

No.'s M-08-001S and M-08-002S

IN RE	§	IN THE DISTRICT COURT
	§	
SEARCH WARRANTS	§	51 st JUDICIAL DISTRICT
	§	
NO.'S M-08-001-S and M-08-002-S	§	SCHLEICHER COUNTY, TEXAS

**SECOND RENEWED REQUEST FOR ISSUING MAGISTRATE TO CONDUCT
HEARING REGARDING ISSUANCE OF SEARCH AND
ARREST WARRANT**

AND

MOTION TO INCLUDE CONDITIONS OF CONFIDENTIALITY IN SAFEKEEPING

[Arts. 18.12 and 13, of the Texas Code of Criminal Procedure, 1st, 4th and 14th Amendments to the U.S. Constitution, and Arts. 1 §9 and 1§6, 8 of the Texas Constitution]

TO THE HONORABLE BARBARA LANE WALTHER, DISTRICT JUDGE FOR THE 51ST JUDICIAL DISTRICT, SCHLEICHER COUNTY, TEXAS:

NOW COME the FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS ("Church"), LYLE JEFFS, and MERRIL JESSOP by and through their undersigned attorneys, and file this Consolidated and Renewed Request for this Honorable Court as the "issuing magistrate" to Conduct a Hearing pursuant to Arts. 18.12 and 18.13 of the Texas Code of Criminal Procedure to determine whether "good ground" existed for the issuance of search warrants numbered M-08-001-S and M-08-002-S, and to seek adequate conditions of Confidentiality and Safekeeping of items retained. In particular, Arts. 18.12 and 18.13 of the Texas Code of Criminal Procedure expressly provide, respectively, that "upon the return of a search warrant" the magistrate "shall proceed to try the questions arising upon same and shall take testimony as in other

examinations” and if the magistrate “shall not be satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall...order the restitution of the property taken from him.” At the time that the original motion was filed herein, the warrants had not yet been returned. However, it has been determined by undersigned counsel that on or about April 10, 2008 both warrants were “returned” to this Honorable Court and an inventory filed¹. Both warrants having now been returned Movants ask the Court, by this Motion, to conduct a hearing, take testimony and determine whether “good ground” existed for these warrants and the searches conducted pursuant thereto, and to take measures to protect matters of privilege and privacy in the property seized. In support of this motion, Movants would respectfully show:

I. PRELIMINARY QUESTION OF STANDING

The FLDS maintains several places of religious worship and church administration (including a temple and temple annex) on the YFZ Ranch property in Schleicher County which were both searched pursuant to warrants M-08-001-S and M-08-002-S herein. Mr. Lyle Jeffs, a Bishop of FLDS, maintains a residence on the YFZ Ranch, in which he keeps clothing, papers, and other personal effects. Mr. Merrill Jessop is the Bishop the “Texas Stake” of FLDS, which includes the temple and temple annex on the YFZ Ranch, who also maintains a residence on the YFZ Ranch in which he keeps clothing, papers, and other personal effects. Both of these residences were searched pursuant to warrants M-08-001-S and M-08-002-S and at various locations personal papers² and

¹Counsel have been unable to determine as to which of the two search warrants the inventory relates.

²For example, a document with the name Lyle Steed Jeffs appearing thereon, and the notation in the upper right-hand corner of “4-508, 12:24PM, ExH #8”, appears to be a “personal

effects of both Lyle Jeffs and Merrill Jessop were seized pursuant to these searches.

Moreover, the affiant on search warrant M-08-001S expressly states that the premises sought to be searched "are in charge of and controlled by...Frederick Merrill Jessop, dob 12/27/1935," *See*: Affidavit for Search Warrant No. M-08-001S, at p. 1, ¶ 2 and Affidavit for Search Warrant No. M-08-002-S, at p. 1, ¶ 2, that Merrill Jessop "advised Affiant that Frederick Merrill Jessop resides at the Suspected Place and Premises," *See*: Affidavit for Search Warrant No. M-08-001S, at p. 2, ¶ 5, and that Merrill Jessop "presented himself...as the authority at the Suspected Place and Premises" sought to be searched. *See*: Affidavit for Search Warrant No. M-08-001S, at p. 2, ¶ 5.

DETERMINATION OF "PLACE SEARCHED" SHOULD BE A TWO-WAY STREET

Despite the Fourth Amendment's requirement that a search warrant "particularly describ[e] the place to be searched," and the fact that the affiant on search warrant No. M-08-001S specifically recites that there are "numerous residential structures" on the premises sought to be searched, the State was allowed to enter and search all residences and structures under the guise that the entire YFZ Ranch premises constituted a "household" or "place to be searched" for child protective and Fourth Amendment purposes. Accordingly, undersigned respectfully suggest that Movants should be allowed to complain of the search of those same premises on that same theory.

writing" of Movant Jeffs, written in his hand. *See*: Art. 18.02 of the Texas Code of Criminal Procedure which expressly prohibits issuance of a search warrant for "the personal writings by the accused." Both search warrants direct the seizure of "any family bible or books showing the marriages or births of children," which would include personal writings and notations. *See*: ¶ 8, p. 1, of Search Warrant No. M-08-001S and ¶ 7, p. 1, of Search Warrant No. M-08-002S.

SIMMONS ASSERTION OF FIFTH AMENDMENT RIGHTS

Movants, in particular Lyle Jeffs, has filed under separate copy an Affidavit swearing that these and additional facts in support hereof are true and correct. Said Affidavit is being filed in an effort to assert Movants' Fourth Amendment right to be free from unreasonable searches and seizures while still invoking, asserting, and not waiving their Fifth Amendment rights at any trial hereafter, pursuant to *Simmons v. U.S.*, 390 U.S. 377 (1968), where the United States Supreme Court stressed that:

“[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another. We therefore hold that when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt.” *Simmons v. U.S.*, 390 U.S., at p. 390.³

II. JURISDICTION, AUTHORITY, AND DUTY OF THIS COURT TO HOLD A HEARING ON THE ISSUANCE OF THE WARRANTS

1. JURISDICTION OF THE COURT

This Honorable Court, as the issuing magistrate of the arrest and search warrants in question, has continuing authority and a continuing obligation to ensure that the execution of those warrants comports with both statutory and constitutional mandates and protections. *See In re Cornyn*, 27 S.W.3d 327 (Tex. App.- Houston, 2000) (The court issuing a warrant is the proper court to maintain continuing jurisdiction over the warrant).

³Additionally, Rule 104(d) of the Texas Rules of Evidence specifically provides:
“(d) Testimony by Accused Out of the Hearing of the Jury.
The accused in a criminal case does not, by testifying upon a preliminary matter out of the hearing of the jury, become subject to cross-examination as to other issues in the case.”

2. MANDATORY REVIEW

Chapter 18 of the Code of Criminal Procedure provides the statutory scheme governing the issuance, execution, return, and review of warrants in Texas. Articles 18.12 and 18.13 of that chapter not only contemplate this Court's post-execution review of the warrants and their execution, but their use of the word "shall" imposes a mandatory duty on the Court to conduct such a review. *See* Tex. Gov't Code § 311.016(2) ("'Shall' imposes a duty."); *see also* *Luquis v. State*, 72 S.W.3d 355, 363 (Tex. Crim. App. 2002) ("The use of the word 'shall' generally indicates a mandatory duty.") This mandatory review is to be conducted in the common manner of hearings before the Court, including the testimony of witnesses:

"Art. 18.12. MAGISTRATE SHALL INVESTIGATE

The magistrate, upon the return of a search warrant **shall** proceed to try the questions arising upon same, and shall take testimony as in other examinations before him."
Tex. Code Crim. Pro. art. 18.12 (emphasis supplied).

The considerations of the Court's Article 18.12 investigation are set forth Article 18.13, also in mandatory terms:

"Art. 18.13. SHALL DISCHARGE DEFENDANT

If the magistrate **shall** be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he **shall** discharge the defendant and order restitution of the property taken from him, except for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court." Tex. Code Crim. Pro. art. 18.12 (emphasis supplied).⁴

Accordingly, the Code of Criminal Procedure imposes upon this Court a duty to conduct a hearing to ensure that the warrants and their executions are in accordance with the law and, if not, to discharge any person arrested and return any property seized.

⁴The Penal Code provides that "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specifically designed, made, or adapted for use in the commission of an offense." Tex. Penal Code § 16.01(b).

III. THESE WARRANTS PRESENT SERIOUS ISSUES REGARDING VERACITY, RELIABILITY, PARTICULARIZED PROBABLE CAUSE, AND THE CONDUCT OF OFFICERS EXECUTING THE WARRANTS

1. VERACITY AND RELIABILITY OF FACTS UNDERLYING WARRANTS CALLED INTO QUESTION

The first warrant issued in this matter, M-08-001-S, commands that the officers arrest a particular individual by the name of "Dale Barlow, date of birth 11/06/1957," locate "identify and photograph Sarah Jessup, date of birth January 13, 1992," and to search for marriage and birth records relating to both individuals. In particular, affiant alleged that he believed that the "felony criminal offense of sexual assault of a child" occurred at the "Suspected Place and Premises," and that both "the victim of the crime, SARAH JESSOP" and the perpetrator, "DALE BARLOW" were "currently located at the Suspected Place and Premises." *See*: Affidavit for Search and Arrest Warrant No. M-08-001 S, at p. 3.

