

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: May 24, 2024 4:39 PM
<b>PEOPLE OF THE STATE OF COLORADO</b> v.  <b>AHMAD AL ALIWI ALISSA</b> Defendant	▲ <b>COURT USE ONLY</b> ▲
Michael T. Dougherty, District Attorney Adam Kendall, Chief Trial Deputy District Attorney 1777 Sixth Street Boulder, CO 80302  Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: akendall@bouldercounty.org Atty. Reg. #38905	Case No. 21CR497  Div: 13
<p style="text-align: center;"><b>Response to [Defendant's] Motion to Suppress Illegally Seized Evidence from the Unconstitutional Search of his Cell Phone (D-027)</b></p>	

Ahmad Al Aliwi Alissa (the “Defendant”) requests that the Court suppress all evidence related to the search of Defendant’s phone.<sup>1</sup> As law enforcement recovered evidence from the phone pursuant to a lawful search warrant, Defendant’s request is without merit. This Court should deny his Motion.

**I. BACKGROUND**

On March 22, 2021, Defendant drove his Mercedes to the Table Mesa King Soopers store in Boulder armed with a semi-automatic Ruger AR-556 pistol (often referred to and described as

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<sup>1</sup> Defendant generally mentions evidence from the search, “as well as any additional evidence, statements, or other incriminating evidence obtained as a “result” thereof.” Defendant’s lack of specificity is defective, and the People are not required to address his claim with regard to supposed “additional evidence” at issue. *See People v. Dailey*, 639 P.2d 1068, 1075 (Colo. 1982) (“[F]airness to the prosecution requires that the motion to suppress specify [the evidence] challenged, so that the prosecution can prepare for the suppression hearing.”); *see also People v. Cunningham*, 2013 CO 71, ¶ 12 (“[T]he defendant, as the moving party, bears the burden of going forward to show a violation of his or her Fourth Amendment rights. If the defendant satisfies this burden, it is then upon the prosecution to show that defendant’s Fourth Amendment rights were not violated. [T]he prosecution does not have an initial burden of going forward at a suppression hearing.”).

an assault rifle), other guns, large capacity magazines, and a large amount of ammunition. Soon after he arrived at the store, he began shooting victims in the parking lot before continuing into the store and shooting other victims. Ultimately, he murdered 10 people, and shot in the direction of many others. Immediately after the shooting, law enforcement began an extensive investigation into Defendant and his behavior and actions in the months before March 22, 2021. A Jury Trial is currently scheduled to begin on September 3, 2024. A Motions Hearing is scheduled for June 4, 2024.

Defendant filed his Motion to Suppress Illegally Seized Evidence from the Unconstitutional Search of his Cell Phone (D-27) (the “Motion”) on April 26, 2024. Defendant alleges that all evidence seized from the phone should be suppressed because the warrant lacked particularity.

However, the warrant obtained by law enforcement, and signed by Judge Thomas Mulvahill, passes Constitutional muster and is legally sufficient.

**A. The facts alleged within the affidavit.**

Because a court’s review of a challenged warrant is a four corners review, the People incorporate the warrant at issue, signed by Judge Thomas Mulvahill on March 23, 2021, as part of this response. *People v. Gutierrez*, 222 P.3d 925, 937(Colo. 2009); see Exhibit B (“Ex. B”) attached to the Motion.

**B. The items to be produced, as articulated in the affidavit, and other relevant information.**

On March 23, 2021, Investigator Kristin Weisbach applied for and obtained a warrant to search Defendant’s phone (the “Warrant”). *See* Ex. B. The Warrant authorized that the following items to be searched for on the phone:

1. Photographs and/or video photography of the phone
2. Data stored in the cellular phone, SIM card(s), and/or memory card(s), relevant to the

criminal activity described in the affidavit, that relates to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021:

