

# Exhibit 1

Motion to Suppress Evidence from a Keyword Warrant and  
Request for a Veracity Hearing

DISTRICT COURT, DENVER COUNTY, COLORADO 520 W. Colfax Denver, Colorado 80204	DATE FILED: June 30, 2022 12:03 PM FILING ID: 2D0BFA23AF560 CASE NUMBER: 2021CR20001
PEOPLE OF THE STATE OF COLORADO, Plaintiff,  v.  GAVIN SEYMOUR, Juvenile Defendant.	▲ COURT USE ONLY ▲
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<b>MOTION TO SUPPRESS EVIDENCE FROM A KEYWORD WARRANT &amp; REQUEST          FOR A VERACITY HEARING</b>	

## INTRODUCTION

Gavin Seymour, through counsel, moves to suppress all evidence and its fruits derived from a modern-day general warrant: a reverse Google keyword search in violation of the Fourth Amendment of the United States Constitution and Article II, Section 7 of the Colorado Constitution. U.S. Const. amend. IV; Colo. Const. art. II, § 7. Relatedly, Mr. Seymour moves for

a veracity hearing to establish that the warrant affidavit substantially misled the issuing judge. As grounds, Mr. Seymour states as follows:

1. A reverse keyword search is a novel and uniquely intrusive digital dragnet of immense proportions. It requires Google to search billions of people’s search queries—everyone who ran a Google search—and produce information on anyone who looked for certain search terms, or keywords. Here, the government searched for, and then seized, the personal data associated with everyone who searched for nine variations of an address, “5312 Truckee Street,” over the course of 15 days in 2020. *See* Attachment 1 (Nov. 19 Keyword Warrant) at 2656.<sup>1</sup>
2. But for this reverse keyword search, law enforcement would not have identified Mr. Seymour as a suspect in this case. Indeed, the keyword warrant was preceded by a litany of other constitutionally suspect searches. None of them, however, pointed law enforcement to Mr. Seymour. In fact, the operative keyword warrant, issued on November 19, 2020, was the third keyword warrant issued in this case. *See* Attachment 2 (Oct. 1 Keyword Warrant); Attachment 3 (Oct. 20 Keyword Warrant). Google refused to comply with the first two. And just the day before Denver police obtained the warrant, investigators were interrogating an alternate suspect. 11/12/21 Tr. (“Prelim. Tr.”) at 72–73. Law enforcement went on a massive fishing expedition, trawling through everyone’s cell phone records, location data, and Google data—without cause to search any of it—until they identified Mr. Seymour with a third keyword warrant.
3. No court has considered the legality of a reverse keyword search, but its constitutional defects are readily apparent and should have been obvious to all involved. It is a 21st century version of the general warrants that the Fourth Amendment was designed to guard against. Just as no warrant could authorize the search of every home in America, no warrant can compel a search of everyone’s Google queries.
4. Everyone, including Mr. Seymour, has a Fourth Amendment interest in their internet search history, which contains an archive of intimate personal expression. Search engines like Google are a gateway to the vast trove of information online, and the only way most people can find what they are looking for online. Even a single query can reveal deeply private facts about a person, things they might not share with friends, family, or clergy: “psychiatrists in Denver;” “abortion providers near me;” “is my husband gay;” “does God exist;” “bankruptcy;” “herpes treatment.” Yet everyday people pose these queries to Google in pursuit of answers, information, and advice. Stitch the searches together over time and they form a tapestry of daily life, woven from a person’s worries, questions, and secrets. Search history is a window into what people wonder about—and it is some of the most private data that exists.
5. Mr. Seymour did not consent to having his Google data searched, and the so-called “third-party doctrine” is inapplicable. Search queries are fundamentally different from the business records to which the third-party doctrine traditionally applies. *See Smith v. Maryland*, 442 U.S. 735 (1979) (numbers dialed on a landline); *United States v. Miller*, 425 U.S. 435 (1976) (bank deposit slips). Instead, they reveal information that is even more private than the seven days of cell phone location data that the Supreme Court found were constitutionally protected in

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<sup>1</sup> All references to the attachments in this motion cite to the Bates numbers provided on those documents, where available.

*Carpenter v. United States*. 138 S. Ct. 2206 (2018). Moreover, Google is no ordinary third party: “Unlike the nosy neighbor who keeps an eye on comings and goings, they are ever alert, and their memory is nearly infallible.” *Id.* at 2219. Indeed, records of Google search queries are comprehensive and inescapable, captured with every query, from every user, regardless of whether they are signed in to a Google account. *See* Attachment 4 (Declaration of Nikki Adeli) ¶ 14. And because each query is tied to a unique ID number as well as the Internet Protocol (“IP”) address assigned to each user, they are personally identifiable.

6. The government searched an ocean of intensely private data in this case, yet it lacked probable cause to search even one Google user. Instead, it demanded that Google search *everyone’s* Google searches in order to generate suspicion. This process is profoundly different from the one that governs the application for and execution of typical warrants, where a suspect is known and the warrant seeks their data. Instead, this “reverse warrant” first identifies categories of data and then seeks information about people whose data falls into those categories.
7. The warrant therefore violates the Fourth Amendment and the Colorado Constitution for lack of probable cause and particularity. It is unconstitutionally overbroad and unparticularized, the digital equivalent of a general warrant, and all evidence obtained or derived from it must be excluded as the fruits of an unconstitutional search. *See Mapp v. Ohio*, 367 U.S. 643 (1961). Furthermore, no reasonable officer could have believed that such a warrant was valid. The government was desperate to make an arrest, and it sought a warrant with impermissibly broad discretion to search and seize data about unspecified people. It therefore violated the Fourth Amendment and cannot be saved by the good-faith exception.

