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CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
SHARLA KNOX, CLERK

**IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA
THIRTEENTH JUDICIAL CIRCUIT**

STATE OF ALABAMA,

PLAINTIFF,

V.

JONATHAN NAKHLA,

DEFENDANT.

CASE NO. CC-21-2477

**MOTION TO SUPPRESS ANY AND ALL EVIDENCE RECOVERED FROM THE
DEFENDANT'S VEHICLE DURING THE COURSE OF AN ILLEGAL SEARCH NOT
BASED ON PROBABLE CAUSE**

COMES NOW, Jonathan Nakhla, by and through undersigned counsel of record, and hereby moves this Honorable Court, pursuant to Article 1 Section 6 of the Alabama Constitution, Rule 15.6 of the Alabama Rules of Criminal Procedure, and the Fourth, Fifth and Sixth Amendments of the United States Constitution, to enter an Order suppressing all evidence seized from Dr. Nakhla's vehicle (2018 Black Audi R8 Spyder V10, bearing Tag JLB867, VIN: WUA4BCFX5J7900874) and later illegally searched due to a lack of probable cause on August 6, 2020. As grounds for this Motion, the following is asserted:

On August 1, 2020, a traffic fatality involving Dr. Jonathan Nakhla and Samantha Thomas occurred on the West I-65 Service Road in Mobile, AL. Dr. Nakhla's vehicle was immediately seized and transported to the Mobile Police Department Impound Yard. Less than eleven hours later, Det. Mccullough supplied a Mobile County Judge with a one (1) page affidavit in support of a search warrant to search the ECM (Electronic Control Module) and/or ACM (Airbag Control Module) from a 2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867 and VIN: WUA4BCFX5J7900874. Exhibit A – Affidavit for Search Warrant.

The affidavit failed to provide information related to Det. McCullough's training and experience in handling such matters and how there was a criminal nexus between the vehicles' Electronic Control Module (ECM) and/or Airbag Control Module (ACM) (hereinafter referred collectively as the "Black Box") and his investigation. The affidavit never mentioned a crime being committed or suspected of being committed. The "establishing probable cause for search" section of the affidavit, is limited to the following information ("Fact Section"):

"I am Officer David McCullough of the Mobile Police Department, currently assigned to the Traffic Safety Division as a Traffic Homicide Investigator. On Saturday, August 1, 2020 at approximately 0040 hours a 2018 Audi RS Spyder VJ0 operated by Jonathan Pishoi Nakhla was traveling south on West J-65 Service Rd. and left the roadway to the left and struck the ditch, the fence and, guardrail for 1-65 causing the death of his passenger Samantha Alison Thomas.

I respectfully request the ECM (Electronic Control Module) and/or ACM (Airbag Control Module) within the 2018 Black Audi RS Spyder VIO, bearing Alabama Tag JLB867 and having vehicle identification number of: WUA4BCFXSJ7900874, be ordered and turned over to Officer David McCullough to be taken for the purpose of analysis to collect and preserve the crash data contained therein. I believe analysis of this data will greatly assist in the investigation of this crash."

Based on this information and outside of the unfortunate passing of Ms. Thomas, there is no discernable information supplied in the search warrant affidavit that would differentiate this wreck and the majority of traffic accidents that occur throughout Mobile County, the State of Alabama, and the United States where no search warrant is ever requested. However, solely because a death did occur, Det. McCollough requested a search warrant because he believed "this data will greatly assist in the investigation of this crash" - an investigation that does not always involve criminal conduct or activity. In -fact, there is an "X" next to "Fatal Crash Investigation", under the grounds for search section of the one page affidavit.

The Alabama Court of Criminal Appeals has made clear that

“[A] search warrant may only be issued upon a showing of probable cause that evidence or instrumentalities of a crime or contraband will be found in the place to be searched.’ *United States v. Gettel*, 474 F. 3d 1081, 1086 (8th Cir. 2007).

Earl v. State, 309 So. 3d 641, 647 (Ala. Crim. App. 2020)

Based upon the well-established legal authorities above and pursuant to the 4th Amendment to the U.S. Constitution, probable cause was lacking for the issuance of the search warrant of Dr. Nakhla’s vehicle data as a matter of law. Nothing in the affidavit supports a finding of probable cause that criminal activity or contraband would be found in the ECM or ACM of Dr. Nakhla’s vehicle. In fact, the last sentence of the affidavit provides the main catalyst for why the search warrant was requested: “I believe analysis of this data will greatly assist in the investigation of this crash.” Det. McCullough’s own words clearly demonstrate there was **no criminal investigation at this time** but solely an investigation involving a traffic accident that unfortunately caused the death of the passenger.

In the end, Det. McCullough’s request amounted to a fishing expedition. However, for Fourth Amendment purposes, a requirement that officers have objective, articulable suspicion of criminal activity is required before making a request to search as it lessens the risk of arbitrary action and fishing expeditions based on nothing more than inarticulate hunches. *Ex parte Parker*, 858 So. 2d 941, 945 (Ala. 2003) (quoting *Alford v. State*, 381 So. 2d 203, 205 (Ala. Crim. App. 1979)). (“[s]ufficient evidence must be stated in the affidavit to support a finding of probable cause for issuing the search warrant,” and “[t]he affidavit must state specific facts or circumstances which support a finding of probable cause[;] otherwise the affidavit is faulty and the warrant may not issue.” ’). See also 4 Wayne R. LaFave, *Search and Seizure*, Sec. 108(d), at 696 (3d ed. 1995).

