

Boulder District Court, Boulder County, State of Colorado 1777 Sixth Street Boulder, Colorado 80302	DATE FILED: June 4, 2024 11:39 AM
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 THE UNCONSTITUTIONAL SEARCH OF MR. ALISSA’S APPLE ICLOUD ACCOUNT (D-32)	

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 the Unconstitutional Search of Mr. Alissa’s Apple iCloud Account (D-32)*, filed on April 26, 2024. Defendant attached the iPhone 7 Search Warrant and iCloud Search Warrant as Exhibit A and Exhibit B, respectively, 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 the Unconstitutional Search of Mr. Alissa's Apple iCloud Account (D-32):

In their April 26, 2024, Motion, Defendant asserted that subsequent to a search of Defendant's home, law enforcement learned that Defendant's phone number was 720-999-4482 and it was associated with a T-Mobile Account. On March 23, 2021, Inv. Weisbach submitted a search warrant for Defendant's phone. On March 24, 2021, law enforcement used a forensic tool to obtain an image of Defendant's phone and, during this imaging, learned the phone was associated with the Apple iCloud account ahmad87654321@icloud.com. On March 24, 2021, Inv. Weisbach submitted a search warrant request for the Apple iCloud account which "only limited the search of these records to a time period of January 15, 2021, to March 22, 2021," and requested "all records and other information related to this account... [failing] to provide any limitations as to the type of information that was to be sought or the legal nexus to such information." Defendant argued that this warrant "lacked the particularity required by the Fourth Amendment of the United State Constitution and therefore any fruits of the search must be suppressed" because the warrant "describes a broad, generalized list of information to be searched for which could arguably include almost anything within the records."

In their May 24, 2024, *Response*, the People argued that law enforcement recovered evidence from Defendant's Apple iCloud account pursuant to a lawful search warrant, so Defendant's motion is without merit and should be denied. The People argued that Inv. Weisbach's affidavit and warrant alleged facts that established probable cause to allow the production of the Apple iCloud account records and she "ensured particularity by simply seeking records that existed from the time period associated with cash withdrawals and gun receipts in Defendant's car (starting January 15, 2021) through the date of the crime." The People argued there is a direct nexus between the records sought and Defendant's activities in the time frame because records of billing, activation, and device information go toward the identification of the phone as belonging to Defendant. Therefore, the People argue that there is sufficient particularity and a sufficient nexus to support inclusion of all information sought by 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 WARRANTS and the AFFIDAVITS FOR SEARCH WARRANT at issue here (Exhibits A and B). 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 the Unconstitutional Search of Mr. Alissa's Apple iCloud Account (D-32)* 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