

COMBINED COURTS, MESA COUNTY, STATE OF COLORADO

Case Number: 22SW

21st Judicial District Attorney's Office Incident 22-37

SEARCH WARRANT

THE PEOPLE OF THE STATE OF COLORADO,

TO: **ANY PEACE OFFICER IN THE STATE OF COLORADO, INTO WHOSE HANDS THIS WARRANT SHALL COME, GREETINGS:**

WHEREAS, **Investigator Michael Struwe**, a peace officer, has made Application and Affidavit for the issuance of a Search Warrant; and,

WHEREAS, the Application appears proper and in conformity with the provision of Colorado Rule of Criminal Procedure, 41(b) and (c), for the following described property, to wit:

- **To perform actions to the collected digital storage device to discover the passcode, decrypt, acquire, extract, and copy data from the device;**
- **To process and then search and analyze the collected digital storage device for the following described data to include data that is stored, sent, received, deleted, encrypted, saved, or protected believed to have been created, viewed, accessed, modified, deleted, downloaded or saved to the device between: 1302 hours, and 1430 hours, on 02/07/22**
 - **All image, audio, and video files, including related metadata;**
 - **Data which shows application installation, deletion, activation, or termination;**
 - **Data which shows possession, dominion and control over the device surrounding relevant artifacts identified in the data;**
- **To review the device's settings, system data, and log files to determine consistencies or inaccuracies between the timestamps in the device's data and actual time;**
- **All data without associated timestamps such as files from unallocated space and deleted files**

Believed to be located or situated at:

An Apple iPad with a white keyboard case located on or about the person of TINA PETERS

upon one or more grounds as set forth in Rule 41(b), Colorado Rules of Criminal Procedure, namely:

- (1) Which is stolen or embezzled
- (2) Which is designed or intended for use as a means of committing a criminal offense
- (3) Which is or has been used as a means of committing a criminal offense
- (4) The possession of which is illegal
- (5) **Which would be material evidence in a subsequent criminal prosecution in this state or in another state**
- (6) The seizure of which is expressly required, authorized, or permitted by any statute of this state
- (7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health

The names of person(s) whose affidavits have been taken in support hereof are:

Investigator Michael Struwe / 21st Judicial District Attorney's Office

and as I am satisfied that there is probable cause to believe the property so described is located on the person(s), premises, or in the vehicle(s) described above, YOU ARE THEREFORE COMMANDED to search

forthwith the person(s), premises, or in the vehicle(s) described above for the property described, any time, night or day, within 14 days of the date hereof, and to make return of this Warrant to **Investigator Michael Struwe**, and to deliver to the person from whom the property is taken, or from whose premises or vehicle the property is taken, a copy and receipt at the place from which the property is taken; and to deliver to the Clerk of the Court a written inventory of the property with the return of this Warrant.

Dated 2/8/2022 | 08:48 PST, Mesa County, Colorado.

By the Court:

DocuSigned by:
Gretchen B. Larson
D027E82646E849D...
Judge

COMBINED COURTS, MESA COUNTY, STATE OF COLORADO

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AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

The undersigned, in conformity with the provisions of Colorado Rules of Criminal Procedure 41(b) and (c), presents to this Honorable Court an Affidavit for a Search Warrant and respectfully moves this Honorable Court for the issuance of a Search Warrant and in support of the Application for Search Warrant, **Investigator Michael Struwe**, hereinafter referred to as "Affiant", presents the following Affidavit in support of Search Warrant and asserts the following:

1. That the Affiant is of lawful age and is a duly sworn law enforcement officer currently employed by the **Office of the District Attorney, 21st Judicial District of Colorado** and was so employed at all times relevant to the facts contained herein. All of the information herein contained was compiled by the Affiant in the course of a criminal investigation, including speaking with fellow law enforcement officers, citizens, and reviewing official police reports. All locations referred to are in the County of Mesa, State of Colorado, unless specifically noted otherwise.
2. On 02/07/22, at about 1302 hours, Mesa County Court case 21CR1312 went on the record in Division 9, Judge BARRETT's courtroom, for a scheduled hearing in that case. I viewed the hearing virtually over Webex. As the hearing developed, Paralegal HALEY GONZALEZ and D.D.A. JONATHAN MOSHER noticed a female known to them to be Mesa County Clerk and Recorder TINA PETERS using an Apple iPad to apparently record the proceeding.
3. According to the register of actions in 21CR1312, Judge BARRETT held a conference at the bench at 1312 hours. That conference was requested by D.A. RUBINSTEIN to alert the Court that Clerk PETERS appeared to be recording the hearing. Judge BARRETT addressed the audience about recordings being prohibited in court, per the posted sign at the entrance, as well as "common sense." Judge BARRETT cautioned the audience that if he learned of a recording, he would take appropriate legal action.
4. Later in the hearing, after a short recess, Judge BARRETT went back on the record to clarify that he did not take any action regarding an alleged recording because when confronted about making a recording, Clerk PETERS represented to the Court that she had not made any such recording. Judge BARRETT made it clear that his decision to not take action was based on his belief that Clerk PETERS personally stated to the Court that she was not recording. Clerk PETERS' statements to the Court affected his decisions and actions concerning a matter which was to be performed by him as a public servant. If Clerk PETERS had in fact made a recording, Judge BARRETT's decisions and actions would have been influenced by deceit.
5. The hearing ended at about 1430 hours; Clerk PETERS, and the iPad she was using, remained in the courtroom throughout.
6. D.D.A. MOSHER later reported to me that Clerk PETERS made statements in the courtroom that she was not recording and the allegations that she was recording were not true. Paralegal GONZALEZ confirmed that she also heard Clerk PETERS claim to the Court that she was not recording and those accusing her of recording were not being truthful.
7. D.D.A. MOSHER reported to me that he saw Clerk PETERS holding what appeared to be an iPad in a white keyboard case in such a manner as to point the rear-facing camera toward the podium as if recording D.A. RUBINSTEIN. D.D.A. MOSHER reported that when the Court addressed the audience

about recordings being prohibited, Clerk PETERS rotated the iPad, affording him a view of the screen. He advised the iPad screen had the iPadOS “camera” application running. D.D.A. MOSHER saw that the view in the camera application screen was a live view of Judge BARRETT’s courtroom from the iPad’s vantage point.

