

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 9:03

No. 114-10

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 Time Warner
20 Cable. This business is located at 13820 Sunrise
21 Valley Drive, in the City of Herndon, within the
22 State of Virginia. The search is to include the
23 premises and all record storage areas and all parts
24 therein.

1 ITEMS TO BE SEIZED

2 For the following property, to wit:

- 3 1. All stored electronic communications and other
4 files controlled by user account(s) owned by Time
5 Warner Cable and all affiliates using the telephone
6 number of (760) 645-3092. Connection dates and
7 times,
8 2. Disconnection dates and times, if applicable,
9 3. Method of account (e.g., written application,
10 telephone, Internet),
11 4. Telephone caller identification records,
12 5. All text messages, greetings, voicemail recordings
13 and passwords,
14 6. All call detail information on incoming and
15 outgoing calls,
16 7. Other connection information such as the telephone
17 number of the caller or Internet Protocol address
18 of the source of the connection,
19 8. Connection information for other cellular
20 telephones, landline telephones and computers to
21 which the user of the above-referenced account(s)
22 connected, by any means, during the connection
23 period, including the telephone numbers called and
24 received and the destination IP addresses,
25 connection dates and times, disconnection dates and
26 times, method of connection to the designated
27 telephone, and all other information related to the

1 connections from Time Warner Cable and all
2 affiliates,

3 9. All available cell site information for calls
4 placed to or received from telephone number (760)
5 645-3092 between January 1, 2010, and February 23,
6 2010,

7 10. All telephone company subscriber information for
8 the phone number identified as (760)645-3092 to
9 include subscriber name(s), personal information,
10 addresses, telephone numbers, work information,
11 billing addresses, billing statements, records of
12 customer service, copies of customer contracts,
13 social security records, credit information and
14 documentation showing methods of payment, and
15 should include any additional numbers assigned to
16 the client which may or may not be working in
17 conjunction to that listed above, between January
18 1, 2010, and February 23, 2010, including a copy of
19 the initial contract regardless of date,

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

25 If you find the same, or any part thereof, to bring it
26 forthwith before me at the Superior Court of the State of
27 California for the County of San Diego, or to any other court in

1 which the offense in respect to which the property or things is
2 triable, or retain such property in your custody, subject to the
3 order of this Court, pursuant to section 1536 of the Penal Code.

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

5
6 R. G. Mauro

7 Judge of the Superior Court

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

COUNTY OF SAN DIEGO
STATE OF CALIFORNIA

SS.
[Signature]

RECEIPT AND INVENTORY

WARRANT NO. 114-10

CASE NO. 10018139

MCSTAY, JOSEPH
(name)

10 MAR -4 AM 9:03

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:

[Lined area for inventory with a large diagonal line and "N/A" handwritten in the center.]

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. 114-10

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

11 A. The records in the constructive or actual
12 possession of the business known as Time Warner
13 Cable. This business is located at 13820 Sunrise
14 Valley Drive, in the City of Herndon, within the
15 State of Virginia. The search is to include the
16 premises and all record storage areas and all
17 parts therein.

18 ITEMS TO BE SEIZED

19 For the following property, to wit:

- 20 1. All stored electronic communications and other
21 files controlled by user account(s) owned by Time
22 Warner Cable and all affiliates using the
23 telephone number of (760) 645-3092,
24 2. Connection dates and times,
25 3. Disconnection dates and times, if applicable,
26 4. Method of account (e.g., written application,
27 telephone, Internet),

- 1 5. Telephone caller identification records,
- 2 6. All text messages, greetings, voicemail recordings
- 3 and passwords,
- 4 7. All call detail information on incoming and
- 5 outgoing calls,
- 6 8. Other connection information such as the telephone
- 7 number of the caller or Internet Protocol address
- 8 of the source of the connection,
- 9 9. Connection information for other cellular
- 10 telephones, landline telephones and computers to
- 11 which the user of the above-referenced account(s)
- 12 connected, by any means, during the connection
- 13 period, including the telephone numbers called and
- 14 received and the destination IP addresses,
- 15 connection dates and times, disconnection dates
- 16 and times, method of connection to the designated
- 17 telephone, and all other information related to
- 18 the connections from **Time Warner Cable** and all
- 19 affiliates,
- 20 10. All available cell site information for calls
- 21 placed to or received from telephone number (760)
- 22 645-3092 between January 1, 2010, and February 23,
- 23 2010,
- 24 11. All telephone company subscriber information for
- 25 the phone numbers identified as (760) 645-3092 to
- 26 include subscriber name(s), personal information,
- 27 addresses, telephone numbers, work information,

