

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 2:47 PM FILING ID: DF22AEA222499 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-97]: MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT TO SEARCH MARK REDWINE’S TRUCK EXECUTED ON FEBRUARY 13, 2014	

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 on February 10, 2014.

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. *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 seeks a warrant for:

Evidence sought: Further processing for but not limited to trace/DNA evidence in White Dodge truck, bearing license plate 643DJA and VIN 1B7GG2AN71S217714, specifically but not limited to the outside and inside of vehicle. This truck is registered to Mark Redwine, DOB 08/24/61. The collection of any human remains and or clothing items believed to belong to, deceased juvenile, Dylan Redwine, DOB 02/06/99 .

7. Items seized go far beyond the parameters of the warrant:

Broom with hair on handle tip collected from truck bed
Folder with missing flyers and AT&T receipt collected from truck cab
One spent shotgun shell collected from truck cab
Three live shotgun shells collected from truck cab
Hair collected from driver's side floor board
Fingernail clipping collected from driver's side floor
Multi tool collected from truck cab
Iron and jack stand bag from truck cab

8. The affidavit asserts in conclusory language that there is probable cause to believe that Mr. Redwine's truck contained evidence. It goes on to proclaim:

Your Affiant spoke with Investigator Tom Cowing who had done independent research into human remains dispersal. He had spoken with a few biologist associated with colleges and wildlife service's from Montana and Alaska. These professionals also told Cowing that it is common to see the majority of remains present. Most of the remains would be fairly close to each other. Fur bearing predators like mountain lions and bears typically eat their prey where they located it and coyotes can take remains several hundred feet from the site, but the remains are still fairly close. Our numerous searches of the area spanning several hundred yards from the body discovery site only produced a small amount of skeletal remains belonging to Dylan Redwine.

9. Both the dog “evidence” in the affidavit and Cowing’s independent research are suspect and do not rise to probable cause. See Defense Motions 36-40. 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 rise to probable cause.

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

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).

12. Defendant moves for a hearing on this motion.

13. 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
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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