

DISTRICT COURT
CITY AND COUNTY OF DENVER
STATE OF COLORADO
LINDSEY-FLANIGAN COURTHOUSE
520 WEST COLFAX
DENVER, COLORADO 80204-2609

THE PEOPLE OF THE STATE OF
COLORADO,

vs.

KEVIN BUI,

Defendant.

THE PEOPLE OF THE STATE OF
COLORADO,

vs.

GAVIN SEYMOUR,

Defendant.

^COURT USE ONLY^

Case No.
21CR20000 and 21CR20001
Courtroom No. 5A

REPORTER'S TRANSCRIPT

This matter came on for Motions Hearing on
November 16, 2022, before the HONORABLE MARTIN F.
EGELHOFF, Judge of the District Court.

Wendy Evangelista, RPR

Official Court Reporter - Denver District Court
520 West Colfax Avenue, Room 2G
Denver, Colorado 80204

A P P E A R A N C E S

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AFTERNOON SESSION - NOVEMBER 16, 2022

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(The following proceedings commenced at the hour of 1:40 p.m. with all parties present, the defendants appearing in custody:)

* * * * *

THE COURT: All right. Calling case number 21CR20000, People versus Kevin Bui, as well as case number 21CR20001, People versus Gavin Seymour.

Entry of appearances, please.

MR. MORALES: Good afternoon. Joe Morales and Courtney Johnston on behalf of the People.

MR. JUBA: Michael Juba and Jenifer Stinson on behalf of Kevin Seymour. Mr. Seymour does appear in custody to our right.

Your Honor, we do have cocounsel, Michael Price. He is out of state. If the Court would allow, he is able to appear over Webex.

THE COURT: I don't think we have the Webex turned on. And this is an in-person hearing. So if counsel wants to participate, I think counsel needs to be here.

So Mr. Bui is set on 21CR20000 for a disposition hearing and in 22CR3079 for an arraignment.

Mr. Seymour appears on 21CR20001 for a hearing

1 which is the Court's ruling with respect to outstanding
2 motions, which I'm prepared to do at this time.

3 You're standing, sir.

4 MR. EARLE: Yes, Your Honor. Christian Earle
5 and Ms. Rachel Lanzen on behalf of Mr. Bui, who is in
6 custody on the other matters.

7 THE COURT: I'm sorry. Thank you.

8 All right. So I'm going to start with the
9 attendant item regarding the outstanding motions, and
10 I'm prepared to resolve them at this time.

11 So as to Mr. Seymour, the Court is in receipt
12 of a variety of motions, which I have lumped into three
13 basic categories for purposes of my analysis.

14 Our first broad category are motions to
15 suppress search and seizure based on -- involving,
16 essentially, the collection of electronic or digital
17 type of evidence. Those motions involve a motion to
18 suppress a geofence MAC identifier, cell phone tower --
19 cell tower data. Excuse me.

20 There's a motion to suppress the keyword
21 search warrant and request for a veracity hearing.
22 There's a motion to suppress the search and seizure of
23 certain cell phone records and cell phone data and
24 certain provider accounts and certain social media
25 accounts.

1 So that's the broad category of motions that
2 I've considered or have been filed. I'll consider those
3 motions pretty much as a group because I think the
4 issues regarding those motions are all interrelated and
5 similar in terms of the analysis and the resolution.
6 Then there's also a motion to suppress the search
7 warrant for a home, which is subject -- well, and
8 there's a motion to suppress statements.

9 And so those are the three categories of
10 motions the Court is in receipt of, and I'll address
11 them based upon that categorization.

12 Starting with the biggest group of motions --
13 and these have to do with searches and seizures
14 involving certain electronic and digital evidence, and
15 these all involve the analyses of the search warrants
16 that were issued with respect to the various categories
17 of evidence.

18 So I'm first going to start out by just
19 recognizing some well-established principles that govern
20 search and seizure, in general, and search warrants, in
21 particular. So I'll just start out by acknowledging and
22 articulating those particular standards that the Court
23 is obliged to and has applied.

24 And so we start out with the proposition that
25 the Fourth Amendment to the U.S. Constitution and

1 Article II, Section 7 of the state -- Colorado
2 Constitution prohibits unreasonable searches and
3 seizures.

4 Neither of these respective constitutional
5 provisions explain exactly what constitutes an
6 unreasonable search, but the U.S. Supreme Court has
7 inferred from the text of the Fourth Amendment that a
8 warrant must generally be secured before a police
9 officer may conduct a search.

10 Under both constitutions, a search warrant may
11 only be issued upon a showing of probable cause
12 supported by oath or affirmation that particularly
13 describes the place to be searched and the things to be
14 seized. An affidavit submitted in support of a search
15 warrant must set forth particular facts and
16 circumstances underlying the existence of probable cause
17 so as to allow the magistrate to make an independent
18 evaluation.

19 Probable cause exists when an affidavit sets
20 forth sufficient facts to warrant a person of reasonable
21 caution to believe that contraband or evidence of
22 criminal activity is located at the place to be
23 searched. A magistrate or judicial officer's probable
24 cause determination must be based on facts contained
25 within the four corners of the affidavit that is

1 submitted in support of the search warrant.

2 With respect to that magistrate's review of
3 the affidavit in issuance of the search warrant, the
4 magistrate's probable cause determination is generally
5 given, quote, great deference and is not subject to a
6 de novo review by a review in court. The deference
7 is consistent with the preference for police to seek a
8 judicial determination of probable cause rather than
9 resort to warrantless searches in the hopes of relying
10 on one of the narrowly defined exceptions to the warrant
11 requirement.

12 And as a consequence, a review in court, such
13 as this Court, should not attempt to put itself in the
14 shoes of the magistrate and consider whether it would
15 have found probable cause. Instead, the usual question
16 for a review in court whether the issuing magistrate had
17 a substantial basis for issuing the search warrant, and
18 any doubts must be resolved in favor of the magistrate's
19 probable cause determination.

20 Those are all propositions of law, the
21 statements of law which are well settled, well engrained
22 in our system. I didn't include individual sites for
23 each of the propositions, but they're all summarized in,
24 for example, the case of *People versus Hebert*,
25 H-e-b-e-r-t, 486 P.3d 473, Colorado Supreme Court, 2002.

1 That's just one of a zillion cases that articulate those
2 various principles of law which the Court has considered
3 and relies upon and endeavors to honor.

4 So with that legal framework, I'm going to
5 just generally summarize kind of the factual context of
6 these motions, how they came up chronologically and
7 factually, just to put the Court's rulings in some form
8 of context.

9 These facts have been discussed in detail in
10 the various affidavits that appear in support of the
11 search warrants. They also appear in detail in previous
12 orders of this Court and the pleadings. And so by this
13 recitation, I don't purport to list all of the facts
14 here. I'm just providing a skeletal summary of the
15 factual context of how these issues arose.

