

1 Leslie Halligan, District Court Judge
2 Fourth Judicial District
3 Missoula County Courthouse
4 200 West Broadway
5 Missoula, Montana 59802
6 (406) 258-4771
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8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>9 STATE OF MONTANA, 10 Plaintiff, 11 v. 12 YANBIN BAO, 13 Defendant.</p>	<p>Dept. No. 1 Cause No. DC-23-326 ORDER ON MOTION TO SUPPRESS</p>
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14 This matter comes before the Court on the *Motion to Suppress* filed by
15 Defendant Yanbin Bao. The Court has considered the Motion and its
16 supporting evidence, the Response to the Motion filed by the State of
17 Montana and its supporting evidence, and Defendant’s brief in Reply. No
18 party requested a hearing on the Motion and the Court finds the briefing
19 sufficient for the issues presented. The Court has reviewed the record before
20 it and rules as follows:

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ORDERS

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2 (1) The Court grants in part and denies in part Defendant’s Motion
3 to Suppress.

4 (2) The Court hereby suppresses all evidence obtained from the
5 searches of the following electronic devices:

6 (a) LERMS 12 (Silver/white colored Apple iPhone in clear case)

7 (b) LERMS 13 (white Apple iPhone in a purple case)

8 (c) LERMS 14 (Apple iPad Pro in gray case bearing S/N:
9 DMP5MA5Y111M); and
10

11 (d) LERMS 15 (Red Apple iPhone in pink and clear case).

12 (3) The Court denies the Motion in all other respects.

13 **MEMORANDUM**

14 **I. FACTUAL AND PROCEDURAL BACKGROUND**

15 The State of Montana has charged Defendant Yanbin Bao with seven
16 counts of Sex Trafficking, felonies in violation of Mont. Code Ann. § 45-5-
17 702(1), and one count of Labor Trafficking, a felony in violation of Mont. Code
18 Ann. § 45-5-703(1). The charging documents refer to three anonymously
19 named victims.
20

21 The charges arise from a May 29, 2023, telephone call from Jane Doe
22 to Missoula County 911, calling from Soul Massage, a Missoula County
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1 business off Highway 93 South. In that call (through a translator because
2 Doe was speaking Mandarin Chinese), Doe accused Bao and Richard
3 Bushey of running a prostitution and sex trafficking business out of Soul
4 Massage and that Bushey had assaulted her. Missoula County Sheriff's
5 deputies and medical personnel were dispatched to Soul Massage.

6 The responding deputies found Doe, Bao, and Bushey at the scene.
7 Doe was transported to the nearby hospital and the deputies went inside the
8 business to speak with Bao and Bushey. At some point, the deputies
9 decided to arrest Bao and Bushey and seize the cell phones that they had
10 on their person.¹ They seized an Apple iPhone in a black Otter Brand case
11 from Bushey and an Apple iPhone in a clear case from Bao. Because a
12 deputy had heard another phone ringing while Bao was in the bathroom, he
13 demanded that Bao produce it. While she initially refused, after the deputy
14 used a translator app on his phone to communicate the demand to Bao, she
15 went into the bathroom, appeared to take a phone from a window sill behind
16 a window covering, and handed it to the deputy.² This phone was an Apple
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20 ¹ Because the present Motion focuses on the evidence connected with electronic devices,
21 the remainder of the recitation of facts shall likewise focus on the seizure and search of
22 electronic devices as part of the criminal investigation.

23 ² A later search warrant application alleges that Bao had been "hiding [this] second phone
on her person." The deputy's body camera video shows that the phone was in the
bathroom as described above directly before she gave it to the deputy, but the video and
the phone presence in the bathroom does not foreclose the possibility that the phone had
been hidden on her person before then.

1 iPhone in a purple case. The deputies arrested Bao and Bushey and
2 transported them to jail. The State filed charges against Bao on May 31,
3 2023, and later amended them.

4 The briefs are unclear on the date, but shortly thereafter and pursuant
5 to a search warrant, a detective found and seized another four electronic
6 devices inside Soul Massage, an Apple iPad Pro in a gray case, a red Apple
7 iPhone in a pink and clear case, a blue Motorola cell phone, and a black
8 Samsung cell phone bearing IMEI: 3513....

9
10 On June 6, 2023, law enforcement arrested another suspect with a
11 connection to the allegedly unlawful business at Soul Massage. This suspect
12 was Hui Wang, and when she was arrested she had four cell phones in her
13 purse: (i) a black Samsung Galaxy A12 cell phone; (ii) a BLU V50 cell phone;
14 (iii) a BLU Vivo XL3 Plus; and (iv) an Apple iPhone in a pink/purple case with
15 red staining upon it. When Wang's Missoula hotel room was searched
16 pursuant to a warrant, police found and seized another two devices: a black
17 Vortex cell phone and an Apple iPad.

