in the warrant, the court held that the government had probable cause to search codefendant's computer because the affidavit established a fair probability that evidence of a crime would be found on computers accessible to defendant at his home. The court also noted the special problems computer pose: "Computers are simultaneously file cabinets and locked desk drawers; they can be repositories of innocent and deeply personal information, but also of evidence of crimes. The former must be protected, the latter discovered. As society grows ever more reliant on computers as a means of storing data and communicating, courts will be called upon to analyze novel legal issues and develop new rules within our well established Fourth Amendment jurisprudence."

***U.S. v. Giberson, 527 F.3d 882 (9th Cir. 2014)***

**Facts:** Police obtained a warrant to search the defendant's residence for "records or documents" relating to his finances and false I.D.s. During the search, agents discovered a personal computer with a sheet of what appeared to be fake Nevada I.D. cards next to it. The agents seized the computer and sent it to a lab, which made a mirror image of the hard drive before returning the computer. Agents obtained a second warrant authorizing a search of the mirror image. While searching the computer, an agent discovered images of illegal pornography. The agent did not deliberately search for more illegal pornography files but continued searching for the fake I.D. items authorized in the search warrant. But any illegal pornography files that he inadvertently discovered were seized. A third search warrant authorized searching the mirror image for illegal pornography, and this search found more than 700 illegal pornography files.

**Issue:** Did the seizure of the computer exceed the scope of the first search warrant and therefore make all the subsequent searches illegal?

**Holding:** No. "We have long held that a search warrant authorizing the seizure of materials also authorizes the search of objects that could contain those materials. . . . While it is true that computers can store a large amount of material, there is no reason why officers should be permitted to search a room full of filing cabinets or even a person's library for documents listed in a warrant but should not be able to search a computer... . If we do not permit computers to be searched, what about a USB flash drive or other external storage device? ... If it is reasonable to believe that a computer contains items enumerated in the warrant, officers may search it."

***U.S. v. Payton, 2014 U.S. App. LEXIS 15969 (9th Cir. 2014)***

**Facts:** Police obtained a search warrant for drugs, associated materials, and financial records. The warrant did not authorize the search of computers. A computer was found in the defendant's bedroom with a screen saver on the monitor. The officer moved the mouse, which removed the screen saver, and an illegal pornographic photo was disclosed. Defendant was charged for possession of illegal pornography.

**Issue:** Was the illegal photo within the bounds of the search warrant?

**Holding:** No. The illegal photo was outside the bounds of the search. There was nothing that suggested that evidence of drug sales or anything else specified in the warrant would be found on the computer. It is true that financial records indicating drug sales were physically capable of being kept on the defendant's computer, but to hold that this is sufficient for a reasonable search would eliminate any incentive for officers to receive a warrant for computer searches. The ability of computers to hold immense amounts of information with a great deal of private information would make such searches too intrusive.

*State Cases*

***People v. Bradford, 15 MN. 1229 (MN 1997)***

**Facts:** Defendant was convicted of murdering two young women. Police seized items not specified in the warrant such as a .22 caliber rifle because “it was common police practice to seize all firearms in a homicide case.”

**Issue:** Did the police’s seizure of items not included in the search warrant violate the Fourth Amendment?

**Holding:** No. The plain-view doctrine permits the seizure of an item not listed in the warrant. “The officers lawfully must be in a position from which they can view a particular area; it must be immediately apparent to them that the items they are observing may be evidence of a crime, contraband, or otherwise subject to lawful seizure, and the officers must have a lawful right of access to the object.”

***People v. Ulloa (Minn Ct. of Appeals, 2002)***

**Facts:** Police, suspecting the defendant of having had sexual relations with a minor, obtained a warrant to search his computer for evidence of the relationship. While searching the computer, officers seized AOL instant messages containing incriminating evidence. The instant messages were not specifically mentioned in the warrant.

**Issue:** Did seizing the AOL instant messages violate the Fourth Amendment?

**Holding:** No. Searching “officers may seize items not listed in the warrant, provided such items are in plain view while the officers are lawfully in the location where they are searching and the incriminating character of the items is immediately apparent [A] the items of any significance that defendant enumerates as having been seized outside the scope of the warrant... are of a character that searching officers would immediately have recognized as incriminating.”

***People v. Majors (Minn. Ct. of Appeals – Unpublished)***

**Facts:** Defendant was suspected of raping a woman in his van. Police obtained a warrant to search defendant’s residence for any “papers, documents and effects [that] tend to show possession, dominion and control over said premises including keys, photographs, taped voice and/or video images. . . .” During the search, police found a locked toolbox that contained a videotape showing the defendant committing an unrelated sex crime.