## FACTS

### I. A Pattern of Dragnet Searches

8. This case turns on the third reverse keyword warrant that the Denver Police Department served on Google, requiring the search of billions of people. It is undoubtedly one of the broadest searches in Fourth Amendment history. But it was also part of a pattern of increasingly invasive and boundless searches affecting the privacy rights of countless people with no connection to this case. The police, working with the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, sought a stunning array of warrants seeking the private data of anyone and everyone who was within at least a mile of the area.
9. Prior to the third keyword warrant, the government executed at least 23 other warrants, escalating over time to “very general search warrants” without any named suspects. Prelim. Tr. at 66; *id.* at 61–62 (acknowledging that law enforcement obtained “search warrants to search kind of general areas” for “[w]ho may have been in the general area at a specific time”). These included two “tower dumps”, Prelim. Tr. at 67–68, 70–71, 122–25, 139 162–64, 178–79, 191; and the use of one “cell-site simulator” (a.k.a. “IMSI catcher”), *id.* at 127–28. Tower dumps seek “information on every single device that had connected to [cell] towers in the area,” implicating “thousands of people’s phone numbers” or “hundreds of different people that lived in the area.” *Id.* at 70–72, 81; *see also id.* at 123–24, 164. These warrants searched and seized information pertaining to devices that belonged to “thousands of people,” *id.* at 71, all without identifying a suspect. Here, when police requested a “traditional tower dump” and

“specialized location data dump,” *see id.* at 123–24, from four major cell phone carriers, one returned 1,471 “unique devices...within a 1-mile radius” of the fire, *id.* at 125, and another returned 4,595 devices, *id.* at 126.

10. None of this information led investigators to identify a suspect. But to try and make sense of it all, they obtained even more information. Police deployed a “cell-site simulator” (a.k.a. “IMSI catcher”) in the same neighborhoods in an attempt to “throw out” some numbers. *Id.* at 128. A cell-site simulator is a fake cell phone tower operated by the police from the back of a car. *See id.* at 127–128. As the police drove the device around Truckee St. on August 20, 2020 at 2 a.m., the simulator forced every cell phone within range to connect to it instead of to the authentic cell phone network. The phones then identified themselves to the police by providing their unique international mobile subscriber identifier (“IMSI”) numbers. *Id.* at 127. Police identified 723 devices in the area, most of which belonged to neighbors in private homes. *Id.* at 128–129. None of this information, however, led investigators to say, “We’ve got our guy or gal or anything.” *Id.* at 129.
11. Police also obtained two Google geofence warrants, one on August 10, 2020, and another on October 6, 2020. *See* Attachment 5 (Aug. 10 Geofence Warrant); Attachment 6 (Oct. 6 Geofence Warrant). A geofence warrant is a type of reverse warrant that searches all Google users with “Location History” enabled for all devices in a given area. *See also United States v. Chatrue*, No. 3:19-CR-130, 2022 WL 628905, at \*3–4 (E.D. Va. Mar. 3, 2022) (finding a geofence warrant unconstitutional). Google maintains this data on “numerous tens of millions” of users. *Chatrue*, 2022 WL 628905, at \*3. For reference, Google had 592 million Location History users in 2018. *See* Attachment 7 (Declaration of Emily Moseley) ¶ 3. To conduct a geofence search, regardless of the size or shape of the area, Google must comb through the account of every Location History user. *Chatrue*, 2022 WL 628905, at \*9. That is because Google does not know which users may have responsive data before conducting the search. *Id.* As a result, the two geofence warrants here, covering six geographic areas, led to the search of hundreds of millions of people, multiple times. Yet, like the prior searches, this approach also failed to produce any “fruitful” leads. Prelim. Tr. at 47.
12. Additionally, the police obtained a warrant to access and receive information from a company named “Fog Data Science” via the “Fog Reveal Portal.” *See* Attachment 8 (Fog Data Warrant) at 1454. Fog Data Science is a private company that aggregates device location information from different databases and online sources to sell that information to others. *Id.* at 1457. The information is linked to “Advertising ID” generated by individual devices, as well as a unique device identifier assigned by Fog. *Id.* Much like a Google geofence warrant, the Reveal Portal allows police to search Fog’s database to locate devices that were present in an area during a given time. Investigators may identify “devices of investigative interest” and then run a “device specific query...for a duration of time over an unconstrained geographical area.” *Id.* at 1458. Fog collects “more than 15 billion signals globally” each day. *Id.* at 1457. The search here covered two areas over a total of 45 minutes, *id.* at 1454–55, resulting in the search of hundreds

of millions of records held by Fog. Once again, however, it did not produce any “fruitful” leads.<sup>2</sup> Prelim. Tr. at 47.

13. Only one search warrant produced information that led police to identify Mr. Seymour as a suspect in this case—the third keyword warrant, issued on November 19, 2020. *See* Attachment 1 (Nov. 19 Keyword Warrant); Prelim. Tr. At 47. This was the broadest dragnet by far, resulting in the search of billions of Google users.