18
19 On July 10, 2023, Detective Sean Evans applied for a single search
20 warrant to search the contents of all 13 previously seized electronic devices,
21 as identified above. The Hon. Jason Marks approved and issued the warrant
22 at 10:58 a.m. on the same day. The application and the resulting warrant
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1 were presented as exhibits to the Motion. The State's Response also
2 appends a search warrant application and a search warrant, but it does not
3 appear that the State's exhibits are the operative documents.³

4 The only timeline of the searches of the 13 electronic devices listed in
5 the search warrant is provided in a report by Forensic Analyst Melanie
6 Thomas, a Sheriff's Office employee, attached as Exhibit D to the Motion.
7 That report identifies the some of the devices as "LERMS" 11-18. There are
8 some confusing inconsistencies between how the separate devices are
9 identified in Thomas's report and the search warrant, but it appears that
10 "LERMS" 11-18 coordinate with the seven devices obtained from Bao,
11 Bushey, and from inside of the Soul Massage business. In any case,
12 according to the report, Thomas searched one device, LERMS 11 (Apple
13 iPhone in black Otter brand case), over the course of July 13-19, 2023. She
14 searched another two, LERMS 16 (blue Motorola cell phone) and LERMS 17
15 (black Samsung cell phone bearing IMEI: 3513...), between July 13-20,
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18 _____
19 ³ While both the Motion and Response append documents that they refer to as the
20 Application and the Search Warrant, the documents differ. To wit, Exhibit A to the Motion
21 was a search warrant application with a digital signature of Sean Evans at 10:56 on July
22 10, and Exhibit B is a search warrant with a digital signature of Judge Marks at 10:58 on
23 July 10. However, the State's Exhibit A is a search warrant with a digital signature of
Judge Marks at 10:34 on July 10, and it includes a Search Warrant Receipt and a Search
Warrant Return that indicate the warrant was not served. And, the State's Exhibit B is a
search warrant application dated July 7 by Sean Evans and signed by Judge Marks on
July 10 at 10:33. The State's exhibits appear to be the wrong documents, discarded and
not used perhaps because the State's Exhibit A is missing the list of electronic devices to
be searched.

1 2013. The report says that Thomas also attempted to search another device,
2 LERMS 14, at 0716 hours on the 20th, but was unsuccessful. According to
3 the report, Thomas did not search the other devices (LERMS 12, 13, 15) until
4 December and January, 2024.

5 The three phones searched on or before July 20 appear to be:

6 LERMS 11 / Apple iPhone in black Otter brand case / seized
7 from Bushey on May 29

8 LERMS 16 / blue Motorola cell phone / seized from Soul
9 Massage on May 29

10 LERMS 17 / black Samsung cell phone bearing IMEI: 3513 /
11 seized from Soul Massage on May 29.

12 The Sheriff's Office placed Melanie Thomas on administrative leave on
13 January 16, 2024. Bao attributes this decision to her mishandling the cell
14 phone evidence in this case, as shortly before this decision the Sheriff's
15 Office notified counsel for the State by letter of problems with the chain of
16 custody of the seized electronic devices and their corresponding
17 downloads/extractions. That letter is in Exhibit C to the Motion.

18 In her present Motion, Bao argues that the Court should suppress the
19 digital evidence obtained from the electronic devices for six reasons: (i) the
20 warrant expired prior to the search of five of seven of Bao's devices; (ii) the
21 warrant issued to search the devices was overbroad in that it lacked
22 particularity; (iii) the warrant application did not demonstrate probable cause
23 to compel the search; (iv) the warrant application contained false information

1 which, if excised, would destroy the probable cause to search one device;
2 (v) the State did not maintain a chain of custody of the devices after
3 expiration of the warrant; and (vi) the searches violated Bao's
4 constitutionally-protected privacy rights. The State's Response presents
5 arguments and authorities in opposition to Bao's positions, and Bao's Reply
6 provides a rebuttal.

7
8 The Court shall analyze Bao's arguments and the State's response to
9 them in detail below.

10 **II. LEGAL ANALYSIS**

11 **A. Application of the 10-day Window for "Service" of a Search 12 Warrant.**

13 Bao argues that Melanie Thomas's search of five of the devices was
14 illegally performed because it did not occur within 10 days of the issuance of
15 the July 10, 2023 search warrant (Exhibit B to the Motion) and thus the
16 evidence obtained from them must be suppressed. Bao derives this
17 argument from Mont. Code Ann. § 46-5-225, which provides in relevant part:

18 The warrant must be **served** within 10 days from the time of
19 issuance. Any warrant not served within 10 days **is void** and
20 must be returned to the court or the judge issuing the warrant
and identified as "not served".