16 So the factual context is that in August of
17 2020, August 5th, the police and fire were dispatched to
18 a house located at 5312 Truckee Street on a call of a
19 house fire. The police -- the responders arrived at the
20 house to find it fully enveloped in fire.

21 In working the fire, they -- "they" being the
22 first responders -- were almost immediately aware that
23 there was one deceased person inside the front of the
24 house, and they were aware that three other people had
25 escaped from the back of the house by jumping through a

1 second-story window. And as they further worked the
2 scene, they discovered the tragic scene of four other
3 deceased people inside the house.

4 The police began a substantial investigation
5 with respect to this house fire. Among the evidence
6 that they were able to obtain were surveillance videos
7 from various neighbors in the neighborhood, and they
8 were able to ascertain -- or obtain evidence with
9 respect to those surveillance videos.

10 They were able to ascertain that in the
11 minutes prior to this fire -- they were able to identify
12 that there were three individuals that were in the --
13 that came to the side of the yard of the house that was
14 on fire prior to the fire. They were wearing masks.
15 They were looking around. They were observed pointing
16 towards the house, moving towards the house. They were
17 observed later -- or shortly thereafter running from the
18 backyard out a gate and towards the front.

19 All of this occurred within a span of about
20 three to four minutes based upon video. And then not
21 long after that, the videos depicted flames coming from
22 the house and screams coming from the house as the house
23 was set on fire. In the course of the police
24 investigation, there was a determination that an
25 accelerant was used to start the fire, which apparently

1 began in the rear of the house in the vicinity where
2 these three people were observed.

3 As part of the investigation, the police
4 became familiar with the nature of the neighborhood
5 where this house was. It was a single-family home. It
6 was in a subdivision -- a rather populated subdivision.
7 The house was not unique in the sense that it wasn't
8 conspicuous on any lot. It was located among a variety
9 of other homes, not on the corner, but within this
10 development.

11 As part of a rather extensive investigation
12 that occurred over several months, the police were not
13 able to identify any motivations that were apparent with
14 respect to why this fire was started, what motivations
15 underlay it.

16 Based upon the investigation and based upon
17 the expertise of the investigators, a theory was
18 developed that the house was in some fashion targeted
19 for some reason given just the nature of the
20 neighborhood, the nature of the fire, all of the
21 circumstances. It was the police's theory that there
22 was some connection to the perpetrators of the fire and
23 the house, and they came up with the theory that this
24 house was somehow targeted.

25 In pursuance of this investigation, there

1 being no other suspects and then no suspects that were
2 developed given kind of traditional investigative
3 techniques, the police began to use, I guess, more novel
4 methods of investigation, which included -- or which
5 focused on obtaining electronic evidence that may be
6 available to assist them in locating and identifying
7 suspects that might lead to some information as to the
8 identity of the perpetrators.

9 As I understand it, the starting point was to
10 try and issue -- or obtain information with respect to
11 what's known as geofence or cell tower data, which
12 essentially fences in certain areas and tries to
13 identify those folks coming in and out of that
14 particular area. That investigation, as I understand
15 it, didn't yield any productive results or any suspects.

16 The police then went to another source; they
17 went to the internet. Essentially, they went to Google
18 to conduct what's been described as a keyword query,
19 essentially, to attempt to identify people that may have
20 conducted internet searches pertaining to the location
21 of 5312 Truckee and, specifically, those that may have
22 researched that address or endeavored to get directions
23 to that address.

24 This was done, again, based upon the location,
25 based upon the police's belief that there had been an

1 appreciable amount of planning that was most likely
2 involved in the crime, the fact that it was probably a
3 personal -- the theory was that it was a personal type
4 of attack, the house being targeted. They felt that it
5 was reasonable that given the nature of all these
6 things, there was the potential that or the likelihood
7 that the perpetrators may have used the internet and
8 Google searches to find out information with respect to
9 the house and the neighborhood.

10 This was based largely on the police's
11 experience in terms of investigating, their training,
12 their reasonable inferences and understanding with
13 respect to both how the internet works and how the
14 internet is used in modern society.

15 In doing so, the police endeavored to -- they
16 went to Google and endeavored to draft appropriate
17 warrant affidavits to obtain appropriate information.
18 Here again, this was a novel approach, as I understand
19 it, something the police hadn't used a lot in the past.
20 They struggled to some extent to come up with an
21 affidavit and an approach with Google that was
22 productive and comported with various considerations,
23 including Google's own internal requirements.

24 And so they went -- they essentially went to
25 Google three times. They first went with a drafted

1 affidavit and worked with Google to come up with the
2 appropriate language. Google would not accept that
3 affidavit because it was, essentially, too broad in the
4 sense that it asked for specific identifying
5 information, which was contrary to Google's policies and
6 procedures and such. And so according to Google, any
7 search that they would be able to do had to be,
8 essentially, anonymous.

9 And so the police then went a second time with
10 a revised draft, which was again reviewed by Google and
11 was rejected by Google because it was more to akin to
12 the kind of geofence type of search that was rejected by
13 Google.

14 They went back a third time. At this point in
15 time, they were able to come up with a draft affidavit
16 that was accepted by Google, which resulted in an
17 affidavit being prepared and submitted to the police to
18 a magistrate, a county court judge. This was,
19 essentially, a warrant that was based on certain
20 keywords that the police, in connection with Google,
21 came up with to try and meet the criteria of those who
22 may have done research with respect to either the house
23 or the directions to the house.

24 A search warrant was indeed approved by the
25 county court judge. As a result, Google produced an

1 anonymized list of IP address of users who had conducted
2 that relevant keyword search within the parameters of
3 the search warrant. That produced, ultimately, three
4 qualifying potential suspects. And through further
5 legal process, the police were able to identify the
6 three specific users associated with that IP address.

7 Then upon defining those three suspects, the
8 police then began issuing additional search warrants.
9 These were search warrants for cell phone records, as I
10 alluded to, to AT&T. There were search warrants issued
11 to social media accounts, including Instagram and
12 Facebook and Snap [sic]. There was ultimately a search
13 warrant with respect to Mr. Seymour's cell phone data.

14 So I'm setting this kind of factual context
15 because what essentially began as a rather, I guess,
16 novel, new police investigative technique -- that really
17 being the keyword search warrant -- really then evolved
18 into more traditional investigative techniques, i.e.,
19 search warrants of cell phones and cell phone data and
20 social media data, which is not novel and has been used
21 rather extensively.

22 The result of all this was -- I can only
23 describe it as a rather extensive and intricate and
24 interconnected series of affidavits and search warrant
25 requests and search warrants, and I think it's a fair

1 inference to have these various search warrant
2 affidavits and search warrant returns -- essentially,
3 they were connected, and they also built on one another.
4 One provided context to get others, and they kind of
5 built on each other.

