

# SEARCH WARRANTS (APA Murder 101)



JESSE EVANS

# INTRODUCTION



ONE MILLION DOLLARS (\$1,000,000) | CALVIN SMITH LAW.COM

# TOPICS

- I. The Fourth Amendment
- II. Homicide investigations
- III. Practical Tips: “The Art” of the SW
- IV. Conclusion

# The Fourth Amendment





# The 4th Amendment

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.

# The Fourth Amendment

- Does NOT prevent “reasonable” searches
- The Expectation of Privacy standard
- Default: Search Warrants are *legally* preferable

# Expectation of Privacy

- The touchstone
- Hinges on what is reasonable
- The importance of legal “standing”

# Search Warrants (the parts):

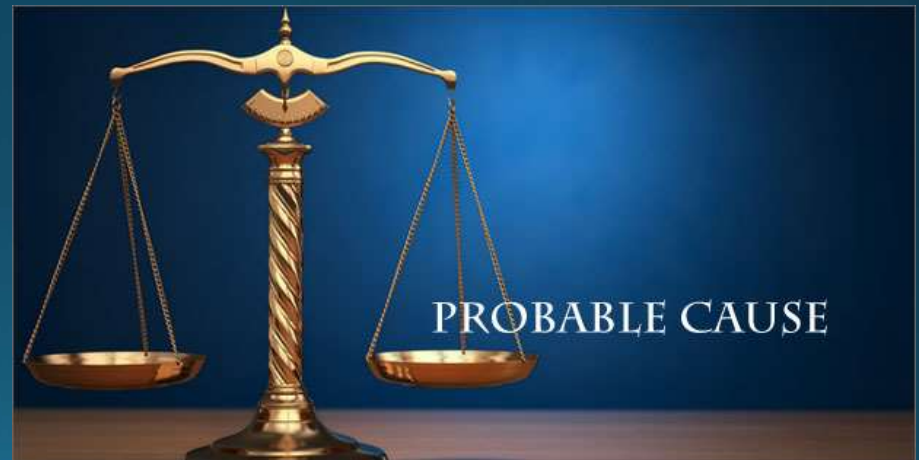
- The sworn affidavit
- Sworn testimony (recorded?)
- The Search Warrant
- The Return





# Search Warrants:

- Probable Cause
- “General warrants” are illegal
- Particularity requirement
- Staleness
- Standing



## **Specific Description of Person or Place to be Searched**

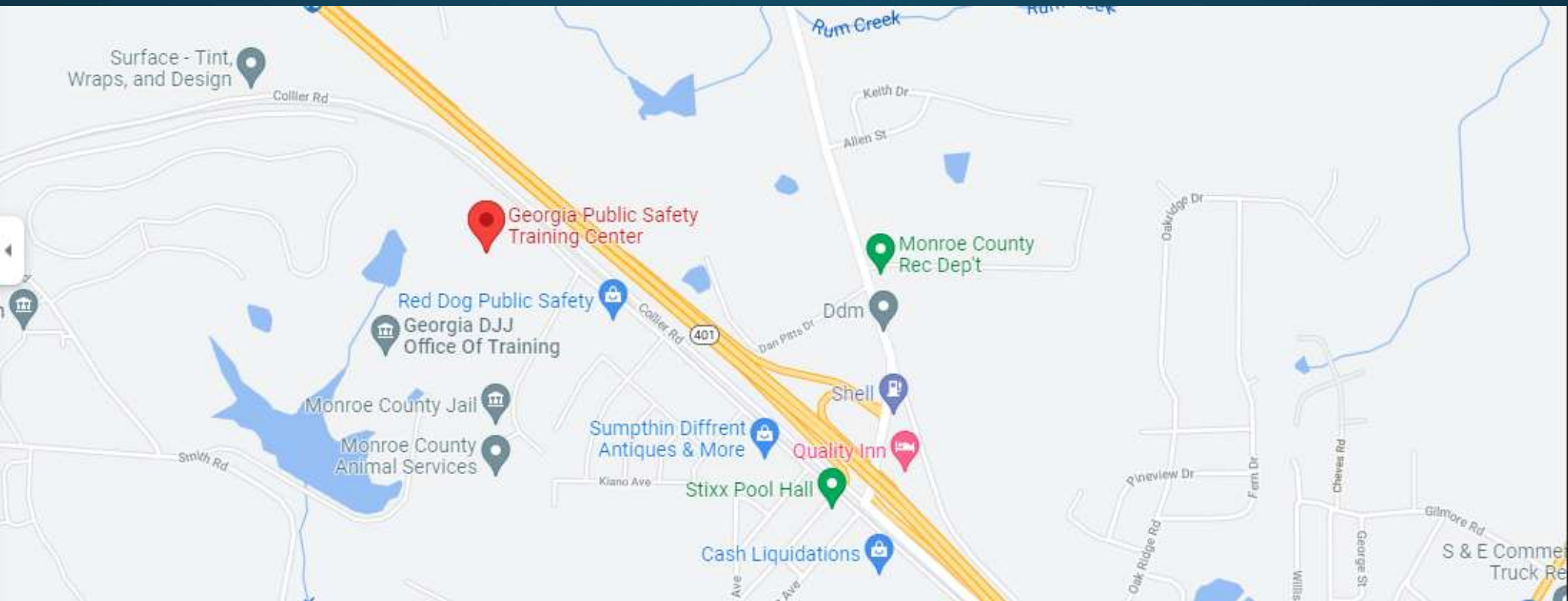
- Describe the person (picture if you can)
- Describe the location (picture if you can)
- Be detailed enough so that a random officer could take the warrant and serve it on the correct place or person