As there was no objective, articulable suspicion that evidence of a crime would be found, the evidence seized as a result of this search warrant should be suppressed. Alabama Courts have

invalidated search warrants containing far more specific and reliable facts establishing a nexus to criminal conduct than what is found in Det. McCullough's search warrant affidavit.

WHEREFORE, premises considered, Dr. Nakhla prays that this Honorable Court will uphold that the 4th Amendment of the United States Constitution still protects citizens from unreasonable searches and seizures and suppress all evidence seized, including but not limited to the electronic contents of the Defendant's vehicle (2018 Black Audi R8 Spyder V10, bearing Tag JLB867, VIN: WUA4BCFX5J7900874) that was illegally searched due to a lack of probable cause. Dr. Nakhla requests a hearing on said motion.

RESPECTFULLY SUBMITTED,

/s/ Richard S. Jaffe
RICHARD S. JAFFE

/s/ Michael W. Whisonant
MICHAEL W. WHISONANT

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/s/ Dennis J. Knizley
DENNIS J. KNIZLEY

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 17th day of January 2023 served a copy of the foregoing by electronically filing to all parties involved.

/s/ Richard S. Jaffe
RICHARD S. JAFFE



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CIRCUIT COURT OF
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**IN THE CIRCUIT COURT OF MOBILE COUNTY
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BASED ON PROBABLE CAUSE**

COMES NOW, Jonathan Nakhla, by and through undersigned counsel of record, and hereby moves this Honorable Court, pursuant to Article 1 Section 6 of the Alabama Constitution, Rule 15.6 of the Alabama Rules of Criminal Procedure, and the Fourth, Fifth and Sixth Amendments of the United States Constitution, to enter an Order suppressing all evidence seized from Dr. Nakhla's vehicle (2018 Black Audi R8 Spyder V10, bearing Tag JLB867, VIN: WUA4BCFX5J7900874) and later illegally searched due to a lack of probable cause on September 28, 2020. As grounds for this Motion, the following is asserted:

On August 1, 2020, a traffic fatality involving Dr. Jonathan Nakhla and Samantha Thomas occurred on the West I-65 Service Road in Mobile, AL. Dr. Nakhla's vehicle was immediately seized and transported to the Mobile Police Department Impound Yard. Approximately two months later, Trooper Ronnie Redding provided Judge Basenberg, a Mobile County Judge, with a one (1) page affidavit in support of a search warrant to search the ECM (Electronic Control Module) and/or ACM (Airbag Control Module) from a 2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867 and VIN: WUA4BCFX5J7900874. Exhibit A at 1 – Affidavit for Search Warrant.

The affidavit failed to provide information related to Trooper Redding's training and experience in handling such matters and how there was a criminal nexus between the vehicles' Electronic Control Module (ECM) and/or Airbag Control Module (ACM) (hereinafter referred collectively as the "Black Box") and his investigation. The affidavit never mentioned a crime being committed or suspected of being committed. The "establishing probable cause for search" section of the affidavit, is limited to the following information ("Fact Section"):

"On Saturday, August 1, 2020, Nakhla was operating his 2018 Audi R8, JLB867/AL VIN:WUA4BCFX5J7900874, southbound on West I-65 Service Road toward Airport Blvd. Nakhla lost control of the Audi, crossing over the centerline, and through the northbound lane before leaving the roadway, The Audi continued through a chain-linked fence, then impacting a grass embankment and guardrail. The Audi overturned, coming to rest upside down in the drainage ditch which runs parallel and between the Service Road and I-65 southbound exit ramp.

Samantha Thomas, front-seat passenger, in the Audi sustained fatal injuries.

At the request of Lt John Angle, Mobile Police Dept- Commander Traffic Safety Unit, ALEA is giving assistance in the reconstruction of this crash event."

Exhibit A

The search warrant was signed on September 28, 2020, and was not returned until October 16, 2020 to this Honorable Court. Exhibit A at 2-3.

Based on this information and outside of the unfortunate passing of Ms. Thomas, there is no discernable information supplied in the search warrant affidavit that would differentiate this wreck and the majority of traffic accidents that occur throughout Mobile County, the State of Alabama, and the United States where no search warrant is ever requested. However, solely because a death did occur, Trooper Redding requested a search warrant because he believed "this data will greatly assist in the investigation of this crash" - an investigation that does not, without more asserted information, involve criminal conduct or activity. In fact, Trooper Redding's affidavit only notates that this is an investigation surrounding a "traffic collision" and does not provide any reason or rationale as to how a crime occurred.

The Alabama Court of Criminal Appeals has made clear that

“[A] search warrant may only be issued upon a showing of probable cause that evidence or instrumentalities of a crime or contraband will be found in the place to be searched.” *United States v. Gettel*, 474 F. 3d 1081, 1086 (8th Cir. 2007).

Earl v. State, 309 So. 3d 641, 647 (Ala. Crim. App. 2020)

Based upon the well-established legal authorities above and pursuant to the 4th Amendment to the U.S. Constitution, probable cause was lacking for the issuance of the search warrant of Dr. Nakhla’s vehicle data as a matter of law. Nothing in the affidavit supports a finding of probable cause that criminal activity or contraband would be found in the ECM or ACM of Dr. Nakhla’s vehicle. Any information learned subsequent to the issuance of the search warrant would in no way change the analysis or law. In fact, the last sentence of the affidavit provides the main catalyst for why the search warrant was requested: “I believe that the analysis of this data will greatly assist in the investigation of this crash.” Trooper Redding’s own words clearly demonstrate there was **no criminal investigation at this time** but solely an investigation involving a traffic accident that unfortunately caused the death of the passenger.