**Issue:** Did the seizure of the videotape violate the Fourth Amendment?

**Holding:** Yes. “Although the search warrant here authorized the search of the appellant’s residence to include videotapes for purposes of establishing his dominion and control of the residence, the investigating officer’s affidavit submitted to obtain the search warrant contained no factual basis for including videotapes within the scope of the warrant.” In fact, police had no doubt that it was defendant’s residence and had no reason to search to determine if it was his residence. Furthermore, the plain-view doctrine does not apply. “Here, the videotapes were not immediately apparent until the locked toolbox” was opened. “Furthermore, the contents of the videotapes were unknown and not apparent until the images on the tapes were viewed.” 43 44

***Law Review Articles***

***“Searches and Seizures in a Digital World.”  
Orin S. Kerr. 119 Harv. L. Rev. 531 (2005)***

“Computers tend to play an ever greater role in our lives as computer technologies advance.... These trends suggest that as time passes, rules created to prevent general searches for physical evidence may result in equivalent general searches for digital evidence.” The old rule of “using the physical box as the common denominator of a computer search would ... lead to unpredictable, unstable, and even disturbing results. . . . When assessing how the Fourth Amendment applies to the collection of information, Courts should focus on that information

rather than the physical storage device that happens to contain it.” In this new environment, the need for a new rule is emerging over the container approach. “Courts could apply a very simple rule, suppressing all evidence beyond the scope of a warrant.... This approach would permit forensic investigators to conduct whatever searches they deemed necessary, and to use General Tool or its equivalent however they liked, with the caveat that only evidence within the scope of the warrant normally could be used in court. . . . Dagnet searches would be neutralized by a rule ensuring that only evidence within the scope of proper authority could be used.”

In addition to suppressing evidence outside the scope of the warrant, “the best way to neutralize dragnet searches is to rethink the plain view exception in the context of digital evidence. . . . The plain view exception may need to be narrowed or even eliminated in digital evidence cases to ensure that digital warrants that are narrow in theory do not devolve into general warrants in practice.... Computer hard drives store a tremendous amount of private information that can be exposed even in a targeted search.” If everything comes into plain view, the plain-view exception threatens to eradicate the purpose of a warrant and there are no longer checks on dragnet searches.

For example; “if the police know that they can use legal authority to search for A as a way of looking for B, they may embark on pretextual searches and fishing expeditions. When combined with the considerable breadth of many low-level offenses, the ability to engage in pretextual searches may permit the police to target unpopular or politically powerless persons or groups for heightened scrutiny. Probable cause that a particular person has committed a low-level offense may be relatively easy to establish, giving the police tremendous power to execute invasive searches upon a target of their choosing. This discriminatory and inefficient practice was just the kind of misuse of government power the Fourth Amendment was created to stop.”

***“Fourth Amendment Limitations on the Execution of  
Computer Searches Conducted Pursuant to a Warrant.”  
David J.S. Ziff. 105 Colum. L. Rev. 841 (2005)***

“Courts should address the novel problem of computer searches ... by simply applying established case law that controls the search of personal documents.” So when conducting a search, courts should treat computers as the same as any other personal document containers. “[A]n officer conducting a search for evidence on a defendant’s computer should have the authority under a warrant to open and view any document on the computer’s hard drive to the extent necessary to determine if the document is within the warrant’s purview, because any document could contain material described in the warrant.”

“[T]he plain-view doctrine should apply to seizures of computer files to the same extent it applies to physical seizures.” The plain-view doctrine already has steps in place to prevent overbroad searches. First, “an officer is only ‘lawfully in a position from which to view’ the contents of a given file insofar as she is acting within the authorization of the warrant to view that file. . . . During the time in which the warrant allows a searching officer to view the contents of a file ... the incriminating character of the file must be immediately apparent. After a determination can be made that the contents of a given file are outside the scope of the warrant, the officer’s authority to examine that file under the warrant expires. Therefore, if the incriminating character of a file only becomes apparent after the officer has determined that the file is outside the scope of files to be seized under the warrant, the plain view-doctrine cannot apply because the authority of the warrant has expired and the officer is no longer in a lawful position from which to view the file. If, however, the incriminating character of the file becomes apparent while the officer is still determining whether the file is within the scope of the warrant, then the plain view-doctrine should apply and the file can be seized by the officers.”

“For example, suppose an officer is searching the contents of a computer for illegal pornography and opens a file labeled ‘letter to grandma.doc.’ ... [T]he officer is only allowed to open and view

the file to the extent necessary to determine that it is not merely a mislabeled file concealing the object of the warrant. This limitation prohibits the officer from reading the contents of the letter. Any information in the letter, including information relating to other illegal activity, remains private. Even if an individual file appears suspicious to an officer but further investigation [beyond what is necessary to determine that the file is outside the scope of the warrant] is required to establish probable cause as to its association with criminal activity, the item is not immediately incriminating and cannot be seized pursuant to the plain view doctrine.”

#### **CREDITS**

Materials adapted from *People v. Bratton*  
Constitutional Rights Foundation, California.

4835-9113-4240, v. 1