21 Emphasis added. Bao argues that this statute has a straightforward
22 application here – it required law enforcement to search the phones within
23

1 10 days of the issuance of the warrant on July 10, 2023. Because Melanie
2 Thomas searched five of seven of Bao’s devices well after the July 20, 2023,
3 deadline, she lacked authority to do so because at that point the search
4 warrant was void, in accordance with Mont. Code Ann. § 46-5-225.

5 The State argues that under the plain language of the statute, the
6 warrant merely needed to be served within the 10 days, and that once timely
7 served, the search can occur later – and that there is no time-based
8 restriction on the search. The State posits that Mont. Code Ann. § 46-5-225
9 is analogous to Rule 41(e)(2)(A) of the Federal Rules of Criminal Procedure,
10 which requires a federal search warrant to command an officer to “execute
11 the warrant within a specified time no longer than 14 days.” In federal courts,
12 that Rule has been interpreted to mean, in the case of a cell phone search,
13 that the “execution period specified in a warrant applies to the time to seize
14 the device or to conduct on-site copying of information from the device. This
15 deadline does not apply to the time to analyze and investigate the contents
16 of the device off-site.” *U.S. v. Cleveland*, 907 F.3d 423, 431-32 (6th Cir.,
17 2018) (reasoning that the execution of the warrant occurred when the phone
18 and all the data within it was seized, and the timing of the subsequent
19 extraction and analysis of the data is immaterial). The State argues that the
20 same reasoning should apply here.
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1 In addition, the State argues that the Montana Supreme Court in *State*
2 *v. Neely*, 261 Mont. 369, 372-73, 862 P.2d 1109 (1993), interpreted Mont.
3 Code Ann. § 46-5-225 to mean that “service” of a warrant relates to its
4 “execution,” i.e., the deadline in which officers must seize the listed property
5 and hold it on the court’s order.

6 The Court finds Bao to present a much more persuasive argument on
7 this issue. Notably, all of the subject electronic devices had already been
8 seized at the time of the warrant – so the purpose of the warrant was to
9 search their contents. Thus, to execute the warrant was to effect the search.
10 What other action could the 10-day statutory window govern? Put another
11 way, since the phones were already seized, what did the statute require to
12 happen within 10 days? In this light, the reasoning from *Cleveland* does not
13 apply because “execute” in that case meant to seize, not search, like here.
14

15 Further, the holding and reasoning from *Neely* directly answer these
16 questions. In *Neely*, police obtained a warrant to search a house on
17 suspicion of drug activity, but then waited two days to execute it. Because
18 by the time the police executed the search, some of the information asserted
19 in the application for the warrant was no longer accurate; so in the ensuing
20 criminal case, the defendant sought to suppress the search results. *Neely*,
21 261 Mont. at 371. The Montana Supreme Court rejected this argument,
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1 reasoning that “[Mont. Code Ann. § 46-5-225] clearly allows police ten days
2 from the date of issuance to execute the warrant” in accord with the State’s
3 position on that statute. *Id.*, 372. Because the police executed the search
4 within 10 days, it was immaterial whether some of the information in the
5 application had gone stale. *Id.*, 373.

6 The Court finds that because the electronic devices listed in the search
7 warrant had already been seized, the Court interprets Mont. Code Ann. § 46-
8 5-225 to mean that law enforcement officers had 10 days from July 10, 2023,
9 to execute the search that the warrant commanded. Because law
10 enforcement did not search the following devices within that window, the July
11 10 warrant was void and their search was not authorized: (a) LERMS 12; (b)
12 LERMS 13; (c) LERMS 14; and (d) LERMS 15. Because the search of these
13 devices was not authorized, the Court must suppress any evidence
14 discovered in the search.
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16 Finally, on the 10-day window provided by Mont. Code Ann. § 46-5-
17 225, Bao’s Motion argues that deadline expired exactly at 10:58 a.m. on July
18 20, 2023, and that since Thomas’s report does not identify whether she
19 completed the search of LERMS 16 and 17 before that precise time on July
20 20, the fruits of those searches must also be suppressed. The Court
21 disagrees. The statute measures time by days, like most timing statutes and
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1 rules, not hours and minutes, and Montana law does not require the issuing
2 judicial officer to note the time the warrant was issued. The fact that the time
3 appears in the electronic signature is immaterial to duration of the warrant's
4 effectiveness. If the search was completed by the 10th day after the warrant
5 was issued, the Court considers it timely.