## II. Reverse Keyword Warrants Generally

14. Reverse keyword warrants are a new type of search. They are unlike anything courts have approved in the past, and they are antithetical to both the Fourth Amendment and the Colorado Constitution. No keyword warrant has been tested in an adversarial proceeding, and there are no reported decisions concerning their constitutionality. Thus, until now, not much has been known about how Google executes keyword warrants.
15. In this case, Google has provided a declaration describing, for the first time, how a reverse keyword search works. *See* Attachment 4 (Declaration of Nikki Adeli). As a threshold matter, Google requires law enforcement to obtain a warrant. *Id.* ¶ 3. That is because Google treats search query data as private content belonging to individual Google users. *See* Attachment 9 (Google Privacy Policy) at 22. Google keeps a record of every search query that users make. If a Google user is signed-in to their account, then their search queries are logged and saved to their account, which is personally identifiable by a “GAIA ID” (“Google Accounts and ID Administration”) number. Attachment 4 (Declaration of Nikki Adeli) ¶ 14. If a user is not signed-in or does not have a Google account, then Google assigns a “Browser Cookie ID” number based on the individual characteristics of the computer involved. *Id.* ¶ 7. Both the GAIA ID and the Browser Cookie ID are personally identifiable with information available to law enforcement with a subpoena. And in both cases, Google also retains the user’s IP address, which law enforcement can use to subpoena subscriber information, including names and addresses. *See id.*
16. Google asserts that it “generally” uses a “staged process” for executing keyword warrants. *Id.* ¶ 3. During the first stage, upon receiving a keyword warrant, Google “creates a text-based query [ ]that can include letters, numbers, or characters” based on the keyword search terms identified in the warrant. *Id.* ¶ 4. That query is “run over the records of searches conducted through Google Search and Maps.” *Id.* This includes searches conducted by “authenticated” (logged-in) Google users as well as searches from users who are not authenticated. *See Id.* ¶ 7. Put another way, when responding to a keyword warrant, Google searches all queries run on Google Search or Google Maps, regardless of whether the person who conducted the search was logged into a Google account or consented to such use of their Google Search or Maps histories. As Google acknowledges, at the point the warrant is executed, there is no way to know which users—if any—have used the keywords contained in the warrant. *Id.*

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<sup>2</sup> It remains unclear to the defense whether use of the Fog Reveal Portal produced no results, or whether the government did not retain a record of its search results. The Denver Police Department and the ATF both have paid subscriptions to the Fog Reveal Portal. *See* Attachment 8 at 1457.

17. This process yields a set of raw results that reflect who searched for the terms identified in the warrant. *Id.* Google then makes certain decisions about what information to include in its production to law enforcement. *See id.* ¶¶ 7–8. Google decides, for instance, whether to “limit the results to queries that contain only the search terms listed in the warrant and no other words,” or, “more commonly,” produce results that contain additional words or terms not specified in the warrant. *Id.* ¶ 6 (e.g., “1600 Amphitheater Parkway” vs. “1600 Amphitheater Parkway Google Headquarters”). It will do so even where the search results strongly imply that a keyword search is irrelevant. *See id.* ¶ 8 (stating that Google will disclose search results for similar addresses in other cities or states).
18. Before turning over the query results to law enforcement, Google may “de-identif[y]” the results. *Id.* ¶ 8. The “production version” of the query results “typically includes the following categories of information: (1) the date and time of the [keyword] search, (2) coarse location information inferred from the IP address from which the search was conducted, (3) the Query..., (4) the Result..., (5) the Host..., (6) the Request..., (7) a truncated Google identifier (known as the GAIA ID), if the search was conducted from an authenticated user’s account, or a truncated version of a Browser Cookie ID if the search was not conducted from an authenticated user’s account and (8) the associated user agent string.” *Id.* ¶ 7. The “Query” is the search query a user enters into Google Search or Google Maps. *Id.* ¶ 4. The “Result” refers to the “result generated by Google from a user’s queried search.” *Id.* ¶ 7. “The Host” is “the Google domain name that the user contacted (e.g., google.com and google.fr.)” *Id.* The “Request” is the latter part of the same URL and it distinguishes between user-generated searches and “background requests made of Google’s servers” (“GET” vs. “POST”). *Id.* The GAIA ID is a unique number associated with each Google account. And a “Browser Cookie ID” is a unique number associated with the web browser that conducted the search. *Id.*; *see also* Attachment 9 (Google Privacy Policy) at 23.
19. While Google asserts that it de-identifies these results before disclosing them to law enforcement, *see id.* ¶ 3, the information provided can be used to identify people who used the relevant search terms without additional court supervision. As Google explains, during the second stage of executing the warrant, law enforcement “can compel Google to provide additional information for those users the government has determined to be relevant to its investigation” if allowed by the warrant. *Id.* ¶ 9. Separate from this, law enforcement can use a subpoena to obtain the name and address of the account holder. *See id.* ¶ 9 (stating that law enforcement can use subpoenas under 18 U.S.C. § 2703(c)(2) to obtain various categories of identifying information after determining which accounts are relevant to the investigation). There is nothing in Google’s process that prevents law enforcement from seeking identifying information about all users in the de-identified query results.
20. Importantly, Google does not follow this process in all cases. Rather, Google qualifies that it “generally” uses the staged process described, *id.* ¶ 3, but in some cases—like this one—Google deviates significantly. As detailed below, the November 19 keyword warrant explicitly compelled Google to disclose full IP addresses in “stage one,” making it meaningless to “de-identify” other information like the full GAIA or Browser Cookie IDs. Law enforcement can and did use the IP addresses provided to identify Google users, including Mr. Seymour.