**ADD PHOTOS**





# OR MAPS



# GeoFence:



- A geo-fence is a virtual perimeter for a real-world geographic area
- It can be “dynamically generated” or “predefined”



# First Geofence SW

## IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA

IN RE: Application for a Search Warrant

- Warrant # 19SW0074
- Agency Case No. # 18-112288

### SEARCH WARRANT

TO ANY LAWFUL OFFICER TO EXECUTE AND RETURN:

AFFIDAVIT HAVING BEEN MADE BEFORE ME, by Detective D.N. Raissi, a POST certified Police Officer, of the Cobb County Police Department, charged with the duty to investigate criminal activity and enforce the criminal laws of the State of Georgia, that said officer has probable cause to believe that within Cobb County, Georgia:

- A specific offense(s) is/are being committed/have been committed, and
- A specific instrument, article, and/or thing is being used in committing these specific offenses; and

After hearing the sworn testimony of the above affiant and considering the application and affidavit for this Search Warrant and Order, and after reviewing the relevant code sections including O.C.G.A. § 16-11-66, et seq., O.C.G.A. §§ 16-11-68.1 and 18 U.S.C.A. §§ 2701, et seq., including but not limited to 2702, & 2703, this Court finds that probable cause exists for the issuance of this Search Warrant and Order.

There is probable cause to believe that the following crime(s) (is/are being) and/or (has/have been) committed. (List all applicable offenses and code sections.)

Offense(s)	Code Section(s)
AGGRAVATED ASSAULT	16-5-21
MURDER	16-5-1

That certain electronic files, database information, customer data, devices, instruments, articles, or things, intended for use, and/or used in the commission of said offenses is or will be located at:

Google, Inc., Google, LLC, or Google Payment Corp.  
1600 Amphitheatre Parkway Mountain View, California 94043  
Phone: (844) 383-8524 Email: [uslawenforcement@google.com](mailto:uslawenforcement@google.com)

And there is now in the custody of the above-listed provider at the above-described premises, certain "ELECTRONIC CUSTOMER DATA" contained therein that has been used to commit or further a crime, or constitutes evidence relevant to proving that a crime has been committed, to wit:

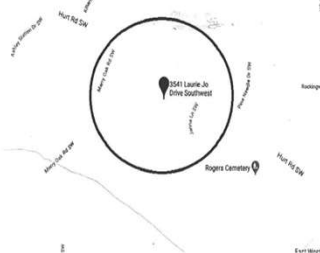
- Files including but not limited to GPS, Wi-Fi, Metadata or Bluetooth sourced location history data generated from devices that reported a

location within the geographical region bounded by the following latitudinal and longitudinal coordinates, dates and times ("Initial Search Parameters") and identifying information for Google Accounts associated with the responsive location history data.