1 billing addresses, billing statements, records of
2 customer service, copies of customer contracts,
3 social security records, credit information and
4 documentation showing methods of payment, and
5 should include any additional numbers assigned to
6 the client which may or may not be working in
7 conjunction to that listed above, between January
8 1, 2010, and February 23, 2010, including a copy
9 of the initial contract regardless of date,

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

16 AFFIANT'S QUALIFICATIONS

17 I am a peace officer employed by the County of San Diego
18 Sheriff's Department and have been so employed for approximately
19 14 years. During my tenure, I have been assigned to the jail,
20 patrol, the Community Oriented Policing and Problem Solving Unit
21 and Area Investigations. I am currently a detective assigned to
22 the Sheriff's Homicide Detail and have been so assigned for over
23 1 year.

24 While working in these different positions, I have conducted
25 numerous investigations related to crimes of violence ranging
26 from battery to murder. I have been involved in approximately 40
27 homicide investigations in various capacities. I have also

1 investigated several cases of missing persons, natural deaths,
2 suspicious deaths, suicides and officer involved shootings.
3 Additionally, I have worked closely and consulted with
4 criminalists and other specialized consultants in the field of
5 criminal investigations.

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

14 I possess an Advanced Certificate from the California
15 Department of Justice on the Commission of Peace Officer
16 Standards and Training.

17 PROBABLE CAUSE

18 During the course of my duties, I have learned the following
19 information based upon my discussions with the named witnesses or
20 by having read the reports of or talked with other San Diego
21 Sheriff's Department deputies and detectives who have spoken
22 directly with the named witness. All references to dates refer
23 to the current calendar year unless otherwise stated.

24 At approximately 0939 a.m the morning of Monday, February
25 15th, 2010, SDSO communications received a call from Michael
26 McStay. Michael McStay was calling from the Huntington Beach
27 area of California and he wanted to report that his brother,

1 Joseph McStay and Joseph's family; Summer McStay (wife, 43 years
2 old), Gianni McStay (son, 4 years old) and Joseph McStay Jr (son,
3 3 years old) had not been seen or heard from since Thursday,
4 February 4th, 2010.

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

16 At 1032 a.m. deputies arrived at 3473 Avocado Vista Lane as
17 a result of the request for a welfare check at the residence.
18 When deputies arrived they knocked on the front door of the
19 residence and checked the exterior of the residence for signs of
20 forced entry. The residence was secure and no persons were home.
21 Due to the reported length of time that the family had been
22 missing, deputies entered the residence to check the welfare of
23 persons who may be in the residence but were unable to respond.
24 Deputies found no persons in the residence. The two family owned
25 dogs were in the backyard.

26 Deputies exited the residence and spoke to neighbors. The
27 neighbors had not seen the family recently. Deputies located a

1 San Diego County Animal Control notice attached to the front door
2 indicating the residents were being warned for abandoning their
3 dogs and not providing for their care.

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

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

19
20 During the homicide briefing in which the deputies who have
21 secured the scene inform the homicide unit of what had occurred,
22 Deputy Tingley apologized as he told me he inadvertently forgot
23 to check the garage area of the residence during his welfare
24 check. He described the initial welfare check as a cursory
25 search of the residence for persons. Based on my training and
26 experience, I realized the search for bodies and any sign of foul
27 play during a welfare check is crucial to determining if a person

1 has been harmed. I asked Deputy Tingley to lead a secondary
2 welfare check into the residence to complete the welfare check of
3 the garage and to focus on the aforementioned circumstances.
4 This check would include looking in closets, under beds, and in
5 locations where small children could be.