### III. The Three Keyword Warrants in This Case

21. With no leads in their investigation, investigators determined they “were going to write a search warrant to Google to see if there[] [were]...any keyword searches for the address” where the fire occurred. Prelim. Tr. at 47. The warrant would require Google to determine which, if any, users had searched for nine variations of the address (accounting for different spellings like “North” versus “N.,” or “Street” versus “St.”) “to see if anybody would have Googled that address...prior to the fire.” *Id.* Google, however, rejected the first two such keyword warrants, only complying with the third after directing investigators on the language it wanted included. *See* Attachment 10 (Supplementary Report) at 3760. The three keyword warrants all focused on the same address over the same 15 days, but they differed significantly in the types of data to be produced and the process for obtaining it from Google.

#### A. The First Keyword Warrant

22. On October 1, 2020, the government submitted the first keyword warrant to Google. The October 1 warrant requested data about users who searched for nine variations of “5312 Truckee Street”<sup>3</sup> over the course of 15 days (“July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.”). *See* Attachment 2 (Oct. 1 Keyword Warrant) at 3138–39. It had just one step. Specifically, for each responsive query, the warrant required Google to produce “the personal identification of the subject account, to include full name, date of birth, email address(es), physical address(es), and telephone numbers.” *Id.* at 3139. Google refused to comply with this warrant and escalated the matter to outside counsel at Perkins Coie LLP. Through counsel, Google emailed investigators on October 15, 2020, to state that the search warrant needed to be revised.<sup>4</sup> *See* Attachment 10 at 3757. According to Google, the warrant did not comport with its required de-identification procedures, presumably because it called for Google to produce full names and addresses for all responsive queries. *See* Attachment 4 (Declaration of Nikki Adeli) ¶ 11.

#### B. The Second Keyword Warrant

23. On October 20, 2020, the government submitted a second keyword warrant to Google. *See* Attachment 3. Like the first warrant, the October 20 warrant used the same nine variations of the “5312 Truckee Street” address and involved the same 15-day timeframe, between July 22, 2020, and August 5, 2020. *Id.* at 2659–60. This second version, however, sought “anonymized information” for responsive queries, meaning that Google would produce an “Anonymized List” of responsive devices with “an identifier assigned by Google...which does not contain any unique device identifier/individual account identifier.” *Id.* at 2660. Law enforcement would then “review the Anonymized List to remove device IDs that [were] not relevant” and

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<sup>3</sup> Specifically, the warrant sought information about everyone who had searched for one or more of the following terms: “5312 Truckee”; “5312 Truckee St”; “5312 Truckee Street”; “5312 N Truckee St”; “5312 N. Truckee St.”; “5312 N. Truckee St”; “5312 N Truckee St.”; “5312 North Truckee”; “5312 North Truckee Street”.

<sup>4</sup> The government has not produced this communication to the defense despite multiple requests. The defense still does not know how Google counseled investigators to revise the first warrant.



create a “shortlist” from the Anonymized List. *Id.* If they wanted “additional information...that [fell] outside of the Initial Search Parameters,” they would provide a “subsequent warrant.” *Id.* Indeed, this warrant explicitly provided that “[l]aw enforcement shall not seek or be provided any further subscriber/device information unless an additional search warrant is obtained.” *Id.* at 2661.

24. Despite the revised process, however, this second keyword warrant included a new, additional demand for user location data, which Google treats as account content. Unlike the first warrant, the second one required Google to produce two days of location data (August 4–6, 2020) for each account identified as responsive to the keyword search. *Id.* at 2660. In effect, it was a keyword search combined with a geofence search. It also contradicted the warrant affidavit—essentially a copy of the first—which promised that “[n]o other contents of the account are being sought at this time.” Attachment 3 at 3068. And once again, Google did not comply. On October 30, 2020, Google’s outside counsel at Perkins Coie called investigators and “advised that again the language in the search warrant was not correct and the search warrant again would need to be revised.” Attachment 10 at 3759.

### C. The Third Keyword Warrant

25. On November 17, 2020, investigators had another phone call with Google’s outside counsel, this time “to work out the language that [Google] would like in the warrant.” Attachment 10 at 3760. The Denver District Attorney was invited to join. *See* Attachment 11 (Email with Hayley Berlin) at 6110–13. The defense still does not have a record of who participated, what transpired, or how Google directed law enforcement to draft the warrant, but on November 19, 2020, the government submitted a third and final keyword warrant to Google. *See* Attachment 1 (Nov. 19 Keyword Warrant) at 2656–58. This warrant differed from the first two in a critical way: it required Google to provide full IP address information for every responsive search query.
26. The third keyword warrant again sought returns for the same nine variations of the address where the fire occurred and same 15-day timespan for those searches. *See id.* at 2656. It did not request any location information, and instead asked for “anonymized information” responsive to the keyword search. *Id.* at 2657. But significantly, it also demanded “the IP addresses used by all accounts that are found to have conducted” one of the keyword searches. *Id.*
27. Including IP addresses is significant because they are *not* anonymous identifiers. Police routinely use this information to identify individuals responsible for online activity. An IP address is required for any device to access the internet, including Google, and it is assigned by internet service providers, like Comcast. *See* Prelim. Tr. at 133. Service providers maintain records of which IP addresses were assigned to which customers at what times. And they also maintain subscriber, payment, and street address information for those customers. As a result, law enforcement can easily associate an IP address with a particular subscriber or street address. *See id.* at 133–34 (“An IP address is essentially...a value that is used to identify a device on a network. As far as investigations go, we can...figure out where that IP address was utilized or...the subscriber of the account related to the usage of that IP address.”); *see also*

Attachment 12 (Comcast Warrant), Attachment 13 (AT&T Warrant); Attachment 14 (Verizon Warrant); Attachment 15 (T-Mobile Warrant).

