IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR 17-50033
	)	**MOTION TO SUPPRESS**
	)	
	)	
STANLEY PATRICK WEBER,	)	
	)	
Defendant.	)	

MOTION TO SUPPRESS

Comes now the Defendant, Stanley Patrick Weber, by and through his undersigned counsel, and moves this court for an order suppressing the admission of items seized pursuant to a defective search warrant, and in support would show:

1. This is an action wherein Defendant Stanley Patrick Weber ("Weber") is charged with violations of §18 USC et al concerning the alleged sexual abuse of minors.

2. In conducting its investigation of Weber, Health and Human Services Special Agent Curt Miller applied for a Search Warrant on February 24, 2017. Said "Application" is attached hereto as Exhibit "A".

3. The application referred to, and included, an Affidavit in Support of Application for Search Warrant and Attachments A-E. The Affidavit, including attachments, is 37 pages. The part of the "Affidavit" most pertinent to this motion (Attachment B, Items To Be Seized) is attached hereto as Exhibit "B".

4. In response to the Application, on February 24, 2017 the court authorized a Search and Seizure Warrant, which warrant was required to be executed on or before March 10, 2017. That "Warrant" is attached hereto as Exhibit "C".

5. Law enforcement executed the Warrant on February 28, 2017. The "Receipt", itemizing the property seized, is attached hereto as Exhibit "D".

6. This court should suppress the items seized pursuant to the Warrant, as the Warrant is invalid on its face. It fails to identify, with any reasonable particularity, the property to be seized, instead describing the materials as "evidence of a crime" which is located at Weber's property. Law enforcement is not entitled to rely in good faith on such a deficient Warrant.

7. This deficiency is not cured by the fact that the Warrant had been entered pursuant to the Application, even though that Application is supported by the Affidavit, which describes the evidence sought in detail. For a warrant to validly incorporate an affidavit, that affidavit must be referenced in the warrant. Reference in the application is not sufficient. In this case, the Warrant never specifically references the Affidavit.

8. At a minimum, the court should suppress the items seized which are associated with, or reflective of, the crime of "International Sex Travel" (i.e. 18 USC 2423(b)). Notwithstanding the fact that this crime is referenced in the Affidavit, it is contradicted by the Application, which makes an express declaration of the crimes being contemplated in the search; 18 USC 2423(b) is not included. As a consequence, any items which were seized as part of an investigation of that crime is absolutely outside the scope of the Warrant, and not subject to search and seizure.

THIS COURT SHOULD SUPPRESS THE RESULTS OF THE SEARCH WARRANT BECAUSE IT IS INVALID ON ITS FACE SINCE IT FAILS TO IDENTIFY ANY ITEMS TO BE SEIZED WITH ANY PARTICULARITY

9. The United States Constitution requires that law enforcement obtain authorization from a court of law before persons can be searched and items can be seized.

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" *U.S. Constitution, Amendment IV*

10. As is plainly noted in this original constitutional text, the authorization includes an obligation that the search warrant which authorizes the search meet a standard of specificity. This has long been recognized in the law.

> "The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional" *Massachusetts v. Sheppard, 104 S.Ct. 3424, Footnote 5 (1984)*

11. In this case, the Warrant fails this requirement. In response to the prompt "identify the person or describe the property to be seized", the warrant states "evidence of a crime". The only practical limitation is that the search is to be limited to Weber's home (that is, the Warrant describes the house by its address and a brief description).

12. Plainly, "evidence of a crime" located inside Weber's home fails to give any particularity regarding anything being seized. Instead, it gives carte blanche authorization for the officer executing the warrant to go anywhere in the house. It then entitles that officer to seize anything they choose, since any tangible thing of value has the potential to be stolen goods or a container for contraband. It certainly fails to put Weber on notice as to the limits to which his security has been legally abridged. Therefore, the warrant on its face is not sufficient to meet the standards required by the United States Constitution.

13. In such a situation, law enforcement does not have a retort that the search and seizure was done in good faith, and was therefore permissible even if it was done using a flawed search warrant, as has been articulated in *United States v. Leon, 468 U.S. 897 (1984).*

> "Even if a search warrant is deemed invalid, evidence obtained pursuant to a warrant is not automatically suppressed. Such evidence is admissible when it is objectively reasonable for a police officer to have relied in good faith on the issuing judge's probable cause determination…The Court in *Leon* cited four circumstances in which the good-faith exception does not apply:…(4) when the warrant is 'so facially deficient' that no police officer could presume the warrant to be valid." *U.S. v. Puckett, 466 F.3d 626, 630 (8th Cir. 2006)* citing *United States v. Leon, 468 U.S. 897 (1984)*

14. A search warrant which describes the scope of the search as including all "evidence of a crime" is so facially deficient. In a similar case, the Supreme Court of the United States identified a warrant as facially invalid when it only described the home, and nothing inside.

