

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304		<div style="border: 2px solid black; padding: 5px; text-align: center;"> ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO NOV 14 2018 ▲ COURT USE ONLY ▲ DEPUTY CLERK </div>
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	Case Number: 17 CR 343	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #28615 Fred Johnson, Special Deputy District Attorney, #42479 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200		
PEOPLE'S RESPONSE TO [D-90] DEFENDANT'S MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT FOR ATT CELL PHONE TOWER INFORMATION [PUBLIC ACCESS]		

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and as their response to the Defendant's motion state as follows:

Facts

1. On November 18, 2012, Dylan Redwine went missing while in the custody of his father, the Defendant. On November 28, 2012, a search warrant of the Defendant's home revealed [REDACTED] associated with the Defendant's home and Dodge pick-up truck.
2. In their efforts to locate Dylan Redwine, law enforcement officers applied for a search warrant for the cellular tower in the area of the Defendant's home where Dylan Redwine had last been seen. The search warrant was granted on January 9, 2013. See attached People's Exhibit 1. At that time, Dylan Redwine was still missing and the request for cellular tower records was not only for the Defendant but for every person whose cellular device would have used that tower on November 18-19, 2012.

3. Now the Defendant seeks to suppress that evidence of whose cellular devices used that cellular tower the day his son went missing, challenging the validity of the search warrant.

Law

4. “Probable cause for a search warrant exists when the affidavit in support of the warrant alleges sufficient facts to warrant a person of reasonable caution to believe that contraband or other evidence of criminal activity is located at the place to be searched.” *Bartley v. People*, 817 P.2d 1029, 1032-1033 (Colo. 1991) (citing *People v. Arellano*, 791 P.2d 1135, 1137 (Colo.1990); see also *People v. Hill*, 690 P.2d 856, 859 (Colo.1984); *People v. Hearty*, 644 P.2d 302, 309 (Colo.1982). In assessing whether this constitutional standard for probable cause has been satisfied, an affidavit for search warrant must be interpreted in a common sense and realistic fashion. *Id.* (citing *Arellano*, 791 P.2d at 1137-38; see also *Hill*, 690 P.2d at 859; *People v. Ball*, 639 P.2d 1078, 1082 (Colo.1982)). Due consideration should be given to a law officer's experience and training in evaluating the significance of the officer's observations relevant to probable cause. *Id.* (citing *Ball*, 639 P.2d at 1082).
5. A probable cause determination is limited to the four corners of the affidavit. *People v. Meraz*, 961 P.2d 481, 483 (Colo. 1998) (en banc).
6. The analysis of probable looks at the totality of the circumstances. *People v. Altman*, 960 P.2d 1164 (Colo. 1998) (en banc). The probable cause standard does not lend itself to mathematical certainties and should not be laden with hypertechnical interpretations or rigid legal rules; instead, judges, considering all of the circumstances, must make a practical, common-sense decision whether a fair probability exists that a search of a particular place will reveal contraband or evidence of a crime. *Id.* (citations omitted).
7. Because the exclusionary rule is designed to deter police misconduct and not judicial error, the “good faith exception” exists where a police officer is executing a court issued search warrant. *Id.* C.R.S. 16-3-308 codified the “good faith exception,” creating a presumption that the officer is acting in good faith by relying upon a court issued warrant. *Id.* The inquiry by the court must be whether it was objectively reasonable for the officer to rely upon the warrant, and only if no reasonable officer would have relied upon the warrant is the exception inapplicable. *Id.*
8. Police officers are not appellate judges, and therefore the determination by an appellate court that a warrant is invalid does not mean a police officer's reliance upon that warrant was objectively unreasonable. *Id.* Finally, where the “good faith exception” applies, the Colorado Supreme Court has determined that further analysis regarding probable cause in the warrant affidavit is not required. *Id.*
9. Under *United States v. Leon*, four circumstances in which an officer could not reasonably rely on a warrant: (1) where the magistrate was misled by knowingly or recklessly false information; (2) where the magistrate wholly abandoned his or her judicial role; (3)

where the warrant is so facially deficient that the executing officers cannot reasonably determine the particular place to be searched; and (4) where the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. 468 U.S. 897, 923 (1984).

