

Boulder District Court, Boulder County, State of Colorado 1777 Sixth Street Boulder, Colorado 80302	DATE FILED: June 4, 2024 1:39 PM
People of the State of Colorado, v. AHMAD AL ALIWI ALISSA, Defendant.	▲ COURT USE ONLY ▲
<i>Attorneys for the People:</i> Michael Dougherty, Esq., Adam Kendall, Esq., and Ken Kupfner, Esq. <i>Attorneys for Defendant:</i> Samuel Dunn, Esq., and Kathryn Herold, Esq.	Case Number: 2021CR497 Division 13 Courtroom G
ORDER RE: MOTION TO SUPPRESS ILLEGALLY SEIZED EVIDENCE FROM MR. ALISSA'S PERSON (D-35)	

BACKGROUND

Defendant is charged with ten counts of Murder in the First Degree (F1), forty-seven counts of Attempted Murder in the First Degree (F2), one count of Assault in the First Degree (F3), six counts of Possession of a Large-Capacity Magazine During the Commission of a Felony (F6), and forty-seven counts of Crime of Violence with a Semiautomatic Assault Weapon as a Sentence Enhancer. This case is set for a two-day motions hearing, starting on June 4, 2024, at 9:00am. This matter comes before the Court regarding Defendant's *Motion to Suppress Illegally Seized Evidence from Mr. Alissa's Person (D-35)*, filed on April 26, 2024. Defendant attached the signed Search Warrant of Ahmad Al Aliwi Alissa as Exhibit A to their motion. The People filed their written *Response* on May 24, 2024.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS

The Court reviewed the evidence, the case file, applicable law, and considered the arguments of counsel. The Court now issues the following findings and orders.

Motion to Suppress Illegally Seized Evidence from Mr. Alissa's Person (D-35):

In their April 26, 2024, Motion, Defendant argued that the search warrant that permitted a search of "the person who has identified himself as Ahmad Al Aliwi for photographs for identification, photographs of injuries, collection of clothing, gun shot residue testing, buccal swabs, swabs of blood or other fluids on his body, fingernail scrapings/cuttings, collections of trace evidence on his body" did not meet the requirements required by the United State and Colorado Constitutions because probable cause did not exist for the issuance of the warrant and the warrant was not specific enough to mee the particularity requirements.

In their May 24, 2024, *Response*, the People argued that law enforcement recovered evidence from the search of Defendant's person pursuant to a lawful search warrant, so Defendant's request is without merit and his motion should be denied. The People argued that Inv. Weisbach's affidavit and warrant alleged facts that established probable cause to allow the search of Defendant and seizure of the evidence collected. Additionally, the People argued there was clear evidence of Defendant shooting in the store and suffering a gunshot wound, so there was reason to believe the swabs and fluid evidence sought to be recovered would relate directly to the crimes being investigated, and the items to be seized from Defendant's person were clearly delineated in the warrant.

Under the United States and Colorado Constitutions, "a search warrant may only be issued upon a showing of probable cause, supported by oath or affirmation, particularly describing the place to be searched and the things to be seized." *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008) (citing U.S. Const. amend. IV; Colo. Const. art. II, § 7); *see also* § 16-3-303, C.R.S. Accordingly, in considering whether a warrant is defective, the Court must inquire "whether the affidavit contained sufficient information to support a finding of probable cause." *People v. Randolph*, 4 P.3d 477, 481 (Colo. 2000) (citing U.S. Const. amend. IV; Colo. Const. art. II, § 7). An affidavit establishes probable cause for the issuance of a warrant if it "alleges 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." *Randolph*, 4 P.3d at 481 (quoting *People v. Turcotte-Schaeffer*, 843 P.2d 658, 659-60 (Colo. 1993)). To make this determination, the reviewing court "must look within the four corners of the affidavit to determine whether there are grounds for the issuance of [the] search warrant." *People v. Brethauer*, 482 P.2d 369, 373-74 (Colo. 1971); *see also* *People v. Johnson*, 560 P.2d 465, 487 (Colo. 1977).

Probable cause to search exists when an affidavit for a search warrant alleges sufficient facts to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched. *People v. Hebert*, 46 P.3d 473, 482 (Colo. 2002) (internal quotation marks omitted). An affidavit for a search warrant must supply a sufficient nexus between criminal activity, the things to be seized, and the place to be searched. *Id.* Circumstantial evidence and inferences can supply the necessary link between suspected criminal activity and a specific location to be searched. *Id.* A reviewing court must engage in a "four corners" review of the affidavit for a search warrant to determine whether probable cause has been shown. *Id.* The court must interpret the affidavit in a "common sense and realistic fashion" to determine whether, under the totality of the circumstances, probable cause supports the warrant. *Id.* Doubtful or marginal cases should resolve with preference accorded to the warrants. *Illinois v. Gates*, 462 U.S. 213 (1983).

In engaging in its four-corner review, a court must also 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 (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). 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. Leary*, 405 F.3d 852 (10th Cir. 2005); *see also Berger v. N.Y.*, 388 U.S. 41 (1967) (stating the preliminary query is "whether the warrant describes the crime that has been committed and the items to be seized in connection therewith").

The Court has reviewed the SEARCH WARRANT and the AFFIDAVIT FOR SEARCH WARRANT at issue here (Exhibit A). Applying the legal standards set forth above, the Court FINDS that a four-corners review of the search warrant reveals that it is signed by a Judge, it is supported by probable cause, is not unconstitutionally overbroad, and the affidavit meets the particularity requirement of the Fourth Amendment. THEREFORE, the Defendant's *Motion to Suppress Illegally Seized Evidence from Mr. Alissa's Person (D-35)* is DENIED.

Dated June 4, 2024.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Ingrid S. Bakke', written over a horizontal line.

Ingrid S. Bakke
District Court Judge