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IN THE DISTRICT COURT, CASCADE COUNTY, STATE OF MONTANA

STATE OF MONTANA,
Plaintiff,

v.

NEHEMIAS VALERIANO MIDENCE,
Defendant.

Cause No. BDC-25-477

**MOTION TO SUPPRESS
AND DISMISS**

COMES NOW, Nehemias Valeriano Midence, the Defendant, by and through his Attorney's of record, Zachary D. Kitchin / Cayle M. Halberg, The Practice of Law, P.L.L.C., and hereby respectfully moves the Court, pursuant to § 46-13-302, MCA, to suppress all evidence collected in this matter as the original search warrant was not supported by probable cause, or alternatively, because law enforcement exceeded the scope of the original search warrant, and proceeded to violate the Fourth Amendment's Warrant Requirement at least nine (9) times.

As part of this Motion, the Defendant requests that the Court enter an Order of Dismissal as the State cannot proceed against the Defendant as charged with the evidence suppressed.

FACTUAL BACKGROUND

In this case, Midence's cellphone was seized, without a warrant, on April 23, 2025, by a member of the Great Falls Police Department allegedly as part of an investigation into stalking

allegations made by a Great Falls Police Department intern, identified as Mattiah Murillo born on May 14, 2004.

However, prior to Midence's arrest and seizure, it is clear that Travis Burrow, ("Burrow"), a member of the Great Falls Police Department, was working in concert with Homeland Security personnel, Brian Flynn, and Cassidy Riley, regarding Midence's involvement with an individual named, Sierra Mickelson.

On April 23, 2025, Mickelson provided information that Midence had sexually explicit photos and videos of herself and Midence on his phone—Mickelson is an adult female with a birth date of August 1, 2005.

Each police report turned over indicates that law enforcement had probable cause to charge Midence with stalking related to MM. Indeed, Guderian completed a probable cause affidavit for the charge of stalking in violation of § 45-5-220(3), MCA—a first offense. The Cascade County Adult Detention Facility Remanding Report indicates that Midence was charged with stalking, resisting arrest, and obstructing a peace officer with an arrest date of April 23, 2025. Notably absent from this remand form is any charge related to the crime of obscenity.

A. MUNICIPAL COURT SEARCH WARRANT.

On or about June 6, 2025, Guderian applied for a search warrant from Great Falls Municipal Court Judge Steven Bolstad alleging that there was probable cause to believe that Midence committed the offenses of: (1) Stalking, in violation of § 45-5-220(3), MCA, and (2) Obscenity, in violation of § 45-8-201, MCA.

Guderian's search warrant application contained information related to Murillo and Mickelson. Both Murillo and Mickelson are, and were at all relevant times, adult females over the age of eighteen (18). Midence does not dispute that probable cause existed to issue the search

warrant for stalking; however, Midence does dispute that probable cause existed to issue the search warrant for obscenity.

After obtaining the search warrant from the Municipal Court, Guderian provided the cell phone to Special Agent Andrew Remington, Homeland Security Investigations, (“HSI”), who conducted the forensic extraction of Midence’s cell phone. Special Agent Adam Cates, HSI, began to review the data. Guderian also provided “reference information” regarding potential victims to assist the search, including Mattiah Murillo and Gabriella Santistevan. This is the first mention of Ms. Santistevan in the investigation as there was exactly zero information related to Ms. Santistevan in Guderian’s original search warrant application. Notably absent from this “reference information” is Sierra Mickelson. This clearly indicates that Guderian wished to conduct a general search of Midence’s cell phone, not one related to stalking charges, but one to try and find whatever she could to deport him.

During Cates’ search, he ran it against a local HSI database and five (5) images were flagged by HSI forensic software, which had previously been identified as possible child sexual abuse material. There was no authorization under the Municipal Court search warrant to search for child sexual abuse material (“CSAM”). Cates indicates that these images were considered “age difficult” and don’t “clearly” meet the federal definition of CSAM but may be child exploitation material. Then, he continued to search and found three (3) additional images described as “age difficult.” Finally, on the ninth (9th) image, which Cates indicates was clear CSAM, he “stopped pending the receipt of a new search warrant for CSAM.” Accordingly, after finding these images, a CSAM warrant was requested. The new warrant was applied for and granted on August 25, 2025¹.

