

DISTRICT COURT, El Paso County, Colorado Court Address: 270 South Tejon Street Colorado Springs, Colorado 80903	DATE FILED: January 10, 2022 DATE FILED: January 10, 2022 6:13 PM
<b>People of the State of Colorado</b> vs. <b>Defendant: LETECIA STAUCH</b>	<b>▲ COURT USE ONLY ▲</b>
District Attorney, Michael J. Allen, #42955 Senior Deputy District Attorney, Dave Young, # 21118 and Deputy District Attorney, Angelina Gratiano, #50674 105 E. Vermijo Colorado Springs, CO 80903 Phone Number: 719-520-6000	Case #: 20CR1358  Division #: 15S  Courtroom #: S403
<b>[D-38]</b>  <b>PEOPLE'S RESPONSE TO DEFENSE MOTION TO SUPPRESS WIRETAP</b>	

Comes Now, Michael J. Allen, District Attorney for the Fourth Judicial District, and his duly appointed Deputy District Attorneys, submits [D-38] People's Response to Defense Motion to Suppress Wiretap.

1. The Defense Motion to Suppress Wiretap seeks to suppress all communications obtained pursuant to the court approved orders for the interception of Subject Telephone One and Subject Telephone Two.

**Principles Applicable to Judicial Review of a Search Warrant**

2. Under both the United States and Colorado constitutions, "a search warrant may only be issued upon a showing of probable cause, supported by oath or affirmation, particularly describing the place to be searched and the things to be seized." *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008). An affidavit submitted in support of a search warrant "must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation." *Id.*
3. Probable cause exists when an affidavit sets forth "sufficient facts to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched." *People v. Miller*, 75 P.3d 1108, 1112 (Colo. 2003). A magistrate's probable cause determination must be based on facts contained "within the four corners of the affidavit" submitted in support of the search warrant. *People v. Gallegos*, 251 P.3d 1056, 1064 (Colo. 2011).

4. A magistrate's probable cause determination is generally given "great deference" and is not subject to de novo review. *People v. Pacheco*, 175 P.3d 91, 94 (Colo. 2006); *People v. Hebert*, 46 P.3d 473, 481 (Colo. 2002). Consequently, a reviewing court should not attempt to put itself in the shoes of the magistrate and consider whether it would have found probable cause. *Id.* Instead, "the usual question for a reviewing court is whether the issuing magistrate had a 'substantial basis' for issuing the search warrant." *Id.* (quoting *People v. Gall*, 30 P.3d 145, 150 (Colo. 2001)); see also *Miller*, 75 P.3d at 1112 ("A reviewing court should uphold the validity of a warrant if the affidavit accompanying the warrant creates a substantial basis for the conclusion that probable cause existed."). Any doubts must be resolved in favor of the magistrate's probable cause determination. *Hebert*, 46 P.3d at 481.
5. The affidavit in a wiretap application serves the same function as an affidavit used to establish probable cause for a search warrant. *People v. Wahl*, 716 P.2d 123, 127 (Colo. 1986).
6. Regarding review of a court order authorizing interception of telephonic communications, the affidavits submitted as part of the application process must "establish that there is probable cause to believe that evidence of specific enumerated crimes will be obtained through the substantial intrusion upon the individual's privacy." *People v. Montoya*, 616 P.2d 156, 159 (Colo. App. 1980).
7. Further, the Colorado Supreme Court has adopted the "totality of circumstances" analysis, when evaluating a probable cause determination as to warrants. *People v. Pannebaker*, 714 P.2d 904, 907 (Colo. 1986)
8. A wiretap order is presumed proper, and it is the defendant who carries the burden of overcoming this presumption. *People v. Gallegos*, 251 P.3d 1056, 1062 (Colo. 2011). See also *People v. Baez-Lopez*, 322 P.3d 924, 929-930 (Colo. 2014); *United States v. Verdin-Garcia*, 516 F.3d 884, 890 (10th Cir. 2008); *United States v. Radcliff*, 331 F.3d 1153, 1160 (10th Cir. 2003); *United States v. Mitchell*, 274 F.3d 1307, 1310-1311 (10th Cir. 2001) (citing *United States v. Castillo-Garcia*, 117 F.3d 1179, 1186 (10th Cir. 1997)).

