

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	DATE FILED: April 26, 2024 4:00 PM σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. 21CR497 Division 13
MR. ALISSA’S MOTION TO SUPPRESS ILLEGALLY SEIZED EVIDENCE FROM THE UNCONSTITUTIONAL SEARCH OF VERIZON RECORDS CONNECTED TO THE CELLULAR DEVICE OF THE TELEMATICS SYSTEM OF HIS VEHICLE (D-029)	

AHMAD ALISSA, by and through counsel, moves for this Court to suppress all evidence obtained by the police from the defective search warrant for Verizon records connected to the cellular device of the telematics system of his vehicle, as well as any additional evidence, statements or other incriminating evidence obtained as a “result” thereof. In support of this motion, Mr. Alissa states the following:

FACTS¹

1. On the afternoon of March 22, 2021 Mr. Alissa left his home in Arvada, Colorado and drove to Boulder, Colorado. Boulder is a place that Mr. Alissa has no direct ties to nor is it believed he had ever visited prior to March 22, 2021.
2. Mr. Alissa’s family home in Arvada is less than one mile from a King Soopers store. Instead of going to the King Soopers in Arvada, Mr. Alissa drove approximately fifteen miles and went to the King Soopers in Boulder. Mr. Alissa has no known ties to that King Soopers in Boulder.

¹ The facts referenced in this motion are drawn solely from discovery. They do not constitute any admission on the part of Mr. Alissa.

3. Mr. Alissa was driving a Mercedes Benz C Sedan (license plate number BJR-Y99) registered in his brother's name. Law enforcement discovered through their investigation that Mr. Alissa and his brother regularly shared use of that sedan.
4. After arriving at the King Soopers, Mr. Alissa shot and killed ten people, including a Boulder police officer. Witnesses heard very few statements from Mr. Alissa. Statements believed to have been made by Mr. Alissa were described as "gibberish."
5. Mr. Alissa was shot in the leg and then surrendered to police. Law enforcement placed Mr. Alissa under arrest and transported him to the hospital.
6. While investigating the scene law enforcement discovered the sedan Mr. Alissa drove to the King Soopers. They applied for and received a warrant to search the sedan.² During the search of the sedan they found a number of items that were directly linked to Mr. Alissa. These items included his wallet, with identification, and a white iPhone 7 (IMEI 355311088471778).
7. Days later, on March 26, 2021, law enforcement additionally requested a warrant for the telematics system of the sedan. By the time this warrant was requested, law enforcement had Mr. Alissa in custody and a clear theory of prosecution. Knowing all that, law enforcement still requested a warrant for the cellular device connected to the telematics system. *See exhibit B*. Further, within that warrant law enforcement requested "all records and other information relating to wire and electronic communications sent or received by the Account..." *See Attachment B of Exhibit B*.
8. Without considering the lack of particularity of the requested search warrant, the Honorable Judge Mulvahill signed that warrant on March 26th, 2021 giving law enforcement "virtually unfettered access" to the cellular data found within the telematics system of Mr. Alissa's sedan. *See Id. See also, People v. Coke*, 461 P.3d 508, 516 (Colo. 2020).

LAW AND ARGUMENT

9. The Fourth Amendment of the United States Constitution and Art II, Sec. 7, of the Colorado Constitution "provides protections against unreasonable searches and seizures." *People v. Williams*, 192 Colo. 249, 253 (Colo. 1976).
10. The United States Constitution states in pertinent part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause..." U.S. Const. Amend IV.
11. "The Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). Information that a person "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.*
12. "As in the case of the Fourth Amendment to the United States Constitution...the

² *See Exhibit A*.

purpose of the Colorado constitutional provision is to protect a person's legitimate expectation of privacy from unreasonable governmental intrusions.” *People v. Sporleder*, 666 P.2d 135, 139-40 (Colo. 1983); *Charnes v. DiGiacomo*, 612 P.2d 1117 (1980); *People v. Bement*, 567 P.2d 382 (1977); *People v. Counterman*, 556 P.2d 481 (Colo. 1973).

