

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, CO 80903	DATE FILED: December 27, 2021 1:04 PM	27, 2021
<b>PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff v. <b>LETECIA STAUCH,</b> Defendant		
Attorney or Party without Attorney (Name and Address):  <b>BARKER &amp; TOLINI, P.C.</b> <b>JOSHUA TOLINI, ESQ.</b> 720 S. Tejon Colorado Springs, CO 80903 Phone Number: (719)227-0230 FAX Number: (719)227-0964 Atty. Reg. #: 30119	Case No. 20CR1358   Division 15	
<b>MOTION TO SUPPRES ADT SYSTEM SEARCH (D-36)</b>		

Ms. Stauch moves to suppress as incriminating evidence any and all physical evidence seized from the Search Warrant for the ADT System on the following grounds:

1. The Fourth Amendment to the United States Constitution and article II, section 7 of the Colorado Constitution protects persons from unreasonable searches and seizures and prohibit the issuance of a search warrant except upon probable cause supported by oath or affirmation particularly describing the place to be searched and objects to be seized.1 People v. Kazmierski, 25 P.3d 1207, 1211 (Colo. 2001) (citing U.S. Const. amend. IV; Colo. Const. art. 2, § 7).

2. The purpose of this particularity requirement is to prevent the use of general warrants authorizing wide-ranging, rummaging searches in violation of the Constitution's proscription against unreasonable searches and seizures. People v. Hagos, 250 P.3d 596, 616 (Colo. App. 2009) (citing Andresen v. Maryland, 427 U.S. 463, 479-80 (1976)); accord People v. Roccaforte, 919 P.2d 799, 802 (Colo. 1996) (“The primary function of the particularity requirement of the

Warrants Clause is to ensure that government searches are ‘confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause. The policy behind the requirement is to prevent officers from conducting a “general, exploratory rummaging in a person's belongings.”) (citations omitted).

3. A police officer seeking the issuance of a warrant must present an affidavit containing facts sufficient to “provide the magistrate with a substantial basis for determining the existence of probable cause.” People v. Gutierrez, 222 P.3d 925, 937 (Colo. 2009) (quoting Illinois v. Gates, 462 U.S. 213, 239 (1983)).

4. The magistrate shall make the probable-cause determination only with reference to the facts contained within the four corners of the affidavit and the reasonable inferences that may be drawn from those facts. Gutierrez, 222 P.3d at 937 (citing People v. Titus, 880 P.2d 148, 150 (Colo. 1994)); People v. Randolph, 4 P.3d 477, 481 (Colo. 2000) (“Probable cause must exist within the four corners of the affidavit.”).

5. To establish probable cause, the affidavit supporting the warrant must allege facts sufficient to cause “a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched.” Kazmierski, 25 P.3d at 1211 (quoting People v. Quintana, 785 P.2d 934, 937 (Colo. 1990)). The focus is on whether the affidavit establishes a fair probability that officers executing the warrant will find contraband or evidence of crime at the location to be searched. People v. Hakel, 870 P.2d 1224, 1228 (Colo. 1994); see also People v. Ball, 639 P.2d 1078, 1082 (Colo. 1982) (“Probability, not certainty, is the touchstone of probable cause.”)

6. “[T]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt. . . and that the belief of guilt must be particularized with respect to the person to

be searched or seized.” Gutierrez, 222 P.3d at 937 (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)). In other words, probable cause cannot be predicated upon mere speculation or suspicion. Brinegar, 338 U.S. at 175; see also People v. Branin, 188 Colo. 235, 238, 533 P.2d 1138, 1139 (1975).

7. As a part of this same inquiry, the affidavit must supply a sufficient nexus between criminal activity, the things to be seized, and the place to be searched. Kazmierski, 25 P.3d at 1211 (citing 2 Wayne R. LaFave, Search and Seizure § 3.7(d) (3d ed. 1996)).

8. An affidavit containing only vague allegations that the defendant engaged in illegal activity without establishing a nexus between the alleged criminal activity and place to be searched cannot establish probable cause. Kazmierski, 25 P.3d at 1211 (citing cases).

9. Failure to satisfy any of the above requirements violates the Fourth Amendment and analogous provisions under the Colorado Constitution.

10. The fruit of the poisonous tree doctrine excludes evidence discovered as a result of a Fourth Amendment violation. People v. McFall, 672 P.2d 534, 537 (Colo. 1983) (citing Wong Sun v. United States, 371 U.S. 471 (1963), and other cases).

11. Further when law enforcement is requesting to search digitally stored information the Court is required to impose limitations on the search. “We recognize the reality that over-seizing is an inherent part of the electronic search process and proceed on the assumption that, when it comes to the seizure of electronic records, this will be far more common than in the days of paper records. This calls for greater vigilance on the part of judicial officers in striking the right balance between the government's interest in law enforcement and the right of individuals to be free from unreasonable searches and seizures.” United States v. Comprehensive Drug Testing, Inc., 621 F.3d 1162, 1177 (9th Cir. 2010).

12. The Colorado Supreme Court has recently addressed cell phone searches and the particularity requirement of the Fourth Amendment.

Given modern cell phones' immense storage capacities and ability to collect and store many distinct types of data in one place, this court has recognized that cell phones "hold for many Americans 'the privacies of life' " and are, therefore, entitled to special protections from searches. *Davis*, Further, this court has held that a warrant authorizing the search of a cell phone simply for general indicia of ownership would violate the Fourth Amendment's particularity requirement.

Despite these recent admonitions, the warrant at issue here contains no particularity as to the alleged victim or to the time period during which the assault allegedly occurred. Rather, it permitted the officers to search all texts, videos, pictures, contact lists, phone records, and any data that showed ownership or possession. We conclude that such broad authorization violates the particularity demanded by the Fourth Amendment. Because it authorized a general search of Coke's phone, it was also unreasonable under the Fourth Amendment.

People v. Coke, 461 P.3d 508, 516 (Colo. 2020).

13. The warrant in question here is similar in that it requests to search a device for electronically stored information. Further similar to the warrant in Coke, the warrant authorizes an unbridled search. Specifically, paragraph 8 allows the following to be searched:

Any and all data stored within by devices associated to the ADT System and account, to include, but not limited to, computer applications, images, videos, text, programs, encryption routines and algorithms, or any other data that may be decoded, reconstituted, or otherwise manipulated to produce, utilize, transmit, receive, encrypt, encode, or display such images, videos, text, programs, encryption routines, and algorithms.

Defendant requests an order suppressing the above-referenced evidence and statements and all evidence which is a direct or indirect fruit of the above described evidence and statements, all pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments to the United

States Constitution; C.R.S. 16-2-112; and Article II, Sections 7, 16 and 25 of the Colorado  
Constitution.

s/ Joshua Tolini  
Joshua Tolini #30119  
Dated: December 27, 2021