28. Google also recognized the significance of including full IP addresses, which is why their keyword warrant procedure did not allow for the disclosure of that information. *See* Attachment 4 (Declaration of Nikki Adeli) at ¶ 7. Instead, Google’s policy was to include only “coarse location information inferred from the IP address from which the search was conducted” in the initial “production version.” *Id.* In this case, however, Google did not follow that policy. *Id.* at ¶¶ 13–15. Instead, it complied with the third keyword warrant as written.
29. Consequently, Google searched billions of users—worldwide—and produced two spreadsheets containing a total of 61 queries that it deemed responsive. *See* Attachment 16 (Keyword Warrant Return Data). The government has testified that the search was limited to the entire state of Colorado, *see* Prelim. Tr. at 82 (“I believe we limited it to Colorado”), but this is incorrect.<sup>5</sup> The spreadsheets returned by Google include a list of states (“Subdivisions”) associated with each IP address. Of the 61 queries, 38 were associated with Colorado; 2 were associated with Illinois; and 21 were blank. *See* Attachment 16. The government also acknowledged in a subsequent search warrant that the “information provided...was for any account where the states IP address were resolved.” *See* Attachment 17 (Dec. 4 Google Warrant) at 2612.
30. Moreover, most of the queries Google returned did not match any of the nine variations “5312 Truckee St.” specified in the warrant. Only five did. Instead, there were 45 that contained additional search terms, such as state, zip code, or the word “interior.” And there were another 11 entries that did not specify the search query used at all, leaving that field entirely blank.
31. Still, Google provided either a truncated GAIA or Cookie ID for each of the 61 queries, depending on whether the user was signed-in to their account at the time. *See* Attachment 16. There were five distinct GAIA IDs and four distinct Cookie IDs, suggesting that the data seized belonged to up to nine people.<sup>6</sup> *Id.* Critically, Google provided full IP addresses for 60 of the 61 queries, leaving one filed blank. *Id.*; *see also* Prelim. Tr. at 132, 135 (stating that the return included IP addresses). There were 12 distinct IP addresses responsible for those 60 queries,

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<sup>5</sup> The government limited subsequent search warrants to the five Google accounts with IP addresses resolved to Colorado, as described *infra*, but it received data on at least four others.

<sup>6</sup> The government has testified that Google provided five “accounts” in response to the keyword search warrant. Prelim. Tr. at 192. But the presence of four additional Cookie IDs, with no associated GAIA IDs, indicates that other people may have run responsive queries while not logged-in to a Google account. *See* Attachment 18 (Report of Investigation No. 7) at 5843 (“Responsive data from Google indicated *at least* five users who...quer[ied] that address”) (emphasis added); *see also* Prelim. Tr. at 196 (“What we were able to determine is that someone was using a Google product to search that address but was not logged into a Google account at that point in time. So, when that address was queried, Google obviously knew that that address was queried, but they could not attribute it back to a Google user because it -- whoever it was at that point was not logged in.”).

indicating that at least two of the nine people had searched Google from more than one IP address. *See id.*

#### **IV. Subsequent Investigation**

32. Based on Google’s return from the third keyword warrant, investigators focused on the five Google accounts with IP addresses in Colorado. *See* Attachment 17 at 2612; Prelim. Tr. at 131. They also saw that three accounts had searched for the Truckee Street address multiple times, some of which raised “red flags” because they included the word “interior.” Prelim. Tr. at 48. Consequently, on December 4, 2020, investigators obtained five additional warrants seeking subscriber information associated with that activity. *See id.* at 135; Attachment 18 (Report of Investigation No. 7) at 5843.
33. One warrant required Google to produce subscriber information, in addition to all account contents, for all five accounts. *See* Attachment 17 at 2604–05. Google refused to produce the account contents. *See* Attachment 4 (Declaration of Nikki Adeli) ¶ 16 (“Google objected to the warrant to the extent it required disclosure of content or other records based on a truncated GAIA ID and advised that new legal process would be required to obtain additional information.”). But it did produce the subscriber information, which showed that one account belonged to Mr. Seymour. *See* Attachment 18 (Report of Investigation) at 5843.
34. The other four warrants required various internet service providers—Comcast, AT&T, Verizon, and T-Mobile—to produce subscriber information associated with the full IP addresses in the keyword search return. Attachment 12 (Comcast Warrant) at 3040–41, 3049–50; Attachment 13 (AT&T Warrant) at 3037; Attachment 14 (Verizon Warrant) at 3191; Attachment 15 (T-Mobile Warrant) at 2698. Comcast complied, stating that two of the accounts were registered to “Stephanie Johnson” at an address in Lakewood, CO. *See* Attachment 20 (Comcast Warrant Return) at 2775. Ms. Johnson is Mr. Seymour’s mother, and they lived together at the same address in Lakewood.<sup>7</sup>
35. Based on this information, law enforcement obtained further warrants to search Mr. Seymour’s full Google account, as well as his Snapchat, Facebook, Instagram, and Apple iCloud accounts. *See* Attachment 21 (Google Account Warrant) at 5967–6088; Attachment 22 (Snapchat Account Warrant) at 4276–77; Attachment 23 (Facebook & Instagram Account Warrant) at 4245–49; Attachment 24 (Apple iCloud Account Warrant) at 5492–539. The government also obtained Mr. Seymour’s text messages and historical cell phone location information. *See* Attachment 25 (AT&T Call Detail Warrant) at 2862–64. And after reviewing this information and conducting further investigation, police arrested Mr. Seymour on January 27, 2021. But for the keyword warrant, however, investigators would have never identified Mr. Seymour as a suspect in this case, let alone obtained his account contents and arrested him. *See* Prelim. Tr. at 50–51.