10. The first prong relates to the veracity of the affiant. The test for veracity is the “totality-of-circumstances” as seen in *Illinois v. Gates*, meaning that the duty of the reviewing Court is merely to ensure that the issuing magistrate had a “substantial basis for concluding” that probable cause existed. 462 U.S. 213, 216 (1983).
11. While in *Franks v. Delaware*, to challenge the veracity of an affidavit, the defendant must meet a variety of requirements, Colorado has a two-part test to establish whether a veracity hearing is needed. The defendant (1) establishes a good faith basis in fact for the challenge and (2) describes with specificity the precise statements being challenged. *People v. Warner*, 251 P.3d 556, 560 (Colo. App. 2010).
12. A defendant is permitted a hearing on the veracity of an affidavit for a search warrant only if they can prove with “substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included in the affidavit.” *Id.*
13. If this burden is met, the defendant must then prove by a preponderance of the evidence that with the false material is set aside, the remaining material in the affidavit is insufficient to establish probable cause. *Id.*
14. To meet their burden, the motion to suppress must, also, contain one or more affidavits supporting their good faith basis with which specific statements will be challenged to allow the prosecution to prepare for the hearing. *People v. Dailey*, 639 P.2d 1068, 1075 (Colo. 1982).
15. Therefore, in circumstances where the Defendant cannot satisfy the two-prong test of *Dailey*, or under circumstances where there is enough evidence to establish probable cause after redacting the false statements as seen in *Franks*, then no hearing will be administered to challenge veracity. 639 P.2d at 1075; 438 U.S. at 155-56.
16. If granted a hearing to challenge the validity of the affidavit for the search warrant, the defendant bears a burden of proving by the preponderance of the evidence, the falsity of the statement(s) included in the affidavit and without the statement, that the search warrant would have never been granted due to lack of probable cause. At the hearing, the Court must determine “whether there are erroneous statements in affidavit.” *Warner*, 251 P.2d 560. If the Court does declare there are erroneous statements, then they must next determine whether the source of the error is intentional falsehood or reckless disregard of the truth on the part of affiant. *Id.*

17. It should be noted that this applies only to falsehoods attributed to the affiant, and not necessarily to the information and sources relied upon by the affiant. In *Warner*, false statements from sources other than the affiant may not be excluded if the trial determines that sanctions or no sanctions are appropriate. 251 P.2d at 260.
18. A defendant may not rely purely on the affidavit to prove falsity of the statements. *Warner* at 561-62. Not only must the defendant not rely on the affidavit to resolve the dispute, there must be proof that the falsity of the statements led to an illegal search warrant, making evidence from the search inadmissible. *Id.* If the defendant is unable to establish a preponderance of the evidence, then the Court shall deny the motion. *Id.*

Analysis

19. As a threshold matter, a search conducted pursuant to a judicially approved search warrant is presumed to be a valid search. Here, the search warrant affidavit, when viewed in the totality of the circumstances within the four corners of the warrant, establishes probable cause.
20. First and foremost, the People ask that this court review the warrant in its totality as opposed to in the pieces presented by the Defendant in his motion. Since the Defendant opted not to attach the affidavit for the Court's reference, the People have done so with this response. When viewed in its entirety, the affidavit contains ample information to support probable cause.
21. The Defendant's Motion references an affidavit from November 28 or 2012, however, as the Court can see this affidavit was sworn and signed on December 21, 2012, and then amended on January 8, 2012.
22. Further, the arguments in the Defendant's Motion appear to apply to the search of the Defendant's truck, not cell tower records.
23. Additionally, the Defendant's Motion refers to a search for evidence of a crime scene. The People can only assume he is referring to a different warrant.
24. None of the Defendant's arguments apply to the search for cell tower information.
25. Since it is unclear what affidavit or what search is even being challenged here, the People simply state that the four corners of the warrant affidavit supporting the search for cellular tower records contains probable cause.
26. With regard to the information contained in the warrant, the People note that, despite the Defendant's erroneous and unsubstantiated claims that the Court should scrutinize some of the evidence presented in the affidavit, when conducting a four corners analysis the court is "required to presume those attestations were valid." *People v. Cox*, 2018 CO 88, ¶¶ 15-16.

Conclusion:

27. When considered under the totality of the circumstances and within the four corners of the warrant, there is probable cause for the search in this case.
28. Further, because only a four corners analysis is appropriate under these circumstances, the People respectfully request that the court deny his motion for a hearing and find probable cause through a four corners analysis of the totality of the circumstances.

WHEREFORE, the People respectfully request this Honorable Court DENY Defendant's Motion To Suppress Fruits of Illegal Search – Search Warrant For ATT Cell Phone Tower Information.

Respectfully submitted this March 14, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Fred Johnson
Fred Johnson, #42479
Special Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2019, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne