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DATE FILED: December 28, 2021

DATE FILED: December 28, 2021 12:57 PM

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903	σ COURT USE ONLY σ
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH Defendant	
BARKER & TOLINI, P.C. JOSHUA TOLINI, ESQ. 720 S. Tejon Colorado Springs, CO 80903 Phone Number: (719)227-0230 FAX Number: (719)227-0964 Atty. Reg. #: 30119	Case No. 2020CR1358  Division 15
<b>MOTION TO SUPPRESS WIRETAP (D-38)</b>	

Pursuant to C.R.S 16-15-102(10) and the U.S. and Colorado Constitutions, Ms. Stauch moves the court to suppress statements and evidence obtained by authorities through the use of illegal and unconstitutional wiretaps. As grounds, Ms. Stauch states as follows:

**INTRODUCTION**

During the course of this investigation, two wiretaps were authorized in regard to telephones that were believed to have been utilized Ms. Stauch. Hundreds of telephone and text conversations were intercepted by these court-ordered wiretaps. Among this number were communications involving the Defendant, meaning that the Defendant is an aggrieved party pursuant to 16-15-102 C.R.S. According to the statutory language, any aggrieved party may challenge a wiretap and request that it be suppressed if any provisions of the statute have been violated.

The Fourth Amendment of the United States Constitution, Article II sec. 7 of the Colorado Constitution, and the Colorado wiretap statute all require that certain procedures be

followed when the government seeks authorization for a wiretap. *See* sec. 16-15-102 C.R.S. In the event that a wiretap is authorized, such authorization is not unfettered, and the government is to be held to certain standards in the execution of the wiretap. In the present case, the limited evidence which has been presented to the Defendant has demonstrated conclusively that the government failed to meet its obligations in regard to the applications for, and the execution of, the wiretaps at issue here.

The initial wiretap (on Subject Telephone One) was obtained through an affidavit which failed to show that probable cause that Ms. Stauch used the cellular telephone in furtherance of criminal activity; the information contained in relation to probable cause was stale; and the affidavit failed to show that normal investigative procedures had been tried and failed, in contravention of Section 16-15-102(2) C.R.S. Subsequent wiretaps were obtained through affidavits which lacked probable cause as to the cellular phones to which they were designated and which demonstrated a complete lack of the use of any alternative investigative procedures.

#### THE PRELIMINARY INVESTIGATION

According to the various reports and affidavits accompanying the requests for wiretaps, Ms. Stauch was a person of interest in relation to the disappearance of her stepson Gannon Stauch on January 28, 2020. Law enforcement had become increasingly frustrated by what they viewed as non-cooperation and/or deception by Ms. Stauch. Due to this, law enforcement began to focus on Ms. Stauch as a murder suspect. Due to this pressure by law enforcement and an increasing media focus, Ms. Stauch relocated South Carolina in early February 2020. On February 7, 2020 the El Paso County Sheriff's Office and the Fourth Judicial District Attorney's

Office began applying for wiretaps in order to gather evidence against Ms. Stauch in relation to the disappearance of Gannon.

#### PROBABLE CAUSE

Not only must the affidavit in support of the wiretap demonstrate probable cause that Ms. Stauch was engaged in criminal activity, "in Colorado affidavits in support of a request for an ex parte wiretap order must establish that there is probable cause to believe that evidence of specific crimes will be obtained through the substantial intrusion upon the individual's privacy." People v. Montoya, 616 P.2d 156, 159 (Colo. App. 1980).

Whether in support of the original wiretap for telephone one or for telephone number two, the affidavits are almost identical in relation to probable cause for the intrusion. Each of the affidavits contain a specific section detailing the alleged probable cause for either the telephone or email accounts. This motion will focus on the exact language of the Affidavit in Support of Subject Telephone One, but makes the arguments in relation to all affidavits in question.

In the initial paragraph Detective Bethal alleges "Stauch **generally likely** relies on a cellular device to communicate with others." (February 7, 2020 Affidavit for Subject Telephone One paragraph 93). Detective Bethal fails to support this vague suspicion with any facts or circumstances that would allow a neutral and detached judge to determine probable cause. "Vague suspicion does not rise to the dignity of probable cause." Gallegos v. People, 401 P.2d 613 (Colo. 1965). More importantly the Affidavit fails to provide concrete facts that would allow a Judge to determine Ms. Stauch would use Subject Telephone in relation to any of the accusations around Gannon Stauch. The Affidavit is void of any facts that would lead a neutral and detached magistrate to conclude that Ms. Stauch had a co-conspirator or accessory, much less one that she communicates with on Subject Telephone One.