8. Paralegal GONZALEZ reported to me that she observed what appeared to be an iPad in a white keyboard case under Clerk PETERS’ control. She reported the iPad was open and the rear-facing camera was pointed at the bench/podium as if Clerk PETERS was recording. Paralegal GONZALEZ said that when the parties approached for the bench conference, Clerk PETERS was reaching for the screen on the iPad in a manner consistent with trying to either initiate – or in this instance, more likely end – a recording. Paralegal GONZALEZ reported that when Judge BARRETT made his address to the audience, Clerk PETERS picked up the iPad and rotated it to her left (south), thereby pointing the screen in Paralegal GONZALEZ’s direction to the north. This revealed the screen to Paralegal GONZALEZ and she could see that the iPadOS “camera” application was open, distinguishable with the red record button on the application. Paralegal GONZALEZ saw that the view in the viewfinder was a live view of the courtroom from the iPad’s vantage point. Paralegal GONZALEZ advised that Clerk PETERS then closed the iPad and put it in her bag.
9. It was only after the court hearing that D.D.A. MOSHER and Paralegal GONZALEZ provided their complete statements to me and asserted their certainty that Clerk PETERS was recording, or was attempting to record and when discovered, appeared to try to stop the recording and conceal her iPad in a bag she carried on her person.
10. Review of security footage from Division 9 confirmed that prior to the bench conference, Clerk PETERS was sitting behind the defense table with what appears to be a white tablet-like device perched on the courtroom bar, oriented consistent with what D.D.A. MOSHER and Paralegal GONZALEZ reported. See partial screenshot below:



11. Based on my knowledge, training, and experience, I know Apple iPads are designed and manufactured

to operate exclusively on Apple's iPadOS operating system and are shipped to the end user with said operating system preinstalled. I know from my training and experience that iPadOS captures significant data regarding system processes during the use of the device, to include dates and times when applications are installed/deleted as well as initiated/terminated. It is possible with current digital forensic methods to recover this information from a device, sometimes even when the device is in a locked state. The iPadOS camera application is capable of capturing audio, as well as digital video and still images. These files are transferred automatically to the iPadOS "photos" application for storage. These files are also capable of being transferred and stored elsewhere on a device's memory. Deleting audio, video, or image files from a device does not delete all data associated with that file and oftentimes the files themselves are capable of being recovered even after deletion. Digital artifacts associated with applications and their use at a specific time are also logged and can be recovered from the device's memory. Photo, video, or audio files captured using iPadOS are also capable of carrying metadata that can reveal the date, time, location, device settings, camera settings, and other information about the files. Even if a device running iPadOS is completely erased and/or restored to factory settings, data can be extracted to reveal when such a reset was likely performed.

12. I am asking to search and review data believed to have been created, viewed, accessed, modified, deleted, downloaded or saved to the device between **1302 hours and 1430 hours, on 02/07/22**. Current digital forensic processes require that all data be extracted from the device and then processed. After processing, the data can then be filtered by timestamps prior to analysis.
13. Based on my knowledge, training, and experience, I am aware that even a novice user can manipulate the date and time settings in digital storage devices. A user can decide to set their device to a different time zone or even to a different date and year. Because of this, I am requesting to conduct a forensic review of the device's settings, system data, and log files to determine consistencies or inaccuracies between the device's time-stamped data and actual time.
14. Based on my knowledge, training, and experience, I know that the device's data may also contain evidence which is not timestamped. Files from unallocated space and deleted files can at times only partially be recovered and remnants of these files may not include date and timestamps associated with the files or portions of the data itself. I am aware that many relevant databases update at intervals and the timestamp associated with the data may not accurately represent when the data may have been initially created in the device. A forensic review of this data is necessary to locate evidence that may have been deleted by the user or stored without the user's knowledge.
15. In the event that inculpatory or exculpatory evidence is located in the device, it will be critical to establish evidence of the individual who had possession and use of the device at or about the time the data was accessed, modified, created, or distributed. As such, data relating to possession, dominion, and control over the device will assist in associating the data to the person whose activity generated such data.
16. On 02/08/22, at about 0855 hours, County Attorney TODD STARR reported to me that he saw Clerk PETERS at 544 Rood Ave, seated in the back at a scheduled Mesa County Commissioners meeting. Mr. STARR reported that Clerk PETERS had a black purse with her that was open and he could see an iPad with a white case contained therein. Contemporaneously, MCSO Deputy SIMON also reported seeing an iPad in a white case in a black purse under the control of Clerk PETERS.
17. **BASED UPON THE FOREGOING**, I believe probable cause exists that evidence of a digital recording made between **1302 hours and 1430 hours, on 02/07/22**, on a device under Clerk PETERS' control, an iPad with a white keyboard case, would be material evidence in a subsequent criminal prosecution in this state for the crime of:

