

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 3:20 PM FILING ID: 1EF15C6F75056 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, v. Mark Redwine Defendant	σ COURT USE ONLY σ
Megan A. Ring, Colorado State Public Defender Justin Bogan 33827 John Moran 36019 175 Mercado St. Suite 250 Durango Colorado 81301 John.moran@coloradodefenderes.us	Case No.: 17CR343 Div. 1
[D-100] MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO TWO ILLEGAL SEARCH WARRANTS FOR CR ENGLAND TRUCKING IN VIOLATION OF MR. REDWINE'S RIGHTS TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURES	

Mark Redwine, through counsel, moves to suppress (1) two 3x5 spiral bound notebooks, (2) several Post-It notes clipped to black notebook, and (3) a 6x9 clip board with notes, and fruits of said items, based on an unlawful search of CR England Trucking in violation of Mr. Redwine's rights to be free of unreasonable searches and seizures pursuant to the Fourth and Fourteenth Amendments to the U.S. Constitution and Article II, Sections 7 and 25 of the Colorado Constitution.

BACKGROUND

1. At the end of July or start of August search warrants were executed on Mark Redwine's former place of employment CR England Trucking 4701 West 2100 South, Salt Lake City, Utah.
2. Based on the conflicting inventory reports, it is unclear when the actual search of Mr. Redwine's former employer occurred.

3. That said, both Tonya Goldbricht of the La Plata County Sherriff's Office and David Greco with the West Valley City Police Department acknowledge they obtained (1) two 3x5 spiral bound notebooks, (2) several Post-It notes clipped to black notebook, and (3) a 6x9 clip board with notes.
4. On July 28, 2017, Judge Wilson authorized a search order stating in relevant part that "Said search is based upon one or more grounds as set forth in Rule 41(b), Colorado Rules of Criminal Procedure, namely:
 - 1) Which is stolen or embezzled; or
 - 2) Which is designed or intended for use as a means of committing a criminal offense; or
 - 3) Which is or has been used as a means of committing a criminal offense; or
 - 4) The possession of which is illegal; or
 - 5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or
 - 6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or
 - 7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health..
5. On July 31, 2017, District Court Judge Paige Peterson in Salt Lake County authorized a separate search order stating in relevant part that

"that said property or evidence:
 Was unlawfully acquired or is unlawfully possessed;
 has been used or is possessed for the purpose of being used to commit or conceal the commission of an offense; or
 is evidence of illegal conduct."

STANDING

6. Any governmental action intruding upon an area in which one holds an expectation of privacy constitutes a "search," thus triggering the protections of both state and federal constitutions. *People v. Oates*, 698 P.2d 811, 814 (Colo. 1985).
7. Defense must demonstrate a legitimate expectation of privacy in areas searched or items seized. *People v. Curtis*, 959 P.2d 434, 437 (Colo. 1998)(citations omitted).
8. Someone has standing to assert a Fourth Amendment violation if they have a legitimate expectation of privacy in the areas search. *People v. Schafer*, 946 P.2d 938, 941 (Colo. 1997)(citation omitted). Whether someone has a legitimate expectation of privacy is

determined by the totality of the circumstances including whether an individual has possessory or proprietary interest in the areas searched. *Id.*

9. Employees may have reasonable expectations of privacy in their offices and workplaces. *People v. Rosa*, 928 P.2d 1365, 1369 (Colo.App. 1996)(citing *O'Connor v. Ortega*, 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987); *United States v. Battles*, 25 M.J. 58 (C.M.A.1987); see also *City & County of Denver v. Casados*, 862 P.2d 908 (Colo.1993), cert. denied, 511 U.S. 1005, 114 S.Ct. 1372, 128 L.Ed.2d 48 (1994).
10. Mr. Redwine has standing to challenge a search of CR England Trucking because even the affidavit acknowledges that former employees of CR England Trucking maintain privacy in their former workplace considering the affidavit authored by Tonya Goldbright states as follows, “[CR Trucking] normally remove the personal property of former employees from their trucks and store it for a period of months for the owner.”

A SEARCH BASED ON AN INVALID SEARCH WARRANT

11. The Fourth and Fourteenth Amendments to the United States Constitution and Article 2, Sections 7 and 25 of the Colorado Constitution protect citizens from unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643 (1961).
12. “[N]o warrants shall issue, but upon [1] probable cause, [2] supported by oath or affirmation, and [3] particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend IV; see also Colo. Const. art. II, § 7; See also *Whitely v. Warden*, 401 U.S. 560, 564 (1971).
13. A court issuing a warrant must have “sufficient information within its four corners to establish probable cause for the issuance of a warrant under the fourth amendment to the United States Constitution and under Art. II, Sec. 7, of the Colorado Constitution.” See *People v. Pannebaker*, 714 P.2d 904, 907 (Colo. 1986).
14. The Colorado Supreme Court previously held that the constitutional safeguards afforded under the Fourth and Fourteenth Amendments to the United States Constitution, and under Article II, Section 7 of the Constitution of Colorado are met when the affidavit supporting an arrest warrant or search warrant contains the name and address of the citizen-informant who was a witness to criminal activity and includes a statement of the underlying circumstances. *People v. Glaubman*, 485 P.2d 711, 717 (Colo. 1971).
15. Here, the affidavits supporting the issuance of these search warrants do not contain the name and address of the confidential informant nor does it conclude whether this informant is reliable. See Exhibit A-Afft for Search Warrant (Colorado); See Exhibit B-Afft for Search Warrant (Utah). Additionally, the affidavit does not provide how these notebooks and notes are material evidence to the prosecution of Mr. Redwine; how these items have been used or is possessed for the purpose of being used to commit or conceal

the commission of an offense by Mr. Redwine; or is in any way evidence of illegal conduct.