6 Because the Court finds the issue of timeliness of the warrant
7 execution to be dispositive regarding the devices identified as LERMS 12-
8 15, the Court shall confine the remaining analysis to the arguments as
9 relevant to LERMS 11, 16, and 17.
10

11 **B. Warrant as Void for Lacking Particularity.**

12 Bao's second argument in favor of suppression is that the warrant was
13 impermissibly vague, in violation of the provisions in the United States and
14 Montana Constitutions that govern search warrants and the right of
15 individuals to be secure in their persons and property. The degree of
16 particularity required for a search warrant is governed by a Montana statute
17 and its long history of interpretation. Mont. Code Ann. § 46-5-221 provides,
18 in toto:
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20 A judge shall issue a search warrant to a person upon
21 application, in writing, by telephone, or electronically, made
under oath or affirmation, that:

- 22 (1) states facts sufficient to support probable cause to believe
23 that an offense has been committed;

- 1 (2) states facts sufficient to support probable cause to believe
2 that evidence, contraband, or persons connected with the
3 offense may be found;
- 4 (3) **particularly** describes the place, object, or persons to be
5 searched; and
- 6 (4) **particularly** describes who or what is to be seized.

7 Emphasis added. Montana has adopted the rule that:

8 The specificity required of a search warrant may vary
9 depending on the circumstances of the case and the type of
10 items involved. Generic categories or general descriptions of
11 items are not necessarily invalid if a more precise description
12 of the items to be seized is not possible.

13 State v. Seader, 1999 MT 290, ¶ 13, 297 Mont. 60, 63, 990 P.2d 180 (citing
14 *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986)). Additionally,
15 the warrant must be specific enough to “allow the executing officer to
16 distinguish between items that may and may not be seized.” *Seader*, ¶ 12
17 (quoting *United States v. Leary*, 846 F.2d 952, 600, n. 12 (10th Cir. 1988)).

18 The State argues that the subject search warrant meets these
19 standards. The Court agrees with the State. The warrant here (Exhibit B to
20 the Motion) begins with a citation to the Sex Trafficking statute, Mont. Code
21 Ann. § 45-5-702(1), and makes repeated references to that crime in its
22 descriptions of the data to be searched. This compels the officer executing
23 the warrant to execute it in light of the statute’s language. The statute
provides:

- 1 (1) A person commits the offense of sex trafficking if the
2 person purposely or knowingly:
3 (a) owns, controls, manages, supervises, resides in, or
4 otherwise keeps, alone or in association with others, a
5 house of prostitution or prostitution business;
6 (b) procures an individual for a house of prostitution or
7 prostitution business or procures a place in a house of
8 prostitution or prostitution business for an individual;
9 (c) encourages, induces, or otherwise purposely causes
10 another person to become or remain a prostitute;
11 (d) solicits clients for another person who is a prostitute;
12 (e) procures a prostitute for a patron;
13 (f) transports an individual into or within this state with the
14 purpose to promote that individual's engaging in
15 prostitution or procures or pays for transportation with
16 that purpose;
17 (g) leases or otherwise permits a place controlled by the
18 offender, alone or in association with others, to be
19 regularly used for prostitution or for the procurement of
20 prostitution or fails to make reasonable effort to abate
21 that use by ejecting the tenant, notifying law
22 enforcement authorities, or using other legally available
23 means;
(h) recruits, transports, transfers, harbors, receives,
provides, obtains, isolates, maintains, or entices
another person intending or knowing that the person
will be subjected to prostitution; or
(i) benefits, financially or by receiving anything of value,
from facilitating any conduct described in subsections
(1)(a) through (1)(h).

On its very face, this statute establishes an exceptionally wide definition of Sex Trafficking as a crime, which necessarily opens the scope of what may be searched and seized as evidence. The Court finds the breadth of the warrant here to be proportionate to the breadth of the Sex Trafficking statute. Further, while the warrant certainly seems to list nearly every type of data

1 that could be found in a smart phone, even a lay understanding of each of
2 the listed items can readily link them to how a person could commit the crime
3 of Sex Trafficking. While the warrant could have named the specific
4 applications in which this information could be found, the Court is
5 unpersuaded by Bao's argument that it is impermissibly vague without them.

6 The Court has some concerns with the lack of time parameters in the
7 warrant, *i.e.*, limits of how far back in time the search could go. However,
8 the Court is unpersuaded by Bao's argument that this violates her
9 constitutional rights. Given the nature of the charged crime, with some types
10 of prohibited conduct taking years to achieve, the lack of time constraints is
11 more reasonable.