In the end, Trooper Redding’s request was a fishing expedition. However, for Fourth Amendment purposes, a requirement that officers have objective, articulable suspicion of criminal activity is required before making a request to search as it lessens the risk of arbitrary action and fishing expeditions based on nothing more than inarticulate hunches. *Ex parte Parker*, 858 So. 2d 941, 945 (Ala. 2003) (quoting *Alford v. State*, 381 So. 2d 203, 205 (Ala. Crim. App. 1979)). (“[s]ufficient evidence must be stated in the affidavit to support a finding of probable cause for issuing the search warrant,” and “[t]he affidavit must state specific facts or circumstances which support a finding of probable cause[;] otherwise the affidavit is faulty, and the warrant may not issue.”). See also 4 Wayne R. LaFave, *Search and Seizure*, Sec. 108(d), at 696 (3d ed. 1995).

As there was no objective, articulable suspicion a crime occurred, the evidence seized as a result of this search warrant should be suppressed. Alabama Courts have invalidated search warrants containing far more specific and reliable facts establishing a nexus to criminal conduct than what is found in Trooper Redding's search warrant affidavit.

WHEREFORE, premises considered, Dr. Nakhla prays that this Honorable Court will uphold that the 4th Amendment of the United States Constitution still protects citizens from unreasonable searches and seizures and suppress all evidence seized, including but not limited to the electronic contents of the Defendant's vehicle (2018 Black Audi R8 Spyder V10, bearing Tag JLB867, VIN: WUA4BCFX5J7900874) that was illegally searched due to a lack of probable cause. Dr. Nakhla requests a hearing on said motion.

RESPECTFULLY SUBMITTED,

/s/ Richard S. Jaffe
RICHARD S. JAFFE

/s/ Michael W. Whisonant
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OF COUNSEL:
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/s/ Dennis J. Knizley
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CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 17th day of January 2023 served a copy of the foregoing by electronically filing to all parties involved.

/s/ Richard S. Jaffe
RICHARD S. JAFFE



IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA
THIRTEENTH JUDICIAL CIRCUIT

STATE OF ALABAMA,

PLAINTIFF,

V.

JONATHAN NAKHLA,

DEFENDANT.

CASE NO. CC-21-2477

**OBJECTION TO STATE'S NOTICES OF INTENT TO INTRODUCE PURSUANT TO
RULE 404(b)**

COMES NOW, Jonathan Nakhla, by and through undersigned counsel of record, and files this objection to the State's Notice of Intent to Introduce Rule 404(b) evidence during the trial of this matter. The State has provided notice of specific instances of collateral conduct that serves no other purpose than conformity and to inflame the jury. In support of this objection, the defendant sets forth the following:

"The rule [404] protects the defendant's right to a fair trial. It seeks "to prevent conviction based on a jury belief that the accused is a person of bad character. The jury's determination of guilt or innocence should be based on evidence relevant to the crime charged." *Ex parte Cofer*, 440 So. 2d 1121, 1123-24 (Ala. 1983); *Goodman v. State*, 401 So.2d 208, 212 (Ala.Cr.App.1981), *cert. denied*, 401 So.2d 213 (Ala.1981), citing *United States v. Turquitt*, 557 F.2d 464, 468 (5th Cir.1977).

On August 1, 2020, a traffic accident involving Jonathan Nakhla and Samantha Thomas occurred on the West I-65 Service Road in Mobile, AL. Despite originally being charged with Manslaughter, Dr. Nakhla was indicted for Reckless Murder.

The State of Alabama seeks to introduce evidence of numerous improper collateral conduct. Not only does their notice contain improper character evidence, it also includes improper

legal conclusions and evidence that is not relevant to this case. The State filed their first notice on January 7, 2022, stating that the three (3) acts noted would be used to “show the absence of mistake or accident”. Doc. 47.

1. “...defendant had been driving this same vehicle prior to this crash with passenger Nazmi Ozokur. The passenger Mr. Ozokur stated that at that time the defendant’s driving habits were extremely reckless. He drove the vehicle on the interstate in a reckless manner. After arriving back at the apartment, Mr. Ozokur said he was afraid that the defendant was going to kill someone the way he was driving and would not get back in the car with him again.” Doc. 47
2. Photo from phone showing Dashboard of vehicle at 159 mph taken on June 26, 2020.
3. “In the hours before the crash that caused the death of Samantha Thomas, the evidence will be that the defendant left the apartment after drinking driving the Audi R8 vehicle with witness Paige Farley. Ms. Farley will testify that they left the complex with the defendant driving the car and they got on the interstate and were driving Northbound to Springhill Avenue. Ms. Farley will also testify that the defendant got the vehicle up to speeds of 155 MPH and she looked at the speedometer while the defendant was driving. She will also testify that she was extremely frightened to the point that she knew she was going to die if the vehicle crashed. She will state that the defendant was approaching cars at a fast rate of speed and swerving around them and that he while driving placed his hand on her thigh and made her feel uncomfortable. Ms. Farley will also state that the defendant ask her to have sex with her while in the car and she refused.”

Doc. 47.

The State then filed an additional notice of 404(b) on December 12, 2022, listing 4 more specific instances, yet not submitting a reason of why it is admissible. Doc. 104.

