ADVANCE SHEET HEADNOTE
June 17, 2024

2024 CO 45

No. 22SC869, *Dhyne v. People*—Fourth Amendment—Search Warrants—IP Addresses.

This case concerns whether a search for internet-related evidence that extended to a previously unknown basement apartment was reasonable, even though the apartment was not specified in the warrant. The supreme court holds that 1) the warrant's reference to the property's "[h]ouse, garage, and any outbuildings" was sufficiently specific because there were no outward indicators that the basement apartment existed, and 2) execution of the warrant was reasonable in this specific scenario, where the warrant was for all buildings on the property and the defendant told the police that he lived in the basement and used the IP address that provided grounds for the search.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 45

Supreme Court Case No. 22SC869
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1565

Petitioner:

Kevin Matthew Dhyne,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
June 17, 2024

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 The Fourth Amendment of the U.S. Constitution and article II, section 7 of the Colorado Constitution protect against unreasonable searches. To conduct a lawful search of a premise, law enforcement agents must obtain a warrant that is supported by probable cause and describes the area to be searched with particularity. These requirements limit searches in multi-dwelling buildings; a constitutional search extends only to the units or areas described in the warrant because those are the only parts of the building where the police have probable cause to support their search.

¶2 In this case, police reasonably determined that the warrant they were executing extended to a previously unknown basement apartment when they learned, just as they began the search, that both dwellings used the same Internet Protocol ("IP") address. Because the IP address was the basis for the probable cause supporting the warrant, we conclude that the search was reasonable.

I. Facts and Procedural History

¶3 In 2016, the Clear Creek County Sheriff's Department learned from a Jefferson County Sheriff's Office investigator that child pornography had been downloaded to a particular IP address. Upon discovering that the subscriber for that IP address lived at a particular address in Clear Creek County with her son, a registered sex offender, a lieutenant obtained a warrant to search for computer

equipment and other electronic storage devices on the property. The house on the property appeared to be a single-family home and it was listed as such by the County Assessor's office.

¶4 While the police were on site to execute the warrant, Kevin Matthew Dhyne exited the basement of the house through an external door. Dhyne, who is unrelated to the IP address subscriber, was not listed on the warrant. Until the police encountered him that day, they did not know that Dhyne lived on the property. Dhyne explained to the lieutenant that he rented the basement and used the same internet access as the rest of the house. The basement had a separate entrance, but it was not marked with a number and there was no other indication that it was a separate dwelling. The lieutenant believed that the basement apartment fell within the "[h]ouse, garage and any outbuildings" scope of the warrant, so the officers searched Dhyne's apartment along with the rest of the property. They seized several computers, and a later search of Dhyne's laptop revealed sexually explicit material involving children.

¶5 Dhyne was charged with two counts of sexual exploitation of a child. Before trial, he moved to suppress the material found on the laptop. He argued that the search violated the U.S. and Colorado constitutions because the warrant was not specific to his basement apartment. The trial court agreed and held that, under this court's holding in *People v. Avery*, 478 P.2d 310 (Colo. 1970), the police should

have sought a separate warrant when they discovered that Dhyne lived in a separate apartment on the property. But the court denied Dhyne's motion to suppress. In the trial court's view, even if the officers had not searched his apartment in conjunction with the original warrant, they would have executed the same search later that day under a warrant specific to the basement apartment, and the evidence would therefore have inevitably been discovered. After a bench trial, Dhyne was convicted of both counts.

¶6 A split division of the court of appeals affirmed the trial court's denial of the suppression motion, though it did so by upholding the search rather than by applying the inevitable discovery exception. *People v. Dhyne*, 2022 COA 122, ¶¶ 16, 19, 523 P.3d 1271, 1275–76. The entire division agreed that for a multi-dwelling unit, separate dwellings normally require separate, specific warrants. *Id.* But Judge Richman disagreed with the division's majority about which exception to that requirement justified the search of Dhyne's apartment. *Id.* at ¶ 41, 523 P.3d at 1278–79 (Richman, J., specially concurring). The majority relied on the shared use of the IP address, borrowing from a "common occupancy" exception that a different division of the court of appeals had adopted for shared physical spaces, and concluded that both the main house and the basement apartment "occupied" the IP address. *Id.* at ¶ 19 & n.4, 523 P.3d at 1276 & n.4 (citing *People v. Martinez*, 165 P.3d 907, 912 (Colo. App. 2007)). Judge Richman specially concurred, offering

a different exception to support the search: an "entire premises are suspect" exception, which also originally supported searches of physical spaces. *Id.* at ¶¶ 39, 41, 523 P.3d at 1278–79 (Richman, J., specially concurring) (citing *United States v. Whitney*, 633 F.2d 902, 907 (9th Cir. 1980)). As Judge Richman acknowledged, "Colorado courts have neither adopted this exception nor applied it to the scope of a search related to an IP address . . . ." *Id.* at ¶ 41, 523 P.3d at 1279.