- a. Data which tends to show possession, dominion and control over said equipment, including device and system ownership information
- b. Passwords, encryption keys, codes, and/or other devices or information that may be necessary to access the device and its contents
- c. Date/time, language, and other setting preferences to include wireless local area network settings, Bluetooth settings to include device name, hotspot SSID, and MAC address and connection dates and times to the device
- d. System and device usage files, logs, and databases utilized to records device activities such as lock/unlock activities, powering on/off cycles, installation and deletions records
- e. Telephone contact lists, phone books and telephone logs
- f. Data contained in notes, reminders, documents, calendars and/or other similar applications that relates to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021
- g. Communications made, stores, sente, received or deleted that relate to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021
- h. Photos and videos created, stored, sent, received or deleted, or documents containing such photographs or videos that relate to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021
- i. All electronic files, data, videos, and communications, including related metadata and location data, stored, sent, received or deleted from social media and third party applications located on the device that relate to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021
- j. Communications through SIRI/GOOGLE ASSISTANT system, including all communications entered and/or recorded into the system as well as communicated from the system to the user that relate to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021
- k. Global position system data and any other geolocation data that relates to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021
- l. Records of internet activity that relates to the planning and commission of homicide, including but not limited to murder, killing and death, that occurred on 03/22/2021, including internet protocol addresses and Port IDs, firewall logs, transactions with internet hosting providers, co-located computer systems, cloud computing services, caches, browser history and cookies, “bookmarked” or “favorite” web pages, search terms that the user entered into any internet search engine, and records of user-typed web addresses pertaining to violations of the law or that show who used, owned, possessed, or controlled the device.

The Warrant specifically sought to search the phone without a time constraint but did include the

above noted subject matter limitations.

The investigation into the mass murder at King Soopers began on March 22, 2021. While executing a search of Defendant's Mercedes pursuant to a lawful warrant, law enforcement found a cell phone belonging to Defendant. Ex. B., pg. 3. Notably, Defendant is not challenging the search of his Mercedes used in the commission of this crime.

Pursuant to the Warrant, law enforcement searched Defendant's phone.

## II. APPLICABLE LAW AND ARGUMENT

### A. **The Warrant is Supported by Probable Cause and Sufficiently Particularized.**

A court must determine whether the affidavit meets the particularity requirement of the Fourth Amendment, in which it must "particularly" describe the place to be searched or the things to be seized in order to prevent a "general" search. *People v. Staton*, 924 P.2d 127, 131 (Colo. 1996). *See also Marron v. U.S.*, 275 U.S. 192, 196 (1927) (stating the purpose of the particularity requirement is twofold: to prevent the seizure of one thing under a warrant describing another thing, and to prevent leaving discretion at the hands of the executing officer).

Probable cause may be based on common-sense conclusions about human behavior. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The United States Supreme Court has recognized the general principle that most people maintain possession of their phones on their person, particularly when they travel or move about. *See e.g. Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018) ("While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time. A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales."); *Riley v. California*, 134 S.Ct. 2473, 2484 (2014) ("modern cell phones . . . are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."). Most people in today's society do indeed maintain their

cellphones on their person at most times, including when they travel to different locations. *See e.g., United States v. Hargus*, 128 F.3d 1358, 1362 (10th Cir. 1997) (“There need not be direct evidence or personal knowledge that the items sought are located at the place to be searched, and we have recognized that courts often rely on the opinion of police officers as to where contraband or evidence may be kept.”). It is appropriate for a judge, in determining probable cause, “to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense.” *United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986).

“The particularity requirement . . . ensures that a search is confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause. The test applied to the description of items to be seized is a practical one. A description is sufficiently particular when it enables the searcher to reasonably ascertain and identify the things authorized to be seized.” *U.S. v. Leary*, 846 F.2d 592, 600 (10<sup>th</sup> Cir. 1988). A warrant that describes the items to be seized in broad or generic terms is valid as long as the description is as specific as the circumstances and the nature of the activity under investigation permit. *U.S. v. Riccardi*, 405 F.3d. 852, 862 (10<sup>th</sup> Cir. 2005) (citing to *Leary*, 846 F.2d at 600). Courts are discouraged from taking a “hyper-technical approach” when reviewing warrants due to the Fourth Amendment’s strong preference for searches conducted pursuant to warrant. *Gates*, 462 U.S. at 236; *see also Hill*, 690 P.2d at 859.