12
13 The Court concludes that the warrant issued to direct the search of the
14 devices later identified as LERMS 11, 16, and 17 meets the statutory and
15 constitutional particularity requirements. The Court shall not suppress the
16 search results for insufficient particularity.

17
18 **C. Sufficiency of Probable Cause within the Warrant**
19 **Application.**

20 Bao's third argument in favor of suppression is that Detective Evans'
21 July 10, 2023, Application for Search Warrant (Exhibit A to the Motion) fails
22 to state facts sufficient to support probable cause to believe that evidence
23 connected with Sex Trafficking would be found in the seized devices. She

1 argues that the application fails to connect the use of the phones to the
2 alleged crimes.

3 The State's Response disagrees and cites the "totality of the
4 circumstances" test outlined in *State v. Kasperek*, 2016 MT 163, ¶ 8, 384
5 Mont. 56, 375 P.3d 372, to evaluate the sufficiency of a warrant application.
6 Under that test, issuing judicial officers must make "a practical, common
7 sense determination, given all the evidence contained in the application for
8 a search warrant, whether a fair probability exists that contraband or
9 evidence of a crime will be found in a particular place." *Id.* (quoting *State v.*
10 *Barnaby*, 2006 MT 203, ¶ 29, 333 Mont. 200, 142 P.3d 809). The probable
11 cause must be found within the four corners of the warrant application. *Id.*

12
13 The Court has carefully reviewed the subject warrant application and
14 concludes that it contains sufficient probable cause to search the devices at
15 issue here. It begins with a citation to the Sex Trafficking statute, is
16 supported by four single-spaced pages of explanation of what the detective
17 knows about the facts of the case and where and when the phones were
18 found. It explains the nature of the allegations against Bao and generally
19 explains how electronic devices are used to facilitate the illegal conduct she
20 is alleged to have committed. The application does not spell out in detail
21 how phones can be used to, for example, manage a prostitution business or
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1 recruit prostitutes, but the Court finds that connection to be a matter of
2 common sense. The Court sees no practical need for the application to have
3 specifically stated that she may have used a device, for example, to facilitate
4 payments or to communicate with clients or recruits – because these are
5 common uses for smart phones. Judges understand how smart phones can
6 be used, and unless there is some extraordinarily unusual use, judges do
7 not need to be thoroughly informed by a warrant application on how the
8 suspect could have used the device.
9

10 That the crime cited in the application is Sex Trafficking also makes a
11 difference. As analyzed above, Sex Trafficking is a broadly-defined crime
12 that can capture a plethora of activities and transactions. It is a matter of
13 common sense, not imagination, that electronic devices would have a role in
14 those activities and transactions. Given what the detective relayed about the
15 allegations, the state of the Soul Massage business, how sex traffickers
16 operate, and where and when the devices were found, the Court finds
17 sufficient probable cause and thus shall not suppress any evidence due to
18 an inadequate warrant application.
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20 **D. Presence of False Information in the Warrant Application.**

21 Bao's Motion makes a lengthy argument focusing on a single phrase
22 used by Detective Evans in his application for the warrant to search the
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1 phones, and she argues that if this phrase was excised from the application
2 the application would not provide sufficient probable cause to authorize a
3 search of one of the phones, LERMS 13. The application states: “While
4 waiting with Bao, Deputy Baker found her to be **hiding** a second phone **on**
5 **her person.**” Emphasis added. According to Bao, this statement is false
6 and is belied by body camera footage which demonstrates that Bao was not
7 hiding any phone on her person, and that the phone it refers to was found in
8 a bathroom. The Court has a different view of the body camera footage, and
9 does not conclude that it forecloses the possibility that Bao had been hiding
10 the phone on her person at some point during her interaction with Deputy
11 Baker. In any case, because the Court finds the evidence obtained from
12 LERMS 13 must be suppressed because it was not timely searched, the
13 Court need not rule on this issue.
14

15
16 **E. Whether the Searches Violated Bao’s Privacy Rights and**
17 **Chain of Chain of Custody Compromises Compel**
Suppression.

18 Bao’s Motion claims, in a few places, that the searches of her many
19 electronic devices violated her constitutionally-protected privacy rights and
20 that the chain of custody of the devices was prejudicially compromised.
21 However, neither the Motion nor the Reply provide any substantial analysis
22 of these claims other than what has already been discussed above. Because
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1 Bao does not further analyze these arguments, the Court, too, shall not
2 address them.

3 DATED this 16th day of February, 2024.

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5 
6 Leslie Halligan
7 District Court Judge

8 cc: Andrea Haney, Esq.
9 Jordan Kilby, Esq.

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