1. Accounts associated with the area near the location, **3541 Laurie Jo Drive, Marietta, GA 30008, 33.866067, -84.603068** between 20:45pm EST and 22:00pm EST, on 11/23/2018, and a geofence of 150 meters from the center of that location, for device information which are maintained on computer Servers controlled by Google, Inc., Google, LLC or Google Payment Corp.

2. Accounts associated with the area near the location, **3541 Laurie Jo Drive, Marietta, GA 30008, 33.866067, -84.603068** between 12:30pm EST and 13:30pm EST, on 11/07/2018, and a geofence of 150 meters from the center of that location, for device information which are maintained on computer Servers controlled by Google, Inc., Google, LLC or Google Payment Corp.

Target Location 1 Reference Image:



3. Accounts associated with the area near the location, **223 Bass Street SW, Atlanta, GA 30315, 33.735890, -84.395310** between 21:30pm EST and 23:00pm EST, on 11/23/2018, and a geofence of 150 meters from

the center of that location, for device information which are maintained on computer Servers controlled by Google, Inc., Google, LLC or Google Payment Corp.

Target Location 2 Reference Image:



- Google shall query location history data based on the "Initial Search Parameters"
- For each location point recorded within the "Initial Search Parameters", Google shall produce anonymized information specifying the corresponding unique device ID, timestamp, coordinates, display radius, and data source, if available (the "Anonymized List")
- Law enforcement shall review the "Anonymized List" to remove devices that are not relevant to the investigation, for example, devices that were not in the location for a sufficient period of time. If additional location information for a given device ID is needed in order to determine whether that device is relevant to the investigation, law enforcement may request that Google provided additional location coordinates for the Time Period that fall outside the Target Location. These contextual location coordinates may assist law enforcement in identifying devices that were located outside the Target Location, were not within the Target Location for a long enough period of time, were moving through the Target Location in a manner inconsistent with the facts of the underlying case, or otherwise were not relevant to the investigation

- For those devices IDs identified as relevant pursuant to the process described above, law enforcement may request that Google provide identifying information for the Google Account associated with each identified device ID.

- Provide Records to Detective D. N. Raissi at Cobb County email address [david.raissi@cobbcounty.org](mailto:david.raissi@cobbcounty.org).

The location of the foregoing described instrument, article, and/or thing is evidence connected with the foregoing listed crime(s) and: (Only valid when the judge has initialed ALL that are applicable)

(Judge's initials)  
( ) is/are intended for use in the commission of the crime(s) herein described.  
( ) has/have been used in the commission of the crime(s) herein described.  
( ) is evidence of the commission of the crime(s) herein described. [O.C.G.A. 17-5-21 and *United States v. Jones*, 132 S. Ct. 945 (January 23, 2012)]

I am satisfied that there is probable cause to believe that the certain instrument, article, and/or thing, specifically described herein, is being used in the commission of the offenses above described and that probable cause exist for the application and issuance of this search warrant.

EXECUTION OF SEARCH WARRANT: This search warrant shall be executed within ten days from the time of issuance. Any search warrant not executed within ten days from the time of issuance shall be void and shall be returned to this court. (O.C.G.A. 17-5-25)

SO ORDERED, this 7<sup>th</sup> day of February, 2019, at 1:35 o'clock, P. M.