**Probable Cause for the Interception of Subject Telephone One and Subject Telephone Two**

9. The application and supporting affidavit for the interception of wire and electronic communications for Subject Telephone One was specific to cellular telephone number: 407-375-3463.
10. The application and supporting affidavit for the interception of wire and electronic communications for Subject Telephone Two was specific to cellular telephone number: 843-798-1700.
11. The affiant for both Subject Telephone One and Subject Telephone Two, Detective Jessica Bethel with the El Paso County Sheriff's Office (EPSO), avers a belief that the interception of Subject Telephone One and Subject Telephone Two will yield critical

evidence relating to the whereabouts of a then missing and presumed murdered person, Gannon Stauch.

12. Upon review of the wiretap affidavits submitted for Subject Telephone One and Two, the Honorable Chief Judge William Bain of the Fourth Judicial District found the following: "There is probable cause to believe that Leticia Stauch (a/k/a Leticia Hardin); referred to as the "Named Interceptee"), and others yet unknown, have committed, are committing, and will continue to commit an enumerated crime pursuant to Colorado Revised Statutes §16-15-102(1)(a), specifically subsection (I), including, but not limited to: Colorado Revised Statutes §18-3-102, Murder in the First Degree; and Colorado Revised Statutes §18-2-201, Conspiracy." (*Bates Stamped Page 27-0004 and Page 27-0062*).
13. Based on the condition of Gannon Stauch's bedroom, it was clear that a violent altercation occurred, leaving little doubt given the amount of bloodshed in the room, that Gannon Stauch was murdered. The objective of the investigation now shifted to the recovery of his body, and to gather all evidence showing that he was murdered at the hands of the Defendant.
14. This Court should grant great deference to the probable finding of the reviewing court in this case. It is important to note, the finding of probable cause for Subject Telephone One and Two was not made by a judicial officer that is unfamiliar with wiretaps. As Chief Judge for this jurisdiction, Judge Bain bears the primary responsibility for making probable cause determinations in wiretap applications on a regular basis.
15. To be clear, the fact that the Defendant possessed and used a cellular telephone was not the primary argument presented to establish probable cause as the Defense suggests. Law enforcement reasonably believed that evidence of the crimes alleged in the wiretap applications would be collected via interceptions of Subject Telephone One and Two.
16. The facts and evidence presented in the affidavits for Subject Telephone One and Two overwhelmingly implicated the Defendant in the murder of Gannon Stauch.
17. From January 27, 2020, through the date of the respective wiretap applications, the Defendant blatantly illustrated her non-cooperation and deception when dealing with law enforcement, members of the community, and most devastatingly, the family of Gannon Stauch. For example, on January 27, 2020, she reported to 9-1-1 that Gannon Stauch went to a friend's house but did not return home. Later, on January 29, 2020, she altered her account of what occurred by claiming that a man ambushed her at the residence leaving her to black out and she could not recall what happened to Gannon Stauch. Her multiple explanations and versions of events served to obfuscate a critically urgent and on-going investigation.
18. The court ordered interceptions of Subject Telephone One and Two are presumed proper based on the finding of probable cause by Judge Bain. The Defense carries the burden of overcoming this presumption, and they have not met that burden.

### Staleness of Information and Determining of Probable Cause

19. "If information provided the issuing magistrate does not reasonably demonstrate that the suspect is continuously engaged in criminal activity, a warrant based on dated, or 'stale,' evidence is invalid." *Montoya*, 616 P.2d at 160.
20. "Whether the information is stale and cannot support probable cause depends on the factual circumstances and the type of crime." *Miller*, 75 P.3d at 1113.
21. In this case, the Defendant continued to provide blatantly false information to law enforcement from the inception of the investigation to conceal her criminal activities, namely: hiding evidence in this case, and specifically the body of Gannon Stauch. At the time of the wiretap applications for Subject Telephone One and Two, the location of Gannon Stauch's body was still unknown to law enforcement and this was due to the on-going efforts of the Defendant to conceal that location.