6 What's highly significant in this process is
7 that in every step of this process, in this
8 investigation, the investigators involved resorted, in
9 the first instance, to the legal process and to obtain
10 an authorization to require that information. This
11 wasn't a situation where the police are -- I don't
12 know -- trying to get subpoenas issued or trying to get
13 these various entities to just voluntarily surrender
14 information. Instead, they are using the legal process.
15 They are using the search warrant process which is --
16 obviously, the search warrant process is to obtain this
17 information.

18 As I've gone through these various search
19 warrant affidavits and search warrants, the police went
20 to multiple judicial officers who were involved in
21 reviewing and ultimately authorizing these various
22 search warrants that we're talking about.

23 I think that is significant because it
24 certainly guides the Court -- and restricts the Court in
25 a lot of respects -- with respect to its analysis of

1 these various search warrants. Here again, the
2 preference -- there is a preference under the law for
3 the State to resort to search warrants with respect to
4 these kinds of -- any kind of search, essentially. I
5 mean, that's what the police did here.

6 And before I go on to address these issues
7 separately, I also think it's important to keep in
8 context -- keep in mind the application of the
9 exclusionary rule and what the exclusionary rule is and
10 what it's designed to do. Again, the purpose of the
11 exclusionary rule is to provide, through judicial
12 creation, some remedy to essentially address and deter
13 police misconduct. And so to the extent that the police
14 obtained evidence contrary to the law, there's this rule
15 that allows the exclusion of evidence based upon that.

16 I think the corollary to that is that when the
17 police actually do exactly what we ask them to do, i.e.,
18 resort to the judicial process to get authorization,
19 there is certainly no word that minimizes or reduces the
20 necessity to deter any sort of misconduct and -- which,
21 here again, leads to the requirement that the Court be
22 deferential with respect to the various search warrants
23 that were issued here.

24 This is a long-winded way of saying that in
25 terms of the investigation here, what we have is the

1 police doing exactly what we want the police to do,
2 i.e., investigate their case. If they need to conduct
3 searches that implicate Fourth Amendment issues, go
4 first to the courts to obtain authorization to do so,
5 and then go from there. So that's the context of all
6 this.

7 So in looking at the specific motions that are
8 before the Court, the first one -- and this appears to
9 me -- from what I understand, this appears to have been
10 sort of the starting point, is this motion to suppress
11 evidence regarding geofence MAC identifier data and cell
12 tower data.

13 With respect to this particular motion, the
14 police certainly went and obtained a warrant based on
15 the affidavit, but I can't figure out what, if anything,
16 resulted from that. No one has been able to identify
17 anything that was obtained with respect to that
18 particular warrant.

19 It didn't yield any suspects. It didn't
20 yield, to my understanding, any evidence that was
21 seized, let alone seized absent proper authorization.
22 And from what I can ascertain -- and it sounds like the
23 Defense is simply asking the Court to invalidate the
24 warrant just for purposes of invalidating the warrant
25 without any evidence sought to be suppressed, and that's

1 not what courts do. Courts don't issue these kinds of
2 rulings in a vacuum or just to send a message or to
3 create a policy.

4 I don't find that there's any either evidence
5 or fruits of evidence that are implicated by these
6 search warrants. And so regardless of the sufficiency
7 of the affidavit and search warrant, I don't find that
8 there's any basis to issue any further orders with
9 respect to it simply because there's no evidence, I
10 find, that's implicated.

11 I think the real starting point with respect
12 to all this relates to the keyword search that was
13 conducted pursuant to the search warrant because, by and
14 large -- at least this is my understanding of how this
15 all played out -- based upon the results of that keyword
16 search, the other searches, the other information, the
17 other avenues of investigation flowed from that
18 particular search and search warrant and was revealed
19 from it.

20 So I think the real starting point is this
21 keyword search warrant. By and large, I think the
22 remaining warrants either rise or fall on the validity
23 of that particular search warrant. So that's my
24 starting point really in terms of analyzing these
25 various motions.

1 In terms of my analysis, I think it's, first
2 of all, important to really understand and articulate
3 what this warrant and what the search is and what it is
4 not. Because by doing so, I think that really
5 simplifies and clarifies the analysis here. And having
6 reviewed these pleadings in detail over and over again
7 and trying to understand it, I'm not persuaded that this
8 keyword search is the kind of search that's been
9 characterized by the Defense.

10 I don't find that -- well, first of all, the
11 search that was requested and the search that was
12 conducted pursuant to the warrant was not a search of
13 any individual user account. It wasn't a search of any
14 particular person or user. As I understand it, it
15 wasn't even a search for any specific content of any --
16 of the information in the internet.

17 And so the Court understands that the internet
18 is a huge thing with an infinite amount of information
19 in it, much of which is personal and private and
20 everything else. I can certainly envision any number of
21 ways to penetrate that vast amount of information and
22 obtain the kind of personal private individualized
23 content or information of an individual user, but that's
24 not what the search warrant was.

25 What we're talking about, as I understand it,

1 is, essentially, a database query submitted to the
2 custodian of the database, which was Google, which
3 established certain search parameters that were within
4 the capacity of this database. That query and those
5 search terms, which were developed by law enforcement in
6 connection with Google related to specific search terms
7 that were specific both to the address involved here,
8 5312 Truckee, and various variations of that address and
9 the specific event that made that address relevant and
10 significant.

11 With respect to that search, the investigators
12 neither requested nor received any specific data from
13 that search. What they obtained in connection with
14 it -- and this is what was authorized by the search
15 warrant -- was an anonymized list of IP addresses, and
16 those addresses were ones that comported with the
17 specific search parameters that were identified in the
18 search warrant.

19 So that's what the search was, was a search
20 for certain IP addresses that was authorized and what
21 was produced. And then once that search yielded
22 results, then additional legal process was resorted to
23 with respect to finding the specific users. So that's
24 what we're really talking about here.

25 I think my understanding of the nature of this

1 particular search that really, at least in my mind,
2 demystifies much of this and makes the analysis of the
3 search warrant simply that which is not with every
4 search warrant, i.e., to review it in the context of the
5 legal principles I've articulated with respect to
6 whether it comports with the requirements of the Fourth
7 Amendment.

8 With respect to that search warrant -- first
9 of all, there was some suggestion or some argument that
10 was made by the Prosecution that maybe the Court doesn't
11 even need to go that far, that maybe with respect to
12 this kind of a search, given the way the internet works,
13 given the ubiquity of Google and internet searches and
14 how information is derived, that there isn't some
15 expectation of privacy with respect to that information
16 and such.

17 And while the Court certainly understands and
18 agrees that an individual defendant doesn't have the
19 standing to assert a violation of some expedition of
20 privacy as to other accounts to the extent that other
21 information of other users may have been uncovered, he
22 certainly has standing to challenge information that
23 pertains to him.

