

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

2 COUNTY OF SAN DIEGO

3 S E A R C H W A R R A N T

4 10 MAR -4 AM 9:02

No. 113-10

5 The People of the State of California, to any peace officer in the
6 County of San Diego:

7 Proof, by affidavit, having been this day made before me by
8 Troy DuGal, a peace officer employed by the San Diego Sheriff's
9 Department, that there is substantial probable cause pursuant to
10 Penal Code section 1524 and 1524.2 for the issuance of the search
11 warrant, as set forth in the affidavit attached hereto and made a
12 part hereof as is fully set forth herein, you are, therefore,
13 commanded to make search at any time of the day good cause being
14 shown therefore;

15
16
17 LOCATION, PROPERTY, AND/OR PERSON[S] TO BE SEARCHED

18 A. The records in the constructive or actual
19 possession of the business known as T-Mobile. This
20 business is located at 4 Sylvan Way, in the City of
21 Parsippany, within the State of New Jersey. The
22 search is to include the premises and all record
23 storage areas and all parts therein.
24
25
26
27

ITEMS TO BE SEIZED

For the following property, to wit:

1. All stored electronic communications and other files controlled by user account(s) owned by T-Mobile Wireless and all affiliates using the telephone numbers of (949) 295-6411 and (949) 295-7451,
2. Connection dates and times,
3. Disconnection dates and times, if applicable,
4. Method of account (e.g., written application, telephone, Internet),
5. Telephone caller identification records,
6. All text messages, greetings, voicemail recordings and passwords,
7. All call detail information on incoming and outgoing calls,
8. Other connection information such as the telephone number of the caller or Internet Protocol address of the source of the connection,
9. Connection information for other cellular telephones, landline telephones and computers to which the user of the above-referenced account(s) connected, by any means, during the connection period, including the telephone numbers called and received and the destination IP addresses, connection dates and times, disconnection dates and times, method of connection to the designated

1 telephone, and all other information related to the
2 connections from T-Mobile Wireless and all
3 affiliates,

4 10. All available cell site information for calls
5 placed to or received from telephone numbers (949)
6 295-6411 and (949) 295-7451 between January 1,
7 2010, and February 23, 2010,

8 11. All cellular telephone company subscriber
9 information for the phone numbers identified as
10 (949) 295-6411 and (949) 295-7451 to include
11 subscriber name(s), personal information,
12 addresses, telephone numbers, work information,
13 billing addresses, billing statements, records of
14 customer service, copies of customer contracts,
15 social security records, credit information and
16 documentation showing methods of payment, and
17 should include any additional numbers assigned to
18 the client which may or may not be working in
19 conjunction to that listed above, between January
20 1, 2010, and February 23, 2010, including a copy of
21 the initial contract regardless of date,

22 12. Any other records related to the above-referenced
23 account(s), names and user names, including
24 correspondence, billing records, records of contact
25 by person(s) or entities about the above-referenced
26 account and any other subscriber information.

1 If you find the same, or any part thereof, to bring it
2 forthwith before me at the Superior Court of the State of
3 California for the County of San Diego, or to any other court in
4 which the offense in respect to which the property or things is
5 triable, or retain such property in your custody, subject to the
6 order of this Court, pursuant to section 1536 of the Penal Code.

7 Given under my hand and dated this 23rd day of February, 2010.

8
9 R. G. Main

10 Judge of the Superior Court

88
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

COUNTY OF SAN DIEGO }
STATE OF CALIFORNIA }

RECEIPT AND INVENTORY

WARRANT NO. 113-10
CASE NO. 10018139
McSTAY, JOSEPH
(name)

Receipt is hereby acknowledged, and the undersigned makes this inventory, of the following property and things seized by him/her this day in the search of the premises described in said warrant and taken pursuant thereto, to wit:

N/A

DATE: 3-3-10 TIME: 0800
SIGNED: [Signature]
DEPT./AGENCY: SD SHERIFF
ID NO.: 1635

I, [Signature], the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all property taken by me on the warrant.