### Defendant's Challenge to Necessity and Compliance with 16-15-102(2)

22. The Defense argues that the wiretaps were invalid because the "necessity requirement" was not met in relation to the wiretap statute. The Defense goes through a number arguments to show that necessity was not met in this case. However, the Defense takes a much narrower view of what is required to establish necessity than the courts take in reviewing applications for wiretaps.
23. In the affidavit for interception of wire and electronic communications for Subject Telephone One, Paragraph 116(a) through (f), Detective Jessica Bethel details several investigative steps attempted and considered, as well as why these steps were, or would be, insufficient in achieving the goals of this investigation. Detective Bethel draws her conclusions from specific information based upon this investigation as well as her years of training and experience.
24. A district court reviewing the court order authorizing the wiretap interception reviews the authorizing judge's conclusion that the interception was necessary for an abuse of discretion. *United States v. Hall*, 603 F.Supp.2d 1308, 1312 (D.Colo. 2009); *United States v. Ramirez-Encarnacion*, 291 F.3d 1219, 1222 (10th Cir. 2002). Consequently, the reviewing court confines itself to the information as it existed before the authorizing judge. *Hall*, 603 F.Supp.2d at 1312. Typically, the reviewing court conducts a four-corners review of the application and does not consider additional evidence. *See Gallegos*, 251 P.3d at 1066.
  - a. Section 16-15-102(2)(c), C.R.S., requires a wiretap application to include "a complete statement as to whether or not other investigative procedures have been tried and failed, or why they appear to be unlikely to succeed if tried, or to be too dangerous." This subsection is commonly referred to as the "necessity requirement." *United States v. Zapata*, 546 F.3d 1179, 1186 (10th Cir. 2008).

- a. The necessity requirement is separate and distinct from the probable cause requirement. *Mitchell*, 274 F.3d at 1309. The purpose of the necessity requirement is to ensure that wire interception is not used in situations where traditional investigative techniques would be sufficient to expose the criminal activity. *Zapata*, 546 F.3d at 1185-86. However, the necessity requirement is not to be treated “hypertechnically.” *Verdin-Garcia*, 516 F.3d at 890.
  - b. In satisfying the necessity requirement, the overall burden on the applicant for a wire intercept order is not great. *Verdin-Garcia*, supra.
  - c. The requirements pursuant to section 16-15-102 should be interpreted in a practical and commonsense fashion to effectuate their purpose. *People v. Ingram*, 684 P.2d 243, 246 (Colo. 1984). These requirements may be satisfied when the application and accompanying affidavit inform the reviewing judge about the difficulties encountered and there was a lack of success or danger in using various conventional methods. *People v. Gable*, 647 P.2d 246 (Colo.App. 1982). Further, there is no requirement that a wiretap be used only as a last resort. *People v. Vazquez*, 768 P.2d 721, 725 (Colo. App. 1988).
  - d. The necessity requirement is satisfied if the application informs the authorizing judge of the difficulties encountered, and the lack of success in using conventional investigatory means. *Gable*, 647 P.2d at 250; see also *People v. Milnes*, 527 P.2d 1163, 1167 (Colo. 1974).
25. In this case, each of the investigation techniques highlighted by the Defense were addressed in the underlying affidavits for Subject Telephone One and Two.
26. Regarding physical surveillance, this was simply no longer possible when the affidavits were submitted for review. See *Subject Telephone One Affidavit, Paragraph 117(a) (Bates Stamped Page 27-0041)*; See *Subject Telephone Two Affidavit, Paragraph 119(a) (Bates Stamped Page 27-0109)*. The Defendant fled the state of Colorado with her daughter, Harley Hunt, and their whereabouts were unknown.
27. Regarding the use of search warrants, law enforcement applied for various warrants to gather as much evidence regarding the whereabouts of Gannon Stauch as possible. See *Subject Telephone One Affidavit, Paragraph 117(b) (Bates Stamped Page 27-0042)*; See *Subject Telephone Two Affidavit, Paragraph 119(b) (Bates Stamped Page 27-0109)*. Despite the many search warrants applied for, the location of Gannon Stauch’s body and identification of the murder weapons were still unknown when the wiretap applications were submitted for review.
28. Regarding the use of cooperating sources, law enforcement thoughtfully considered the benefits and pitfalls of utilizing this tool. See *Subject Telephone One Affidavit, Paragraph 117(c) (Bates Stamped Page 27-0042)*; See *Subject Telephone Two Affidavit, Paragraph 119(c) (Bates Stamped Page 27-0110)*. The family members and supporters of the Defendant were unlikely to provide useful information to law enforcement given the amount of false information the Defendant was feeding to her friends, supporters, and

family. Of note, not even the Defendant's daughter, Harley Hunt, was willing to contact law enforcement regarding her or her mother's whereabouts after they fled the state of Colorado.