24 And with respect to the suggestion that this
25 sort of search does not implicate a reasonable

1 expectation of privacy, I don't -- I reject that. I'm
2 not prepared to say that simply by availing oneself of
3 the internet, that the users surrender all expectation
4 of privacy with respect to that use.

5 And there are, no doubt, limits to what that
6 expectation of privacy entails. But I certainly think
7 that as a general matter, while Google or some other
8 provider may ultimately use the information submitted to
9 it for commercial or other purposes -- and I think
10 people, in general, understand that that's what happens
11 when you access the internet -- I think that's well
12 understood.

13 But I think that taking that principle to a
14 further extent to suggest that the means that the
15 government can intrude upon that pool of information, I
16 think that certainly implicates Fourth Amendment
17 concerns and the expectation of privacy. So I certainly
18 reject the assertion that there is no expectation of
19 privacy with respect to this type of information.

20 But I do so -- or I make that presumption --
21 or I start with that presumption in this case with,
22 actually, the luxury of it not mattering that much
23 because what we have here is law enforcement going
24 through the proper legal process, i.e., using the legal
25 process to obtain a search warrant to access the

1 information. And so to the extent there is an
2 expectation of privacy, which I think there is, the
3 police, I think, recognized that and utilized the
4 judicial process to obtain the search warrant that was
5 authorized here.

6 So with respect to -- so, here again, what
7 I've concluded, what I draw from all this, is that the
8 search that we're talking about -- the search warrant
9 that we're talking about isn't something that's
10 groundbreaking or innovative or anything else. I think
11 it's a search warrant that's subject to traditional
12 review and analysis, and that's how I'll proceed.

13 I kind of liken this search to kind of looking
14 for a needle in a haystack, that being the internet is
15 the haystack and what the police is looking for is the
16 needle inside of it. The fact that the haystack may be
17 big, the fact that the haystack may have a lot of
18 information in it doesn't mean that a targeted search in
19 that haystack somehow implicates overbreadth or anything
20 like that.

21 The Court recognizes that to the extent that
22 there's a way to search that haystack -- and, here
23 again, Google certainly has that capacity through its
24 various technologies that are well beyond my
25 comprehension. They're able to look through that

1 haystack and try to identify where the needle is.

2 That's how I kind of look at this.

3 So, here again, what we're talking about is
4 the police -- through Google accessing an enormous
5 database, what they're looking for really is a very
6 targeted, narrow needle that's relevant to the facts of
7 this case.

8 Here again, this isn't just in looking through
9 the affidavit for the search warrant and the search
10 warrant itself, although the warrant authorizes a search
11 of this vast resource -- what's being sought here is
12 narrow. What's being sought through the affidavit and
13 through the search warrant are these deidentified or
14 anonymized accounts of -- that searched this narrow
15 keyword search, i.e., this narrow group of users who
16 searched for this particular address in this narrow time
17 frame. It's looking for that information, and it's
18 looking for the IP addresses associated with those
19 searches.

20 So that's what's being looked at. That's the
21 needle that the police are looking for. That is, in my
22 view, a very particular, specific targeted category of
23 data that's being sought here. And so with respect to
24 how that comports with the Fourth Amendment, the
25 entities being described, the custodians being described

1 and the specific information or data is being described
2 with, in my view, very precise particularity.

3 Here again, this isn't just a generalized
4 search of: We want to search through Google and find
5 out, you know, anything that might be helpful. This is
6 a very targeted search -- or a targeted search term to
7 obtain this information. That search is linked to what
8 the magistrate found to be probable cause and what, in
9 the Court's review of the affidavit, likewise
10 establishes probable cause.

11 And even though the affidavit is broken down
12 into a variety of different kind of sections, the
13 affidavit talks about the general nature of technology
14 and the internet and how the internet is accessed and
15 used and such. It's broken down into how the police
16 understand how it's used. But it also discusses very
17 specifically why a particular keyword search of keywords
18 being sought to be searched are relevant and are likely
19 to yield any included information with respect to it.

20 The affidavit has very specific factual
21 assertions with respect to why the police and why a
22 magistrate would believe that there's a likelihood of
23 included information, and much of that is -- much of
24 what I discussed with respect to the factual context is
25 included in that factual recitation, i.e., the nature of

1 the neighborhood, the nature of the crime, the
2 likelihood that the address was being targeted, and the
3 likelihood that -- because of that, there's a likelihood
4 that folks would use the internet to do that research
5 and find those directions and such. That's all stated
6 specifically in the affidavit for the search warrant.

7 And given that, given that the affidavit --
8 well, the magistrate found that there was probable
9 cause. And the Court concurs that the issuing
10 magistrate had a substantial basis for finding that
11 there was probable cause, that this very narrowly
12 tailored keyword search request was likely to yield the
13 information requested pursuant to the affidavit. I find
14 that the issuing magistrate did indeed have a
15 substantial basis for issuing this warrant.

16 I guess I would mention it as an aside. As
17 I've said previously, the police's use of these kinds of
18 warrant requests or other kinds of electronic data is
19 becoming more and more common. This Court has reviewed
20 many search warrant affidavits for electronic data,
21 information, et cetera, and this particular affidavit
22 and this particular search warrant is one of the more
23 detailed and specific and narrowly tailored affidavits
24 that this Court really has encountered in a long time.

25 And so, here again, my analysis is restricted

1 by my analysis of the four corners of the warrant and
2 affidavit, and it's my conclusion that this affidavit is
3 not overbroad, it's narrowly tailored, it is particular
4 in the specific evidence it seeks to obtain, and that is
5 supported by probable cause to believe that the search
6 of the Google database would yield that sort of
7 information. And so I don't find any basis upon which
8 the Court would invalidate this warrant in any fashion.

9 There's the suggestion that, well, the warrant
10 should be invalidated because there's been certain false
11 or reckless or knowing representations or
12 misrepresentations with respect to the affidavit, and I
13 reject that.

14 First of all, there's a suggestion that the
15 magistrate should have been involved, that this would
16 involve a search of millions, if not billions, of
17 people. That's just not what the search warrant does,
18 and there would be no obligation to put that in a search
19 warrant or affidavit because it's not true as I have
20 previously characterized the nature of the search, nor
21 is the fact that the police went to Google and worked
22 with Google on multiple occasions to obtain proper
23 language for a search warrant affidavit.

24 First of all, that information would not
25 undermine probable cause because the magistrate is

1 obliged to review the affidavit as it comes to the
2 magistrate and the four corners of its analysis. The
3 fact that the police were working with Google, which
4 basically narrowed and restricted the parameters of the
5 search, I don't find that there's any reason/requirement
6 that that information be contained in the affidavit for
7 a search warrant because it wouldn't negate -- it
8 wouldn't impact the probable cause determination of the
9 magistrate. So I don't find that there's any knowing or
10 reckless falsehoods that would somehow invalidate the
11 search warrant.