Moreover, “all records” warrants, while broad in scope, “do not automatically fail the particularity requirement because ‘the quantity of items listed in a search warrant or the quantity of items seized during the execution of a warrant does not necessarily have any bearing on the validity of the search itself.’” *People v. Roccaforte*, 919 P.2d 799, 803 (Colo. 1996) (quoting *People v. Tucci*, 179 Colo. 373, 375, 500 P.2d 815, 816 (1972)). As such, finding that a warrant is essentially an “all records” warrant is not dispositive of whether it is sufficiently particularized.

*Id.* So long as a warrant and its supporting affidavit constitute one, complete document, “the particularity of an affidavit can cure an overbroad warrant.” *Roccaforte*, 919 P.2d at 804, citing *United States v. Leary*, 846 F.2d at 603-04.

An affidavit must demonstrate a connection between the crime suspected and the area to be searched. This requirement is met where the affidavit establishes a fair probability that officers executing the warrant will find contraband or evidence at the location to be searched. *People v. Kazmierski*, 25 P.3d 1207 (Colo.2001).

The sufficiency of the Warrant in terms of a sufficient nexus should be analyzed in terms of “time, crime, objects, and place.” *Id.* at 1211. The affidavit must have more than vague allegations that the Defendant engaged in illegal activity; the affidavit must provide a nexus between the alleged criminal activity and place to be searched. *Randolph*, 4 P.3d at 482. This nexus can be established by circumstantial evidence and proper inferences drawn therefrom. *People v. Hakel*, 870 P.2d 1224, 1229 (Colo.1994). The facts alleged in the affidavit, together with reasonable inferences drawn from those facts, may be enough to establish the requisite link between suspected criminal activity and a specific location to be searched. *People v. Green*, 70 P.3d 1213, 1215 (Colo.2003).

Here, Investigator Weisbach ensured particularity by seeking information to establish identity, records, and data that related to the commission of the murders that occurred on March 22, 2021. Defendant bringing his cell phone to the King Soopers in his Mercedes, along with a large amount of ammunition and weapons, and Investigator Weisbach’s knowledge that mass murderers often use their phones to research, plan, and complete their crimes creates a direct nexus between the phone data sought and Defendant’s activities in either planning or committing the murders. Defendant argues that there is little nexus between the using of Defendant’s phone and the crimes at King Soopers as they relate to the phone. However, the data sought links Defendant

to the phone, the crime, and enables investigators to establish Defendant's location before, during, and after the murder. Additionally, the Warrant seeks any materials that relate to the planning and commission of the murder without time constraints as phones can be manipulated, and data on the device may not contain time stamps, or time stamps may have been removed or altered by either the user of the device or the device's internal functioning. Further, the planning associated with carrying out a mass murder can occur over months, if not years. As a result, appropriate subject matter constraints were placed within the Warrant. Given the above facts, there is a sufficient nexus to support inclusion of all of the data sought by the Warrant.

**B. Alternatively, if the Court determines that portions of the Warrant are defective, blanket suppression is not the appropriate remedy.**

“Blanket suppression is an extraordinary remedy that should be used only when the violations of search warrant requirements are so extreme that the search is essentially transformed into an impermissible general search.” *Eirish*, 165 P.3d at 856 (internal citations omitted). If this Court determines that particular requests within this POR are overbroad, the logical remedy here is exclusive suppression of items that lack a nexus with the criminal activity involved, but not a blanket suppression. See *U.S. v. Foster*, 100 F.3d 846, 852 (10<sup>th</sup> Cir. 1996) (“The extreme remedy of blanket suppression should only be imposed in the most “extraordinary” of cases...it is for that reason that the dearth of appellate cases authorizing blanket suppression is neither surprising nor revealing”).

**III. CONCLUSION**

WHEREFORE, the People hereby request that this Court DENY Defendant's Motion.

Respectfully submitted,

MICHAEL T. DOUGHERTY  
DISTRICT ATTORNEY

By:  
s/Adam Kendall  
Adam D. Kendall  
May 24, 2024

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CERTIFICATE OF SERVICE  
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I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system/hand-delivered on May 24, 2024, and addressed as follows:

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