Subscribed and sworn to before me

this 4TH day of MARCH 2010

[Signature]
Officer Executing Search Warrant

[Signature]
Magistrate/Judge

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

2 COUNTY OF SAN DIEGO

3 STATE OF CALIFORNIA,)

AFFIDAVIT FOR SEARCH WARRANT

4 (ss.

5 COUNTY OF SAN DIEGO)

No. 113-10

6 I, Troy DuGal, do on oath make complaint, say and depose the
7 following on this 23rd day of February, 2010: that I have
8 substantial probable cause to believe and I do believe that I
9 have cause to search:

10
11 LOCATION, PROPERTY, AND/OR PERSON[S] TO BE SEARCHED

12 A. The records in the constructive or actual
13 possession of the business known as T-Mobile.
14 This business is located at 4 Sylvan Way, in the
15 City of Parsippany, within the State of New
16 Jersey. The search is to include the premises and
17 all record storage areas and all parts therein.

18
19 ITEMS TO BE SEIZED

20 For the following property, to wit:

- 21 1. All stored electronic communications and other
22 files controlled by user account(s) owned by T-
23 Mobile Wireless and all affiliates using the
24 telephone numbers of (949) 295-6411 and (949) 295-
25 7451,
26 2. Connection dates and times,
27 3. Disconnection dates and times, if applicable,

- 1 4. Method of account (e.g., written application,
2 telephone, Internet),
- 3 5. Telephone caller identification records,
- 4 6. All text messages, greetings, voicemail recordings
5 and passwords,
- 6 7. All call detail information on incoming and
7 outgoing calls,
- 8 8. Other connection information such as the telephone
9 number of the caller or Internet Protocol address
10 of the source of the connection,
- 11 9. Connection information for other cellular
12 telephones, landline telephones and computers to
13 which the user of the above-referenced account(s)
14 connected, by any means, during the connection
15 period, including the telephone numbers called and
16 received and the destination IP addresses,
17 connection dates and times, disconnection dates
18 and times, method of connection to the designated
19 telephone, and all other information related to
20 the connections from T-Mobile Wireless and all
21 affiliates,
- 22 10. All available cell site information for calls
23 placed to or received from telephone numbers (949)
24 295-6411 and (949) 295-7451 between January 1,
25 2010, and February 23, 2010,
- 26 11. All cellular telephone company subscriber
27 information for the phone numbers identified as

1 (949) 295-6411 and (949) 295-7451 to include
2 subscriber name(s), personal information,
3 addresses, telephone numbers, work information,
4 billing addresses, billing statements, records of
5 customer service, copies of customer contracts,
6 social security records, credit information and
7 documentation showing methods of payment, and
8 should include any additional numbers assigned to
9 the client which may or may not be working in
10 conjunction to that listed above, between January
11 1, 2010, and February 23, 2010, including a copy
12 of the initial contract regardless of date,

13 12. Any other records related to the above-referenced
14 account(s), names and user names, including
15 correspondence, billing records, records of
16 contact by person(s) or entities about the above-
17 referenced account and any other subscriber
18 information.

19
20 **AFFIANT'S QUALIFICATIONS**

21 I am a peace officer employed by the County of San Diego
22 Sheriff's Department and have been so employed for approximately
23 14 years. During my tenure, I have been assigned to the jail,
24 patrol, the Community Oriented Policing and Problem Solving Unit
25 and Area Investigations. I am currently a detective assigned to
26 the Sheriff's Homicide Detail and have been so assigned for over
27 1 year.

1 While working in these different positions, I have conducted
2 numerous investigations related to crimes of violence ranging
3 from battery to murder. I have been involved in approximately 40
4 homicide investigations in various capacities. I have also
5 investigated several cases of missing persons, natural deaths,
6 suspicious deaths, suicides and officer involved shootings.
7 Additionally, I have worked closely and consulted with
8 criminalists and other specialized consultants in the field of
9 criminal investigations.

10 I have received training available to law enforcement to
11 keep proficient in my profession. This training includes, but is
12 not limited to: the Investigation of Homicide and Deaths;
13 Officer Involved Shootings; Domestic Violence; Sexual Assault;
14 Kidnappings; Gangs and Narcotics; Interview and Interrogations
15 courses; Arrest and Search Warrant Preparation courses; Court
16 Room Testimony courses; and Basic Criminal Investigations
17 courses.