¹ This Court granted the CSAM search warrant based upon a subsequent search warrant application.

On September 16, 2025, Ms. Santistevan appeared at the Great Falls Police Department with a written statement, over three (3) months after the original search warrant was applied for and issued, and nearly a month after the second search warrant was applied for and issued. This is noteworthy as Guderian apparently provided Ms. Santistevan's information to Cates when he was searching Midence's device pursuant to the Municipal Court warrant but no mention of Ms. Santistevan appears in the original search warrant application, which further illustrates the pretext and desire for a generalized search.

ANALYSIS

In Montana, individuals enjoy a constitutionally protected right to individual privacy. The Montana State Constitution in Article II, § 10, states: "The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest." Along with this state-guaranteed right to privacy, individuals enjoy the United States Constitution's Fourth Amendment protections, which are mirrored in the Montana State Constitution in Article II, § 11. Further, a warrantless search is per se unreasonable unless it falls within one of the defined exceptions to the warrant requirement. See, Coolidge v. New Hampshire, 403 U.S. 443 (1991).

1. MIDENCE HARBORED A REASONABLE EXPECTATION OF PRIVACY IN HIS CELL PHONE.

"[A] cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form." Riley v. California, 573 U.S. 373, 396-97 (2014) (emphasis in original). Montana courts have already determined that even parolees have a reasonable expectation of

privacy in their cell phones, and that society recognizes such an expectation as reasonable. See, State v. Mefford, 2022 MT 185, ¶ 15 (finding search of cell phone unlawful).

As such, Midence, as a free individual, has a reasonable expectation of privacy in his cell phone. In this case, Midence challenges the issuance of the original warrant, as well as the subsequent warrant obtained after repeated violations of the scope of the original warrant by law enforcement, though the first issue may be entirely dispositive.

2. REQUIREMENT OF PARTICULARITY.

Warrant applications must particularly describe the place to be searched and the persons or things to be seized. U.S. Const. amend. IV. “The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” Marron v. United States, 275 U.S. 192 (1927). The Court’s statement articulates why it is necessary to have a particularity requirement; however, it overstates the enforcement of that requirement.

“Knowledge that some objects connected with criminal activity are to be found on certain premises is no basis for permitting an unrestricted search of those premises.” 2 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 4.6(a), p. 765 (5th ed. 2012). The conclusions of LaFave and Marron illustrate the important purpose of the particularity requirement: preventing general searches—which is what occurred in this case. LaFave explains further that “an intrusion upon the occupant’s expectation of privacy in those premises should extend no further than is necessary to find particular objects, and this is reflected in the rule that the described premises may only be searched as long and as intensely as is reasonable to find the things described in the warrant.” Id.

In this case, the search warrant application requested essentially all data on Midence's phone, including data not easily acceptable by a user of the cellphone. Due to the overbreadth of the request, the resulting Municipal Court search warrant suffered the same lack of particularity. It, in fact, authorized a general search of Midence's cell phone, and this proved out based upon subsequent conduct of law enforcement.

With regard to the duration and intensity of such a generalized search, it should be noted that Guderian personally observed the call logs on Murillo's cell phone and personally observed Murillo receiving repeated contact attempts by Midence while Murillo was at the police station. Insofar as law enforcement required evidence to substantiate probable cause for stalking, this was accomplished without resort to the search warrant.

As such, the duration and intensity of the search of Midence's cell phone should have been extraordinarily short: a review of his call log would have produced the evidence of stalking that Guderian had already personally observed. Moreover, Guderian had access to Murillo's cell phone, and she obtained the necessary evidence by taking a photograph of Murillo's call log—which was provided in evidence but was not included in the original search warrant application. Instead, law enforcement opted for a full extraction of Midence's cell phone.

3. GATES TEST.

Montana employs the "totality of circumstances" test set forth in Illinois v. Gates, 462 U.S. 213 (1983), to determine whether probable cause exists. "Under that test, the issuing judicial officer must make a practical, common-sense decision, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, of whether there is a fair probability that contraband or evidence of a crime will be found in the place described in the affidavit." State v. Dutton, 2007 MT 56, ¶ 11.