As probable cause to support such assertions, affiant alleged that the "Crisis Hotline" at the New Bridge Family Shelter in San Angelo had received "multiple calls" on March 29 and March 30, 2008, ranging in duration from "brief duration" to "approximately one hour in duration" from a caller claiming to be a "sixteen years old, pregnant" child by the name of "Sarah Jessop" (maiden name) or "Sarah Barlow," with a "date of birth of January 13, 1992." The affiant further states that the caller claimed that she had "an eight month old baby," and that the father was "Dale Barlow [who] is physically as well as sexually abusive toward her," stating that the perpetrator, Dale Barlow was "currently located at the Suspected Place and Premises" sought to be searched. *See*: Affidavit for Search and Arrest Warrant No. M-08-001 S, at pp. 2 - 3.

Moreover, the affidavit reflects that the affiant and Schleicher County Sheriff David Doran had determined "that DALE EVANS BARLOW, dob 11-05-57 [had been] arrested for the offense of Conspiracy to Commit Sexual Conduct with a minor...in the State of Arizona on or about 07-11-2005." As a consequence, the affiant "obtained a copy of a judgement via the Superior Court of the State of Arizona, County of Mohave where DALE EVANS BARLOW was placed on probation for a period of three years in reference to this offense," with the probation period "to begin on 8/17/07." *See:* Affidavit for Search and Arrest Warrant No. M-08-001 S, at p. 3. Despite this verified information that Dale Barlow was currently serving a probated sentence (requiring registration) in Arizona, it does not appear that any attempt was made to contact the Mohave County probation office, which was supervising Mr. Barlow. Nor was any other Arizona law enforcement agency contacted.

Rather than simply alleging that Dale Barlow "was located" on the YFZ Ranch premises in Eldorado, Texas, once Affiant Long and Sheriff Doran were put on notice that their subject was on supervised probation in Arizona, these officers could have and should have exercised greater diligence in verifying and determining the true whereabouts of a known convicted felon, serving a probated sentence in another state.⁵

At the very least, alleging that Dale Barlow was "located" on the YFZ Ranch near Eldorado, Texas, without checking with the Arizona Probation Office, these officers knew to be supervising

⁵The face of the affidavit in No. M-08-001S reflects that both affiant Long and Sheriff Doran had "obtained a copy of a judgement [from] the Superior Court of the State of Arizona," reflecting that Dale Evans had been convicted and was currently under supervised probation in Arizona. *See:* Affidavit for Search and Arrest Warrant No. M-08-001 S, at p. 3. Accordingly, the officers obviously had the cause number and had recently been in contact with the supervising Arizona court.

him, constituted a reckless disregard for either standard law enforcement protocol or common sense.

Moreover, prior to executing the initial warrant, Sheriff Doran was advised that Dale Barlow was in Arizona and not on the premises sought to be searched. In fact, prior to entering the premises Sheriff Doran actually spoke to Dale Barlow in Arizona by cell phone, confirming his driver's license number and the fact that he was in Arizona. Moreover, Mr. Barlow advised that he did not know any Sarah Jessup, had not been to Texas in over 20 years, and had never been to the YFZ Ranch. Thus, before the search warrant was executed, the officers had been apprised, and even verified, that the only person these officers alleged to be suspected of criminal activity or to pose "an immediate risk of physical or sexual abuse of a child" was not located on the premises, or even in the State of Texas. Affiant's failure to apprise this Honorable Court that he had reason to question whether the person believed to have committed the offense and/or posed a risk to any child was not located on the premises as alleged in their affidavit and warrant constituted a reckless disregard for the truth. *See: Franks v. Delaware*, 438 U.S. 154 (1978); *Juarez v. State*, 586 S.W.2d 513, 518 (Tex. Cr. App. 1979); *Ramsey v. State*, 579 S.W.2d 920 (Tex.CrimApp. 1979) [holding that an evidentiary hearing is required whenever an accused makes substantial allegations that the search warrant affidavit contains material misrepresentations, which are intentionally or recklessly false]; *See also: Blake v. State*, 125 S.W.3d 717, 724 (Tex.App.-Houston 2003); *Melton v. State*, 750 S.W.2d 281, 284 (Tex.App.- Houston); *Heitman v. State*, 789 S.W.2d 607, 610-11 (Tex.App.-Dallas 1990) [all to the same effect, that "omissions" may constitute false statements for *Franks v. Delaware* purposes]. Having received evidence which called into question the primary reason for entering these premises, namely to locate the very individual who allegedly posed a threat to the safety of a child, these officers were no longer entitled to rely in good faith upon the

representations made in the affidavit submitted to this Honorable Court.

By Friday, April 4, 2008, the first full day of the week-long search allegedly for Dale Barlow, Arizona Child Protective Services case workers, Candice Babb and Vince Vincent were interviewing Mr. Barlow at his Arizona home, confirming that he had did not know anyone named Sarah Jessop and had never been to the YFZ Ranch in Texas.⁶

That same day, Friday, April 4, 2008, Arizona Child Protective Services (in particular, Candice Babb and Vince Vincent) received a call stating that the day before, April 3, 2008 (the day that warrant No. M-08-001 S was issued and the search for Dale Barlow and Sarah Jessop began), a person claiming to be a 16-year-old by the name of Sarah Jessop called stating that she was “locked in her basement” in Colorado City, Arizona, and that her father, Lorin Fisher, was sexually abusing and forcing her to marry a 40 year old man by the name of Windel Nelson, there in Arizona.⁷

The veracity of the factual underpinnings for any probable cause in support of search warrant No. M-08-001 S is further undermined by the revelation that the telephones utilized by the alleged sexually abused, pregnant, 16-year-old mother, claiming to be Sarah Jessop to the New Bridge

⁶A week later, on April 12, 2008, Texas Rangers interviewed Dale Barlow at his home in Arizona, but did not arrest him as was commanded by this Honorable Court, in search and arrest warrant No. M-08-001 S. It is interesting that these Texas law enforcement officials interviewed Dale Barlow, but did not arrest him pursuant to the arrest warrant they had obtained from this Court, in that same serves to undermine any claimed beliefs that Dale Barlow had been in Texas, constituted a real threat to any child, or that authorities had any real hope of indicting or obtaining a conviction against him. See: *Universal Amusement Co., Inc. v. Vance*, 404 F.Supp. 33 (S.D.Tex. 1975) [where a three-judge court granted §1983 relief upon a showing that authorities had no realistic hope of obtaining a conviction, at p. 50]; *Farmer v. Sherrod*, Cause No. 2:93-CV-0017 (N.D.Tex. 1993); *Heartland Academy Community Church v. Waddle*, 371 F.Supp.2d 984 (E.D.Mo. 2004).

⁷On April 10, 2008 a woman claiming to be “Sarah Barlow” called the Monroe Washington Battered Womens’ Shelter claiming her husband, Dale Barlow, was living at an address in Everett, Washington.

Family Shelter "Crisis Hotline" in San Angelo, Texas have been traced back to a 33-year-old, childless, African American woman in Colorado Springs, Colorado. *See*: District Court, County of El Paso, Colorado Arrest Warrant and Affidavit, attached hereto as Exhibit 1.

It is clear from the recently unsealed Colorado Springs affidavit [*See*: Exhibit 1] that Texas authorities were well aware of the fact that the two telephones utilized to make the numerous calls to the New Bridge Family Shelter "Crisis Hotline" in San Angelo were registered to telephone numbers outside the State of Texas. This information, together with the determination that the alleged perpetrator, Dale Barlow, was not present on the premises prior to initiation of the search, warranted further investigation.

Both of these telephones had Colorado Springs, Colorado area codes (area code 719). Upon calling the Colorado Springs Police Department (Sergeant Mandel) Texas authorities were immediately advised that one of these telephone numbers was associated with an individual who had made numerous "false reports of sexual abuse to police agencies" in the Colorado Springs area. All-in-all the investigation reveals that Rosita Swinton has been linked to false allegations of sexual abuse to over ten different child protection and law enforcement agencies,⁸ dating back to 2005, in cities across the country from Monroe, Washington to Ft. Meyers, Florida. These allegations related to claims of abuse by her "father," "uncle," "husband," "older brother," and "youth pastor." The affidavit recites that one of the Colorado Springs telephones called the New Bridge Family Shelter

⁸Ms. Swinton has been linked to false reports of sexual abuse to the Domestic Violence Crisis Center, TESSA (the Trust, Education, Safety, Support and Action Center), HOPE (the Hope for Child Brides) Center, the Urban Peak Center, 911 Emergency Line, and Sierra High School, all in Colorado Springs, Colorado; Longmont, Colorado Police Department; Pueblo, Colorado Police Department; the Abused Counseling and Treatment Center in Ft. Meyers, Florida, Cocoon House and Snhomish County Shelter for Battered Women in Monroe, Washington.