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<sup>7</sup> Comcast stated that the third IP address was registered to Tanya Bui, the older sister of co-defendant Kevin Bui. *See* Attachment 20 at 2777. The related search query was not conducted from an authenticated Google account, however. As a result, there was no GAIA ID provided, only a truncated Cookie ID.

## ARGUMENT

36. The November 19 keyword warrant authorized a Fourth Amendment search. It was a search because it violated Mr. Seymour's reasonable expectation of privacy in his Google search query history and because it infringed on Mr. Seymour's property rights in his Google account data. Critically, it was not just a search of Mr. Seymour, but a search of billions of Google users, and all without a shred of evidence to search any one of them. In short, it was an unconstitutional general warrant.
37. Because this search also implicates the First Amendment, courts must apply the Fourth Amendment's requirements with "the most scrupulous exactitude." *Stanford v. Texas*, 379 U.S. 476, 485 (1965). Indeed, the Colorado Supreme Court has held that the First Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution protect an individual's right to obtain information anonymously, and that the government must meet a higher burden to get a search warrant for such records when they are maintained by a third-party. *See Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1047 (Colo. 2002) (involving a warrant authorizing the seizure of customer purchase records from a bookseller). The government must demonstrate "a compelling governmental need" for the "specific" records they seek, considering whether there are "reasonable alternative methods" of investigation, whether the warrant is "unduly broad," and whether the records are sought for "reasons related to the content" of the information at issue. *Id.* The keyword warrant here failed to meet this heightened standard. Indeed, the warrant was fatally overbroad and profoundly lacking in particularity. It did not demonstrate probable cause to search and seize *anyone's* Google data, let alone cause to search billions of accounts. And it lacked particularity because it failed to specify which accounts could be searched and seized, enabling the government to act far beyond the scope of a proper search.
38. Finally, the good-faith exception does not apply to the instant keyword warrant because the affidavit omitted critical facts and substantially misled the issuing judge. The warrant also lacked sufficient indicia of probable cause and was facially deficient. No reasonable officer would believe that a dragnet search of every home in America is constitutional. And there is no good reason to think that it would be permissible in the digital sphere.

### **I. A search of Google queries is a Fourth Amendment search.**

39. In *Carpenter v. United States*, the Supreme Court found that law enforcement's acquisition of cell site location data constituted a search. 138 S. Ct. at 2220. The Court ruled that individuals have an expectation of privacy in their location data, even when it is held by a third-party service provider. *Id.* Because keyword search data is even more revealing than cell phone location data, law enforcement must also get a warrant to search it under *Carpenter*. Furthermore, an individual's Google account data, including their search history, is their private property. It is the digital equivalent of the "papers" and "effects" that are explicitly protected by the Fourth Amendment and the Colorado Constitution. U.S. Const. amend. IV; Colo. Const. art. II, § 7. As such, a search of Google account data is also a trespass because it infringes on the user's property rights, and it is therefore a Fourth Amendment search requiring a warrant.

**A. People have a reasonable expectation of privacy in their keyword search information.**

40. The Fourth Amendment protects people from unreasonable searches and seizures of things in which they have a reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). Individuals have a reasonable expectation of privacy when (1) a person has exhibited an “actual (subjective) expectation of privacy,” and (2) that the expectation is “one that society is prepared to recognize as ‘reasonable.’” *Id.* at 361 (Harlan, J., concurring).
41. The U.S. Supreme Court has recently clarified how to identify a reasonable expectation of privacy in the digital context. Courts should look to “historical understandings” of what was unreasonable at the nation’s founding, guided by the understanding that the Fourth Amendment (1) aims to secure “the privacies of life” and (2) “place obstacles in the way of a too permeating police surveillance.” *See Carpenter*, 138 S. Ct. at 2214. The Court has sought to preserve a “degree of privacy against government that existed when the Fourth Amendment was adopted.” *Kyllo v. United States*, 533 U.S. 27, 34 (2001). Consequently, the Court considers whether the “retrospective quality” of the data gives the government access to a category of information that would be “otherwise unknowable” before the digital age. *Carpenter*, 138 S. Ct. at 2218; *see also Riley v. California*, 573 U.S. 373, 393–94 (2014); *People v. Tafoya*, 494 P.3d 613, 623 (Colo. 2021) (holding that three-month-long surveillance of a home using a pole camera violated the Fourth Amendment following *Carpenter*).
42. Keyword data reveals the privacies of life by exposing what people wonder, desire, believe, and fear. *See Seth Stephens-Davidowitz, Everybody Lies: Big Data, New Data, and What the Internet Can Tell Us About Who We Really Are* 3 (2017). It can show that someone hates their boss, is the victim of domestic abuse, is unhappy in their marriage, or was recently diagnosed with cancer. *See id.* at 6, 27. These are intimate details that paint intimate portraits of the inner workings of people’s minds, and people want and expect this information to remain private.
43. In many ways, this information is even more revealing than the location data at issue in *Carpenter*. There, the Court held that cell-site location information (“CSLI”) revealed “privacies of life” to law enforcement because a cell phone “tracks nearly exactly the movements of its owner” as they travel “into private residences, doctor’s offices, political headquarters, and other potentially revealing locales.” *See Carpenter*, 138 S. Ct. at 2217–18. Keyword search data exposes more personal information. Instead of merely tracking a visit to the doctor, keyword search data can expose a person’s medical diagnosis. Instead of following a person to a “potentially revealing” location, keyword search data explicitly reveals a person’s thoughts about any number of topics including things like race relations in the United States or their sexual orientation. *See Stephens-Davidowitz, supra*, at 6, 117. CSLI gives the government dots on a map which enables it to make inferences about “familial, political, professional, religious, and sexual associations.” *See United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring). By contrast, keyword search data gives the government explicit information about an individual’s innermost thoughts and associations. Brennan Ctr. for Justice, *Applying the Supreme Court’s Carpenter Decision to New Technologies* 4 (Mar. 18, 2021), <https://perma.cc/JK3J-C9N2>.