Signature <u>G. Grant Brantley</u>	COBB SUPERIOR COURT
G. GRANT BRANTLEY Senior Judge, State of Georgia Presiding in Cobb Superior Court <small>G. Grant Brantley Senior Judge, State of Georgia Presiding in Cobb Judicial Circuit</small>	STATE OF GEORGIA

# Protected Areas:

- The Fourth Amendment textual basics
- Vehicles
- Electronic Devices
- Geolocation data



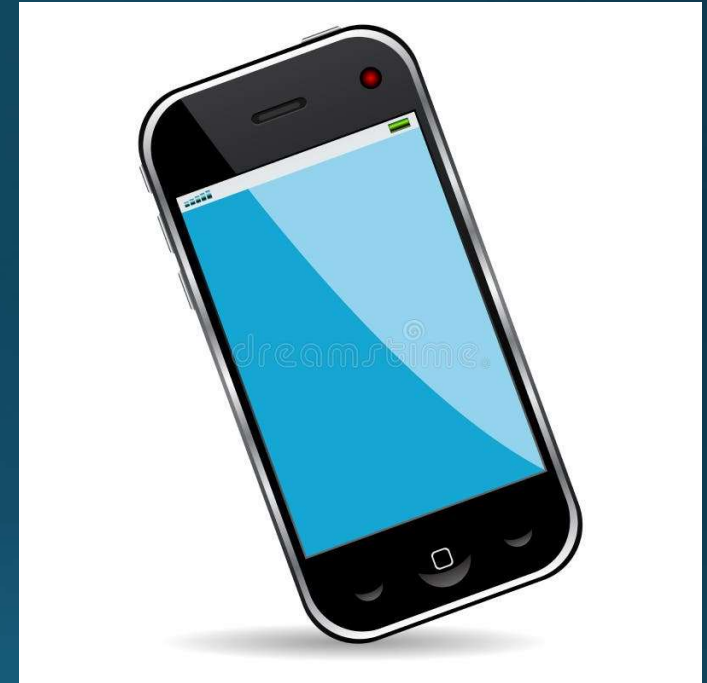
# Anticipatory Warrants

- Where PC does *not* exist, *but will* exist when certain events happen
- Think ongoing investigations
- They have been approved
- Take a cautious approach



# Digital Evidence (1):

- The Fourth Amendment textual basics
- *Nothing* disappears!
- *Hidden* data
- Geolocation data – it's everywhere
- Timing: add transport and analysis language



## Digital Evidence (2):

- Third party carrier data
- Carpenter v. US & US v. Jones
- 18 USC 2703
- *Subscriber? Records? Content?*





# Motions to Suppress

- *Illinois v. Gates*, 462 U.S. 213 (1983)
- PC
- Totality of the Circumstances
- “The task of the Magistrate...”
- “Fair probability...”



# Homicide Investigations



# Homicides:

- The Importance of the crime scene
- The basic legal elements (mens rea)



# Homicides (continued):

- Motive & premeditation evidence
- Negating future defenses (mental, intoxication, etc.)
- Gangs / 404(b)



# Practical Tips: The “Art” of the SW

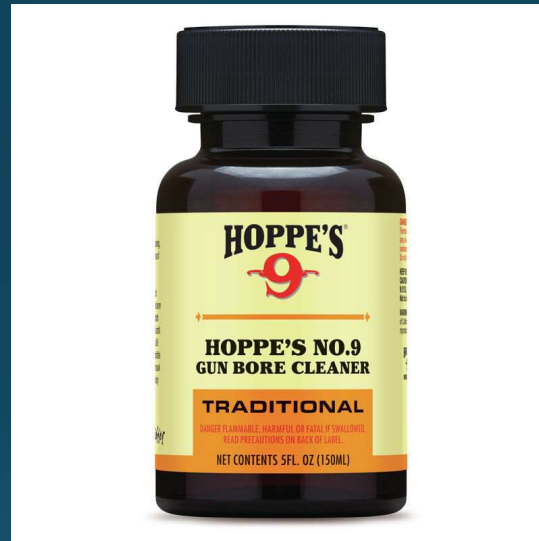




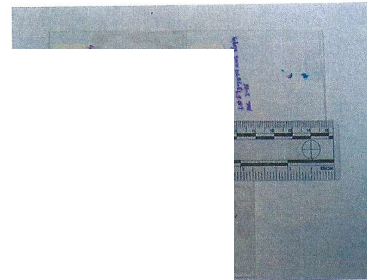
# Items



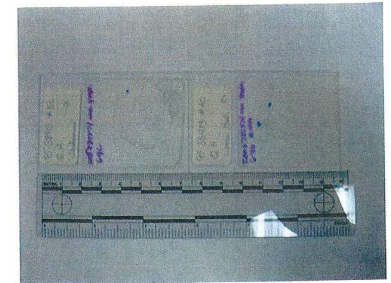
# Tip: “Get Small”