12 I'm going to make some findings almost in
13 passing. The Prosecution has suggested that, well, if
14 for some reason the Court would have invalidated the
15 warrants, that there would be reason to invoke the good
16 faith exception to the warrant requirement. That's not
17 necessary here because I find this warrant is completely
18 valid. But I make the observation that this warrant, in
19 particular, for this keyword search I think was novel to
20 law enforcement. It probably was novel to the
21 magistrate that issued the warrant.

22 Here again, the police did exactly what they
23 were supposed to do, and it, to me, would defy common
24 sense and comprehension to believe that given that,
25 given the novelty of this particular issue and given the

1 specificity of this particular warrant and the
2 magistrate's review, that somehow any of the criteria
3 for the good faith exception would come into play that
4 would not allow that exception to be applicable.

5 Here again, if an issuing magistrate looks at
6 this affidavit and says it's sufficient, and if a
7 reviewing court, such as this Court, were to make the
8 analysis I've made and finds it to be sufficient, it
9 defies comprehension how the police could be said to
10 say, well, they couldn't reasonably rely upon this
11 warrant. They certainly could. It's immaterial because
12 I find the warrant to be perfectly valid. But I'm
13 making that finding simply because, well, I think it
14 should be on the record.

15 So with that, I'm finding -- here again, in
16 looking at these various other searches, I think the
17 other information -- other search warrants and
18 information kind of stem from that. And the analysis
19 with respect to the additional searches, i.e., the cell
20 phone records and the service provider account
21 information and social media accounts, I think flow from
22 that and are straightforward and rather, in my view,
23 unremarkable.

24 I find the same principles with respect to
25 reviewing those warrants as I did the keyword search.

1 And so I deal with these largely in a -- well, I'll
2 start with the cell phone records. Here again, the
3 Court's looking at the particularity of the warrant
4 itself and whether the information is -- or whether the
5 evidence sought to be -- whether there's probable cause
6 to believe that the information sought to be searched
7 and obtained, there's probable cause to support that.

8 With respect to the cell phone records, I
9 mean, here again, that's been directed to the custodian,
10 which is AT&T. And similar to the keyword search, it
11 appears to the Court that the data to be seized is
12 narrow and specific. It looks for information with
13 respect to the identity of the subscriber of the cell
14 phone records, the call history of the subscriber, and
15 location data with respect to the device. That's the
16 specific data that's being sought to be obtained.

17 And recognizing that the custodian has a vast
18 amount of data evidence -- is in possession of a vast
19 amount of data, i.e., the haystack, the affidavit and
20 the warrant further limits what is being sought. It's
21 limited to the specific time frame relevant to the crime
22 involved here. So there's that limitation.

23 And so it is also limited as to information as
24 it relates specifically to the address involved here,
25 5312 North Truckee, and the date -- well, the specific

1 crimes referenced. In other words, it's not just a list
2 of: I want to look through the entirety of the records
3 regarding the subscriber and the entirety of the call
4 records. The affidavit for the search warrant is
5 further restricted in terms of what is allowed to be
6 searched for a limited time frame and information
7 relevant specific to this address and this crime.

8 And so given those limitations, I find that
9 the warrant is sufficiently particularized. And when I
10 say "sufficiently," I should say very particularized
11 with respect to what it's searching for. This isn't
12 some sort of a general rummaging around of all of these
13 records pertaining to the subscriber. It's limited to
14 this data in the context I've described. Here again,
15 there's a specific articulation of what the probable
16 cause is to support that belief or the likelihood that
17 that information is contained in those records.

18 Similar to the keyword search, there's -- and
19 with respect to the probable cause, the magistrate can
20 rely upon a variety of sources. They can rely upon
21 specific factual allegations which are contained in this
22 affidavit. They can rely upon police experience in
23 terms of -- or investigative experience of the
24 investigator. The magistrate can rely upon the common
25 understanding and the common sense with respect to how

1 the world works, et cetera.

2 Here, similar to the other warrant, the
3 affidavit identifies the fact that they were the three
4 participants in this area, that the keyword search had
5 narrowed it down to five and narrowed it down to three
6 specific individuals. The affidavit tied up information
7 or linked these three individuals together by way of
8 where they lived, the schools they attended, the
9 associates they had, the kind of social media postings
10 that the police were privy to.

11 That, in connection with the other allegations
12 in the affidavit and in terms of how, in a common-sense
13 way, the police, in general, and society, in general,
14 understand how the internet works and how people work
15 and how juveniles work, establishes that there was
16 reasonable grounds to believe that given all of this,
17 that there was evidence likely to be found in these
18 various subscriber accounts, information relevant to
19 where certain devices were located at relevant times,
20 who was associated with respect to those devices and
21 accounts, their familiarity with locations, their
22 relationships, et cetera.

23 And so I find that given my analysis, the
24 affidavit in support of the search warrant for the cell
25 phone records was sufficient, and the issuing magistrate

1 indeed had a substantial basis, given all that, to issue
2 the search warrant. I don't find this to be anything
3 near the kind of general search warrant or search
4 request that is characterized by the Defense motions.

5 My analysis with respect to the search
6 warrants as to the provider accounts, i.e., the accounts
7 for information issued to Google and Apple, and my
8 analysis with respect to the search warrants as to the
9 social media accounts -- that being Instagram, Facebook,
10 and Snap -- my analysis with respect to those two
11 motions really is identical in terms of -- well, is
12 identical and substantially similar, if not identical,
13 to my analysis with respect to the previous search
14 warrant.

15 Here again, the location of the information is
16 described with particularity in terms of who the
17 custodian is. The types of data is described in detail
18 with respect to that specific data that is being sought.
19 Here again, it's a wide variety of kinds of data and
20 areas to be searched, but that is then limited by,
21 again, a specific time limitation/time period and
22 pertaining to the specific crimes being investigated,
23 i.e., the house at 5312 Truckee on the date this
24 happened.

25 And so, here again, although the police were

1 allowed to -- or the search warrant authorizes the
2 search of a vast amount of information, what can
3 actually be obtained from that vast amount of
4 information -- the needle, if you will -- is described
5 in detail and is proscribed in a manner that restricts
6 that which can be obtained and reviewed by the State.

7 So I find that these affidavits and search
8 warrants are sufficiently particularized and, again,
9 likewise supported by probable cause. And these
10 warrants and these affidavits are all substantially
11 similar. They build on each other in some respects.
12 There's some information contained in some that are not
13 in others based upon how the investigation evolved.

14 But with respect to the factual allegations
15 and the reasonable inferences that can be drawn from
16 them, I think the issuing magistrate clearly had a
17 substantial basis to find that there would be a
18 reasonable likelihood of probability that the
19 information pertaining though these crimes were
20 contained within those records.

21 So given that, those -- that conclusion, I
22 don't find any basis to in any way invalidate any of the
23 warrants issued with the account data or the social
24 media data.

