

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 9:17 AM FILING ID: D72F482F9D999 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- 92]:          MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT          TO INSTALL TRACKING DEVICE ON MARK REDWINE’S TRUCK</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 installation and utilization of an electronic tracking device installed on Mark Redwine’s truck November 28, 2012.

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. Government use of a electronic tracking devices on a suspect’s vehicle must be preceded by the acquisition of a warrant based upon a finding of probable cause. This is because, as the Colorado Supreme Court noted in *People v. Oates*, P.2d 811, “the “right to exclude” has often been viewed as the crucial factor that grants a legitimate expectation of privacy in an area that has been subject to police intrusion. *Rawlings v. Kentucky*, 448 U.S. 98; see *Naranjo*, 686 P.2d at 1345 (possessory or proprietary interest in area searched or item seized important factor in determining whether legitimate expectation of privacy violated.” The Colorado Supreme Court went on in *Oates*:

In a very real sense, the beeper serves as a surrogate police presence that remains within the vehicle's interior and converts the area into a covert broadcasting station. Given the capacity of such devices to impart information, the introduction of these government-controlled objects into an area in which an individual

legitimately retains an expectation of privacy constitutes an offensive invasion of fourth amendment values. The government, via its electronic counterpart, remains physically present within the interior of the vehicle from the moment its agents enter until the tracking device ceases to function.

Id.

3. 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. *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 November 28, 2012 affidavit asserts in conclusory language that there is probable cause to believe that Mr. Redwine’s truck “has been, is, and will continue to be used in the commission of kidnapping.”

7. The affidavit then goes on to refer to the use of helicopter searches, cadaver dog searches, and tracking dog searches utilized in trying to find Dylan. The efficacy, reliability, and error rates of the dog searches are not included in the affidavit. It also refers to a 2003 allegation of Mark Redwine menacing a minor in Adams County. This statement provides no insight to the Court’s determination of probable cause. There are extensive references to Mark Redwine’s chronology of events after Dylan arrived at the Durango Airport. None of these references, taken separately or collectively, demonstrate probable cause, including Mark Redwine’s apparent references to rough housing with Dylan at his home. The concludes with speculative assertions that do not support a finding of probable cause:

On 11/20/2012, Mark Redwine provided consent for LPCSO to search his residence. Two LPCSO investigators walked through the house and did not find Dylan present. No items were taken in the search. No analysis was conducted to find evidence of Dylan's bodily fluids, to include no usage of alternative light sources (ALS) or luminol, to find evidence of such fluids that are not readily visible.

Based upon the possible "rough housing" and prior reported abuse by Redwine; the discrepancies between Dylan texting between 8:00 pm and 9:45 pm and the actual cell phone records of the cell phone of Dylan; Dylan's known habits to consistently text through the late night and on a daily basis; no reported or video sighting of Dylan walking towards the Vallecito Reservoir; and no canine unit positive indication on the pillowcase that Dylan supposedly slept on, your affiant believes probable cause exists in the matter of the application and search warrant of the people of the State of Colorado for an order authorizing the use, monitoring, maintenance, and installation of an electronic tracking device on a silver, 2004 Chevrolet truck, Colorado license plate 701-ECA, VIN 1GCHC23G34F1 84531, and a white, 2001 Dodge truck, Colorado license plate 643-DJA, VIN 1B7GG2AN71S217714 owned by Mark Redwine.

Your affiant knows Mark Redwine to be the last person to see Dylan Redwine. Dylan Redwine is either alive or deceased. In the event he is alive, Mark Redwine could be providing sustenance. In the event he is deceased, Mark Redwine could be maintaining the security of the dump site in an effort to avoid detection by law enforcement. After exhausting all other resources in the efforts to locate Dylan Redwine your affiant believes the application of the electronic tracking device will greatly enhance the ability of law enforcement officers to monitor the vehicles enabling officers to identify co-conspirators and locations where the suspects frequent, or the possible location of Dylan Redwine without jeopardizing the ongoing investigation

8. The affidavit makes reference to Mark Redwine's statements to law enforcement on November 26, 2012 (see motion to suppress ) and November 27, 2012 (see motion to suppress ). If this Court suppresses those statements it should review the affidavit for probable cause with statements omitted.

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

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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/ JB