1. “...Dr. Amber Gordon, medical partner to the defendant, will testify that she knows the defendant likes to drive fast and bragged about it to her a lot. She also will testify that he has told her he lives to pull out his police badge and that the badge is his get out of jail free card. He has told her about the many times he has been pulled over and uses badge to get out of it while driving speeds of 150-160 mph in his Audi R8. She has also personally witnessed him driving fast in the months before the crash well over the speed limit on Dauphin Street when recruiting employees at dinners.” Doc. 104.
2. “Officer Santaun McGee pulled the defendant over for revving his car engine and showing off in his car on Dauphin Street in the months leading up to the crash and intends to introduce and show body cam footage of this event where the defendant immediately upon being approached by the Officers shows him his police badge.” Doc. 104.
3. “...on the night of the incident Tristan Hughes was with the Defendant when the defendant made a statement saying ‘every time I get pulled over for going 80 in a 45 I just show the police my police surgeons id card and they know who I am and they let me go’ while pulling out his police surgeons ID card from his wallet and showing it to Tristan.” Doc.

104.

4. "Captain William Reed with the Mobile Police Department will testify that in January of 2020, Dr. Jonathan Nakhla volunteered to be a police surgeon. On June 8, 2020, the defendant came to the Mobile Police Department office on Museum Drive to pick up his police surgeon badge. At this time, he discussed his Audi Spyder with a v10 Lamborghini Engine in it and discussed with Captain Reed how he has driven it fast a few times. The defendant then called Captain Reed again on August 5, 2020, after the crash and told him he had gotten someone to cover his call out schedule for the week but he would be able to work as the Police Surgeon the following week for call outs if needed."

Doc. 104.

The above are inadmissible pursuant to Rules 402, 403 and 404 of the Alabama Rules of Evidence.

Legal Framework:

Rule 404(a) establishes the concept that evidence of collateral conduct generally is inadmissible when offered to prove that the person committing the conduct is of a certain character and, consequently, acted in keeping with that character on the occasion of the act now at issue.

It is well settled law in Alabama that, unlike the corresponding Federal Rule, Alabama Rules of Evidence 404(b) is **exclusionary** from its basis. Under the Alabama rules, the prejudice from the evidence or testimony of prior or subsequent bad acts is presumed as a matter of law.

The State has no absolute right to use evidence of prior acts to prove the elements of an offense or to buttress inferences created by other evidence. Evidence of prior bad acts of a criminal defendant is presumptively prejudicial to the defendant. It interjects a collateral issue into the case which may divert the minds of the jury from the main issue. *Ex parte Cofer*, 440 So. 2d 1121, 1124 (Ala. 1983); *Kilpatrick v. State*, 51 Ala.App. 352, 285 So.2d 516 (1973), *cert. denied*, 291 Ala. 628, 285 So.2d 525 (1973).

Given the presumptively prejudicial nature of prior bad acts, the State has the burden of overcoming the exclusionary nature of Rule 404(b). The Alabama Supreme Court discussed this issue and its history prior to the adoption of our formal rules of evidence in *Ex Parte Casey*, 889 So. 2d. 615 (Ala. 2004):

Long before the adoption and effective date of Rule 404(b) on January 1, 1996, the exclusionary rule was explained and followed in our caselaw. The adoption of Rule 404(b) did not abrogate our prior caselaw on the exclusionary rule. Our caselaw

explains the purpose of the exclusionary rule: The general rule is that in criminal prosecutions, evidence of prior criminal acts is not admissible since the only facts to be laid before the jury *should consist exclusively of the transaction which forms the subject of the indictment*, and which alone the defendant is called on to answer. Internal citations omitted.

...
It is the law that distinct criminal acts, having no connection with [the charged offense], and shedding no light on defendant's connection therewith, are inadmissible. Such testimony may tend to create an atmosphere upon the trial highly injurious to the defendant. Care should always be taken not to convict a man of one alleged crime because he has been guilty of another. *Harden v. State*, 211 Ala. 656 (1924).

Collateral conduct may only gain admissibility when relevant to some other material purpose in the case.

Rule 404(b) of the Alabama Rules of Evidence sets forth the following:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or **acts is not admissible to prove the character of a person in order to show action in conformity therewith**. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial. (emphasis added).

“Rule 404(b) is a test of relevancy.” *Draper v. State*, 886 So. 2d 105, 119 (Ala. Crim. App. 2002). Alabama Rule of Evidence 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 402 states “[e]vidence which is not relevant is not admissible”. Evidence is admissible only when the purpose for which it is offered is a material issue in the case.

At issue in this case is whether or not Dr. Nakhla committed reckless murder as defined in Ala. Code §13A-6-2(a)(2), as alleged in the indictment. Specifically, whether Jonathan Nakhla did “engage in conduct which manifested extreme indifference to human life and created a grave risk

of death to a person other than the said Jonathan Pishoi Nakhla ... by driving at a high rate of speed and/or driving while under the influence of alcohol...” Doc. 1

As the Alabama Court of Criminal Appeals has consistently held:

“““Judicial inquiry does not end with a determination that the evidence of another crime is relevant and probative of a necessary element of the charged offense. It does not suffice simply to see if the evidence is capable of being fitted within an exception to the rule. Rather, a balancing test must be applied. **The evidence of another similar crime must not only be relevant, it must also be reasonably necessary to the government's case, and it must be plain, clear, and conclusive, before its probative value will be held to outweigh its potential prejudicial effects.**” *Anderson v. State*, No. CR-20-0568, 2022 WL 420076, at *4 (Ala. Crim. App. Feb. 11, 2022), quoting *Averette v. State*, 469 So. 2d 1371, 1374 (Ala. Crim. App. 1985), quoting *United States v. Turquitt*, [557 F.2d 464] at 468-69 [(5th Cir.1977)].” *Robinson v. State*, 528 So. 2d 343, 347 (Ala. Crim. App. 1986).” *Bailey v. State*, 75 So. 3d 171, 184-85 (Ala. Crim. App. 2011).