> "…in the space set aside for a description of the items to be seized, the warrant stated that the items consisted of 'a single residence…blue in color.' In other words, the warrant did not describe the items to be seized *at all* [Emphasis in original]. In this respect the warrant was so obviously deficient that we must regard the search as "warrantless" within the meaning of our case law. *Groh v. Ramirez, 124 S.Ct. 1284, 1290 (2004)*

15. If the 'facially invalid' standard identified in *Puckett* is to have any meaning, the present case should certainly apply. While there are words that are used when describing the scope of the search, those words are the enigmatic "evidence" of "crime". Absent a literal blank space, it is difficult to imagine a more opaque description.

16. The practical effect, then, was that law enforcement conducted a warrantless search of Weber's home. This is an affront to our legal system, absent some extreme circumstances.

> "We are not dealing with formalities…[b]ecause 'the right of a man to retreat into his own home and there be free from unreasonable government intrusion' stands '[a]t the very core of the Fourth Amendment…our cases have firmly established the 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable…Thus, 'absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within." *Groh v. Ramirez, 124 S. Ct. 1284,1290-1291 (2004) [Internal Citations Omitted]*

THE FACIALLY INVALID SEARCH WARRANT IS NOT CURED BY THE AFFIDAVIT REFERENCED IN THE APPLICATION SINCE THE AFFIDAVIT IS NOT REFERENCED IN THE SEARCH WARRANT

17. Arguably, the ambiguity identified in the Warrant is made more understandable when viewed in light of the Application, where the prompt "identify the person or describe the property to be seized" is responded to with "See Affidavit in Support of Application for Search Warrant and Attachments A-E". That Affidavit, when read in its entirety, describes an investigation which precipitated the Application. Weber concedes that it has been incorporated into the Application by reference.

18. This incorporation, however, is not enough to save the Warrant because the incorporation by reference is found only in the Application. No such similar specific incorporation or direct reference is in the actual Warrant. This is fatal to the validity of the Warrant.

> "The government concedes that the April 4 warrant is facially defective for failing to specify the items to be seized, but contends that the affidavit cured this defect by listing particular items. To work this curative effect, an affidavit must be specifically incorporated by reference in and physically attached to the warrant, or at least referenced in the warrant and physically present at the search site." *U.S. v. Decker, 956 F.2d 773, 778 (8th Cir. 1992)*

19. Note that it is not sufficient merely that the Affidavit accompany the Warrant, as might occur when all papers are given to a suspect at the time that a search warrant is being executed. While physical accompaniment of an affidavit with a search warrant is crucial, specific reference in the search warrant to the affidavit being utilized is *also required*.

> "The traditional rule is that the generality of a warrant cannot be cured by the specificity of the affidavit which supports it because, due to the fundamental distinction between the two, the affidavit is neither part of the warrant nor available for defining the scope of the warrant…However, a description in the supporting affidavit can supply the requisite particularity if a) the affidavit accompanies the warrant, and b) the warrant uses suitable words of reference which incorporate the affidavit therein…The government concedes that both criteria must be met. The search warrant did not contain suitable words of reference incorporating the affidavit, such as 'see attached affidavit'…" *U.S. v. Curry, 911 F.2d 72, 77 (8th Cir. 1990)*

20. Thus, the prosecutor in the present case cannot cure any possible defect in the Warrant by relying upon any apparent specificity in the Affidavit; the Affidavit is not suitably referenced anywhere in the Warrant, and therefore does not constitute a basis to clarify the Warrant's facial deficiency.

THE FACIALLY INVALID SEARCH WARRANT IS NOT CURED BY INCLUDING A GENERALIZED REFERENCE TO AFFIDAVIT(S)

21. The only scant reference to an affidavit which is included in the Warrant is a phrase that is included as part of the generalized form, appearing after the space where specificity is usually required but where this Warrant merely described "evidence of a crime". That phrase says "I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property."

22. The phrase is plainly generic, insofar as it allows for the conclusion that *either* one or more affidavits, *or* recorded testimony, was utilized in crafting the scope and terms of the Warrant. No labeling or specific reference to the Affidavit included with the Application is included, in contrast to the highly descriptive label that does appear on the Application (e.g. "See Affidavit in Support of Application for Search and Attachments A-E"). And in an analogous situation, the 8th Circuit Court of Appeals has already determined that such language is insufficient to incorporate an affidavit not otherwise referenced in a search warrant.

23. In *United States v. Strand, 761 F.2d 449 (8th Cir. 1985)*, the court reviewed a situation where law enforcement officers who executed a search warrant seized evidence that exceeded the warrant's description of "stolen mail." In an effort to defend the scope of the search,

> "the government…argues that the warrant in this particular case incorporated the affidavit, satisfying the Fourth Amendment's demand for particularity through the specific listing in the affidavit of the non-generic items to be seized." *Id. at p. 453*

24. This argument flowed from the principle, discussed supra, that a search warrant can be cured of its lack of specificity by the incorporation of a supporting affidavit, when that affidavit is also attached to and delivered with the search warrant. However, the 8th Circuit Court of Appeals held that such incorporation is not accomplished with the type of generic verbiage included in the Warrant in this case.