29. Regarding the use of undercover agents, it was unreasonable to expect that the Defendant would disclose the location of Gannon Stauch to a relatively new stranger. *See Subject Telephone One Affidavit, Paragraph 117(d) (Bates Stamped Page 27-0043; See Subject Telephone Two Affidavit, Paragraph 119(d) (Bates Stamped Page 27-0111)*. Further, the use of an undercover agent was unreasonable given that the Defendant fled the state of Colorado.
30. Regarding forensic testing, Detective Bethel illustrated that evidence was collected and was sent out for testing. *See Subject Telephone One Affidavit, Paragraph 117(e) (Bates Stamped Page 27-0044); See Subject Telephone Two Affidavit, Paragraph 119(e) (Bates Stamped Page 27-0111)*. Given the nature of the crime being investigated, the murder of a young child, it would not have been reasonable to wait weeks for a return on results before applying for a wiretap.
31. Regarding toll records, pen registration, and traps and trace devices, the Defense overlooks the fact that applying for these things is useful when there is uncertainty as to what person is in possession of and utilizing the target telephone number. In this case, it was clear based on communications between a source of information (SO1) and the Defendant that the Defendant was using Subject Telephone One to communicate with others. *See Subject Telephone One Affidavit, Paragraphs 118-120 (Bates Stamped Page 27-0045); See Subject Telephone Two Affidavit, Paragraph 120-122 (Bates Stamped Page 27-0113)*.
32. Regarding the use of a grand jury and other witnesses, the urgent objectives of this case could not have been met through a grand jury. *See Subject Telephone One Affidavit, Paragraph 117(f) (Bates Stamped Page 27-0044); See Subject Telephone Two Affidavit, Paragraph 119(f) (Bates Stamped Page 27-0111)*. The state of the investigation in early 2020 cannot and should not be understated. The fact remains that at the time the People applied for the wiretap of Subject Telephone One and Two, Gannon Stauch was still missing. The goal of the investigation was to find the location of Gannon Stauch, and moreover, to find him as quickly as possible given his age, the fact that he went missing amid a frigid winter, and the distressing signs that he was the victim of a brutal attack in his bedroom. Convening a grand jury would not have been practical in terms of the timeliness or urgency the community expects and demands when law enforcement investigates a recent report of a missing child.
33. Lastly, it is important to note the following timeline: the application for Subject Telephone was applied for on February 7, 2020, with orders for interception issued that same day. By February 8, 2020, the Defendant acquired two new cellular telephone numbers and moved these numbers to a new telephone plan. As of February 9, 2020, the Defendant stopped making outgoing calls from Subject Telephone One.

34. The time between the court's review of the affidavit for Subject Telephone One and Subject Telephone Two was a matter of four days. Given that short time frame, of course the facts alleged in the affidavit for Subject Telephone One will be reiterated and used as a basis for the affidavit for Subject Telephone Two. Subject Telephone One and Subject Telephone Two include many similar facts and assertions. The fact remains that the Defendant purposely switched her use between cellular telephone numbers to avoid detection by law enforcement.

#### The Good Faith Exception

35. The exclusionary rule does not apply to situations where the police act in objectively reasonable, good faith reliance on a warrant, even if a court later holds that the warrant is defective. *United States v. Leon*, 468 U.S. 897 (1984); *Miller* 75 P. 3d at 1113.
36. The Colorado legislature has codified this "good faith" exception by creating a presumption that an officer was acting in good faith if he or she acted pursuant to a warrant. § 16-3-308(4)(b), C.R.S. (2020). This presumption may be rebutted if the officer failed to undertake the search in an objectively good faith belief that it was reasonable; if no reasonable officer would have relied upon the warrant, then objective good faith is absent and the good faith exception offers no shelter. *People v. Cooper*, 383 P.3d 1170, 1174.
37. There are four circumstances under which an officer may not reasonably rely on a warrant: (1) where the issuing magistrate was misled by a known or recklessly made falsehood; (2) where the issuing magistrate wholly abandoned the judicial role; (3) where the warrant is so facially deficient that the officer cannot reasonably determine the particular place to be searched or things to be seized; or (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. *Leon*, 468 U.S. at 923; *Cooper*, at 1174; *Miller*, 75 P.3d at 1114.
38. Application of the good faith exception turns on whether it was "objectively reasonable" for the officer to rely on the warrant. *Miller*, at 1116.
39. The affidavits contain evidence of the Defendant's involvement in the homicide of Gannon Stauch and her on-going efforts at the time to conceal the evidence in this case – such that a reasonable officer could have a reasonable, good faith belief that the court order for interception of Subject Telephone One and Two were proper.
40. Accordingly, even if this Court were to find the District Court erred in finding probable cause, the good faith exception should apply, and evidence obtained from the wiretaps should not be suppressed.

WHEREFORE, the People respectfully request Defendant's [D-38] Motion to Suppress Wiretap be denied.