25 With respect to -- I guess the last issue with

1 respect to electronic data has to do with cell phone
2 data that was obtained, again, pursuant to a search
3 warrant. Here again, this is an area that is becoming
4 more and more common as the police are incorporating
5 this practice to obtain evidence of a crime.

6 This is an area where the state supreme court,
7 our supreme court, has weighed in. Again, the
8 analysis -- *People versus Coke* is the primary case that
9 comes from the Colorado Supreme Court. I don't know if
10 I've got the citation at my fingertips here. I don't
11 have the cite right quick, but I'll come back to that.

12 Anyway, *People versus Coke* is a case that this
13 Court has struggled with for quite some time with
14 respect to what it actually means. Because as I
15 understand the evolution of all this, the police in
16 *Coke*, for example, issued a search warrant for a wide
17 swath of information obtained from a cell phone, and
18 *Coke* began to describe some of the limitations and
19 parameters with respect to those kinds of searches.

20 Here again, *Coke* followed up on various
21 pronouncements of the U.S. Supreme Court which talk
22 about the reality of phones and cell phone usage in this
23 country in this world these days, and *Coke* certainly
24 follows up and reiterates those concerns, which, to me,
25 really is a double-edged sword; It cuts both ways.

1 I mean, the U.S. Supreme Court and the
2 Colorado Supreme Court have recognized kind of the
3 ubiquity of cell phones and how one's entirety of his or
4 her life can be obtained or contained within the
5 capacity of the cell phone, and that raises unique
6 privacy concerns with respect to the cell phone and cell
7 phone data protected by the Fourth Amendment.

8 And so there's certainly -- I don't know if
9 it's exact to say there's a heightened concern, but
10 there certainly is a significant concern that there be
11 sufficient guardrails to make sure that in searching
12 that kind of information and that the net isn't being
13 cast too broadly, that the warrants be sufficiently
14 particularized.

15 Again, *Coke* recognizes that ubiquity and that
16 reality of kind of life in this century. But there's
17 also -- by my reading of *Coke*, there's kind of a
18 limitation with respect to how far *Coke* is willing to
19 go. In *Coke*, the supreme court found the warrant to be
20 overbroad.

21 But in addressing particularity, the supreme
22 court said, Despite -- and I'm quoting, Despite these
23 recent admonitions -- and this is referring to the
24 various privacy concerns it articulated. The *Coke* court
25 said, quote, The warrant at issue here contains no

1 particularity as to the alleged victim or to the time
2 period during which the assault alleged occurred, closed
3 quote, which suggests to this Court that a significant
4 appreciable, I guess, limitation in a search warrant
5 affidavit that would satisfy Fourth Amendment
6 considerations would be to particularize not only the
7 data that's being requested but to narrow that request
8 for data by way of the alleged victim of the crime or
9 the time period of those kinds of things, which is
10 actually precisely what the police had done in the
11 previous warrants, i.e., to request specific data in a
12 vast network of information limited by time and crime.

13 With respect to, again, cell phone data, the
14 Court is certainly cognizant of the fact that there's no
15 way to take a cell phone and just somehow do a targeted
16 search of that cell phone to obtain specific
17 information. Essentially, the entirety of the cell
18 phone, as the Court understands, needs to be obtained.
19 And then once that's obtained and once the entirety of
20 the information is obtained from the cell phone, then
21 there needs to be a further process to target specific
22 information within the cell phone.

23 The Court is also cognizant that within the
24 cell phone, there are a wide variety of places within
25 the cell phone. And this is a really blunt way of

1 describing this because I don't have the expertise. But
2 there's a vast number of different areas within a cell
3 phone and cell phone data that can contain specific
4 information. Here again, I hate to keep coming back
5 with this, but this is the proverbial haystack upon
6 which information can be retained in a cell phone, and
7 what's being sought here is a targeted search within
8 that haystack for specific information.

9 With that context and having reviewed *Coke* and
10 having reviewed the affidavit, similar to the other
11 warrants, although this search warrant seeks to search a
12 wide swath of the contents of the cell phone data, the
13 target is narrowly -- is described with particularity
14 within the warrant, which certainly limits what can be
15 obtained and reviewed and used by the State.

16 Having reviewed the affidavit in support of
17 it, the issuing magistrate certainly had probable
18 cause -- there's a substantial basis for the reviewing
19 court to have found there was probable cause that the
20 cell phone would contain that specific data. And so
21 similar to my conclusions with respect to the other
22 warrants, I don't find any deficiency with respect to
23 the resulting search warrant that was issued with
24 respect to that search.

25 So having made those findings and those

1 conclusions, my conclusion is that the motions I
2 identified as it pertains to the electronic data, those
3 motions to suppress are all respectively denied.

4 The next issue has to do with a search warrant
5 that was obtained for a search of a home. This is of --
6 well, this is clearly just a straightforward
7 four-corners analysis of the affidavit for a search
8 warrant.

9 Having done so, by and large, the affidavit,
10 in my view, clearly establishes -- well, it's particular
11 with respect to what exactly is being sought or what
12 specific items of evidence are being sought. The
13 allegations -- the factual allegations, the inferences
14 that can be drawn from the affidavit with respect to
15 police experience and common sense, an understanding of
16 how things work, establishes probable cause.

17 Here again, when I say "primarily," clearly,
18 what's being sought are items including things like
19 accelerants, gas containers, masks, hoodies, those kinds
20 of things that were observed, and those are very
21 specific items of evidence that the police are looking
22 for and certainly have probable cause to believe would
23 likely be found in the home given the inferences and
24 facts alleged in the affidavit. Clearly, the warrant
25 establishes probable cause for those.

1 There is the exception of, I guess, a more
2 generalized request for the search for video
3 surveillance equipment or firearms, which I don't know
4 that the warrant necessarily establishes probable cause
5 for those kinds of searches. And the Court can
6 certainly sever those aspects of the warrant that may be
7 overbroad or beyond the "can" of the affidavit. I would
8 so sever those portions of the warrant.

9 I don't know that there's any such evidence
10 that was recovered. But to the extent that they were, I
11 think that's beyond the probable cause established by
12 the search warrant. But with respect to other evidence
13 described in the search warrant, there clearly was
14 probable cause to search this home for these specific
15 items articulated in the affidavit.

16 So I guess the Court denies in part and grants
17 in part that particular motion based upon these
18 conclusions.

19 The last issue has to do with the motion to
20 suppress statements made by Mr. Seymour. I understand
21 that Mr. Seymour was given the opportunity to speak with
22 investigators about this case. He was interviewed while
23 in custody or there was an attempt to interview him in
24 custody, and Mr. Seymour essentially declined to make
25 a -- to waive those rights and to make a statement,

1 which was entirely in his rights.