# “Get Small” (continued)



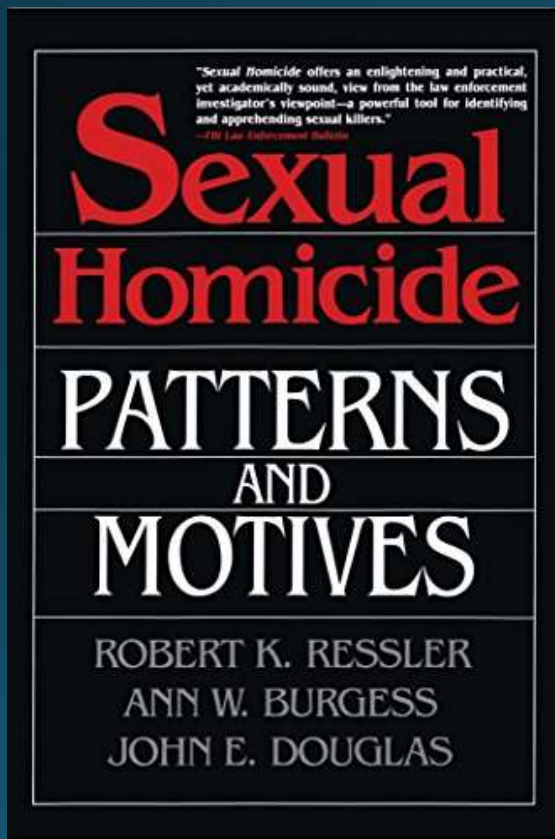
Item 3 slides



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Item 6 slides

# COLD CASES & ADVANCED SEARCH WARRANTS



On Saturday, January 12, 1991, Cobb County 911 Center received a call regarding a deceased female located at a recreational area on Lake Acworth, Cobb County, Georgia, after fishermen discovered murder victim Yvonne Weems on a shoreline. Cobb County Police Department (CCPD) opened an investigation. Weems appeared to have been sexually assaulted. Her pants and panties were pulled down to her ankles and her shirt was pushed up above her breast line. The crotch area of her pants were ripped below the zipper and her under shorts were also torn. Other clothing items of Weems were found near her body but removed from her person. Weems suffered from two gunshot wounds that appeared to have been close or press contact in nature. She was shot to death with a .22 caliber firearm. Projectiles were recovered during a subsequent autopsy.

Victim Yvonne Weems was not from the Acworth area. Weems was residing in Atlanta at the time of her murder and had only minor encounters with law enforcement prior to her murder. As part of the 1991 criminal investigation, oral, anal and vaginal swabs were collected from Weems during her autopsy. These swabs were maintained by CCPD as evidence after their collection. This murder was investigated as a sexually motivated homicide. After initial leads failed to reveal a viable suspect, the investigation eventually went inactive.

In 2014, the swabs collected from Weems were submitted to the Georgia Bureau of Investigations Division of Forensic Sciences (GBI) for analysis. On Monday, February 23, 2015, the GBI notified CCPD that DNA of a male assailant had been developed from Weems's vaginal and anal swabs. The DNA profile from the vaginal swabs was entered into the Combined DNA Index System (CODIS) and a match was obtained. The CODIS match returned to George Gengarely (DOB 5/20/1951).

George Gengarely is a convicted offender out of the state of Florida. His DNA profile had been added to the national CODIS database after he was convicted of Attempted Murder out of Volusia County, Florida, in 1998, for crimes he committed on October 13, 1995. The facts of the Florida conviction reveal that Gengarely picked up a female victim in Daytona who was originally from St. Louis, Missouri. Gengarely brought her back to a residence where he was staying. There he brutally assaulted and raped her. Gengarely beat the victim repeatedly about her head with a mallet made from a steel pipe and duct tape. Gengarely bound the victim's hands up with her own bathing suit and forcibly raped her. After he tried to anally sodomize his victim, she managed to free herself from her bathing suit and fled the residence to a neighboring residence. These neighbors called 911 reporting that the nude and bloodied victim had escaped the incident location after having been assaulted. Police in Volusia County arrived and apprehended Gengarely in the residence where the attempted murder and rape occurred. He had apparently showered before police arrived. The victim later identified Gengarely as her assailant.