Argument:

The State has failed to overcome the exclusionary nature of Rule 404(b). The State identified a single purpose for the first set of 404(b) notice, and that was “absence of mistake or accident.” Doc. 47.

Based on the information provided by the State in the indictment, ‘absence of mistake or accident’ must be solely related to the act of speeding at the time of the incident. However, this has not been alleged by Dr. Nakhla in this case and is therefore not an allowable material purpose at this time. “For collateral-act evidence to be admissible for one of the “other purposes” in Rule 404(b), there must be “**a real and open issue as to one or more of those “other purposes.”**” *Draper v. State*, 886 So. 2d 105, 117 (Ala. Crim. App. 2002); *Gillespie v. State*, 549 So.2d 640, 645 (Ala.Crim.App.1989), quoting *Bowden v. State*, 538 So.2d 1226, 1227 (Ala.1988).

Dr. Nakhla never suggested the act of speeding was an “accident.” Therefore, the absence of mistake or accident has no application here and serves no other purpose but to prejudice Dr. Nakhla’s right to a fair trial under Article 1 Section 6 of the Alabama Constitution and the 6th

amendment to the U. S. Constitution.

As for the second notice of 404B provided by the State, there was no permissible “purpose” offered by the State as to why this improper character evidence would be admissible. Therefore, it should be excluded at trial.

In the end, **none of the proposed collateral conduct is reasonably necessary** to the State’s case. Nor is it plain, clear, and conclusive, which is necessary for its probative value to be held to outweigh its potential prejudicial effects. This collateral conduct comes in the form of witnesses relaying what Dr. Nakhla allegedly said or allegedly did. That is clearly distinct from having prior speeding tickets or DUIs, where the alleged defendant has been charged and convicted of the conduct. Below is a response to each set of improper character evidence proposed by the State and why it is improper and should not be allowed to be heard by a jury in this case.

A. Mr. Ozokur’s proposed testimony is speculative, makes legal conclusions, invades the province of the jury, and is improper character evidence.

The proposed testimony of allegations of previous instances of speeding by Dr. Nakhla is improper character evidence. As referenced above, while the State argues it is used to show “absence of mistake or accident,” mistake has not been made an issue in this case as it relates to speed. Therefore, the only relevance this evidence has is for the improper purpose of conformity which is clearly impermissible:

The same can be said for the comment that he was worried that Dr. Nakhla “was going to kill someone the way he was driving and would not get back in the car with him.” Doc. 47. This is not only irrelevant, but also speculative and unfairly prejudicial. In addition, it violates the evidentiary rule of prohibiting offering a layperson’s state of mind, as it is speculative. Rule 401 Alabama Rules of Evidence.

Further, any statements/opinions of previously driving “recklessly” are an improper opinion on the ultimate issue. These statements are strictly prohibited under Alabama Rules of Evidence Rule 704 as they are legal conclusions/opinions and go directly to the question that must be solely determined by the jury. Alabama Rules of Evidence Rule 704 (“testimony in the form of an opinion or inference otherwise admissible is to be excluded if it embraces an ultimate issue to be decided by the trier of fact.”) As the Commentary Notes of Rule 704 note, this testimony, especially when “witnesses generally are precluded from giving opinions that involve legal definitions or conclusions,” should be precluded due to “the fear that the admission of such an opinion will preempt the role and function of the factfinder.” See, e.g., *Ex parte Dial*, 387 So.2d 879 (Ala.1980) (reversible error to permit policeman to give opinion as to whether an individual was an “accomplice”); *see also* McElroy's Alabama Evidence, 3rd Ed., s 128.07 (A witness, be he expert or lay, cannot give his opinion when such constitutes a legal conclusion or the application of a legal definition).

The ultimate question (and issue at hand) is whether Dr. Nakhla acted recklessly. Any opinion testimony from a layperson would constitute a legal conclusion or require the application of a legal definition. This testimony also describes the mental state of Dr. Nakhla which is improper.

B. The photo is improper character evidence.

As discussed above there is no other material purpose for a photo of a speedometer that is relevant to the issue at hand in this case other than the improper purpose of conformity. Furthermore, upon review of the discovery provided this picture was taken in May, approximately three (3) months before this incident. The State’s notice referenced when the picture was sent to someone, not when the picture was taken. There is no evidence as to who was driving some unknown vehicle when the picture was taken and where the vehicle was when the picture was

taken, or who took it or whether it was on a speedway. Thus, this collateral assertion/photo is far from plain, clear, and conclusive as required to be admissible. *Anderson v. State*, No. CR-20-0568, 2022 WL 420076, at *4 (Ala. Crim. App. Feb. 11, 2022)

C. Ms. Farley’s proposed testimony contains improper character evidence, is not relevant and is substantially unfairly prejudicial.

Ms. Farley’s proposed testimony of Dr. Nakhla going “up to speeds of 155 MPH” before the accident is also improper character evidence, as its only purpose is to show conformity. The same can be said for the description of Dr. Nakhla’s driving habits earlier in the night while she was in the car. In order for the State to overcome the exclusionary nature of Rule 404(b), Dr. Nakhla would be required to offer testimony that the *act of speeding* was an accident or not a mistake.