“approximately sixteen (16) times from March 29, 2008 through April 5, 2008.”

This same Rosita Swinton plead guilty to “False Reporting” to a law enforcement agency in Douglas County, Colorado in June of 2007, and is currently charged in Colorado Springs with similar “False Reports” to law enforcement in February of this year. Texas Rangers participated in Ms. Swinton’s arrest and the search of her residence in Colorado Springs, reporting the seizure of “several items suggesting a connection between Swinton and calls regarding the Eldorado retreat and other Texas and Arizona [locations] owned by the Fundamentalist Church of Jesus Christ of Latter Day Saints.”

FAILURE TO APPRISE THIS COURT OF SALIENT FACTS

The affidavit for the second search warrant, No. M-08-002 S, fails to apprise this Honorable Court that by Sunday evening (10:12PM, April, 6, 2008) the executing officers had verified and were well aware of the fact that Dale Barlow, the alleged perpetrator of the offense warranting the initial entry (and who the officers alleged posed “an immediate risk...of sexual abuse” to the child, Sarah Jessop) was not present on the premises being searched and had been located and interviewed by law enforcement in the State of Arizona. Similarly, the officers failed to apprise this Court that the alleged child, Sarah Jessop, had not been located, nor any records indicating her existence, after some three full days of searching every structure on those premises.

2. PARTICULARIZED PROBABLE CAUSE

The breadth of the premises to be searched is unreasonably expansive in light of both the objects of the search and the community-character of the YFZ Ranch. The warrant purports to

authorize the search of any and all “buildings, medical facilities, structures, places and vehicles.” There are dozens of separate and distinct residences (family dwellings) within this community, and there existed no “particularized” probable cause to believe the objects of the warrant would be located within a specific home or residence. *See Morales v. State*, 640 S.W.2d 273 (Tex. Crim. App. 1982). In fact, by the time the search was initiated, these officers were in possession of evidence to the contrary.

Just as the “reasonableness” standard of *U.S. v. Leon*, 468 U.S. 897 (1984)⁹ would not permit the wholesale search of every apartment in a complex, the warrant authorizing the search of every residence and structure on the YFZ Ranch – a community larger in population and acreage than many Texas cities – is constitutionally untenable.

3. OFFICERS’ WARRANTLESS AND UNCONSTITUTIONAL TAKING OF DNA

The actions and conduct of officers executing the warrants are factual matters that the Court should develop through the hearing procedures provided by Arts. 18.12 and 18.13, Tex.C.Cr.P., and Movants would show the Court that officers took actions far beyond the scope that these warrants authorized, which were also repugnant to the rights of the Church and its members. Among other actions, the officers executing the second search warrant, No. M-08-002 S, proceeded to take DNA

⁹ “[Fourth Amendment rights]... are not mere second-class rights but belong in the catalogue of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual and putting terror in every heart.” *Illinois v. Gates*, 462 U.S. 213, 274-5 (1983).

samples through buccal swabs, drawing blood, and the taking of pubic hair of adults¹⁰, despite the fact that this Court had expressly disallowed same.¹¹ Such actions compel investigation by the Court.

The hallmark of a seizure is whether an intrusion impinges one's expectation of privacy or right to be left alone. *Katz v. U.S.*, 384 U.S. 347, 350 (1967). In *Rochin v. California*, 342 U.S. 165, 172, 72 S.Ct. 205, 96 L.Ed. 183 (1952), the United States Supreme Court held that forcing an emetic down an individual's throat to induce vomiting "shocked the conscience" violating substantive "Due Process."

"Applying these general considerations to the circumstances of the present case, we are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combating crime too energetically. This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents-this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation." *Rochin v. California*, 342 U.S. 165, 172 (1952).

Similarly, in *Schmerler v. California*, 384 U.S. 757, 767-770, 86 S.Ct. 1826, 16 L.Ed.2d 448 (1957), the Court held that the taking of blood was a search and seizure under the Fourth Amendment.

"The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be

¹⁰For example, officers drew blood, took buccal and pubic hair samples from Richard Barlow, a 40-year-old male.

¹¹This Honorable Court struck through and initialed the requested to take "blood, head hair, pubic hair, buccal cells, and fingerprints of adult males (and females) over the age of seventeen who reside at the Suspected Place and Premises." See: Second Search Warrant No. M-08-002 S, at ¶¶ (10) and (11) on pp.2 and 3.

obtained. In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless there is an immediate search.” *Schmerler v. California*, 384 U.S. 757, 769-770 (1957).

And, in *Cupp v. Murphy*, 412 U.S. 291, 294, 93 S.Ct. 2000 (1973), Cupp was accused of killing his wife by strangulation. The authorities took fingernail scrapings over his objection. The Supreme Court held that this was a search and seizure under the Fourth Amendment.¹²

Thus, causing a person to open their mouth so the inside of it may be scraped, puncturing a vein for the procurement of blood, or causing them to expose their privates to effect the taking of a pubic hair are all actions which implicate the Fourth Amendment of the U.S. Constitution and Art. 1 §10 of the Texas Constitution.

In a similar vein, cellular telephones are not listed as items to be searched for or seized in the initial search warrant No. M-08-001 S. Nevertheless, countless cell phones were confiscated by law enforcement officers executing that warrant prior to the issuance of the second warrant No. M-08-002 S late Sunday evening, April 6, 2008. The fact that such items were added to that second warrant after they had already been seized, does little to authorize their previous seizure.

¹²The Court has even gone so far as to establish that breath tests and urinalysis both reveal a host of private medical facts and implicated privacy interests sufficiently to constitute searches under the Fourth Amendment. *Skinner v. Railway Labor Executive Association*, 489 U.S. 602, 616-617, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989).

“There are few activities in our society more personal or private than the passing of urine. Most people describe it by euphemisms if they talk about it at all. It is a function traditionally performed without public observation; indeed, its performance in public is generally prohibited by law as well as social custom.” *National Treasury Employees Union v. Von Raab*, 81 F.2d 170, 175 (5th Cir. 1987).” *Skinner v. Railway Labor Executive Association*, 489 U.S. 602, 617 (1989).

IV. SPECIAL STATUTORY AND CONSTITUTIONAL PROTECTIONS OF THE FREE EXERCISE OF RELIGION

1. TEXAS RELIGIOUS FREEDOM RESTORATION ACT

In Texas, the Religious Freedom Restoration Act (“the Act”) provides affirmative statutory protections against State actions which encroach upon the free exercise of religion. The Act provides that, when the State puts a substantial burden upon a person’s free exercise of religion, it may serve as a defense in a judicial proceeding. *See* §§ 110.004 and 110.011, Tex. Civ. Prac. & Rem Code, and even before the initiation of a criminal proceeding, the aggrieved church or parishioners may obtain declaratory or injunctive relief to prevent the substantial burden of their free exercise of religion. *See* § 110.006(b), Civ. Prac. & Rem Code.¹³ They also have standing in judicial proceedings to assert their rights because “the Act” expressly provides that:

“A person whose free exercise of religion has been substantially burdened in violation of Section 110.003 may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.”
Tex. Civ. Prac. & Rem Code § 110.004.

And, in Section 110.003(b)(2), the Act requires that the act of a State agency – which should include the State’s acts in searching Church premises and the seizure of Church property – must be

¹³“(b) Notwithstanding Subsection(a), a claimant may, within the 60-day period established by Subsection (a), bring an action for declaratory or injunctive relief and associated attorney’s fees, court costs, and other reasonable expenses, if: (1) the exercise of governmental authority that threatens to substantially burden the person’s free exercise of religion is imminent; and (2) the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the notice.” Counsel moved for a temporary restraining order in an effort to prevent the entry by State law enforcement into the sacrosanct premises of the FLDS Temple.

conducted in “the least restrictive means of furthering that interest.”

2. CONSTITUTIONAL LIBERTIES AND THE HEIGHTENED REQUIREMENT OF “REASONABLENESS” OF SEARCHING CHURCH PREMISES

The Supreme Court of the United States has recognized a hierarchy with respect to one’s “reasonable expectation of privacy,” depending upon the nature and use of certain types of premises. For example, an individual has a heightened expectation of privacy in one’s home, as opposed to a place of business, *See: New York v. Burger*, 482 U.S. 691 (1987):

“An individual’s expectation of privacy in his house is even greater than it is in other places, such as businesses, which the Court has held implicate the protections of the Fourth Amendment.” *New York v. Burger*, 482 U.S., at p. 700. *See also: Payton v. N.Y.*, 445 U.S. 573, n. 17 (1988) [expectation of privacy in the home “must be strictly circumscribed”]; *U.S. v. U.S. District Court*, 407 U.S. 297, 313 (1972).