Gengarely initially went on trial in Volusia County, Florida, in 1996. Before a verdict was rendered, he fled the State of Florida and eventually returned to Cobb County, Georgia. A mistrial was declared in Florida. Thereafter, Gengarely became a fugitive. Gengarely was apprehended in Cobb County, Georgia, by CCPD during an unrelated investigation on 9/11/1997. He was returned to the State of Florida and went on trial a second time for his crimes in Volusia County. During this second trial, Gengarely admitted to picking up the Florida victim and driving her to his residence for sex, but claimed he assaulted her only after she attacked him for refusing to pay her for sex. A jury convicted Gengarely of attempted murder and he was sentenced to 15 years to serve in the State of Florida prison system.

# DEFINE THE CRIME

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# CALL HIM OUT: "SEXUAL SADIST"

Based on the 2015 CODIS match in the Yvonne Weems murder case out of Cobb County, Georgia, a Georgia arrest warrant was issued for Gengarely charging him with Murder, Rape, Aggravated Assault, Aggravated Sodomy, and Possession of a Firearm during the Commission of Crimes, felonies in the State of Georgia.

As part of the investigation into the murder of Yvonne Weems, a background investigation into Gengarely was conducted. Gengarely currently lives at 3401 SE FT King St Apt A107, Ocala, Florida. In addition to the aforementioned Florida felony conviction, Gengarely's criminal history reveals that he has several other arrests and/or convictions for sexual misconduct, including Lewd and Lascivious Behavior, Sexual Battery and Indecent Exposure. Both the Georgia and Florida crimes reveal that Gengarely is a sexual sadist. Gengarely's sexually related attempted murder conviction occurred almost five full years after the murder he committed in Cobb County Georgia. In both cases, Gengarely had sexual contact with his victims before assaulting them with weapons. In both cases, Gengarely

all evidence related to firearms and weapons in Gengarely's possession.

Based on the foregoing, affiant is seeking any and all evidence related to Gengarely's sexual conduct including, but not limited to, electronic, documentary, photographic, and/or video format and any and all electronic devices that may contain the same. Furthermore, based on the foregoing, affiant is

# "SEXUAL SADISTS" – GETTING PAST STALENESS

degrading state of undress. In both cases, he either penetrated or attempted to penetrate his victims anally. Prior investigations of sexually motivated crimes and homicides have shown that sexual sadists often fantasize about sexually deviant behavior and degradation. Georgia law allows for the liberal admission of sexually related evidence in sexually motivated homicide cases, including, but not limited to, the prior bad acts themselves, related evidence, and pornographic materials. During the recent investigation into Gengarely it was learned that he uses FaceBook, a social media outlet that allows for viewing and sharing personal information, digital materials, videos and photos over the internet. FaceBook can be accessed from any number of electronic devices, including computers, tablets, phones, and other similar devices. Pornographic materials can also be contained, shared and viewed on and from these devices, as well as thumb drives, external hard drives, and electronic storage devices. Affiant is seeking any and all evidence related to Gengarely's sexual conduct; be it in electronic, documentary, photographic, and/or video format. In many instances, this material can be found using computer and electronic analysis, even when an offender has tried to delete it from a device.



# BE CREATIVE, “GET SMALL”: STATUTE OF LIMITATIONS

limitations for murder in the state of Georgia, there is a statute of limitations for other offenses. However, Georgia’s statute of limitations includes a tolling provision for periods of time in which an offender is not “regularly a resident within the state.” Because the State must both allege and prove this tolling provision beyond a reasonable doubt, affiant is seeking any and all evidence that would prove that the offender was a resident of any state other than Georgia that he may be in his possession

books, magazines, in tangible or electronic format, ammunition, cleaning materials and other weapons related evidence and any and all electronic devices that may contain evidence related thereto.