Equally inadmissible, prejudicial and egregious though are the attempts by the State to illicit testimony that Dr. Nakhla was attempting to have sexual contact with Ms. Farley that night. This alleged testimony serves no legitimate purpose other than to paint Dr. Nakhla as a “bad guy” and is solely an attempt by the State to inflame the jury against Dr. Nakhla with improper character evidence. This testimony has no relevance to the indictment and is unfairly prejudicial as to whether Dr. Nakhla “drove at a high rate of speed and/or driving while under the influence of alcohol” and therefore recklessly “engage[d] in conduct which manifested extreme indifference” to [Ms. Thomas’s] life and created a grave risk of death...” Doc. 1.

Even if this information was true (which we argue is not), there is no legitimate basis between Dr. Nakhla attempting to have sexual contact with Ms. Farley that night and the traffic fatality that occurred with Ms. Thomas in the vehicle.¹ In the end, this evidence would do little if anything to answer the key question of Dr. Nakhla’s mindset when he drove his vehicle that night, and instead

¹ Furthermore, any attempts by the State to argue the same happened with Ms. Thomas would be speculative and clearly inadmissible.

would likely lead the jurors to conclude that he was the kind of man who would engage in other morally repulsive conduct and who deserved punishment, even if the jurors were not convinced beyond a reasonable doubt that he recklessly “engage[d] in conduct which manifested extreme indifference” to [Ms. Thomas’s] life and created a grave risk of [her] death...” See *Ex parte Cofer*, 440 So. 2d 1121, 1123–24 (Ala. 1983) (“The rule [404] protects the defendant’s right to a fair trial. It seeks “to prevent conviction based on a jury belief that the accused is a person of bad character. The jury’s determination of guilt or innocence should be based on evidence relevant to the crime charged.”).

D. Dr. Amber Gordon’s proposed testimony is not relevant and contains improper character evidence.

As stated throughout, any testimony regarding Dr. Nakhla previously driving fast is improper character evidence. As is whether he allegedly “bragged” about it as characterized.

Any testimony related to Dr. Nakhla’s “police badge” is not relevant and is being used as improper character evidence. There is no fact at issue that Dr. Nakhla having a “police badge” that he allegedly used to get out of speeding tickets is material to. Once again, this is merely another attempt to impugn the character of Dr. Nakhla and improperly inflame the jury. The State has presented no argument to overcome the exclusionary nature of Rule 404(b) to make this admissible.

E. Officer Santana McGee’s proposed testimony is not relevant and contains improper character evidence.

Testimony and bodycam footage of Dr. Nakhla previously “revving” his engine and then showing his “police badge” serves no material purpose and is impermissible under Rule 402, 403, and 404. The State has failed to provide a purpose for this testimony, and it is not relevant and is improper character evidence as to Dr. Nakhla’s alleged conduct on the night of the traffic accident.

F. Tristan Hughes' proposed testimony is not relevant and contains improper character evidence.

Testimony allegedly stating that Dr. Nakhla used his police surgeon's badge to get out of speeding tickets is not relevant to any material issues in this case. Although the State once again failed to provide a purpose for this testimony, it is improper character evidence attempting to show conformity with speeding.

G. Captain William Reed's proposed testimony is not relevant and contains improper character evidence.

Similar to the arguments made in Paragraph F and G again, any testimony regarding Dr. Nakhla and his police surgeon's badge and alleged prior statements of speeding are improper character evidence and mention of the police surgeon's badge are also not relevant.

Not only are the above not relevant, they also are being used to impugn the character of Nakhla, and for the explicit purpose that 404(b) was enacted to prevent.

Conclusion:

Dr. Nakhla has the right to a fair trial. All the proposed 404(b) collateral conduct is the State attempting to assassinate the character of Dr. Nakhla and base their case solely off emotion and prior improper assertions. This is made abundantly clear by their improper attempts to present prior allegations of speed, as well as mentioning of a police badge and testimony of Dr. Nakhla attempting to have sex with another woman. The State has failed to present this Court with a legitimate exception to the exclusionary nature of Rule 404 and none of the proposed collateral conduct should be allowed to be heard by a jury.

RESPECTFULLY SUBMITTED,

/s/ Richard S. Jaffe
RICHARD S. JAFFE

/s/ Michael W. Whisonant
MICHAEL W. WHISONANT

OF COUNSEL:
JAFFE, HANLE, WHISONANT & KNIGHT, P.C.
2320 ARLINGTON AVENUE SOUTH
BIRMINGHAM, AL 35205
205-930-9800

/s/ Dennis J. Knizley
DENNIS J. KNIZLEY

Dennis J. Knizley
7 N. Lawrence Street
Mobile, Alabama 36602
251-432-3799

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 17th day of January 2023 served a copy of the foregoing by electronically filing to all parties involved.

/s/ Richard S. Jaffe
RICHARD S. JAFFE



ELECTRONICALLY FILED
1/18/2023 9:11 AM
02-CC-2021-002477.00
CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
SHARLA KNOX, CLERK

SEARCH WARRANT

District Court / Circuit Court of Alabama, Mobile County

To any Law Enforcement Agency of Mobile County:

Affidavit having been made before me by: Officer David McCullough
Which, establishes probable cause to make the search herein designated, to wit:

1. The () PERSON (X) PLACE to be searched is in Mobile County and is described as:

2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867, VIN: WUA4BCFX5J7900874, registered to Jonathan Pishoi Nakhla, The vehicle is currently in the custody of the Mobile Police Department, stored at the Police Department Impound Yard, located at 1251-B Virginia Street, Mobile, Alabama.