Similarly, and well beyond the statutory protections afforded the free practice of religion, the State’s actions in invading and searching a place of religious significance raises important and sensitive issues which lay at the intersection of religious liberty and the right to be free from unreasonable searches and seizures. Thus, the invasion and search of a place dedicated to ecclesiastical reverence – such as the Church Temple and Temple Annex searched herein – implicates two of the most basic, valued, and constitutionally sacred rights in American and Texas law, requiring a heightened standard of “reasonableness” with respect to the initiation and conduct of a search of a church. Neither the First Amendment to the U.S. Constitution, nor the separate, distinct and even broader religious freedoms guaranteed by Art. 1, § 6 of the Texas Constitution, when coupled with the constitutional proscription against unreasonable searches, will permit government authorities to capriciously invade and rummage through the Church’s most sanctified

religious site any more than it would permit the same to be done to the Basilica of Saint Peter in Rome, were it so situated.

Despite the fact that the religious Temple is by far the most conspicuous structure on the 1,600 acre premises, and, despite the fact that affiant asserts that she had “personally been on the premises of the YFZ Ranch on multiple occasions over the past four years,” the affiant fails to apprise this Honorable Court of the fact that officers intended to forcibly enter this place of worship.¹⁴

CONSTITUTIONAL RIGHT TO FREE EXERCISE OF RELIGION

The right to free exercise of religion, guaranteed by the U.S. Constitution’s First Amendment and Art. 1 §§ 6 and 8 of the Texas Constitution, does not merely protect mainstream and commonly accepted religious practices. Like freedom of speech, freedom of religion is enshrined as a constitutional liberty not to affirm the popular and uncontroversial but to protect the unfavored yet devoutly-held beliefs and practices of the minority.

While very old Supreme Court cases held that plural marriage is properly criminalized even for those whose tenets of faith accept it,¹⁵ more recently the Supreme Court has recognized that religious practices that violate general criminal laws, may still be followed without fear of prosecution. In *Church of the Lukumi Babalu Aye, Inc., et al., v. City of Hialeah*, 508 U.S. 520, 113

¹⁴Interestingly, it was only after having already made a “dynamic” or forced entry into this religious sanctuary, that authorities, for the first time sought permission from this Court to enter and search “temples and temple annex, [and] places of worship.” See: Second search warrant No. M-08-002 S, sought and obtained late Sunday night, April 6, 2008.

¹⁵See: *Reynolds v. U.S.*, 98 U.S. 145, 166, 1878 WL 18416 (1878); *Miles v. U.S.*, 103 U.S. 304, 310, 1880 WL 18845 (1880).

S.Ct. 2217 (1993), the Court held that the religious sacrifice of chickens could not be punished under cruelty to animal laws consistent with the First Amendment. In *Gonzales, et al. v. O Centro Espirita Beneficente Uniao do Vegetal, et al.*, 546 U.S. 418, 126 S.Ct. 1211 (2006), the Court held that federal law reinforcing the protections of the First Amendment prohibited prosecution for the religious consumption of controlled substances. Interestingly, in *Lawrence v. Texas*, 539 U.S. 558, 590 (2003)¹⁶, Justice Scalia wrote in his dissent that the majority opinion's recognition of the Constitutional protections afforded personal decisions related to marriage and intimate personal relationships, has far reaching implications, potentially invalidating laws against bigamy. *Lawrence v. Texas*, 539 U.S. at p. 590.

V. PROTECTION OF CONFIDENTIALITY OF PRIVILEGED AND PRIVATE INFORMATION

Given the issues of privilege and privacy presented by the State's seizure and custody of a massive amount of property belonging to the Church and its members, and in consideration of the ongoing examination of this property for matters of privilege and pending motions regarding same, Movants urge the Court to take measures to ensure that privileged and private information is not disseminated by the State. The extraordinary national media coverage of this case compels the implementation of special and extraordinary measures by the Court to protect interests of privilege and privacy. Movants would suggest that the Court may accomplish these ends by making confidentially a condition of its "safekeeping order" governing the State's custody of the seized property and/or the issuance of a protective order prohibiting dissemination without prior Court

¹⁶The majority in *Lawrence v. Texas, Supra*, struck down the Texas sodomy statute, overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986).

approval.

1. THIS COURT'S DUTY AND AUTHORITY TO ISSUE A SAFEKEEPING ORDER

Article 18.10 of the Texas Code of Criminal Procedure provides that, upon the return of a search warrant, an officer who seizes property "shall retain custody of it until the magistrate issues an order directing the manner of safekeeping the property." Tex. Code Crim. Pro. Art. 18.10. Article 18.11 also expressly contemplates the issuance of the magistrate's safekeeping order where it states:

"Property seized pursuant to a search warrant shall be kept as provided by the order of a magistrate issued in accordance with Article 18.10 of this code." Tex. Code Crim. Pro. art. 18.11.

Courts have held that the power conferred to a magistrate by Articles 18.12 and 18.10 "necessarily includes the authority to amend safekeeping terms," and amendment may include the return of the seized property. *In re Cornyn*, 27 S.W.3d 327, 334 (Tex. App. - Houston [1st Dist.] 2000, orig. proceeding).

Accordingly, this Court has the power to issue a safekeeping order to the officer with custody of seized property, particularly directing the manner in which the property may be held, released, or disposed.

2. PUBLICATION OF THE DOCUMENTS AND RECORDS SEIZED WOULD VIOLATE THE CLERGY-PENITENT AND ATTORNEY-CLIENT PRIVILEGES AND INFRINGE UPON THE FIRST AMENDMENT AND STATUTORY RIGHTS OF THE CHURCH AND ITS MEMBERS

The documents and records seized from the Temple contain information considered sacred

and private in the legitimate religious belief of the Church. This information is held closely and reverently by the Church pursuant to its members' beliefs in the integrity of the family and a community of people who share a common creed. To allow the unvetted access to, and publication of this sacred information by law enforcement agents would egregiously tread upon one of the canonical tenets of the Church and its members.

The documents and records seized also represent confidential communications between members of the Church and their spiritual advisors, and, as such, fall within the protections of the clergy-penitent privilege. *See*: Texas Rule of Evidence 505. This privilege may be claimed by the clergy on behalf of the communicant. *See*: Texas Rule of Evidence 505(c).

It is within the power of this Court to restrict the dissemination and publication of information which may implicate fundamental First Amendment rights of privacy, religion, and assembly. By way of example, in *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984), the United States Supreme Court affirmed a state court's protective order restricting the dissemination of information obtained from a religious organization by a newspaper during civil discovery. The Court held that the First Amendment press and speech rights of the newspaper did not vitiate the First Amendment rights of the religious organization's "members and donors to privacy, freedom of religion, and freedom of association." 467 U.S. 20, 25.

The propriety of the seizure of the documents and records of the Church and their admissibility in any subsequent proceedings is an issue that will no doubt be litigated in the future. However, immediate action by this Court is necessary to ensure the protection of the rights and privileges of the Church and its members to privacy, worship, and association. The issuance of a safekeeping order which temporarily restricts the publication of documents and records seized from

the Temple of the Church will not impede the State's investigation, and such a restriction is appropriately prudent in light of the fundamental rights at issue. To allow the publication of closely-held religious and genealogical information seized from the most sacred halls of an organized faith would violate the rights of the Church and its members as secured by the First, Fourth, and Fourteenth Amendments to the United States Constitution; Article 1, Sections 6, 9, 10, 19, and 27; and Texas Rules of Evidence 503 and 505.

The Texas statutes prohibiting marriages under the age of 16 and attempting to criminalize so-called "spiritual marriages" are of recent vintage and questionable origin. Effective in 2005, the Texas Legislature amended three statutes, raising the age of parental consent to marry from 14 to 16 years of age, *see*: §2.102 of the Texas Family Code, expanding the definition of the crime of "Bigamy", *see*: §25.01, Texas Penal Code, and extending the residency requirements of elective office from one year to two, *see*: §141.001 *et seq.* of the Texas Election Code.

All three Bills were introduced and sponsored by District 53 State Representative Harvey Hilderbran,¹⁷ and the Legislative History specifically and expressly identifies fears associated with the Fundamentalist Church of Jesus Christ of the Latter Day Saints at the YFZ Ranch near Eldorado, Texas, including testimony from the Utah Attorney General, and several authors and activists to the effect that this group would take over the entire electorate,¹⁸ murder its own members,¹⁹ and rape

¹⁷District 53 includes Schleicher County and Eldorado, Texas.

¹⁸ **Committee Chair:** So, the reason you're changing the election code is because they move in en mass, in 1,200, whatever number it is, and then they take over the whole precinct?"

Rep. Hilderbran: "Yeah...That's true." (00:14:11 - 00:14:25).

¹⁹(00:17:06 *et seq.*).

young boys and girls,²⁰ noting that the fear “of the unknown is driving some of the[se] concerns”.²¹

VI. CONCLUSION AND PRAYER

Accordingly, for the foregoing reasons and authorities, Movant prays that this Honorable Court conduct a hearing pursuant to Articles 18.12 and 18.13 of the Code of Criminal Procedure take testimony and receive evidence therein, and, in the interim, issue a safekeeping order or protective order which restricts the State from disseminating, without prior Court approval, any information contained in documents and records seized from the property of the Fundamentalist Church of Jesus Christ of Latter Day Saints and its members.

