IN THE CIRCUIT COURT FOR THE
TWENTY-SECOND JUDICIAL CIRCUIT
CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	
	)	Cause No. 1822-CR00642
v.	)	
	)	FILED UNDER SEAL
ERIC GREITENS,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO QUASH SEARCH WARRANT OF MAY 3, 2018

As this court knows, on May 3, 2018, a search warrant was issued for everything related to the Eric Greitens e-mail account ergreitenspersonal@gmail.com. This motion to quash is based on the lack of probable cause supporting the search warrant.

Just this February, the Missouri Supreme Court made clear the constitutional need for sufficient probable cause to justify the invasion of a person's privacy to conduct a search. In *State v. Douglass,* the Court reemphasized the black letter law that "[p]robable cause exists if, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." 2018 WL 830306 at *7 (Mo. banc 2018).

The affidavit alleges that after the announcement of an investigation, there was an uptick in activity in the specific email account. Search Warrant at 7. Mr. Box refers to this activity as "unique." *Id.* at 8. Then the affidavit alleges that most, if not all of this activity appeared to be coming from Dowd Bennett, the law firm representing Mr. Greitens. *Id.* at 7. Finally, Mr. Box jumps to the conclusion that because there was an uptick in activity after the announcement of an investigation, and because that activity was coming Mr. Greitens's law firm, "there is reason to believe that this activity was related to the Invasion of Privacy Investigation and that there may have been efforts to access or delete the photo in question." *Id.* at 8.

Mr. Box makes no allegation that Dowd Bennett is known to destroy evidence. Nor does he allege that law firms in general are known to destroy evidence. Rather, he describes what would indisputably be normal activity when accusations are made against a client—that is, the law firm begins to investigate. The activity described by the affidavit does not give any reason to believe that evidence could have been destroyed. That certainly is not probable cause.

This is an absurd and unsupportable allegation and this Court must not give credence to such a claim. The affidavit offers no evidence that Mr. Greitens used the account to send anything in particular, let alone an alleged picture. There is no evidence that this account is a location where "there is a fair probability that contraband or evidence of a crime will be found." *Douglass*, 2018 WL at *7. For these reasons, the search warrant is unsupportable and must be quashed.

There exists no evidence that this Gmail account was utilized in any way as part of any alleged crime or that it would contain evidence of the alleged crime. Mr. Box asserts that he has learned that "that individuals who take pictures with their cell phone and other cameras frequently use email communication and related services to transmit those photos and images via email and store them on associated email services, including Google Drive and Google Photo." However, what unidentified people sometimes do with their photos or email accounts does not establish probable cause of anything. The defense would concede it is commonly known that individuals who get up in the morning frequently have breakfast. Such a reality does not in any way establish that a particular person on a particular day had breakfast. Mere speculation is not probable cause.

The second glaring fatal flaw to the search warrant affidavit is it provides no evidence regarding, and in fact does not even mention, the statutory requirement of a reasonable expectation of privacy. Though never citing a specific statute, which itself may be a flaw, the affidavit references an invasion of privacy. However, as this Court knows from multiple other pleadings,

the invasion of privacy statute involved in this case requires that the person photographed must be "in a place where a person would have a reasonable expectation of privacy." § 565.252 RSMo (2014). The affidavit makes no mention of any expectation of privacy at all. This is not a legal argument of when there can be a reasonable expectation of privacy. Rather, the affidavit failed to even mention the concept. Nothing whatsoever is presented in the affidavit suggesting KS had an expectation of privacy, let alone a reasonable one. Therefore, the affidavit does not present sufficient evidence of probable cause to believe there was an invasion of privacy. That alone is fatal to the validity of the search warrant.

Wherefore, this Court should quash the search warrant and prohibit its improper use.

Dated: May 6, 2018

Respectfully submitted,

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