¶7 Dhyne petitioned this court for certiorari review, challenging both appellate approaches and the trial court's inevitable discovery ruling.[1] Although we decline to adopt either of the rationales set out in the division's opinions, we affirm the outcome. The search of Dhyne's apartment was reasonable in these circumstances. Because we uphold the search, we do not reach the inevitable discovery issue.

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[1] We granted certiorari to review the following issues:

1. Whether the court of appeals erred, and the petitioner's constitutional rights under the U.S. Constitution Fourth Amendment and the Colorado Constitution, article II, section 7 were violated, when the lower appellate court found that a search of his private residence was proper because an internet protocol (IP) address, located at a separate private residence specified in the search warrant, was accessible by the petitioner.
2. Whether the district court erred, and the petitioner's constitutional rights under the U.S. Constitution Fourth Amendment and the Colorado Constitution, article II, section 7 were violated, when the lower court found that the inevitable discovery exception applied to the search of the petitioner's residence.

II. Analysis

¶8 A trial court's ruling on a motion to suppress presents an appellate court with a mixed question of fact and law. *People v. Fuerst*, 2013 CO 28, ¶ 10, 302 P.3d 253, 255–56. Here, we accept the findings of fact laid out in the trial court's order denying the motion to suppress, but we review de novo the appellate division's conclusions about whether the search complied with constitutional requirements.

¶9 Individuals are protected from unreasonable searches and seizures by the Fourth Amendment of the U.S. Constitution and by article II, section 7 of the Colorado Constitution. The home is specially protected under both constitutions; a warrantless search of a home is presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980); *Fuerst*, ¶ 11, 302 P.3d at 256. When the search or seizure challenged in a motion to suppress involves a warrant, there are two constitutional issues to assess: (1) the validity of the warrant itself and (2) the manner in which the warrant was executed. *See Maryland v. Garrison*, 480 U.S. 79, 84 (1987). Both the warrant and its execution must be reasonable. *Id.* We examine each of these issues in turn.

A. The Warrant Was Sufficiently Particular and Supported by Probable Cause

¶10 The federal and state constitutions require warrants to be issued with particularity. U.S. Const. amend. IV ("[N]o [w]arrants shall issue [without] . . . particularly describing the place to be searched . . . ."); Colo. Const. art. II, § 7

("[N]o warrant to search any place . . . shall issue without describing the place to be searched . . . as near as may be . . . ."). A warrant that fails this requirement is invalid, and evidence discovered pursuant to an invalid warrant, with some limited exceptions, cannot be introduced in court. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). While a search warrant must identify, with particularity, the places to be searched and things to be seized, it does not need to identify the particular persons who are under suspicion. *Zurcher v. Stanford Daily*, 436 U.S. 547, 561 (1978) ("[S]earch warrants are often employed early in an investigation, perhaps before the identity of any likely criminal and certainly before all the perpetrators are or could be known.").

¶11 In *Avery*, this court held that if the police intend to search a dwelling in a multi-unit building, like an apartment building or dormitory, they must secure a warrant that describes the dwelling to be searched. *Avery*, 478 P.2d at 312. A general warrant for the entire building is not "particular" enough to satisfy constitutional requirements. *Id.* *Avery* involved a search in a building that had been converted from a single-family home into a rooming house for university students. *Id.* at 311. There were exterior indications that it had been converted, including a second-floor fire escape and a list of names on the mailbox. *Id.* In this case, by contrast, the trial court's order denying Dhyne's suppression motion

specified that "[t]here [were] no outward indications that [the] house was anything other than a single family home."

¶12 We have previously emphasized the distinction between an apparent single-family home and a known multi-unit building. *People v. Lucero*, 483 P.2d 968, 970 (Colo. 1971). In *Lucero*, the trial court found that police "had every reason to believe that the house was a one-family residence," and we upheld the search of the Luceros' specific unit, even though the warrant only provided the general address of the building. *Id.* We contrasted that search with the one in *Avery*, where the trial court found that the police "knew or should have known when they got their warrant that the building involved was a rooming house." *Id.*

¶13 The U.S. Supreme Court addressed particularity in a somewhat similar circumstance in *Garrison*, where the police executed a warrant specific to the third floor of a building. 480 U.S. at 80. From the exterior, the building did not appear to have multiple apartments on that floor. *Id.* at 81. The police discovered mid-search that there were two apartments, and they were in the wrong one. *Id.* The Court upheld the warrant and the search, explaining that an otherwise valid warrant should not be retroactively invalidated when its overly broad scope is discovered only in hindsight. *Id.* at 85 ("[W]e must judge the constitutionality of [police] conduct in light of the information available to them at the time they acted.").

