

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 8:59 AM FILING ID: F6E93975CB7C2 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  Mark Redwine Defendant	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Justin Bogan 33827 John Moran 36019 175 Mercado Suite 250 Durango Colorado 81301	Case Number: <b>17CR343</b>          Division 1
<b>[D-84]:          MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT          FOR MARK REDWINE’S EMAIL ACCOUNT</b>	

Defendant moves for this court to enter an order preventing the prosecution from using at trial or pre-trial proceedings any evidence seized by the state during its search of Mark Redwine’s email account:

1. A search warrant must be based upon probable cause, supported by oath or affirmation reduced to writing. *Colo. Const.*, art. II, sec. 7. The trial court’s review is limited to the four corners of the affidavit. *People v. Titus*, 880 P.2d 148, 150 (Colo. 1994).
  
2. The U.S. and Colorado Supreme Courts have recognized the necessity that an affidavit in support of a search warrant contain within its four corners the information necessary to enable a magistrate to make a justifiable determination of probable cause. Mere assertions of fact by an affiant, without clear statements of the actual original sources of the information, cannot suffice. Those prerequisites are missing from the affidavit in this instance. *See, e.g., Moreno v. People*, 491 P.2d 575 (Colo. 1971) citing *Giordenello v. United States*, 357 U.S. 480 (1958); *People v. Brethauer*, 482 P.2d 369 (Colo. 1971); *United States v. Williams*, 605 F.2d 494, 497 (9th Cir. 1979); *United States v. Spach*, 518 F.2d 866 (7th Cir. 1975). *People v. Jackson*, 543 P.2d 705, 706-707 (Colo. 1975). In *People v. Pannebaker*, 714 P.2d 904, 907 (Colo. 1986), the Court adopted a totality of the circumstances test for determining when probable cause exists to issue a search warrant. *Pannebaker* held that probable cause determinations are to be guided by a “practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband

or evidence of a crime will be found in a particular place.” (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

4. Furthermore, a proper warrant must establish the veracity and reliability of its information source. *People v. Grady*, 755 P.2d 1211 (Colo. 1988). A review of the sufficiency of the warrant in this case finds that there is no such establishment, and no information from the arresting officer to corroborate the allegation that Mr. Henderson had committed this, or any other, crime. See *People v. Banks*, 655 P.2d 1384 (Colo. App. 1982).

5. A search warrant must specify with particularity the things to be seized. *Andresen v. Maryland*, 427 U.S. 463 (1976). General warrants enabling exploratory rummaging in a person’s belongings are prohibited. *Id.* A greater degree of specificity is required for unique items than generic ones. *People v. Hearty*, 644 P.2d 302 (Colo. 1982).

6. Here, the affidavit asserts in conclusory language that there is probable cause to believe to support the search.

7. The affidavit asserts:

On Tuesday, November 20, 2012, the La Plata County Sheriffs Office was assigned a missing person investigation. Patrol deputies working for the La Plata County Sheriffs Office took l'he original call on Monday November 19 2012, from Mark Redwine DOB 08/24/ 1960, Dylan Redwine's biological father. Mark reported that his son, Dylan Redwine, DOB 02/06/ 1999, disappeared from his home at 2343 County Road 500 Bayfield, La Plata County, Colorado, on Monday November 19, 2012, between the hours of 0730 and 1130. Mark said be picked Dylan up from the La Plata County Airport at 1745 hours, on Sunday, November 18, 201 2, and took him to his residence at 2343 County Road 500. Mark and Dylan stayed at Mark's house throughout the night. In the morning Mark woke Dylan up and told him he had to run errands in town and would come back later. Dylan rolled over and went back to sleep. When Mark got home at 1130 hours, Dylan was gone, and Dylan 's cell phone was missing and not accepting calls as if was turned off.

8. The affidavit in support of the warrant does not allege sufficient facts justifying probable cause for a warrant.

9. The phrase “any evidence of a possible crime scene” equates to a general search warrant and is overly broad. This is exactly the generic language prohibited by *People v. Hearty*, 644 P.2d 302 (Colo. 1982).

10. All evidence and information obtained as a result of the illegal searches and seizures should be suppressed. All fruits and derivatives of those illegal searches and seizures should also be suppressed, since any direct or indirect use of those fruits or derivatives would violate the rights of Mr. Henderson under the provisions noted herein. *Wong Sun v. United States*, 371 U.S. 471 (1963); *People v. Rodriguez*, 945 P.2d 1351 (Colo. 1997).

11. Defendant moves for a hearing on this motion.

12. Defendant makes this motion, and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the

Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution.

MEGAN RING  
COLORADO STATE PUBLIC DEFENDER

/s/ John Moran  
John Moran, #36019  
Deputy State Public Defender  
September 21, 2018

/s/ Justin Bogan  
Justin Bogan  
Deputy Public Defender  
#33827  
September 21, 2018

CERTIFICATE OF SERVICE

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I hereby certify that on September 21, 2018 a copy of the foregoing document was served on opposing counsel of record.

/s/ Justin Bogan