44. Additionally, keyword search data reconstructs information that would have been unknowable in 1791, when the Fourth Amendment was ratified. In *Carpenter*, the Supreme Court highlighted that the precision and scale of CSLI surveillance would have been impossible when the Fourth Amendment was adopted. *See Carpenter*, 138 S. Ct. at 2218. Similarly, an analysis of Google search terms retrospectively reveals information about a person that would otherwise be unknowable to police. A person’s search history is an inventory of all the names, addresses, and subjects about which they sought information. At the time the Fourth Amendment was adopted, this information would have been impossible to collect.
45. Mr. Seymour had a reasonable expectation of privacy in his keyword search data because it contains the “privacies of life” and because it reflects information that would have otherwise been unknowable to law enforcement. A search of this information is the epitome of a “too permeating police surveillance.” *Id.* at 2214 (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)). This warrant authorized a Fourth Amendment search.

**B. The third-party doctrine does not apply to Google search data.**

46. Mr. Seymour did not voluntarily convey his keyword search data to Google in any meaningful way, and thus did not waive the privacy interest he had in his keyword search data.
47. The third-party doctrine is an exception to the Fourth Amendment that allows law enforcement to warrantlessly search information that a person voluntarily conveys to a third party. The Supreme Court crafted this doctrine in the 1970s in the context of bank deposit slips and telephone numbers dialed. *Miller*, 425 U.S. at 440 (bank records); *Smith*, 442 U.S. at 742 (telephone numbers). However, the Supreme Court has recently and repeatedly recognized that new technologies require a different approach. *See Carpenter*, 138 S. Ct. at 2214; *Riley*, 573 U.S. at 393 (comparing a physical search to the search of a cell phone is like “saying a ride on horseback is materially indistinguishable from a flight to the moon”); *Jones*, 565 U.S. at 417 (Sotomayor, J., concurring) (the third-party doctrine is “ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks”) (Sotomayor, J., concurring). As a result, any extension of old rules to digital data “has to rest on its own bottom.” *Riley*, 573 U.S. at 393.
48. In *Carpenter*, the Supreme Court expressly distinguished cell phone location data, holding that “there is a world of difference between the limited types of personal information addressed in *Smith* and *Miller* and the exhaustive chronicle of location information casually collected by wireless carriers today.” *See* 138 S. Ct. at 2219. Moreover, the Court was clear that the doctrine must not be “mechanically” applied in the digital age. *Id.*
49. Because keyword search data is even more private than the location data in *Carpenter*, it is also “qualitatively different” from the telephone numbers and bank records in *Smith* and *Miller*. *See id.* at 2216–17. It is “detailed, encyclopedic, and effortlessly compiled,” *id.* at 2216, as well as deeply revealing. Granting the government the ability to search across all of this information is an unprecedented new surveillance power, allowing investigators to go back in time and learn what someone was thinking, all without expending physical resources.