> "Though the affidavit did accompany the warrant, the warrant states only that "[a]ffidavit(s) [have] been made" and that "grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s)." The warrant does not in any way incorporate the affidavit's list of particular items reported missing. Accordingly, we hold that the warrant authorized a search only for "stolen mail" and that it did not describe the other items to be seized with sufficient particularity to be valid under the Fourth Amendment." *Id. at p. 454*

25. In *Strand*, then, the 8th Circuit Court of Appeals decided that the phrase "grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s)" was not sufficient incorporation to utilize the details of the affidavit included with the warrant. In the present case, the analogous language is "I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property." This statement is equally imprecise, so it should be deemed similarly insufficient as a matter of law.

EVEN IF THE COURT WERE TO ACCEPT THE APPLICATION AS VALIDATING THE SEARCH WARRANT, THE ITEMS SEIZED EXCEEDED THE APPLICATION

26. Even if this court were to dismiss the plain defects in the Warrant and choose to rely on the Application to determine the valid scope of the Warrant, the court should still suppress much of the search since many of the seized items exceeded the scope of the Application.

27. Specifically, the Application states that "The search is related to a violation of 18 USC 2241, 2422 [sic][1], and 2243…" All of these statutes concern allegations of child sexual abuse. The Affidavit, however, (and specifically its Attachment B, Items To Be Seized) seeks to obtain materials "designed or intended for use or which is or has been used as the means of committing a criminal offense, namely violations of Title 18, United States Code, Sections 2241, 2242, 2243 (sexual abuse) and 2423(b) (International Sex Travel)". The distinction between the two is that the Application makes no reference to the crime of International Sex Travel.

28. Yet, among the items seized are: Printed Travel Documents (*Receipt, Item 9*); Eight U.S. passports (*Receipt, Item 10*); Travel documents (*Receipt, Item 11*); Mariott Rewards Summary (*Receipt, Item 16*); Receipts and travel documents found in box labeled 2013 + 2014 (*Receipt, Item 26*); and Travel Documents (*Receipt, Item 30*).

29. Admittedly, all such documents could theoretically comprise "evidence of a crime", but that is why the Warrant is facially invalid. Setting aside that defect, those materials plainly are not related to the criminal violations contained in the Application. Instead, they appear to have been obtained under the auspices of investigating Weber for "international sex travel", insofar as they relate to air travel overseas. Yet such a topic is not only not included in the Warrant, it is contradicted by the Application's list of crimes being investigated, which should be read to exclude this topic for investigation. *Expressio Unius Est Exclusion Alterius* (the expression of one thing is the exclusion of another).

CONCLUSION

30. The Warrant used to search Weber's home is facially invalid, as it minimally describes what is to be seized by using boilerplate language that is so broad as to render it meaningless. Seeking "Evidence of a Crime", the Warrant provides authorization to search anywhere, and take anything, from Weber's home.

31. While this might seem a mere technical discrepancy, especially since the Application for the search warrant was accompanied by a lengthy Affidavit that described the law enforcement investigation that preceded the application, this is a technical discrepancy recognized by the Supreme Court. The particularity requirement arises under the 4th Amendment to the United

[1] This appears to be a typographical transposition of the numbers 2 and 4, and should properly be read as 2242. The Affidavit, and the ultimate indictment, allege that Weber has violated 18 USC 2241, 18 USC 2242, and 18 USC 2243.

States Constitution, so any reference to a supporting affidavit must actually be made in the Warrant.

32. No good faith exception applies, since the error is plain on the face of the Warrant. Nor can it be cured by relation back to the Application for the Warrant, as those are separate legal documents. While the word "affidavit(s)" does appear in the Warrant, it is too general a reference to accomplish incorporation of the Affidavit into the Warrant.

33. This legal argument is dispositive. However, the court should also be concerned about the specific items seized, since they were based on a description in the Affidavit which doesn't even match the Application. The Affidavit is based on a claim of probable cause that certain crimes were committed, but that assertion was left out of the Application (and completely silent in the Warrant). The court cannot allow items to be seized pursuant to such an attenuated connection to the actual authority granted by the court.

34. For the foregoing reasons, the court should suppress the items seized in execution of the Warrant. Counsel for Weber has spoken with Assistant United States Attorney Sarah B. Collins and she does not agree with the relief requested.

WHEREFORE, the Defendant prays for the relief requested, and for such other and further relief as to the Court sees just and proper in the premises.

Dated this 19th day of June, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2017, I electronically filed the foregoing **MOTION TO SUPPRESS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties entered in the case.

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