4. SEARCH WARRANT APPLICATION IS SOLE BASIS FOR PROBABLE CAUSE DETERMINATION.

An application for a search warrant must state facts sufficient to show probable cause to believe an offense has been committed and that evidence of the crime may be found in the place to be searched. § 46-5-221, MCA; State v. Tucker, 2008 MT 273, ¶ 16 (citing to State v. Barnaby, 2006 MT 203, ¶ 30; State v. Reesman, 2000 MT 243, ¶ 24). Probable cause must be determined solely from the information contained within the four corners of the search warrant application. State v. Isom, 196 Mont. 330, 341 (1982).

5. REESE TEST AND CORROBORATION OF HEARSAY REQUIRED.

“Corroboration of an informant’s information through other sources is necessary when the information is hearsay or the informant is anonymous.” State v. Rinehart, 262 Mont. 204, 212 (1993) (citing to State v. Crowder, 248 Mont. 169, 173 (1991); State v. Hook, 255 Mont. 2, 5 (1992)).

In Reesman, the Montana Supreme Court set forth the Reesman test, which was summarized in Tucker at ¶ 18:

First, if the informant is anonymous, independent corroboration of the informant's information is required. *Reesman*, ¶ 28. If the informant is not anonymous, the next inquiry is whether the informant's information is based on personal observation or hearsay. *Reesman*, ¶ 29. **If based on hearsay, then independent corroboration is needed.** *Reesman*, ¶ 30. If based on the informant's personal observation, we then address reliability by determining whether the informant has provided reliable and accurate information to officers in the past, whether the admission is against the informant's interest, or whether the informant was motivated by good citizenship.

With regard to obscenity, the only information provided in the search warrant application attenuated to obscenity stems from Mickelson’s claim that Midence had sexually explicit photos and videos of herself and Midence on his phone. Guderian notes that she learned this information from Burrow, who advised that Mickelson had reported that Midence had shown those photos and

videos to a “juvenile male.” The search warrant application does not contain any identifying information related to the “juvenile male.” The search warrant application does not contain an attestation that Mickelson has served as a reliable informant in the past, nor any attestation to the veracity of her statements, nor to her basis of knowledge for the statement related to the “juvenile male.” As such, it is hearsay, or hearsay within hearsay.

Because Guderian’s search warrant application relied on Mickelson’s hearsay statement related to the “juvenile male,” and the hearsay was never corroborated, the search warrant was invalid with regard to the obscenity allegation as the State cannot establish probable cause within the four corners of the search warrant affidavit. See, Rinehart, at 210 (“The veracity, reliability and basis of knowledge of informants remain highly relevant factors in determining probable cause under the totality of circumstances test.”); State v. Isom, 196 Mont. 330, 341 (1982). Accordingly, pursuant to the exclusionary rule, “evidence discovered as the result of a constitutionally invalid search or seizure is generally inadmissible against the accused in subsequent proceedings” and all evidence seized related to the crime of obscenity, and that obtained after Cates continued searching the phone without a warrant for CSAM, should be suppressed. State v. Zeimer, 2022 MT 96, ¶ 54.

6. ORIGINAL SEARCH WARRANT APPLICATION FAILED TO ESTABLISH PROBABLE CAUSE FOR THE CRIME OF OBSCENITY.

Pursuant to § 45-8-201, MCA, a person commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person purposely or knowingly:

- (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age or a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be under 18 years of age;
- (b) presents or directs an obscene play, dance, or other performance, or participates in that portion of the performance that makes it obscene, to anyone under 18 years of age;

- (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years of age;
- (d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;
- (e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age or a person, including a law enforcement officer using an undercover or fictitious identity, whom the offender believes to be under 18 years of age; or
- (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.

And a thing is obscene if:

- (a)(i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
- (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or
- (iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and
- (b) taken as a whole the material:
 - (i) applying contemporary community standards, appeals to the prurient interest in sex;
 - (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way; and
 - (iii) lacks serious literary, artistic, political, or scientific value.