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

18 On Tuesday, February 16th, 2010, I went to 1187 Walnut Avenue
19 in Chula Vista to seize the white 1996 Isuzu Trooper (3TAE045)
20 from the Western Tow yard as evidence under authority 22655.5(b)
21 CVC. I had the vehicle towed and stored at the San Diego
22 Sheriff's Crime Lab.

23 During my investigation a residential telephone known to be
24 associated with Joseph McStay and Summer McStay were identified.
25 From my investigation I learned the residential telephone number
26 for Joseph and Summer McStay's residence, located at 3473 Avocado
27 Vista Lane in the City of Fallbrook and the County of San Diego

1 is (760) 645-3092. That telephone number was used to place and
2 receive telephone calls during the time period covering January
3 1st, 2010 to February 23, 2010.

4 The local media and national media have showed intense
5 interest in this case and several news stories have been running
6 on local television for the last several days. Those stories
7 have included a plea for anyone with knowledge of the whereabouts
8 of the McStay family to come forth. As of this date there has
9 been no response to this plea as to the whereabouts of the family
10 and the family has not contacted law enforcement.

11 On February 22nd, 2010, Susan Blake provided me with the
12 residential telephone number to her son, Joseph McStay's
13 residence located at 3473 Avocado Vista Lane. She confirmed the
14 residential telephone number is (760) 645-3092.

15 On February 23rd, 2010, I contacted Time Gato at Time Warner
16 Cable and he informed me they are the local telephone service
17 provider for the residential telephone number, (760) 645-3092.

18 OPINIONS AND CONCLUSIONS

19 Based on my training and experience, I know that the above
20 described telephone company has the information and records
21 requested. I am also aware that the company representative is
22 willing to produce records if a court order is produced.

23 REQUEST TO SEAL AFFIDAVIT

24 Pursuant to People v. Hobbs (1994) 7 Cal.4th 948, I
25 respectfully request this affidavit and search warrant be sealed
26 pending further order of the court. Without sealing, the
27 affidavit and warrant become a matter of public record within ten

1 days (Penal Code section 1534(a)). Sealing is justified even
2 against discovery by the defendant based on the governmental
3 privilege allowing for the protection of the identity of
4 informants pursuant to Evidence Code section 1041 (Swanson v.
5 Superior Court (1989) 211 Cal.App. 3d 332). The sealing
6 requested herein, however, is not based on denying discovery to
7 the defendant(s) when and if they are charged, but is being
8 requested to merely prohibit public disclosure which could surely
9 undermine the continuing investigation herein. We do not wish to
10 divulge the information contained within these documents for fear
11 that the perpetrators will destroy or conceal evidence. I believe
12 that disclosure of the information prior to completion of our
13 investigation would be against the public interest because the
14 necessity for preserving the confidentiality of the information
15 outweighs the necessity for disclosure. Thus, I believe the
16 information contained within the aforementioned documents is
17 entitled to protection provided by the official information
18 privilege pursuant to Evidence Code section 1040 as well. In
19 addition, due to the sensitive nature of the matter, I request
20 the court order sealing of the warrant and documents in support
21 thereof pending further order of court.

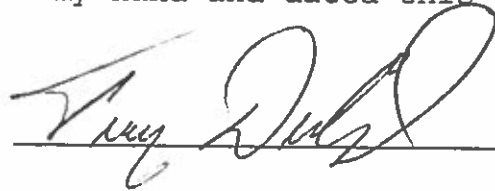
22 Therefore, based on my training and experience and the above
23 facts, I believe that I have substantial cause to believe the
24 above described property, or a portion thereof, will be at the
25 above described premises when the warrant is served.

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

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

9 This affidavit has been reviewed for legal sufficiency by
10 Deputy District Attorney Patrick Espinoza.

11 Given under my hand and dated this 23rd day of February,
12 2010.

13 
14 _____

15 Subscribed and sworn to before me
16 this 23rd day of February 2010,
17 at 2:30 a.m. ~~p.m.~~

18 
19 _____

20 Judge of the Superior Court
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1 which the offense in respect to which the property or things is
2 triable, or retain such property in your custody, subject to the
3 order of this Court, pursuant to section 1536 of the Penal Code.

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

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6 R. G. Maino

7 Judge of the Superior Court

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