13. The determination of the legitimacy of a defendant’s expectation of privacy turns on the question of whether a person expected that their property would be free from governmental intrusion, and if so, whether that expectation is one that society is prepared to recognize as reasonable.” *Sporleder*, 666 P.2d at 140.
14. Mr. Alissa’s cellular data connected to the telematics system in his vehicle is constitutionally protected account and information. This information is password and/or pin protected and not accessible by the public: the Fourth Amendment protects all individuals from intrusions upon their private electronic conversations. *See Katz*, *supra*.
15. “Any governmental action intruding upon an activity or area in which one holds such an expectation of privacy is a “search” that calls into play the protections of the Colorado Constitution.” *People v. Oates*, 698 P.2d 811 (Colo. 1988).
16. Generally, the Warrant Clause of the Fourth Amendment has three basic requirements that must be met in order for a warrant to issue: “[1] probable cause, [2] supported by Oath or affirmation, and [3] particularly describing the place to be searched, and the persons or things to be seized.” *Whiteley v. Warden*, 401 U.S. 560, 564 (1971); U.S. Const. amend. IV.
17. The Colorado Constitution, state statutes, and rules governing the issuance of search warrants provide additional requirements for a search warrant. *See* Colo. Const. art. II §§ 7, 8; *see also* C.R.S. §§ 16-3-301 to 16-3-308; Crim. P. 41.
18. Section 16-3-303(1) provides in relevant part: “a search warrant shall issue only on affidavit sworn to or affirmed before the judge and relating facts sufficient to: . . . (c) establish the grounds for issuance of the warrant or probable cause to believe that such grounds exist; and (d) establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.”
19. “Under the Colorado Constitution, the facts supporting probable cause must be reduced to writing, and so probable cause must be established within the four corners of the warrant or its supporting affidavit.” *People v. Scott*, 227 P.3d 894, 897 (Colo. 2010).
20. Probable cause is determined in light of the totality of the circumstances and exists when an affidavit alleges sufficient facts to warrant a person of reasonable caution to believe that evidence of criminal activity is located at the place to be searched.
21. The affidavit must therefore supply a sufficient nexus between criminal activity, the things to be seized, and the place to be searched. *People v. Kazmierski*, 25 P.3d 1207, 1211

(Colo. 2001); *People v. Randolph*, 4 P.3d 477 (Colo. 2000).

22. Probable cause for a search implicitly requires both sufficient grounds to connect the sought after items to a crime and ground to believe those items will be located in the place to be searched at the time of the search.” *People v. Gall*, 30 P.3d 145, 150 (Colo. 2001); *see also United States v. Wald*, 216 F.3d 1222, 1226-28 (10th Cir. 2000).
23. The warrant did not meet the requirements required by the United States and Colorado Constitutions, case law, and state law because probable cause did not exist for the issuance of the warrant. *See People v. Pannebaker*, 714 P.2d 904 (Colo. 1986). There was no nexus between the criminal activity alleged and the cellular device data connected to the telematics system of the vehicle.
24. The warrant further lacked the particularity required by the Fourth Amendment of the United States Constitution and therefore any fruits of the search must be suppressed. In this case, the warrant describes a broad, generalized list of information to be searched for which could arguably include almost anything within the records. Here, the warrant was not specific enough to meet the particularity requirements of the U.S. and Colorado Constitutions or C.R.C.P. 41(d)(I)(1). The particularity requirements ensures that a search is confined in scope to particularly-described evidence relating to a specific crime for which there is demonstrated probable cause. *United States v. Leahy*, 47 F.3d 396, 398 (10th Cir. 1996); *Anderson v. Maryland*, 427 U.S. 463 (1976). Requesting all records and other information relating to wire and electronic communications sent or received by the Account does not satisfy the particularity requirement of the Fourth Amendment.

WHEREFORE, Mr. Alissa requests this Court suppress all evidence obtained through the defective search warrant for Verizon records connected to the cellular device of the telematics system of his vehicle. Mr. Alissa makes these arguments and motions, and all motions and objections in this case, whether or not expressly stated at the time of the motion or objection, under the Due Process, Trial by Jury, Right to Counsel, Confrontation, Compulsory Process, Equal Protection Cruel and Unusual Punishment and Privilege Against Self Incrimination Clauses of the federal and Colorado Constitutions, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, and Art. II, §§ 3,6,7,8,16,18,20,23 and 25 of Colorado’s Constitution.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Kathryn Herold #40075
Supervising Deputy State Public Defender

Certificate of Service

I hereby certify that on ___April
26_____, 2024, I served the foregoing



Samuel Dunn #46901
Deputy State Public Defender

document through Colorado E filing to all
opposing counsel of record.

KH_____

Dated: April 23, 2024