Respectfully submitted:

DANIEL W. HURLEY
Bar No. 10310200
HURLEY, REYES & GUINN
1805 13th St.
Lubbock, Texas 79401-3823
806-771-0700
806-763-8199 facsimile

Attorney for Movant,
Merril Jessop, individually

GERALD H. GOLDSTEIN
Bar No. 08101000
VAN G. HILLEY
Bar No. 09674000
CYNTHIA E. ORR
Bar No. 15313350
PATRICK T. PERANTEAU
Bar No. 15771300

²⁰(00:17:06 *et seq.*).

²¹(00:10:50).

DONALD H. FLANARY, III
Bar No. 24045877
S. PATRICK BALLANTYNE
Bar No. 24053759
GOLDSTEIN, GOLDSTEIN & HILLEY
310 S. St. Mary's Street
29th Floor Tower Life Bldg.
San Antonio, Texas 78205-3199
210-226-1463
210-226-8367 facsimile

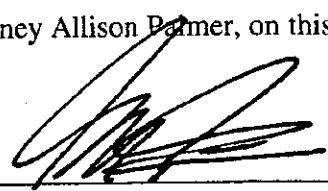
By: 

Gerald H. Goldstein

ATTORNEYS FOR MOVANT,
Fundamentalist Church
of Jesus Christ of Latter Day Saints, and Lyle Jeffs,
individually

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing motion has been sent
via facsimile 325-658-6831 to Assistant District Attorney Allison Palmer, on this the 24th day of
April, 2008.


Gerald H. Goldstein

No.'s M-08-001S and M-08-002S

IN RE	§	IN THE DISTRICT COURT
	§	
SEARCH WARRANTS	§	51 st JUDICIAL DISTRICT
	§	
NO.'S M-08-001-S and M-08-002-S	§	SCHLEICHER COUNTY, TEXAS

ORDER SETTING HEARING

Came on this day to be considered the Fundamentalist Church of Jesus Christ of Latter Day Saints' and Lyle Jeffs' Consolidated and Renewed Request for Issuing Magistrate to Conduct Hearing Regarding Issuance of Search and Arrest Warrant and Motion to Include Conditions of Confidentiality in Safekeeping Order. After due consideration, Movants request that this Court hold a hearing on said Motion is hereby:

_____ **GRANTED**, and a hearing on the matters raised by Movants Motion is set for the
_____ of _____, 2008 at _____ o'clock ____m.

_____ **DENIED**, to which action of the Court Movants duly except.

So **ORDERED** this _____ day of April, 2008.

HONORABLE BARBARA L. WALTHER

No.'s M-08-001S and M-08-002S

IN RE	§	IN THE DISTRICT COURT
	§	
SEARCH WARRANTS	§	51 st JUDICIAL DISTRICT
	§	
NO.'S M-08-001-S and M-08-002-S	§	SCHLEICHER COUNTY, TEXAS

ORDER ON SAFEKEEPING OF SEIZED PROPERTY/PROTECTIVE ORDER

Pursuant to Article 18.10 of the Code of Criminal Procedure, it is hereby **ORDERED** that, in addition to previously issued orders directing the manner of safekeeping of property seized pursuant to the execution of search warrants numbered M-08-001-s and M-08-002-S, the State and its officers and agents shall not make public, disseminate, or reveal information contained in or derived from said property without prior approval from the Court.

So **ORDERED** this ____ day of April, 2008.

HONORABLE BARBARA L. WALTHER

Exhibit 1

APR 16 2008

M.V. PERRY
CLERK OF COURT

DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO

ORDER

THE COURT, having been advised of the premises, hereby enters an ORDER that the Arrest Warrant and Application for Arrest Warrant, to include the Affidavit and Attachment "A" relating to Colorado springs Police Case #07-35545, be sealed until the termination of the case, or until further order by the Court.

DONE THIS 16th DAY OF April, 2008, at the hour of

4:22 P.M.


JUDGE

EC

~~00212008M002726~~
ARREST WARRANT

DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO

WARRANT NUMBER:

00212008M002726

The People of the State of Colorado, Plaintiff

FILED IN THE DISTRICT AND
COUNTY COURTS OF
EL PASO COUNTY, COLORADO

V.

APR 15 2008

SWINTON, Rozita Estraletta AKA: Dana Anderson; DOB: 10/23/74, - Defendant

M.V. PERRY
CLERK OF COURT

Whereas, TERRY E. THURMSTON, Detective Colorado Springs Police Department has made an Application and Affidavit to the Court for the issuance of an Arrest Warrant, and;

Whereas the application is in proper form and probable cause is found to believe that the person named in the application has committed the offense of §18-8-111(2)(B), FALSE REPORTING TO AUTHORITIES, CLASS THREE MISDEMEANOR in violation of Colorado Revised Statutes within the County of El Paso and State of Colorado:

THEREFORE, any Peace Officer into whose hands this Arrest Warrant shall come is hereby ordered to arrest Rozita Estraletta AKA: Dana Anderson SWINTON; DOB: 10/23/74 and bring him/her without unnecessary delay before the nearest Judge of the County or District Court.

It is further ordered that Bond is set in the amount of

\$10,000.00

DONE this day 16th of April, 2008

TIME _____ a.m. / 4:22 p.m.

BY THE COURT:

JUDGE *[Signature]*

RETURN AND SERVICE: I have duly served this Arrest Warrant by arresting the aforementioned Defendant as required on the _____ day of _____, 20____.

Signed: _____

Law Enforcement Agency: _____

MVP

DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO

WARRANT NUMBER:

APPLICATION AND AFFIDAVIT FOR ARREST WARRANT

The People of the State of Colorado, Plaintiff

V.

SWINTON, Rozita Estraletta AKA: Dana Anderson DOB: 10/23/74; SSN: [REDACTED], a black female, five feet eight inches, weighing 180 pounds, having black hair and brown eyes

The undersigned, a Peace Officer as defined in 18-1-901(3)(1), C.R.S., 1973, as amended, being first duly sworn on oath, moves the Court to issue an Arrest Warrant for: Rozita Estraletta AKA: Dana Anderson SWINTON; DOB: 10/23/74, as provided in Rule 4.2 of the Colorado Rules of Criminal Procedure.

AS GROUNDS THEREFORE, the undersigned applicant states that the facts submitted in support of this request are set forth in the accompanying attachment designated as Attachment "A", which is attached hereto and made a part hereof, and that probable cause exists to believe that the aforementioned person has committed the offense of §18-8-111(2)(B), FALSE REPORTING TO AUTHORITIES, CLASS THREE MISDEMEANOR; in violation of Colorado Revised Statutes 1973, as amended within the County of El Paso and State of Colorado.

It is respectfully requested that bond on this Arrest Warrant be set in the amount of: 10,000.



Applicant: TERRY E. THRUMSTON 984D
Colorado Springs Police Department
Position: Detective

Sworn and subscribed before me this day 16th of April, 2008


Judge

Attachment 'A'

The following Affidavit is submitted to the Court to document the probable cause in support of a request for the issuance of an Arrest Warrant and Search Warrant for SWINTON, Rozita Estraletta AKA: Dana Anderson DOB: 10/23/74 SSN: [REDACTED] and 4625 Templeton Park Circle Apt. #125, an apartment located in the Sterling Point Apartment Complex.

This offense is fully documented in Colorado Springs Police Department Offense Report 07-35545 detailing the offense of:

§18-8-111(2)(B), FALSE REPORTING TO AUTHORITIES, CLASS THREE MISDEMEANOR (M-3)

With the victim(s) identified as:

1. State of Colorado

Your Affiant is Terry E. Thrumston, 984D, a sworn police officer with the Colorado Springs Police Department, who has been assigned to the Sex Crimes, Crimes Against Children Unit for the past eight years. Part of your Affiant's responsibilities for the Police Department is to conduct investigations on Sexual Assaults on Children.

Your Affiant would note that through the aforementioned assignment I have conducted an investigation into this reported case, titled False Reporting to Authorities. The details for this occurrence will be documented as follows:

On October 23, 2007 I received a phone call from Jeff Newton with TESSA (Trust, Education, Safety, Support and Action). Mr. Newton advised he had information as a mandated reporter about a victim of sexual abuse. He advised one of the counselors at TESSA, Jennifer Pierce, had received several phone calls over the past several days, October 21, 2007 through October 22, 2007, from a young female identified only as "Dana" who was reporting sexual abuse. Mr. Newton advised "Dana" was reporting that the sexual abuse had taken place over several years beginning with touching. Mr. Newton advised "Dana" was now reporting on Sunday, October 21, 2007 that the sexual abuse had changed to sexual intercourse. He advised "Dana" had reported to Ms. Pierce the abuser was her youth pastor at the New Life Church and had identified him possibly as Lance Cole. Mr. Newton advised "Dana" refused to provide her last name or home address but stated she would talk with a female law enforcement officer. He advised "Dana" was alleging that the New Life Pastor was going to pick her up on October 24, 2007 from her home and take her to the church so they could have sex. The case is documented in CSPD report 07-35545, titled Suspicious Circumstances (Sexual Assault).