2. The PROPERTY to be searched for and seized, if found, is specifically described as:

The ECM (Electronic Control Module) and/or ACM (Airbag Control Module) from a 2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867 and having vehicle identification number of: WUA4BCFX5J7900874

3. The GROUNDS for search are that said property

- () was stolen or embezzled
- (x) Fatal Crash Investigation
- () Serious injury crash investigation

You are hereby commanded to make said search during daytime and seize said property, if found, leaving a copy of this warrant and a receipt for all property taken. You are further commanded to return this warrant with a written inventory of such property and bring the same before a Judge of the District Court of Alabama, Mobile County, within ten days.

ISSUED: Aug 1, 2020 AT 11:02 A.M.

() Judge, District Court / Circuit Court of Alabama, Mobile County
() Municipal Judge, City of Mobile

RETURN: Search made AUG 6 2020 AT 1421 P.M. The following property was taken and seized:

A COPY OF THE ECM/ACM

Copy given: Y

ARRESTED: N

De nea
Officer

The above officer has sworn to and subscribed this return before me and I have appointed him bailee of the seized property until disposed of by law. DATED: 8/31/2020 1:54 p.m.

[Signature]
Judge, District Court / Circuit Court of Alabama,
Mobile County

STATE OF ALABAMA, MOBILE CO.
I HEREBY CERTIFY THIS
PLEADING WAS FILED ON
2020 AUG 31 PM 2:04
CLERK DISTRICT COURT

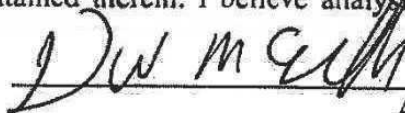
SEARCH AFFIDAVIT**District Court / Circuit Court of Alabama, Mobile County****Affidavit: State of Alabama, Mobile County:****Before the undersigned personally appeared: Officer David McCullough****Who requested a search warrant and in support thereof made oath as follows:**

1. The ☐ PERSON ☒ PLACE to be searched is in Mobile County and is described as:
2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867, VIN: WUA4BCFX5J7900874, registered to Jonathan Pishoi Nakhla. The vehicle is currently in the custody of the Mobile Police Department, stored at the Police Department Impound Yard, located at 1251-B Virginia Street, Mobile, Alabama.
2. The PROPERTY to be searched for and seized, if found, is specifically described as:
The ECM (Electronic Control Module) and/or ACM (Airbag Control Module) from a 2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867 and having vehicle identification number of: WUA4BCFX5J7900874
3. The GROUNDS for search are that said property
☐ was stolen or embezzled
☒ Fatal Crash Investigation
☐ Serious injury crash investigation

4. The FACTS establishing probable cause for search are:

I am Officer David McCullough of the Mobile Police Department, currently assigned to the Traffic Safety Division as a Traffic Homicide Investigator. On Saturday, August 1, 2020 at approximately 0040 hours a 2018 Audi R8 Spyder V10 operated by Jonathan Pishoi Nakhla was traveling south on West I-65 Service Rd. and left the roadway to the left and struck the ditch, the fence and, guardrail for I-65 causing the death of his passenger Samantha Alison Thomas

I respectfully request the ECM (Electronic Control Module) and/or ACM (Airbag Control Module) within the 2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867 and having vehicle identification number of: WUA4BCFX5J7900874, be ordered and turned over to Officer David McCullough to be taken for the purpose of analysis to collect and preserve the crash data contained therein. I believe analysis of this data will greatly assist in the investigation of this crash.



Affiant

Subscribed and sworn to before me this 1 day of August, 2020, at 11:02 a.m.


☒ Judge, District Court / Circuit Court of Alabama, Mobile County
☐ Municipal Judge, City of Mobile

SEARCH WARRANT

District Court / Circuit Court of Alabama, Mobile County

To any Law Enforcement Agency of Mobile County:

Affidavit having been made before me by: Officer David McCullough
Which, establishes probable cause to make the search herein designated, to wit:

1. The () PERSON (X) PLACE to be searched is in Mobile County and is described as:

2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867, VIN: WUA4BCFX5J7900874, registered to Jonathan Pishoi Nakhla, The vehicle is currently in the custody of the Mobile Police Department, stored at the Police Department Impound Yard, located at 1251-B Virginia Street, Mobile, Alabama.

2. The PROPERTY to be searched for and seized, if found, is specifically described as:

The ECM (Electronic Control Module) and/or ACM (Airbag Control Module) from a 2018 Black Audi R8 Spyder V10, bearing Alabama Tag JLB867 and having vehicle identification number of: WUA4BCFX5J7900874

3. The GROUNDS for search are that said property

- () was stolen or embezzled
(x) Fatal Crash Investigation
() Serious injury crash investigation

You are hereby commanded to make said search during daytime and seize said property, if found, leaving a copy of this warrant and a receipt for all property taken. You are further commanded to return this warrant with a written inventory of such property and bring the same before a Judge of the District Court of Alabama, Mobile County, within ten days.

ISSUED: Aug 1, 2020 AT 11:02 A. M.