Furthermore, based upon the foregoing, there is probable cause to believe that the files, documents, and all related equipment and materials as previously stated are located at said premises. Therefore, the issuance of a search warrant is requested to seize, analyze, and examine the contents of any and all material and related equipment, as previously stated in this affidavit, and the relevant items be

Additionally, it is well known that persons often retain documentary information regarding their employment and residence history. Though the investigation into Gengarely has revealed some ties to Georgia, affiant is seeking additional evidence to link him to the State of Georgia and/or Cobb County. This evidence may be maintained in tangible, documentary, or electronic formats. Because it appears that victim Yvonne Weems was transported from Atlanta to Cobb County where her body was

# Conclusion



# Be “artists”...





“Fear not...”



# Be Strategic



# Executing the SW

SW NO. \_\_\_\_\_

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES  
**SEARCH WARRANT AND AFFIDAVIT**  
(AFFIDAVIT)

SAS James F. Hirt \_\_\_\_\_ swears under oath that the facts expressed by him/her in this  
(Name of Affiant)

Search Warrant and Affidavit and in the attached and incorporated statement of probable cause are true and that based thereon he/she has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

\_\_\_\_\_  
(Signature of Affiant)

HOBBS SEALING REQUESTED: ☒ YES ☐ NO  
NIGHT SEARCH REQUESTED: ☐ YES ☒ NO

**(SEARCH WARRANT)**

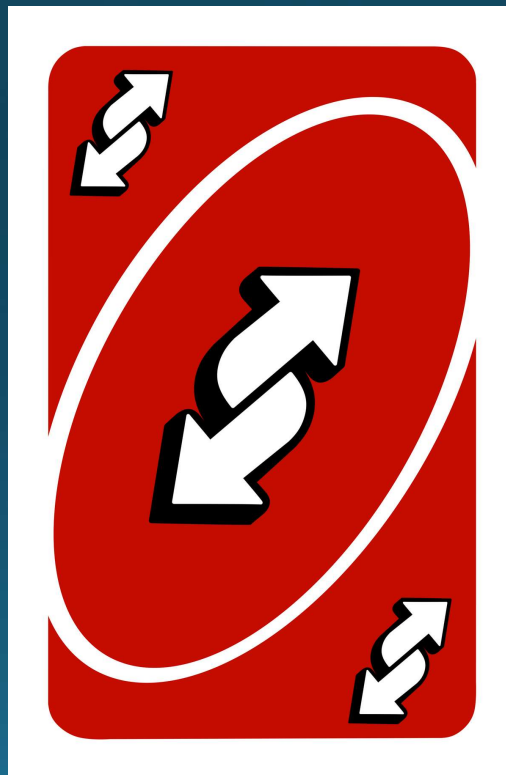
THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF LOS ANGELES:  
proof by affidavit having been made before me by SAS James F. Hirt \_\_\_\_\_  
(Name of Affiant)

that there is probable cause to believe that the property and/or person described herein may be found at the locations set forth herein and is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x" (s) in that:

\_\_\_\_\_ it was stolen or embezzled  
X \_\_\_\_\_ it was used as the means of committing a felony  
\_\_\_\_\_ it is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery,  
X \_\_\_\_\_ it tends to show that a felony has been committed or that a particular person has committed a felony,  
\_\_\_\_\_ it tends to show that sexual exploitation of a child in violation of Section 311.3, or depiction of sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring  
\_\_\_\_\_ there is a warrant for the person's arrest;

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

# Executing the SW: Know when to “back out”...



# “Bruton” / Standing Anecdote





# Strategy

- Think!
- Act!
- Be a “supportive” voice!
- FIGHT!

# APPENDIX MATERIALS

## JESSE EVANS

### QUESTIONS?

- Chief of Police / Special Prosecutor
- [jevans@acworth.org](mailto:jevans@acworth.org)
- [jevenas@acworth-ga.gov](mailto:jevenas@acworth-ga.gov)
- (678) 522-9503