On October 23, 2007 at approximately 1900 hours I received a phone call at my home from Mr. Newton advising "Dana" had once again called the TESSA hotline. I spoke briefly with Ms. Pierce who advised she had spoken with a victim who identified herself as "Dana Anderson," a 13-year-old student attending Liberty High School. She advised "Dana" had provided a birth date of 07/19/89 (making her 17 years old). Ms. Pierce stated "Dana" sounded like, a young, hysterical, crying female. She stated she had spent approximately 15 hours, over several days, talking on the telephone with "Dana," who was asking for help. She advised "Dana" had told her she had been locked in her basement, drugged

and sexually abused by her father. Ms. Pierce stated "Dana" had provided a call back telephone number of 719-339-8294.

On October 23, 2007 at approximately 2009 hours, I received a call from Ms. Pierce advising she was currently on the other line with "Dana" and a three-way connection was established. I identified myself to "Dana." I asked if "Dana" was there and I heard what sounded like a quiet, young, crying female voice say "yeah this is Dana." I attempted to obtain identifying information from "Dana" but she refused and kept saying she was scared and did not know what to do. I asked how old she was and she stated "13." "Dana" refused to give a location but stated she was safe. I provided "Dana" my work telephone number and again attempted to get her to go someplace where I could contact her. She began crying hysterically and disconnected the phone.

On October 24, 2007, Investigative Specialist Sue Prendinger (512C) and I responded to Liberty High School. A search of school records showed only one "Dana," Dana Goddard, enrolled at Liberty High School, but she was older than the caller. After speaking with Ms. Goddard, it was determined she was not the same "Dana" who had called the TESSA hotline.

From October 25 through October 27, 2007, I received several phone calls each day at my work telephone (719-444-7783) from a female who identified herself as "Dana". I recorded these phone calls with her. I again attempted to get a current location from "Dana," but each time she refused further information and disconnected the phone. "Dana," however, would keep begging for help during each call. Investigative Specialist Prendinger also received telephone calls from "Dana," again with the same result.

Upon further investigation of the telephone number 719-339-8249 provided by "Dana," I discovered the telephone number matched several police reports I had received from the Longmont Police Department and Pueblo Police Department located in Colorado, dated February 20, 2007 through February 28, 2007. The Longmont Police Department had five separate reports and Pueblo had two reports. In these police reports the victim, identified as "Ericka Munoz," is a 15-year-old female who is reporting being sexually abused by her uncle. She also alleges she has an infant she needs to drop off at a fire station. "Ericka Munoz" told police she was impregnated by her uncle, "Mike," and gave birth in Colorado Springs. "Erika Munoz" gave numerous locations where Pueblo Police officers could contact her, but each time she was gone prior to their arrival. "Ericka Munoz" had also used the telephone number 719-447-7981.

On September 20, 2006, Officer J. Antonio (953P) was contacted by Rampart High School (8240 Lexington Drive) school counselor Catherine DiNuzzo regarding a possible student identified as "April" (CSPD report 06-32356). "April" had called Ms. DiNuzzo several times to report sexual abuse by her father and uncle. "April" was also reporting that her uncle planned to take her to Planned Parenthood for an abortion on Friday, September 22, 2006. "April" provided telephone number 719-447-7981 and 719-550-8828. Ms. DiNuzzo made an appointment to meet with "April" in front of Rampart High School. She advised when she arrived she observed a female standing by herself and called "April's"

telephone numbers. She advised the girl answered the telephone but ran away. She described the female as a black female, 5'5"-5'6", 150-160 pounds, with a stocky build.

Detective S. Lembergs (1613D) and Investigative Specialist B. Midyett (538C) were assigned for follow-up. Detective Lembergs contacted Planned Parenthood, but they had no information relating to an "April." Investigative Specialist Midyett spoke several times on the telephone with "April," but she refused to provide any further information or to come in for a face-to-face interview.

On February 14, 2007, Sergeant Magdalena Santos (980D) was contacted by Jenna Hamilton from the Cocoon House located in the state of Washington. Ms. Hamilton stated she was concerned for the welfare of a 14-year-old she was talking to identified as "April" from Colorado Springs, Colorado, who had been calling her since September 2006. Ms. Hamilton advised "April" would call several times a week reporting sexual abuse by her father and uncle. She advised "April" had told her she was staying at the TESSA safe house with her mother the end of 2006. Ms. Hamilton stated "April" told her she was a student at Rampart High School. Ms. Hamilton stated she had spoken with counselor Catherine DiNuzzo at the school in reference to "April." Ms. Hamilton advised "April" had called from 719-447-7981 and 719-217-7329.

On October 11, 2007, Officer R. Wekamp (2647P) had responded to Sierra High School located at 2250 Jetwing Drive on a reported Sexual Assault, CSPD report 07-34668. Officer Wekamp contacted the reporting party, principal Dr. Judith Smith. Dr. Smith advised she was contacted by Patty Ming with Urban Peak, who told her she was contacted on October 10, 2007 by a black female who claimed she had been sexually molested by her father and older brothers. Dr. Smith advised Ms. Ming had called the police, but the unknown black female had left prior to police arrival. On October 11, 2007 at 1300 hours, counselor Nicole Cartwright at Sierra High School received a phone call from a black female identifying herself as the same black female who had called Urban Peak. She reported sexual abuse to Ms. Cartwright but refused personal information. The victim stated she was currently at the YMCA located near Sierra High School, but she could not be located. The victim provided telephone number 719-339-8294.

On November 08, 2007, Officer J. Antonio received further information from Ms. DiNuzzo advising "April" had once again contacted her (CSPD report 07-37096). Ms. DiNuzzo advised "April" was now calling herself "V" but she recognized the voice as the same person who was "April." "V" congratulated Ms. DiNuzzo on having a baby and what a good mother she was. She advised "V" told her she had seen her and her family out shopping. "V" began calling Ms. DiNuzzo on a regular basis at work and at home. Ms. DiNuzzo advised "V" seemed to know what was going on in her life.

On November 08, 2007, I contacted Patty Ming with Urban Peak. Ms. Ming advised she had spoken with "April" on numerous occasions from April 2007 through last week. Ms. Ming advised "April" had reported sexual abuse but refused to talk with law enforcement officers. She advised "April" was reporting sexual abuse by her uncle and father. Ms. Ming advised "April" reported she was forced to have several abortions and to have given birth from her father. She advised "April" called and texted from telephone 719-339-8294. I asked if she would recognize "April's" voice and she stated she would.

I responded to Urban Peak and played a portion of the recorded conversation I had made of "Dana Anderson." Ms. Ming identified the female on the audiotape as the same girl she had been speaking to known as "April."

On February 26, 2008 at 1440 hours, Officers J. Whittmore (292P), R. Mooney (1776) and Sergeant Martin (33P) were dispatched to 8220 Candon Drive to investigate two 911 calls from a small female child, asking for or identifying herself as "Jennifer" (CSPD case 08-06693). According to the calls, an unknown child, approximately four years of age, was claiming to be locked in her basement since Friday because she had gotten in trouble. The calls were coming in from a prepaid Tracphone (719-351-0913). Through a GPS and reverse 911 tracking, the 911 calls were identified as having come from the areas of the 8100 or 8200 blocks of Steadman Drive or Candon Drive. Officers conducted door-to-door neighborhood contacts with residents and searches of homes along these streets.

During the neighborhood contacts the officers were contacted by Jennifer Pierce. Ms. Pierce asked if officers were looking for a female claiming to be locked in a basement. Ms. Pierce advised she knew who officers were looking for. Officer Whittmore advised that Ms. Pierce briefed him on her history with "Dana Anderson." Ms. Pierce provided the current contact telephone number she had for "Dana Anderson" of 719-351-0913. Officer Whittmore advised Ms. Pierce had been in contact with "Dana Anderson" since October 2007 with only a brief gap during which time "Dana Anderson" had told Ms. Pierce she was in Texas with a relative named Maria.