(x) Judge, District Court / Circuit Court of Alabama, Mobile County
() Municipal Judge, City of Mobile

RETURN: Search made AUG 6 2020 AT 1421 P.M. The following property was taken seized:

A COPY OF THE ECM/ACM

Copy given: Y

ARRESTED: N

Officer

The above officer has sworn to and subscribed this return before me and I have appointed him bailee of the seized property until disposed of by law. DATED:

Judge, District Court / Circuit Court of Alabama,
Mobile County



APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

State of Alabama

STATE OF ALABAMA

v.
Jonathan P. Nakhla
Defendant

In the District/Circuit
Court of Mobile County.

Before me, (Judge's Signature) Joe Basenberg, the
undersigned Authority, personally appeared Trooper Ronnie Redding
who being by me first duly sworn, deposes and says:

I, Trooper Ronnie Redding, am a Traffic Homicide Investigator
with the Alabama Law Enforcement Agency-Mobile
At present I am investigating a vehicular collision which occurred in Mobile
County, Alabama on August 1, 2020, from which there are reported to be
fatal or serious injuries to Samantha Alison Thomas. I have interviewed
witnesses this date and as a result of my investigation state the following:
(State facts below and on the back of this form to include witnesses statements, your
observations, statements of drivers, other facts determined or obtained by you, etc.)
On Saturday, August 1, 2020, Nakhla was operating his 2018 Audi R8, JLB867/AL, VIN: WUA4BCFX5J7900874,
southbound on West I-65 Service Road toward Airport Blvd. Nakhla lost control of the Audi, crossing over the
centerline, and through the northbound lane before leaving the roadway. The Audi continued through a chain-linked
fence, then impacting a grass embankment and guardrail. The Audi overturned, coming to rest upside down in the
drainage ditch which runs parallel and between the Service Road and I-65 southbound exit ramp.

Samantha Thomas, front-seat passenger, in the Audi sustained fatal injuries.

At the request of Lt John Angle, Mobile Police Dept-Commander Traffic Safety Unit, ALEA is giving assistance in
the reconstruction of this crash event.

I would request that the 2018 Audi R8, JLB867/AL, VIN: WUA4BCFX5J7900874, black in color,
registered Jonathan Pishol Nakhla 151 Du Rhu Dr. #2217, Mobile, AL 36608
be ordered turned over to MPD Ofc David A. McCullough & Trooper Ronnie Redding to be taken for the purpose of analysis to
collect and preserve the crash data contained therein.
the 2018 Audi R8, JLB867/AL, VIN: WUA4BCFX5J7900874 is currently at City of Mobile Impound Yard
in Mobile County,
Alabama. The address is 1251 Virginia Str, Lot B Mobile, AL

I believe that the
analysis of this data will greatly assist in the investigation of the crash that occurred on
West I-65 Service Road

CASE NUMBER: AST02-20-146T

Despondent: Ronnie Redding #1420
Undersigned Authority: Joe Basenberg
Date: Sept 28, 2020 Time: 12:24 PM

SEARCH WARRANT

State Of Alabama

STATE OF ALABAMA

v.

Jonathan P. Nakhla
DefendantIn the District/Circuit
Court of Mobile
County.

TO ANY LAW ENFORCEMENT OFFICER WITHIN THE STATE OF ALABAMA:

Affidavit in support of application for search warrant having been made before me, and the Court's finding that grounds for the issuance exist or that there is probable cause to believe that they exist, pursuant to rule 3.8, Alabama Rules of Criminal Procedure, you are hereby ordered and authorized to forthwith search:

THE FOLLOWING PERSON OR PLACE:

2018 Audi R8, JLB867/AL, VIN:WUA4BCFX5J7900874

FOR THE FOLLOWING PROPERTY: The PCM(Powertrain Control Module)and/or ACM(Airbag Control Module) from 2018 Audi R8, JLB867/AL, VIN:WUA4BCFX5J7900874

and make said return of this warrant and an inventory of all property seized thereunder before me within five (5) days and not to exceed ten (10) days as required by law.

☐ This warrant may only be executed in the daytime between the hours of
8:00 A.M., and
5:00 P.M.

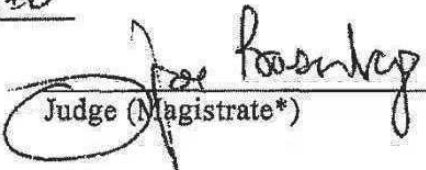
☐ The Court finds probable cause to believe that a nighttime search is necessary, and this warrant may be executed at any time of the day or night.

ISSUED TO

Trooper Ronnie Redding

Sept 28, 2020 at 12:24 o'clock, P.M., this
day of (when warrant is signed) 9/28/2020

* If authorized to practice law
in the State of Alabama


Judge (Magistrate*)

CASE NUMBER: AST02-20-146T

THI-27

SEARCH WARRANT

RETURN

State Of Alabama

v.

STATE OF ALABAMA

Jonathan P. Nakhla
DefendantIn the District/Circuit
Court of Mobile
County.

The Following Property was taken into custody pursuant to the execution of the search warrant: A successful download of the Airbag Control Module (ACM/PCM) of 2018 Audi R8, JLB867/AL, vehicle identification number (VIN) WUA4BCFX5J7900874 was performed on September 30, 2020 by Trooper R. Redding while at City of Mobile Impound Yard.

Sworn to and returned to District court at 9:05 am/pm/hrs
on the 16th day of October, 2020

Ronny R. #1420
Trooper making return of Search Warrant

CASE NUMBER: AST02-20-146TJoe Basen
Judge (Magistrate*)

THI-27B