In the fourth paragraph, Detective Bethal relates Ms. Stauch allegedly used subject telephone one to text SOI that she was 'ok.' Nothing from SOI indicates that Ms. Stauch is communicating with anyone regarding Gannon's disappearance.(2/7/20 Affidavit paragraph 96).

Detective Bethal states that people under investigation for crimes often call friends and associates for advice on what to do "a place to hide, hold evidence, dispose of evidence, help flee law enforcement." (para. 241) Detective Bethal is unable to identify any interceptees whom Ms. Stauch would be contacting with this information. Detective Bethel fails to provide any reasonable basis that Ms. Stauch would use her Subject Telephone One to discuss Gannon Stauch. The only text mentioned in the Affidavit regarding Gannon occurred almost two weeks before the Application. The element of time is crucial to a determination of probable cause. People v. Montoya, 616 P.2d 156, 160 (Colo. App. 1980). Unless the information in the affidavit demonstrates "the suspect is continuously engaged in criminal activity, a warrant based on dated, or 'stale,' evidence is invalid." Id.

In Paragraph 100 Detective Bethel states she believes the monitoring of Subject Telephone One will lead to 'current locations of evidence or locations of disposed of evidence, and witnesses that may have assisted Letecia Stauch.' The Affidavit is void however of any facts that would form the basis of the Detective's beliefs.

In holding the affidavit sufficient in People v. Montoya, the Colorado Supreme Court took note that three separate confidential informants related Mr. Montoya conducted criminal business over the telephone. People v. Montoya, 616 P.2d 156, 160 (Colo. App. 1980). This information sufficiently detailed the underlying facts and circumstances upon which the authorizing court could reasonably conclude the telephone was being used in connection with illegal activities. Detective Bethel's affidavit is lacking any such facts or circumstances.

It is also important to note that Detective Bethel had not bothered to apply for a pen register or trap device before resorting to requesting for a wiretap. Generally in wiretap investigations general search warrants are requested for either a pen register or a trap device for a telephone. The use of these techniques is sometimes successful in aiding in the identification of potential co-conspirators and the telephone numbers and addresses associated with the named interceptees. This technique almost always forms a large part of the probable cause to believe that the telephone is used in a criminal enterprise. The affidavit is devoid of this technique because Detective Bethel chose to skip over it. The only person in the Affidavit Ms. Stauch is alleged to have communicated with about Gannon is her daughter Harley Hunt; however, Harley was with Ms. Stauch in South Carolina and there was no reason to believe she would communicate with Harley by phone.

THE FEBURARY 7, 2020 AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUBJECT TELEPHONE ONE FAILED TO SATISFY § 16-15-102(2)

As mentioned in the introductory section, the wiretap on Subject Telephone One failed to show that "other investigative procedures" had been tried and failed. This failure runs afoul of both Colorado statutory requirements and decades of case law, and as a result, the suppression of evidence relating to these wiretaps is required.

As a practical matter, section 102 is a blueprint for a wiretap request, as only when the steps provided for therein have been satisfied may an order authorizing a wiretap be issued. Each application must be made "upon oath or affirmation" by a law enforcement officer to a judge of competent jurisdiction," and must include a "complete statement as to whether or not

other investigative procedures have been tried and failed, or why they reasonably appear to be unsuccessful if tried, or to be too dangerous." C.R.S. sec. 16-15-102(2)(c) C.R.S.

This particular language is often referred to as the "necessity requirement." United States v. Green, 175 F.3d 822, 828 (10th Cir. 1999). The purpose of the necessity requirement "is to ensure that the relatively intrusive device of wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." United States v. Edwards, 69 F.3d 419, 429 (10th Cir. 1995). In making this showing of necessity, the government must explain fully in its application what investigative techniques have been tried against the target of the wiretap. United States v. Castillo-Garcia, 117 F.3d 1179 (10<sup>th</sup> Cir. 1997), rev'd on other grounds, United States v. Ramirez-Encarnacion, 291 F.3d 1219 (10<sup>th</sup> Cir. 2002). Evidence obtained in violation of the necessity requirement must be suppressed. Castillo-Garcia, 117 F.3d at 1185.

The February 7, 2020 affidavit in support of Subject Telephone One, supposedly in an effort to satisfy the "necessity requirement," contained a section entitled "Need for Interception," which described "a number of normal and routine investigative techniques" at the disposal of the agents in this case. Among these "techniques" were physical surveillance, use of search warrants, use of cooperating sources, use of undercover agents, forensic testing of physical evidence, interviews of witnesses and use of Grand Jury, analysis of pen register data and toll records.