18 I possess an Advanced Certificate from the California
19 Department of Justice on the Commission of Peace Officer
20 Standards and Training.

21

22

PROBABLE CAUSE

23 During the course of my duties, I have learned the following
24 information based upon my discussions with the named witnesses or
25 by having read the reports of or talked with other San Diego
26 Sheriff's Department deputies and detectives who have spoken

27

1 directly with the named witness. All references to dates refer
2 to the current calendar year unless otherwise stated.

3 At approximately 0939 a.m the morning of Monday, February
4 15th, 2010, SDSO communications received a call from Michael
5 McStay. Michael McStay was calling from the Huntington Beach
6 area of California and he wanted to report that his brother,
7 Joseph McStay and Joseph's family; Summer McStay (wife, 43 years
8 old), Gianni McStay (son, 4 years old) and Joseph McStay Jr (son,
9 3 years old) had not been seen or heard from since Thursday,
10 February 4th, 2010.

11 When we arrived we were briefed by Deputy M. Tingley who
12 told us that he initially spoke to the reporting party, Micheal
13 McStay on the telephone. Michael was very concerned as he had
14 communicated with several family members and several friends over
15 the past 11 days in an attempt to locate his brother and his
16 brother's family. No person had seen or heard from the McStay
17 family in the past 11 days. Michael informed Deputy Tingley that
18 Joseph owned and operated his own business and it was very
19 unusual that Joseph would abandon his business and the clients.
20 Michael also believed the family would not have left the two
21 family dogs in the backyard under any circumstance.

22 At 1032 a.m. deputies arrived at 3473 Avocado Vista Lane as
23 a result of the request for a welfare check at the residence.
24 When deputies arrived they knocked on the front door of the
25 residence and checked the exterior of the residence for signs of
26 forced entry. The residence was secure and no persons were home.
27 Due to the reported length of time that the family had been

1 missing, deputies entered the residence to check the welfare of
2 persons who may be in the residence but were unable to respond.
3 Deputies found no persons in the residence. The two family owned
4 dogs were in the backyard.

5 Deputies exited the residence and spoke to neighbors. The
6 neighbors had not seen the family recently. Deputies located a
7 San Diego County Animal Control notice attached to the front door
8 indicating the residents were being warned for abandoning their
9 dogs and not providing for their care.

10 Deputy Tingley conducted a record check of vehicles
11 registered to Joseph B McStay which revealed he owned a 1996
12 Isuzu Trooper (3TAE045) and a 1999 Dodge truck (5X14440). The
13 green 1999 Dodge truck was parked in the driveway of the
14 residence. The 1996 Isuzu Trooper was also missing. A records
15 check of the 1996 Isuzu Trooper revealed the vehicle had been
16 towed from a parking lot near the USA/Mexico border at 2305 hours
17 on Monday, February 8th, 2010. The tow was a result of a parking
18 violation. Deputies secured the scene at about 1630 p.m. and
19 contacted the communication division who called out the homicide
20 unit.

21 Communications contacted SDSO Sgt Martinez, who called out
22 homicide team one. I, along with several other members of the
23 SDSO unit responded to 3473 Avocado Vista Lane in the City of
24 Fallbrook and the County of San Diego.

25
26 During the homicide briefing in which the deputies who have
27 secured the scene inform the homicide unit of what had occurred,

1 Deputy Tingley apologized as he told me he inadvertently forgot
2 to check the garage area of the residence during his welfare
3 check. He described the initial welfare check as a cursory
4 search of the residence for persons. Based on my training and
5 experience, I realized the search for bodies and any sign of foul
6 play during a welfare check is crucial to determining if a person
7 has been harmed. I asked Deputy Tingley to lead a secondary
8 welfare check into the residence to complete the welfare check of
9 the garage and to focus on the aforementioned circumstances.
10 This check would include looking in closets, under beds, and in
11 locations where small children could be.