PARTICULARITY AND PROBABLE CAUSE ARE REQUIRED FOR WARRANTS

16. The Warrant Clause of the Federal Constitution requires that a warrant, “particularly describe the place to be searched, and the persons or things to be seized.” U.S. CONST. AMEND. IV. The Warrant Clause of the Colorado Constitution also requires that “no warrant to search any place or seize any person or things shall issue without describing the place to be searched.” COLO. CONST., ART. II, § 7.
17. The primary function of the “particularity requirement” is to ensure that government searches are “confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause.” *People v. Roccaforte*, 919 P.2d 799, 802 (Colo. 1996) (citing to *Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir.1985)).
18. The Warrant Clauses of both constitutions also require that all searches must be supported by probable cause. U.S. CONST. AMEND. IV; COLO. CONST., ART. II, § 7. This probable cause requirement goes hand in hand with the particularity requirement because “probable cause is required to intrude upon (through search and seizure) each constitutionally protected privacy interest an individual may have.” *People v. Gutierrez*, 222 P.3d 925, 937 (Colo. 2009). Therefore, a search for each particular place must be supported by probable cause.
19. This combination of the particularity requirement and the probable cause requirement are meant to prevent general warrants. These have also been called “writs of assistance” in early cases.
20. A court must suppress all evidence seized pursuant to an overbroad, general warrant. *Roccaforte*, 919 P.2d at 802 (citing to *U.S. v. Christine*, 687 F.2d 749, 757 (3d Cir.1982)).

RUMMAGING IS REVILED

21. The U.S. Supreme Court has held that the Fourth Amendment is meant to protect against the “general, exploratory rummaging in a person's belongings” that was reviled under British rule. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).

THE U.S. SUPREME COURT HAS ROUTINELY RULED AGAINST GENERAL WARRANTS

22. The use of “general warrants” has been repudiated since the fight for American Independence, and the U.S. Supreme Court has routinely ruled to protect against this governmental abuse. *See, e.g., Marron v. United States*, 275 U.S. 192 (1927); *Stanford v. Texas*, 379 U.S. 476 (1965); *Zurcher v. Stanford Daily*, 436 U.S. 547, 460 (1978).
23. In cases such as *Marron* and *Stanford*, the Supreme Court made clear that the “particularity requirement” contained within the Fourth Amendment “makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another.” 275 U.S. 192 at 196. The reason for this explicit requirement was to make sure that when overcoming this Constitutional right, “nothing is left to the discretion of the officer executing the warrant.” *Id.*
24. The search in *Stanford*, executed in an attempt to investigate suspected Communists, was made pursuant to a warrant that allowed police to search for “books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas.” 379 U.S. at 486. The Supreme Court found the “indiscriminate sweep of that language is constitutionally intolerable.” *Id.* To allow such a search would “be false to the terms of the Fourth Amendment, false to its meaning, and false to its history.” *Id.*

COLORADO’S APPELLATE COURTS HAVE ALSO SUPPRESSED GENERAL WARRANTS

25. Colorado’s appellate courts have also routinely ruled against general warrants and rummaging searches in our state. *See, e.g., People v. Gutierrez, supra; People v. Eirish*, 165 P.3d 848 (Colo. App. 2007). These decisions not only deal with searches deemed unlawful because of a lack of particularity, but also because the warrant was not supported by probable cause.
26. This probable cause requirement is the bedrock of search and seizure jurisprudence under federal and state constitutions. The searches challenged in this case – Mr. Redwine’s former place of employment – were not supported by probable cause merely because the material sought from the search “contain references to [Dylan Redwine].”
27. The police in *Gutierrez* searched all the records of a tax preparation business and found allegedly incriminating information in the defendant’s file. 222 P.3d at 937. But the Colorado Supreme Court ruled that there was no individualized probable cause for the defendant’s file, which is required under federal and state law. *Id.*

28. “Although precedent is sparse, our review of the Fourth Amendment leads us to conclude that probable cause is required to intrude upon (through search and seizure) each constitutionally protected privacy interest an individual may have, irrespective of whether that interest is in his person or his tax returns.” *Id.*

THERE IS NO PROBABLE CAUSE FOR THE PLACE SEARCHED IN THIS CASE

29. The warrants in this case do not establish that probable cause exists.

THERE IS NO EVIDENTIARY NEXUS TO SUPPORT PROBABLE CAUSE

30. The *Eirish* decision is also applicable to this case, even though that case deals with geographic limitations that rendered a search invalid. 165 P.3d at 854. The *Eirish* court ruled that the place to be searched must be connected to criminal activity by an “evidentiary nexus.” *Id.* Whether it is the physical distance between a garage and a home, or the digital distance between locations in a smart phone, that distance must nevertheless be bridged by an “evidentiary nexus.”
31. That nexus is absent in this case because it is unclear what if any evidentiary value these items contained aside from a general allegation that “they contain references to [Dylan Redwine].” *See* Exhibit A & Exhibit B.

CONCLUSION

32. In sum, the removal and seizure of items stored for Mr. Redwine at his former place of employment violates the Fourth and Fourteenth Amendments to the U.S. Constitution and Article II, Sections 7 and 25 of the Colorado Constitution.

Mr. Redwine makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution.