Without exception, the affidavit concluded that each and every one of these investigative techniques had been tried in this case and have either failed completely, had limited success, but have failed to achieve the full objectives of this investigation, reasonably appear unlikely to succeed if tried, or are too dangerous to employ. Invariably, when the affidavit concluded that a particular investigative technique would have been unsuccessful if tried, the explanation in

support thereof was couched in boilerplate language, applicable to any investigation, and was not tailored to the facts of the present case.

#### PHYSICAL SURVEILLANCE

In regard to physical surveillance, the affidavit commented that this technique had been used in the investigation, but that it had limited success and would not be able to achieve the overall objectives of this investigation. The affidavit without more concludes this technique will not obtain the goals and objectives set forth in this investigation.

As held by the court in United States v. Castillo-Garcia, 117 F.3d 1179 (10 Cir. 1997), this practice is unacceptable: "In any event, generalities, or statements in the conclusory language of the statute, are insufficient to support a wiretap application. The statements must be factual in nature and they must specifically relate to the individuals targeted by the wiretap."

#### SEARCH WARRANTS

The use of search warrants was also addressed in the affidavit, yet the conclusion was that although search warrants "often lead to the seizures of biological evidence, documentation, and other physical evidence," in this matter they have been unable to furnish any solid evidence linking Ms. Stauch to the alleged crimes. Without any basis in facts, the affidavit states wiretaps may make it possible to learn the location of the physical evidence.

#### COOPERATING SOURCES

In terms of cooperating sources, the affidavit begrudgingly admitted that the technique "has been tried with limited success in this investigation." Detective Bethel then concludes that "at this stage in the investigation, the use of cooperating sources is unlikely to fully achieve the goals of the investigation." Detective Bethel surmises the cooperating source will never be able to get close enough to Ms. Stauch to be told incriminating information.

#### USE OF UNDERCOVER AGENTS

This technique is dismissed out of hand. Detective Bethel merely states she "believes that even if an undercover officer/agent could be introduced to Ms. Stauch, the undercover officer/agent could not get close enough to Ms. Stauch that would assist Your Affiant in meeting the objectives of this investigation." Detective Bethel fails to provide any facts to back up this belief.

#### FORENSIC TESTING OF PHYSICAL EVIDENCE

The affidavit talks of the use of Forensic Testing of physical evidence, and admits that evidence has been collected and sent for testing. The Affidavit then states these tests take time, but fails to elaborate on the specific tests or possible time parameters.

#### TELEPHONE TOLL RECORDS, PEN REGISTRATION, AND TRAPS AND TRACE DEVICES

The use of toll records, pen registers, and trap and trace devices not even mentioned in the affidavit. As stated above the fact these techniques were never even attempted is especially troubling in this instance. Usually these techniques are successful in aiding in the identification of potential co-conspirators and the telephone numbers and addresses associated with the named interceptees. Since this is the stated objective of the investigation, it appears that if tried these other investigative procedure, the use of toll records, pen registers, and trap and trace devices, would have been successful. Therefore, under Section 102, the government was not entitled to a wiretap. See § 16-15-102(2)(c) C.R.S.

#### INTERVIEWS OF WITNESSES AND THE GRAND JURY

Detective Bethel admits compelling close friends and associates of Ms. Stauch "could potentially be successful in achieving the goals of this investigation." This statement flies in the face of the necessity requirement. If the objective of the investigation could be met through the grand jury, then the government is not entitled to a wiretap. If the Fourth Amendment and the statutory procedures of § 16-15-102(2)(c) C.R.S. are to have any real meaning, the government must be held to a standard above that which has been revealed in this case. The Affidavit in support of the request for a wiretap completely failed to satisfy the "necessity requirement" as set forth in § 102(2)(c). The importance of this requirement simply cannot be understated. As held by the United States Supreme Court in United States v. Giordano:

Congress legislated in considerable detail in providing for applications and order authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state and the court must find the normal investigative procedures have been tried and failed or reasonably appear to be too dangerous.

416 U.S. 505, 515 (1974).

The other Affidavit in Support of Subject Telephone Two contain identical language as the Affidavit in Support of Subject Telephone One and must be suppressed for the same reasons.

WHEREFORE, the Defendant prays this Court to enter an Order suppressing any and all wire communications pursuant to the authorization to intercept wire communications and on Subject Telephones One and Subject Telephone Two and for such other relief as the Court deems appropriate.

s/ Joshua Tolini  
Joshua Tolini 30119  
Dated: December 28, 2021