12 After entering the residence, I noticed in the living room
13 there was a small couch with two small bowls that were half
14 filled with popcorn. The popcorn was slightly spilled near the
15 bowls. In the kitchen there was a carton of raw eggs and a bag
16 of microwave popcorn on the counter. In the upstairs master
17 bedroom there was a tall lamp that was lying on the floor. In
18 the walk-in closet of the master bedroom there were several
19 suitcases in the open position with folded clothing inside of the
20 suitcases. There was a large quantity of clothing tossed on the
21 center of the floor in the closet. I did not see a ladies purse
22 anywhere in the residence. There were no apparent signs of foul
23 play.

24 On Tuesday, February 16th, 2010, I went to 1187 Walnut Avenue
25 in Chula Vista to seize the white 1996 Isuzu Trooper (3TAE045)
26 from the Western Tow yard as evidence under authority 22655.5(b)

27

1 CVC. I had the vehicle towed and stored at the San Diego
2 Sheriff's Crime Lab.

3 During my investigation cell phones known to be associated
4 with Joseph McStay and Summer McStay were identified. Law
5 enforcement officers were able to determine that no cell phone
6 activity had occurred since February 4th, 2010 on either phone.
7 From my investigation I learned Joseph McStay typically used his
8 cellular telephone (949)295-7451, while Summer McStay typically
9 used her cellular telephone (949)295-6411 to place and receive
10 telephone calls during the time period covering January 1st, 2010
11 to February 23rd, 2010.

12 The local media and national media have showed intense
13 interest in this case and several news stories have been running
14 on local television for the last several days. Those stories
15 have included a plea for anyone with knowledge of the whereabouts
16 of the McStay family to come forth. As of this date there has
17 been no response to this plea as to the whereabouts of the family
18 and the family has not contacted law enforcement.

19 On February 23rd, 2010 at 0900 hours, I contacted Vanessa at
20 the T-Mobile subpoena compliance office and confirmed both
21 (949)295-7451 and (949)295-6411 are valid cellular telephone
22 accounts held by T-Mobile.

23

24 **OPINIONS AND CONCLUSIONS**

25 Based on my training and experience, I know that the above
26 described telephone company has the information and records

27

1 requested. I am also aware that the company representative is
2 willing to produce records if a court order is produced.

3
4 **REQUEST TO SEAL AFFIDAVIT**

5 Pursuant to People v. Hobbs (1994) 7 Cal.4th 948, I
6 respectfully request this affidavit and search warrant be sealed
7 pending further order of the court. Without sealing, the
8 affidavit and warrant become a matter of public record within ten
9 days (Penal Code section 1534(a)). Sealing is justified even
10 against discovery by the defendant based on the governmental
11 privilege allowing for the protection of the identity of
12 informants pursuant to Evidence Code section 1041 (Swanson v.
13 Superior Court (1989) 211 Cal.App. 3d 332). The sealing
14 requested herein, however, is not based on denying discovery to
15 the defendant(s) when and if they are charged, but is being
16 requested to merely prohibit public disclosure which could surely
17 undermine the continuing investigation herein. We do not wish to
18 divulge the information contained within these documents for fear
19 that the perpetrators will destroy or conceal evidence. I believe
20 that disclosure of the information prior to completion of our
21 investigation would be against the public interest because the
22 necessity for preserving the confidentiality of the information
23 outweighs the necessity for disclosure. Thus, I believe the
24 information contained within the aforementioned documents is
25 entitled to protection provided by the official information
26 privilege pursuant to Evidence Code section 1040 as well. In
27 addition, due to the sensitive nature of the matter, I request

1 the court order sealing of the warrant and documents in support
2 thereof pending further order of court.

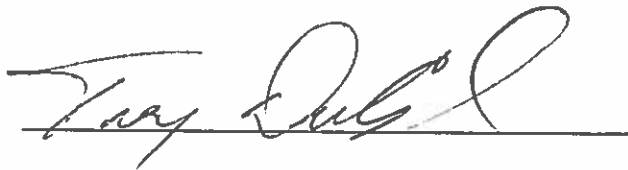
3 Therefore, based on my training and experience and the above
4 facts, I believe that I have substantial cause to believe the
5 above described property, or a portion thereof, will be at the
6 above described premises when the warrant is served.