On March 4, 2008 I met with Ms. Pierce at the Police Operations Center located at 705 S. Nevada Avenue once again. During a follow-up interview conducted with her she advised she was no longer employed with TESSA as of February 28, 2008. Ms. Pierce advised, however, she continued to receive telephone calls from "Dana Anderson" on her personal cellular telephone from "Dana's" new telephone number (719-351-0913). She advised "Dana Anderson" had continued to call her after she had reported the information back in October 2007. Ms. Pierce stated during the conversations, "Dana Anderson" would continue to talk about being locked in the basement and drugged for days on end. Ms. Pierce advised on February 29, 2008, she had received a phone call from "Dana Anderson" who told her she was currently in the TESSA safe house. She advised "Dana Anderson" told her that it was actually her "other personality" that went to the safe house, "Rozita." Ms. Pierce advised "Dana Anderson" stated "Rozita and Dana" are in the same body, but just different personalities. She stated "Dana" described "Rozita" as a dark skin toned black female, 33 years old, who has worked for an insurance agency for a long time. Ms. Pierce stated "Dana" asked her to call her back on "Rozita's" telephone (719-243-5744). She advised "Dana" told her the "Dana" personality is there to protect Rozita from being hurt. Ms. Pierce stated she contacted a confidential source (employee of TESSA) who confirmed there was a Rozita currently housed at the safe house. She advised the source would not give Rozita's last name, but confirmed she was a 33-year-old black female.

Rozita Swinton DOB 10/23/74, a black female, 5'8", 180 pounds, having black hair and brown eyes, is a known repeat victim who repeatedly reports sexual abuse with the Colorado Springs Police Department. She is identified on Colorado Drivers License [REDACTED] A utility check through the

Colorado Springs Utilities on April 15, 2008 showed a current address for Ms. Swinton of 4826 Templeton Park Circle, Apartment 125, with home telephone (719) 243-5744. This same home telephone number has been provided by Ms. Swinton in the past in numerous CSPD police reports dating back to 2005. Ms. Swinton is currently employed with State Farm Insurance located at 1390 Kelly Johnson Boulevard. She made a report of sexual abuse on March 9, 2008 (CSPD report 08-07773) but refused to give any information to the responding officer.

On April 13, 2008, I was contacted by Sergeant Hugh Velasquez (1514D) regarding information he had obtained from Sergeant Sean Mandel. Sergeant Mandel told Sergeant Velasquez he had been contacted by the Texas Rangers in regard to their investigation into the Yearning for Zion (YFZ) Ranch. Sergeant Mandel related Texas Ranger Brooks Long had advised he had two cellular telephone number listings from the Colorado Springs area (719-351-0913 and 719-243-2866). Sergeant Mandel was aware that the phone number, 719-351-0913, that was possibly related to the reporting party for the YFZ Ranch incident in Eldorado, Texas, was also identified in a prior CSPD case report.

On April 14, 2008, I spoke with Texas Ranger Long and confirmed telephone number 719-351-0913 was in fact a local Colorado Springs telephone number associated with Rozita Swinton. I informed Ranger Long that Rozita Swinton was known to make false reports of sexual abuse to the police and other agencies. The Texas Rangers advised they would be responding to Colorado Springs to conduct further investigation.

Texas Ranger Philip Kemp, a certified peace officer in the state of Texas, advised he had been provided information by Ranger Long that a series of telephone calls were made to the Newbridge Family Shelter beginning March 29, 2008 by a female who identified herself as Sarah Barlow with a date of birth of January 13, 1992. During the calls from March 29, 2008 and March 30, 2008, Sarah Barlow stated she had a baby that was approximately eight (8) months old and was also currently pregnant with another child. Sarah Barlow identified her "husband," the father of the baby, as Dale Barlow. Dale Barlow was described as a white male that was forty-nine (49) years of age. Sarah Barlow described Dale Barlow as both physically and sexually abusive towards her. Sarah Barlow stated that she and Dale Barlow were currently residing at the Yearn for Zion Ranch located in Schleicher County, Texas, approximately three (3) miles northeast of Eldorado, Texas. Sarah Barlow would occasionally cry during conversations with the Family Shelter Crisis Hotline call takers. Sarah Barlow desired to leave the YFZ Ranch compound, but stated to call takers (Alisa Thomas and Jessica Carroll) that if she were caught, she would be locked in her room and not allowed to eat.

Texas Ranger Kemp was provided a copy of a report by Texas Ranger Long that had been written by Schleicher County (Texas) Deputy Sheriff John Conner, a peace officer certified by the state of Texas. The report indicated that a female caller identified as Sandra Woodard from Monroe, Washington, had contacted the Schleicher County (Texas) Sheriff's Office and advised she had been in telephone contact with a female claiming to be Sarah Barlow, age sixteen (16). Woodard advised that she worked at the Snohomish County Shelter for Battered Women where she had been in telephone contact with Sarah Barlow. Sarah Barlow advised Woodard that her husband, Dale Barlow, was living

at 13031 8th Avenue West in Everett, Washington. An Internet search revealed that the location was for the Cobble Hill Apartments in Everett, Washington. Sarah Barlow advised Woodard that she married Dale Barlow when she was fourteen (14) years old and was Dale Barlow's third (3rd) wife. Sarah Barlow advised she had been moved to the YFZ Ranch approximately three (3) weeks ago and was assigned to a new husband named "Merrill." Sarah Barlow also advised she had just been moved from the YFZ Ranch in the last few days and was not sure where she was. Sarah Barlow was fearful of revealing her true identity to anyone for fear that the "sisterwives" had told her that her baby would be taken away. Sarah Barlow had also told Woodard that the "sisterwives" had told her to claim she was their daughter and not a wife of "Merrill's." Woodard stated that Sarah Barlow had spoken in Biblical terms. Having been involved in the recent investigation into the allegations at the YFZ Ranch in Texas, Ranger Kemp was aware that the terms "sisterwives" and being "assigned" to a new husband were common terminology used by the women from the YFZ Ranch in referring to fellow wives of the men and also that women were reassigned to different husbands for various reasons in the Fundamental Latter-Day-Saints (FLDS) religion. Woodward was reluctant to provide the information for fear of repercussions.

On April 10, 2008 Schleicher County (Texas) Deputy Conner was contacted by someone named "Karen" at the Snohomish County Shelter for Battered Women and advised that a shelter worker, Kelly Clagget, was on the telephone with Sarah Barlow. Deputy Conner had Clagget establish a three-way call with Clagget, Deputy Conner, and Sarah Barlow. Deputy Conner advised that Sarah Barlow sounded as if she was crying. Sarah Barlow had repeatedly said she felt she would be punished for the trouble she caused. Sarah Barlow insisted that if she came forward her baby would be taken away. Sarah Barlow also stated that the "sisterwives" were instructing her to tell authorities that she was their daughter and that Sarah Barlow's baby belonged to the "sisterwives". Sarah Barlow stated that the baby's name was Claire and that she was about eight (8) months old. Sarah Barlow also stated that she had a twin sister in Colorado City, Utah and requested if Deputy Conner could assist with getting her twin sister and mother out of Colorado City, Utah. Deputy Conner agreed.

Sarah Barlow would say during the conversation that the women at the shelter where she was at would bring the children teddy bears and the boys would get small cars. Sarah Barlow also advised that she didn't want to talk to one of the social workers because she was wearing a short sleeved shirt. Sarah Barlow also stated that the "sisterwives" had told her the workers were trying to poison the people from the YFZ Ranch with food in shiny wrappers. Sarah Barlow was also angry with a woman named Jessica that Sarah Barlow had contacted on March 29, 2008, and faults "Jessica" for the YFZ Ranch being raided by law enforcement. Ranger Kemp was aware that Jessica Carroll was one of the first women that had been called by Sarah Barlow on March 29, 2008 at the Newbridge Family Shelter in San Angelo, Texas. Ranger Kemp was not aware of Carroll's name being released to any media outlets. Sarah Barlow also informed Deputy Conner that the location she was at had multiple buildings, but she would not describe the buildings.

Sarah Barlow would terminate the calls, stating that the "sisterwives" were coming or that she had to pray on the topic of telling Deputy Conner her location and would call back later. Deputy Conner advised that he would wear a shirt of any color Sarah Barlow requested in order for Sarah Barlow to

identify him for assistance to leave the shelter area. Sarah Barlow advised Deputy Conner not to wear red. Sarah Barlow also stated she wanted to leave the shelter at nighttime. Each time that Deputy Conner would request a description of Sarah Barlow's location she would not answer and finally hung up.

Clagget stated Sarah Barlow had been calling from the same telephone number each time, which was identified as 719-243-2866. The first call to the Snohomish County Shelter for Battered Women was on March 22, 2008. Clagget had several telephone conversations with Sarah Barlow on that telephone number, with the last one being on April 8, 2008 (prior to the call on April 10, 2008 just described). Sarah Barlow had previously described herself as having blonde hair, blue eyes, with a date of birth of January 13, 1992 and Claire's birthday was August 1, 2007. Sarah Barlow also stated to Clagget that she was currently pregnant again. Sarah Barlow told Clagget as well that her reassigned husband was named "Uncle Merrill." Through investigation, Ranger Kemp was aware that "Uncle Merrill" is actually Frederick Merrill Jessop, the person in charge of the YFZ Ranch in Eldorado, Texas.