Insofar as the State wished to search Midence's cell phone for evidence of obscenity, it must necessarily establish probable cause that such a crime was committed, and that evidence of that crime was contained on Midence's cell phone. It is patently impossible to do so here on the basis of the search warrant application. Both Mickelson and Murillo were adult females at all relevant times and recordation of their sex acts is not prohibited. As such, the search warrant application fails to provide probable cause for the search warrant as it relates to the crime of obscenity.

7. NINE UNLAWFUL SEARCHES BY CATES FOR CSAM.

Further, the government is not permitted to willy nilly search through an individual's cell phone, happen upon nine (9) separate images, and then apply for a search warrant for the very images they happened upon prior to the request and issuance of a warrant. Riley, 573 U.S. at 403

(“Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.”)

What occurred in this case is what the 4th Amendment’s Warrant Requirement is designed to protect against: general searches. Guderian’s search warrant application lacked probable cause for obscenity and Cates’ repeated and continued viewing of nine (9) separate images prior to the cessation of the search and a request for a search warrant properly tailored in the cell phone context require that all evidence be suppressed.

8. MUNICIPAL COURT JUDGE WAS NOT A NEUTRAL AND DETACHED OFFICIAL AS REQUIRED BY THE FOURTH AMENDMENT.

Here, the original search warrant application was directly related to an intern with the Great Falls Police Department, an entity that supplies courtroom bailiffs to the Great Falls Municipal Court and is intimately involved with the Great Falls Municipal Court in a variety of respects.

Guderian, rather than utilizing a readily available Justice of the Peace or District Court Judge, sought to obtain the original search warrant from the Great Falls Municipal Court Judge, whose staff was involved in apparent evidence collection on behalf of Murillo. See, Def. Ex. __, E-Mail from Ronce Martell, April 24, 2025. When these factors are considered, especially in the context of the lack of any nonhearsay evidence contained in the search warrant application for the charge of obscenity, calls into question the independence, and thus neutrality, of the review.

The final factor that suggests that neutrality and detachment of the original search warrant application review was that the Municipal Court had already issued a protective order on behalf of Murillo against Midence on the same date of Clerk Martell’s email correspondence with Guderian. Accordingly, the Defense submits that the original search warrant application was not reviewed by a neutral and detached official as required by the Constitution. See generally, U.S. Const. amend. IV; Johnson v. U.S., 333 U.S. 10, 14 (1948).

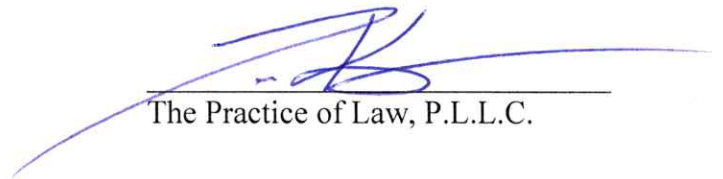
CONCLUSION

Based upon the foregoing, and because the original search warrant fails the “totality of circumstances” test set forth in Illinois v. Gates, 462 U.S. 213 (1983), as it fails to establish probable cause to search for evidence of the crime of obscenity within its four corners, the original search warrant was therefore invalid, and the evidence should be suppressed and the case dismissed. Further, due to the insufficiency of the search warrant application, and the lack of corroboration of material hearsay statements contained therein, the Municipal Court lacked a “substantial basis” to determine that probable cause existed for the crime of obscenity. State v. Reesman, 2000 MT 243, ¶ 19.

Cates’ repeated and continued searches of the cell phone constitutes a warrantless search of the cell phone (because no warrant existed for CSAM at the time of search), resulting in nine (9) warrantless searches altogether, and the evidence gathered should be suppressed on that alternative ground.

Finally, the original search warrant was *void ab initio* due to the constitutional defect that the Municipal Court Judge was not a neutral and detached magistrate.

2/25/26
DATE


The Practice of Law, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I e-filed a true and correct copy of the foregoing document with the Clerk of Court - Cascade County. A courtesy copy was sent to Counsel for the State.

cc. CA Larsen
Defense Counsel

2/25/26
DATE


THE PRACTICE OF LAW, P.L.L.C.

CERTIFICATE OF SERVICE

I, Zachary D. Kitchin, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to Suppress to the following on 02-25-2026:

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