7 Based on the aforementioned information and investigation, I
8 believe that grounds for the issuance of a search warrant exist
9 as set forth in Penal Code 1524 and 1524.2.

10 I, the affiant, hereby pray that a search warrant be issued
11 for the seizure of said property, or any part thereof, from said
12 premise, good cause being shown therefore, and that the same be
13 brought before this magistrate or retained subject to the order
14 of this Court.

15 This affidavit has been reviewed for legal sufficiency by
16 Deputy District Attorney Patrick Espinoza.

17 Given under my hand and dated this 23rd day of February,
18 2010.

19 
20

21 Subscribed and sworn to before me

22 this 23rd day of February 2010,

23 at 2:15 ~~am~~ /p.m.

24
25 
26

26 Judge of the Superior Court

27

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

2 COUNTY OF SAN DIEGO

3 S E A R C H W A R R A N T

4 No. 113-10

5 The People of the State of California, to any peace officer in the
6 County of San Diego:

7 Proof, by affidavit, having been this day made before me by
8 Troy DuGal, a peace officer employed by the San Diego Sheriff's
9 Department, that there is substantial probable cause pursuant to
10 Penal Code section 1524 and 1524.2 for the issuance of the search
11 warrant, as set forth in the affidavit attached hereto and made a
12 part hereof as is fully set forth herein, you are, therefore,
13 commanded to make search at any time of the day good cause being
14 shown therefore;

15
16
17 LOCATION, PROPERTY, AND/OR PERSON[S] TO BE SEARCHED

18 A. The records in the constructive or actual
19 possession of the business known as T-Mobile. This
20 business is located at 4 Sylvan Way, in the City of
21 Parsippany, within the State of New Jersey. The
22 search is to include the premises and all record
23 storage areas and all parts therein.

ITEMS TO BE SEIZED

For the following property, to wit:

1. All stored electronic communications and other files controlled by user account(s) owned by T-Mobile Wireless and all affiliates using the telephone numbers of (949) 295-6411 and (949) 295-7451,
2. Connection dates and times,
3. Disconnection dates and times, if applicable,
4. Method of account (e.g., written application, telephone, Internet),
5. Telephone caller identification records,
6. All text messages, greetings, voicemail recordings and passwords,
7. All call detail information on incoming and outgoing calls,
8. Other connection information such as the telephone number of the caller or Internet Protocol address of the source of the connection,
9. Connection information for other cellular telephones, landline telephones and computers to which the user of the above-referenced account(s) connected, by any means, during the connection period, including the telephone numbers called and received and the destination IP addresses, connection dates and times, disconnection dates and times, method of connection to the designated

1 telephone, and all other information related to the
2 connections from T-Mobile Wireless and all
3 affiliates,

4 10. All available cell site information for calls
5 placed to or received from telephone numbers (949)
6 295-6411 and (949) 295-7451 between January 1,
7 2010, and February 23, 2010,

8 11. All cellular telephone company subscriber
9 information for the phone numbers identified as
10 (949) 295-6411 and (949) 295-7451 to include
11 subscriber name(s), personal information,
12 addresses, telephone numbers, work information,
13 billing addresses, billing statements, records of
14 customer service, copies of customer contracts,
15 social security records, credit information and
16 documentation showing methods of payment, and
17 should include any additional numbers assigned to
18 the client which may or may not be working in
19 conjunction to that listed above, between January
20 1, 2010, and February 23, 2010, including a copy of
21 the initial contract regardless of date,

22 12. Any other records related to the above-referenced
23 account(s), names and user names, including
24 correspondence, billing records, records of contact
25 by person(s) or entities about the above-referenced
26 account and any other subscriber information.

27

1 If you find the same, or any part thereof, to bring it
2 forthwith before me at the Superior Court of the State of
3 California for the County of San Diego, or to any other court in
4 which the offense in respect to which the property or things is
5 triable, or retain such property in your custody, subject to the
6 order of this Court, pursuant to section 1536 of the Penal Code.

7 Given under my hand and dated this 23rd day of February, 2010.

8
9 R. G. Main

10 Judge of the Superior Court

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27