

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 9:11 AM FILING ID: 28609C3415952 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: 17CR343 Division 1
[D-89]: MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT FOR AREA RUG IN LIVING ROOM LOCATED UNDERNEATH THE COFFEE TABLE	

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 (AREA RUG) during its May 21, 2014 search of:

**2343 COUNTY ROAD 500
 BAYFIELD, COLORADO**

The premises searched are the defendant's residence. As such, the defendant had a reasonable expectation of privacy with respect to the premises and the contents therein. Rakas v. Illinois, 439 U.S. 128, (1978); People v. Juarez, 770 P.2d 1286 (Colo.1989). Defendant also seeks to suppress any fruits or derivatives of any evidence or information obtained as a result of that search or seizures, for all of the following reasons:

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).

3. 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. *Pannenbaker* 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 refers to DNA analysis of swabs taken from Mark Redwine’s house:

The swabs were sent to the Colorado Bureau of Investigation lab for DNA analysis. Upon receipt of the results, it was learned that Dylan Redwine’s blood was present on the northeast corner of the coffee table, northeast cushion on the large couch, and southeast cushion of the loveseat. Dylan Redwine’s blood was also collected underneath the living room rug under the northeast corner of the coffee table

This paragraph is misleading to the Court. Per the prosecution’s own reports, CBI’s own analysis, and the prosecution’s own exhibits submitted to the Grand Jury, the swab of the coffee table, when analyzed by CBI, indicate the presence of blood, and Mark Redwine and Dylan cannot be excluded from that sample; meaning either own or both may be contributors to that sample. That is not conclusive evidence that Dylan Redwine’s blood is on the coffee table. Likewise, the swab collected from underneath the living room rug, per law enforcement’s own analysis, demonstrates that Cory Redwine and Dylan Redwine cannot be excluded from the swab. This is not conclusive that Dylan Redwine’s blood is on the rug. The diagram attached to affidavit is the same diagram used during grand jury proceedings, but the diagram attached to the affidavit leaves out the language of the CBI findings.

7. The affidavit does explain how much blood was found.

8. The affidavit also states that there were positive results for blood for the presence of blood. Specifically the affidavit purports:

Numerous searches, both by consent and warrant have been sought and executed. A search warrant was executed at 2343 County Road 500, Vallecito, CO on November 29, 2012 as well as the two vehicles owned by Mark Redwine. During this search, various areas in the residence were tested with phenolphthalein. Several areas did reveal positive results and swabs were collected

The affidavit does not mention: that phenolphthalein is a presumptive test, is not conclusive, and in fact can produce positive results when no human blood is present. The affidavit does not mention WHERE specifically within Mark Redwine's home there were positive results for blood. The affidavit does not mention Mark Redwine's truck had NO positive phenolphthalein results.

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

10. 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).

11. 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

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

 /s/ JB