2 I think that which is being sought to be
3 suppressed are statements made prior to the *Miranda*
4 advisement as it pertains to police questions as to
5 Mr. Seymour's cell phone number and account information
6 and such. As I understand the facts of this, there was,
7 essentially, a preinterview that was all taped, I
8 believe, asking Mr. Seymour basic identifying
9 information, i.e., name, address, date of birth, those
10 kinds of things that preceded the *Miranda* advisement.
11 Among those kinds of things is cell phone information,
12 cell phone number and such, cell phone carrier or
13 provider.

14 I think it's undisputed that that information
15 was obtained prior to the *Miranda* advisement in this
16 case. And so, certainly, absent some other reason, that
17 information could be subject to suppression.

18 I find there's two reasons why it's not.
19 Reason number one is there are exceptions to the *Miranda*
20 requirement in the sense of police are allowed to ask
21 basic identifying questions to a suspect that don't
22 implicate *Miranda* considerations.

23 Certainly, most of what was discussed -- name,
24 date of birth, those kinds of things -- are that kind of
25 routine identifying information. I guess it's a closer

1 question whether in asking someone their cell phone
2 number, their cell phone provider, whether that goes
3 beyond that basic identifying type of information
4 requesting that does implicate the *Miranda*
5 considerations.

6 Quite frankly, in this day and age where one's
7 cell phone and one's cell phone number is reported with
8 identity, I think from a common sense standpoint, it may
9 very well be. Even if it's not, even if that
10 information would be subject to the strictures of
11 *Miranda*, and even if information was provided absent a
12 *Miranda* advisement, it's my conclusion that under the
13 doctrine of inevitable discovery, that information would
14 have inevitably been discovered by the police.

15 I think that finding is based upon the
16 substantial investigation that was being conducted
17 throughout the entirety of this investigation with
18 respect to this vast network of search warrants seeking
19 information with respect to all of this electronic
20 information I've been discussing.

21 This was an ongoing -- this was a substantial
22 part of the police investigation. I think it defies
23 common sense to think that the police either did not
24 have the information already or wouldn't get that
25 information in due course given their substantial

1 investigation in terms of what they were doing in terms
2 of the search warrants and the electronic data.

3 And so even if Mr. Seymour's information with
4 respect to the cell phone number and phone carrier were
5 obtained in violation of *Miranda* under the doctrine of
6 inevitable discovery, it's not something to be
7 suppressed. That motion is denied as well.

8 That, in my view, resolves the motions before
9 the Court. So let's take the next step and get these
10 cases on track.

11 So what's the next step?

12 Actually, before we do this, I want to circle
13 back. I've said this before and I'm going to say it
14 again. Here again, whatever I say here is certainly
15 subject to some other court looking at this and
16 saying -- coming to a different conclusion.

17 I just want to say, based upon my review of
18 all this, it is my judgment that the police in this case
19 did exactly what we want the police to do, i.e., be
20 careful, be specific, be particular in terms of judicial
21 process to obtain this information. Quite frankly, I
22 think if the Court were to determine, based upon all of
23 these things they did and the specificity which I found,
24 if that somehow is beyond what the Fourth Amendment
25 requires, that's -- I find that hard to understand and

1 believe. I think the police here did exactly what we
2 want them to do. That's maybe gratuitous.

3 Okay. So the next steps?

4 MR. MORALES: Your Honor, may I be so bold as
5 to just maybe take a five-minute break so that we can
6 confer with counsel to see how they would like to
7 proceed?

8 THE COURT: Sure.

9 MR. MORALES: And then -- well, you said
10 "sure," so I'm not going to --

11 THE COURT: I think my reporter would really
12 appreciate that.

13 MR. MORALES: Yeah.

14 THE COURT: I've been droning on for an hour
15 and a half, so I think she would appreciate that.

16 MR. MORALES: Well, you said "sure," so I'm
17 not going to make any further record and give her a
18 break, Your Honor.

19 THE COURT: It's always a good idea, when
20 you're ahead, to stop.

21 All right. We'll take a 15-minute recess --
22 actually, a 20-minute recess. We'll reconvene at 3:15.
23 Thanks.

24 (Recess taken from 2:57 p.m. to 3:13 p.m.)

25 THE COURT: Please have a seat.

1 Okay. Mr. Morales? Or anybody?

2 MR. MORALES: I think we should first take up
3 the Seymour matter, Your Honor. I'll let them discuss,
4 but I think what we're going to be requesting is that
5 the Court not set a trial date on the Seymour matter at
6 this point in time and give the parties a little time to
7 meet. We have a meeting set to talk resolutions of this
8 case on December 7th. And then --

9 MS. JOHNSTON: December 8th.

10 MR. MORALES: December 8th. We could then
11 have a status date. I think the Defense is willing to
12 continue to toll speedy trial if the Court is inclined
13 to allow that happen.

14 THE COURT: That's -- as long as we address
15 the speedy trial implications, I have no problem with
16 that.

17 Is that what the Defense wishes to do?

18 MR. JUBA: Your Honor, for Mr. Seymour, he's
19 willing to withdraw not guilty plea and just set it for
20 arraignment. Alternatively, we could just set it for
21 disposition in January and continue to toll speedy
22 trial. I think the former would be our request.

23 THE COURT: I'd rather just keep the not
24 guilty plea entered and toll speedy trial to the next
25 date. You folks can decide if you want a trial or if

1 you want to do something besides the trial. I think the
2 next date that I want is to get this set for trial or do
3 something different, but I want to establish a goalpost.

4 I certainly understand you folks could perhaps
5 benefit from the time between now and the next date to
6 decide what you want to do. But as long as you're
7 willing to toll speedy trial, we'll just have a status
8 date and then go from there.

9 And our next date is when? I'm sorry.

10 MR. MORALES: We don't have a next date, Your
11 Honor.

12 THE COURT: Oh.

13 MR. MORALES: Again, we're meeting with
14 Defense on December 8th. And then if there is a further
15 need for VRA consultation, if the Court could give us a
16 date in January, the second week, that would probably be
17 best for us.

18 THE COURT: The second week we are in a
19 homicide trial. So maybe the third week.

20 MR. MORALES: The third week is fine, if
21 that's okay with counsel.

22 THE COURT: We set a homicide trial that week
23 which is about a zillion years old.

24 Can we come up with a different date, please?
25 What do you think?

1 MR. MORALES: January 20th?

2 THE COURT: Does the 20th work?

3 MR. JUBA: Yes.

4 THE COURT: What time? 8:30 or 1:30? Do you
5 care?

6 MR. MORALES: 1:30.

7 MR. JUBA: That's fine.

8 THE COURT: Okay. So ordered.

9 That's for Mr. Seymour?

10 MR. MORALES: That is correct. And if we
11 could just have Mr. Seymour confirm that he is willing
12 to toll speedy trial to that date and that speedy will
13 not start running until January 20th.

14 THE COURT: So, Mr. Seymour, what we're
15 talking about is you have the right to have a trial
16 within six months of your guilty plea. You can agree to
17 either waive your right to a speedy trial or agree that
18 certain time periods are not counted in that speedy
19 trial time frame. What we're talking about is that
20 second thing, that the time between now and the next
21 date wouldn't count against the speedy trial deadline.