Deputy Conner received another telephone call from Clagget on April 11, 2008, advising she had talked to Sarah Barlow again on the evening of April 10, 2008. During that call, Sarah Barlow advised she was being told identify herself as Martha Jessop and to claim she was fourteen (14) years old. Sarah Barlow also told Clagget that it rained at her location the previous evening and that there were swing sets at her location. Texas Ranger Kemp, being assigned to San Angelo, Texas, where the children had been secured once removed from the compound, was aware of a severe thunderstorm that passed through the area during the night hours of April 10, 2008. Sarah Barlow told Clagget that a "sisterwife" knew she had been talking to someone and that she would have to repent and that Sarah Barlow knew repenting meant she would be beaten. Clagget stated that Sarah Barlow advised the telephone she previously used belonged to her cousin from Colorado. The telephone number that the calls were made from was a Sprint Nextel telephone that was registered in Colorado Springs, Colorado. Sarah Barlow had also stated that she had stayed at the Fair Haven Downs Apartments in Everett, Washington. An Internet search indicated that these apartments had the same address as the Cobble Hill Apartments in Everett, Washington. Clagget believed that Sarah Barlow was about to leave from the shelter that night, but didn't.

Contact was made with the Federal Bureau of Investigations (FBI) requesting telephone records for the Nextel telephone number 719-243-2866. The results indicated that the cell phone was registered to Courtney Lamont Swinton, black male, date of birth 07-03-1976. Swinton had an address of 4660 Hinsdale Way Apt. #242, Colorado Springs, Colorado 80917. The FBI confirmed through Colorado Springs, Colorado utility records that there was another person with the last name Swinton at the apartment complex: Rozita Swinton, black female, date of birth 10-23-1974. Rozita Swinton resides in Apt. #125 at the same apartment complex in Colorado Springs, Colorado. Ranger Kemp was provided a copy of the telephone calls made from the Nextel number and identified the telephone number of the Snohomish County Shelter for Battered Women in Washington (425-252-2873) approximately twenty-eight (28) times from March 29, 2008 through April 12, 2008. Ranger Kemp also observed the

telephone number for the Newbridge Family Shelter (325-655-5774) on the telephone records approximately sixteen (16) times from March 29, 2008 through April 5, 2008.

Texas Ranger Long made contact with the United States Marshals, who had provided an additional telephone number of 615-268-1232. Ranger Kemp was advised by Ranger Long that this telephone number had also called the Newbridge Family Shelter at least seven (7) times. Texas Ranger Long advised Ranger Kemp that the telephone was purchased from a Family Dollar Store in Tennessee under the name "Freddie Brinson" with a Social Security number (REDACTED) and that the Social Security number is fictitious. An additional telephone number that had been located that Ranger Long advised had called the Newbridge Family Shelter was 719-351-0913. Ranger Kemp was advised by Ranger Long that Affiant had several reports regarding Rozita Swinton making false reports with this telephone number.

A search of the telephone records for 719-243-2866 revealed that the Snohomish Battered Women's Shelter in Everett, Washington was called as well as the Hope Organization in Washington, Utah (also related to Hope for Child Brides); F.M. Jessop in Arizona; the Domestic Violence Crisis (Rape Crisis) line in Colorado Springs, Colorado; and the Abused Counseling and Treatment Center in Ft. Myers, Florida.

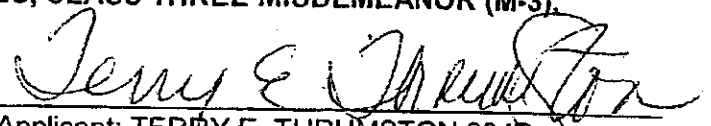
A search of Colorado state court government records, LexisNexis showed Rozita Swinton is currently sentenced on a 12 month Deferred Sentence for False Reporting (M-3) out of Douglas, County Case 05M01552. Ms. Swinton pled guilty on June 27, 2007.

A search for telephone records on numbers (719) 339-8249, (719) 447-7981 and (719) 351-0913 show all telephone numbers as Tracphones with no identifying records attached.

I would request an increased bond due to Ms. Swinton being a flight and a safety risk to the public.

All addresses discussed in this Affidavit are in the City of Colorado Springs, El Paso County and State of Colorado other than reference made to Texas.

I would respectfully request that probable cause be found that SWINTON, Rozita Estraletta AKA: Dana Anderson DOB: 10/23/74 did within the City of Colorado Springs, County of El Paso and State of Colorado, commit in violation of the Colorado Revised Statutes 1973 as amended, the offense of §18-8-111(2)(B), FALSE REPORTING TO AUTHORITIES, CLASS THREE MISDEMEANOR (M-3).



Applicant: TERRY E. THRUMSTON 984D
Colorado Springs Police Department
Position: Detective

Sworn and subscribed before me this 16th day of April 2008

Judge 

COLORADO SPRINGS POLICE DEPARTMENT

WARRANT INFORMATION

FILL OUT ALL INFORMATION

Name: Swinton Rozita DOB: 10/23/74 SSN: [REDACTED]
Last First Middle

Alias's: DANA Anderson

Race: B Sex: F Ht: 5'8 Wt: 180 Hair: BLK Eyes: BRN POB: TN

Hm. Address: 4826 Templeton Park #125 Hm. Phone: 343-5700
Street City State Zip

Employer: State Farm Wk Address: 401 N. Union Blvd Wk Phone: _____
Street City State Zip

Warrant No: 0800002726 Fel. (Misd.) Dated: 4/16/08 Bond F&C: 10,000

Charge: False Information Statute: 18-811 Court Judge: Martin

Officer: Thruvston Division: Sex Crimes Wk Phone: 444-7783 Pager: 921-2712

Police Agency: Colorado Springs Police Department CSPD Case No.: 07-35545

Do You Want to Interview Upon Arrest?: Yes ☒ No ☐ 24 Hr. Contact #'s _____ Pager: _____ Others: _____

Extradite: Yes ☐ No ☐ FBI: _____ MNI: _____ SID: _____

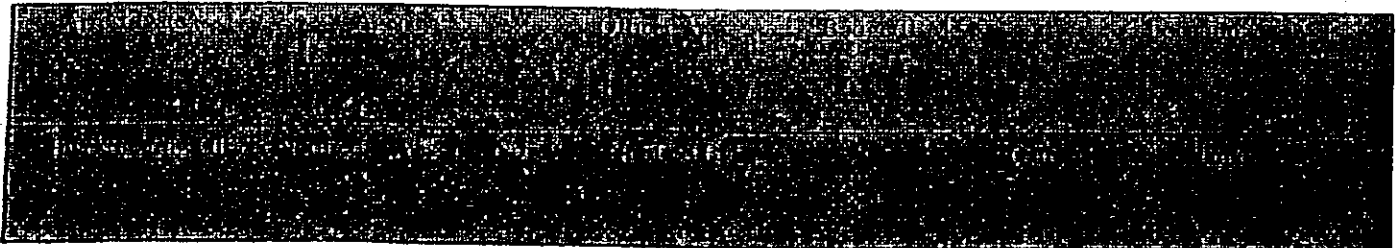
Scars, Marks, Tattoos: _____

Veh. Yr: _____ Make: _____ Model: _____ Color: _____ Lic. No.: _____

Lic. State: _____ Lic. Yr: _____ VIN: _____

Other Misc. Information: _____

Complete this area upon arrest of above subject:



A WARRANT INFORMATION SHEET is to be made out for each person that is to be picked up on a warrant and is to be accompanied with said warrant when taken to the El Paso County Sheriff's Department.

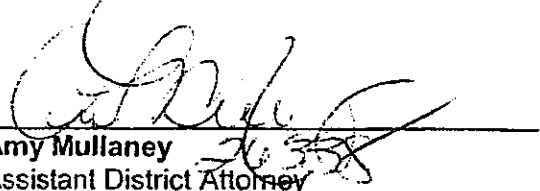
REQUEST FOR SEALING OF ARREST WARRANT

COMES NOW, the People of the State of Colorado, by and through John Newsome, District Attorney for the Fourth Judicial District, and her Deputy District Attorney, Amy Mullaney, respectfully request this Court enter an Order, sealing the Arrest Warrant and Application, to include the Affidavit and Attachment "A", as grounds, therefore states the following:

1. The Criminal Case Report supporting this Arrest Warrant was initiated by the Colorado Springs Police Department, El Paso County, Colorado, Case Number (07-35545 et al.), is an ongoing multi-jurisdictional investigation involving sexual assaults on children.
2. If the information supporting the Arrest Warrant Affidavit was to be released, it could jeopardize the apprehension of the suspect, and subsequent prosecution of same.
3. We are requesting the sealing of this document indefinitely, or until the completion or termination of the investigation.

WHEREFORE, the People of the State of Colorado respectfully request the Court enter an ORDER, sealing the Arrest Warrant and Application for the Arrest Warrant, to include the Affidavits and Attachment "A".

Respectfully Submitted,


Amy Mullaney
Assistant District Attorney
326 S. Tejon St.
Colorado Springs, CO 80903
(719) 520-6000

STATE OF COLORADO)

COUNTY OF EL PASO)

SUBSCRIBED and sworn to before me this _____ day of _____, 2008


4/16/08

NOTARY PUBLIC
(Address)
Colorado Springs, CO 80903

My Commission Expires: _____