¶14 Like the police in *Lucero* and *Garrison*, the Clear Creek County Sheriff's Office did not and could not have known when they sought the warrant that there was a separate apartment associated with the IP address they were investigating. Dhyne's apartment did not have a separate mailbox, nor a unit number on the door. Property records indicated that the address was a single-family residence. Dhyne argues, with the benefit of hindsight, that the police could have investigated the property further through surveillance and conversations with neighbors or postal carriers. And indeed, a more robust investigation could have led to a better warrant in this case. But *Garrison*, *Avery*, and *Lucero* do not require police to turn over every stone in assessing whether a building has multiple units. Their conclusions about the nature of the building must be reasonable, and if they meet that standard, the warrant will not be retroactively invalidated. *Garrison*, 480 U.S. at 85. Under these circumstances, we conclude that the warrant describing the physical address associated with the suspicious IP address was sufficiently particular.

¶15 The U.S. and Colorado constitutions also both require a warrant to be supported by probable cause. U.S. Const. amend. IV ("[N]o [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation . . . ."); Colo. Const. art. II, § 7 ("[N]o warrant to search any place . . . shall issue . . . without probable cause, supported by oath or affirmation reduced to writing."). A warrant that is

unsupported by probable cause is unconstitutional and triggers the exclusionary rule, unless an exception applies. *See Mapp*, 367 U.S. at 655; *People v. Cooper*, 2016 CO 73, ¶¶ 10–11, 383 P.3d 1170, 1174 (recognizing the exclusionary rule but also Colorado's statutory good faith exception).

¶16 Here, the parties do not dispute that the original warrant was supported by probable cause. The police had "reasonably trustworthy information" from another sheriff's office that would "'warrant a man of reasonable caution in the belief that' an offense has been or is being committed" somewhere within the physical range of a certain IP address. *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)). This warrant was not lacking in probable cause for the subscriber's address generally.

B. Execution of the Warrant Was Reasonable

¶17 The question is whether this acceptable warrant extended to Dhyne's apartment, when he informed the police before they began searching that it was a separate apartment.

¶18 In *Lucero*, police were already executing the warrant when they discovered that the building identified in the warrant had multiple units. 483 P.2d at 969. They proceeded with the search anyway, but they confined their search to areas where the affidavit supported probable cause: areas under the control of the Luceros (the people named in the warrant). *Id.* at 970. We upheld the search in

accordance with a general warrant for the building in those circumstances, where there was no outward indication that the building contained multiple units and the subsequent search was confined to areas within the suspects' control. *Id.*

¶19 In this case, the basis for probable cause was not particularly named individuals, but rather a particular IP address associated with a physical street address. While the warrant and its supporting affidavit also described people associated with that IP address (the subscriber and her son), those people were secondary to the initial information from Jefferson County that identified an IP address—not a person—suspected of downloading illegal material. Critically, Dhyne told the police that he used the IP address they were investigating, and he lived at that same physical address. His statements tied his apartment to the probable cause supporting the warrant affidavit, which was associated with his physical address.

¶20 It is axiomatic that "the touchstone of the Fourth Amendment is reasonableness," *Florida v. Jimeno*, 500 U.S. 248, 250 (1991), and the same is true for article II, section 7, *People v. Najjar*, 984 P.2d 592, 595 (Colo. 1999). Under this doctrine, police can make reasonable mistakes. *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990) ("[I]n order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of [the police] . . . is not that they always be correct, but that they always be reasonable."); *Brinegar*, 338 U.S. at 176 ("Because

many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men . . . ."); *cf. Petersen v. People*, 939 P.2d 824, 832 (Colo. 1997) (holding that the officers' mistaken legal belief about consent to a search was unreasonable where it was not supported by any mistake of fact). Here, the Clear Creek lieutenant faced an ambiguity: Dhyne told him that he rented a separate basement apartment, but he also said he used the same IP address that the warrant's probable cause rested on. With facts pointing in both directions—for and against an additional warrant being required—the lieutenant reasonably decided that the warrant included the basement apartment. We will not invalidate a search under these circumstances.

¶21 Both the division majority and Judge Richman upheld the search of Dhyne's apartment by citing exceptions to the normal "separate apartment, separate warrant" requirement. *Dhyne*, ¶ 19, 523 P.3d at 1276; *Id.* at ¶ 41, 523 P.3d at 1279 (Richman, J., specially concurring). We have not previously applied either exception to validate a search under circumstances similar to these. In narrowly answering the question presented—essentially, was this search reasonable—we avoid creating new rules that could be strained by future technological advances or factual scenarios. With judicial restraint in mind, we conclude that the search of Dhyne's apartment under this warrant was constitutional because (1) there was

no outer indication that the building contained more than one dwelling, and (2) Dhyne told the police that he used the same IP address that established probable cause to search the entire physical property.

III. Conclusion

¶22 In the factual circumstances presented by this case—especially Dhyne's statement to the police about his use of the suspect IP address—the search of Dhyne's basement apartment was reasonable. Because we uphold the search itself, we need not discuss the inevitable discovery exception to the exclusionary rule. We thus affirm the court of appeals' holding, but on different grounds.