22 Do you understand that, sir?

23 DEFENDANT SEYMOUR: Yes, Your Honor.

24 THE COURT: And are you agreeing to that?

25 DEFENDANT SEYMOUR: Yes, Your Honor.

1 THE COURT: Okay. All right.

2 MR. JUBA: Your Honor, the last request is
3 we -- we're inquiring if the Court is going to be
4 issuing written rulings regarding the motions.

5 THE COURT: No. The written -- the Court's
6 order is the transcript of what I just talked about.

7 Okay. So as to Mr. Bui, he has a trial date
8 looming and also has an arraignment. There's also a
9 motion to continue that looming trial date; yes?

10 MR. EARLE: Yes. Thank you, Your Honor.
11 Christian Earle on behalf of Mr. Bui.

12 We are still asking to -- requesting to vacate
13 the current trial date and reset that matter as
14 long as -- as well as the motions hearing dates with a
15 waiver.

16 THE COURT: So as I understand it, Mr. Bui
17 has -- I've resolved the one issue, the search warrant
18 issue. There's an issue with respect to his statements;
19 yes?

20 MR. EARLE: That's correct.

21 THE COURT: So we can either do the same thing
22 we did with Mr. Seymour or we can set this for motions
23 and trial.

24 MR. MORALES: Your Honor, as to the motion to
25 continue the jury trial, we're not taking a strong

1 objection to it, although I do have to say that we are
2 not in VRA compliance on that completely. I do think
3 the Court could make a ruling absent us objecting or
4 agreeing to it.

5 Obviously, with the Court's docket and motions
6 and having to hear a significant motion to suppress a
7 confession and the trial date being less than a month
8 away, it seems prudent that the Court would probably
9 grant a motion to continue in light of that,
10 particularly in light of the motion.

11 So I would -- we're not objecting, but we're
12 also not agreeing, if the Court understands where I'm
13 coming from.

14 THE COURT: Okay. And where I'm coming from
15 is I've currently got about 150, maybe 200 potential
16 jurors scheduled for the Friday before the trial date.
17 I've got the time blocked off. So from the Court's
18 standpoint, the Court can certainly proceed to trial.

19 I understand, given all kinds of
20 considerations, that the Defense has great reason to ask
21 the trial be postponed. And if you want me to wait to
22 rule on that motion, Mr. Morales, until you get VRA
23 compliance, I can do that. I can certainly say I would
24 be inclined to grant it.

25 MR. MORALES: And many of the victims in the

1 community are present here, and they have been advised
2 that this would probably happen, even the last time we
3 met with them at their place. So we would ask the Court
4 to rule today on the motion to continue so that we know
5 where we're headed.

6 Again, we're not taking a strong objection to
7 it, but we're also not agreeing to it.

8 THE COURT: Understood. I think there's good
9 cause for Mr. Bui to postpone the jury trial for all
10 kinds of reasons, not the least of which is I think
11 there's a legal issue today and may be one in the future
12 that needs to be resolved that may impact how he chooses
13 to proceed. I don't know.

14 So I'll grant the motion with the
15 understanding, Mr. Bui, that when you ask for a
16 continuance of the jury trial, that operates as -- well,
17 let me just ask you: Are you agreeing to waive your
18 right to a speedy trial to accommodate that trial
19 continuance?

20 And just to make sure you fully understand, as
21 I mentioned to Mr. Seymour, you have the right to have a
22 trial within six months of the date that you plead not
23 guilty. If you would waive that right, that would
24 afford the State six months from today, or until
25 May 16th, as a deadline to resolve your case.

1 Do you understand that?

2 DEFENDANT BUI: Yes, sir.

3 THE COURT: And are you agreeing to waive that
4 right?

5 DEFENDANT BUI: Yes, sir.

6 THE COURT: Are you doing that voluntarily?

7 DEFENDANT BUI: Yes, sir.

8 THE COURT: All right. With the waiver of
9 speedy trial, the speedy trial deadline is May 16th,
10 2023.

11 In terms of how to set, Mr. Morales, do you
12 want a trial date? A motions date? Both? One or the
13 other?

14 And I shouldn't say Mr. Morales. I should say
15 both parties.

16 How do you want this set.

17 MR. EARLE: Your Honor, honestly, I think we
18 would request a dispositional hearing or an arraignment
19 with a tolling of speedy trial until that next date to
20 see if there may be some resolution of this case, and we
21 would ask for that to be sometime in the next 60 days.

22 THE COURT: Mr. Morales?

23 MR. MORALES: That's acceptable to the People.

24 THE COURT: Can we do it on the same date,
25 January 20th at 1:30?

1 MR. EARLE: It's okay with me.

2 MR. MORALES: That's fine. My understanding
3 is -- and the Court will advise Mr. Bui that we will --
4 that speedy trial will not even start running today but
5 will start running on January 28th, which would give the
6 People until June 20th to try this case.

7 Is that what I'm understanding, Counsel?

8 MR. EARLE: Yes.

9 THE COURT: July 20th.

10 MR. MORALES: July 20th. Sorry.

11 THE COURT: I use the finger technique,
12 counting on my fingers.

13 Okay. And is that understood, Mr. --

14 MR. EARLE: Yes. As it relates to the other
15 matter, we would ask that it be set for an
16 arraignment/dispositional hearing on the same date.

17 THE COURT: Mr. Morales?

18 MR. MORALES: Yes, Your Honor. That case
19 should trail, obviously, the more significant case that
20 we have.

21 THE COURT: So ordered.

22 Okay. Anything else we need to talk about
23 today?

24 MR. MORALES: No. I think we're all good.

25 THE COURT: So, here again, just so that

1 everyone understands, including the survivors and
2 interested people, we're doing all this -- the cases
3 will either be resolved in some fashion or will be set
4 for trials on January 20th. Okay?

5 All right. Thanks.

6 MR. MORALES: Thank you very much, Your Honor.

7 THE COURT: Court's in recess.

8 (The proceedings were concluded at 3:28 p.m.)
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DISTRICT COURT
COUNTY OF DENVER
STATE OF COLORADO

Case Nos. 21CR20000
and 21CR20001

REPORTER'S CERTIFICATE

I, Wendy Evangelista, Registered Professional Reporter and Official Court Reporter of the District Court, County of Denver, State of Colorado, do hereby certify that I reported the foregoing proceedings in stenographic shorthand at the time and place aforementioned; that, thereafter, I reduced said shorthand notes to transcription form, and that the foregoing transcript is an accurate transcription of said shorthand notes and the proceedings had, to the best of my knowledge and belief.

Dated this 30th day of November, 2022, in Denver County, Colorado.

/s/ Wendy Evangelista

Wendy Evangelista

Registered Professional Reporter