50. Indeed, in her concurrence in *Jones*, Justice Sotomayor anticipated constitutional concerns regarding searches of keyword data. She insisted that the Fourth Amendment must evolve with changing technological realities and expressed her “doubt that people would accept without complaint the warrantless disclosure to the government of a list of every Web site they had visited in the last week, or month, or year.” 565 U.S. at 418 (Sotomayor, J. concurring); *see also United States v. Moalin*, 973 F.3d 977, 993 (9th Cir. 2020) (expressing doubt that warrantless collection of metadata comported with the Fourth Amendment, citing Justice Sotomayor’s concurrence in *Jones*).
51. The fact that people convey their search queries to Google does not lessen their privacy interest in their search history. In this sense, using a search engine to run keyword searches is like using a cell phone to make cell phone calls—it necessarily involves a third-party service provider. As the *Carpenter* Court explained, “[a]part from disconnecting the phone from the network, there is no way to avoid leaving behind a trail of location data.” 138 S. Ct. at 2220. The same holds true for search queries. There is no way to run a search query without conveying that information to the search engine. Moreover, using a search engine, like using a cell phone, is “such a pervasive and insistent part of daily life” that it is “indispensable to participation in modern society.” *Id.* (citations omitted). Like consulting the card catalogue in a library, it is the way people find what they are looking for online. It is often the first place people turn for whatever information they need, the gateway to the internet. Consequently, “in no meaningful sense does the user voluntarily ‘assume the risk’” of turning over a comprehensive dossier of his search activity to law enforcement. *Id.* (citation omitted).
52. Critically, Google logs search queries for everyone who runs a Google search, regardless of whether they are logged in to a Google account. If a user is logged-in to a Google account at the time of the search, Google pairs that search with the account using a GAIA ID. If a user is not logged-in, Google still records and stores their searches. In that instance, however, the information is paired to a Browser Cookie ID rather than a GAIA ID. Furthermore, users who are not logged-in have no ability to delete this data once it has been collected. *See Google, Search History*, <https://perma.cc/7XKJ-XWUN> (last visited June 29, 2022) (showing users preference options for non-registered Google Search users and providing no option to prevent data collection or control data use once it has been collected).
53. Consequently, a keyword warrant “runs against everyone,” *Carpenter*, 138 S. Ct. at 2218, because there is no way for users to prevent their keyword searches from being captured by Google. Indeed, the warrant here returned three queries that were not paired with a GAIA ID, only a Browser Cookie ID, indicating that those users were not logged-in to a Google account. In short, users like Mr. Seymour do not “voluntarily” record this information in any meaningful way; there is no choice with Google.
54. Finally, Google’s Terms of Service and Privacy Policy have little if any bearing on Fourth Amendment expectations of privacy. *See, e.g., United States v. Irving*, 347 F. Supp. 3d 615, 621 (D. Kan. 2018) (rejecting government’s argument that defendant had no expectation of privacy in his Facebook account information where he agreed to Facebook’s terms that “generally inform[ed] users that Facebook collects a user’s content and information.”). Although cell phone users sign contracts with cell phone services providers, the Supreme Court has never allowed such agreements to determine the contours of the Fourth

Amendment. *See Smith*, 442 U.S. at 745 (“We are not inclined to make a crazy quilt of the Fourth Amendment”). Indeed, the *Carpenter* majority never mentioned Mr. Carpenter’s contract or terms of service. Instead, the Court looked to the realities of the relationship between cell phone users and cell phone companies, and it determined that people do not “voluntarily” convey sensitive data to the cell phone service provider in any “meaningful sense.” 138 S. Ct. at 2220. If anything, Google’s Privacy Policy indicates that search history data is private data owned by the account holder, not a Google business record. *See* Attachment 9 (Google Privacy Policy) (“When you’re signed in, we also collect information that we store with your Google Account, which we treat as personal information.”). Additionally, it is critical to note that Mr. Seymour was just a child—twelve years old—when he created his Google account on September 6, 2016. Google’s own terms require individuals to be at least 13 years old to create an account, undercutting any argument that he provided voluntary and meaningful consent to a search of his account. Google, *Age Requirements on Google Accounts*, <https://perma.cc/Z6XG-N795> (last visited June 30, 2022).

55. The Supreme Court has never sanctioned a warrantless search of Google data, let alone a search of billions of people’s data. On the contrary, a reverse keyword search is precisely the kind of “permeating police surveillance” that the Court has repeatedly warned against. *Di Re*, 332 U.S. at 595 (accord. *Carpenter*, 138 S. Ct. at 2214). Only the vanishing few who can move through life without Google searches “could escape this tireless and absolute surveillance.” *Carpenter*, 138 S. Ct. at 2218. This court should therefore conclude that the third-party doctrine does not apply to Google search data.

**C. This is a search because users have a possessory interest in their keyword search data.**

56. Government conduct is a Fourth Amendment search if it involves an incursion into areas where someone has a property interest. Mr. Seymour, as well as the billions of others whose information was collected in this reverse search, has a property interest in his Google search history. And because the government infringed upon this interest, it was a search under a “property-based” interpretation of the Fourth Amendment. *See Carpenter*, 138 S. Ct. at 2257 (Gorsuch, J., dissenting).
57. Terms of service have little relevance in a *Katz*-type analysis, where the question is what society, not Google, is prepared to accept as reasonable. But a more “traditional approach” asks “if a house, paper or effect was *yours* under law.” *Id.* at 2267–68. If it was, “[n]o more [is] needed to trigger the Fourth Amendment.” *Id.* This understanding of the Fourth Amendment predates *Katz* and has been repeatedly identified by the Supreme Court as an equally valid and independent test for determining whether a search occurred. *See, e.g., Jones*, 565 U.S. at 409; *Kyllo*, 533 U.S. at 37; *Soldal v. Cook County*, 506 U.S. 56, 62 (1992) (“our cases unmistakably hold that the Amendment protects property as well as privacy”).
58. Thus, it is highly relevant to a property-based analysis that Google treats search history as personal data that belongs to the user who created it. As Google explains to users, “Your content remains yours, which means that you retain any intellectual property rights that you have in your content.” *See* Attachment 26 (Google Terms of Service) at 4. Justice Gorsuch quoted this language—word for word—in *Carpenter* as an example of the type of positive law



that would likely establish a property right in one's digital "papers." 138 S.Ct. at 2242 (Gorsuch, J., dissenting).

59. Google's licensing provisions also reinforce the existence of an individual property right. When creating an account, users agree to provide Google with a license to use any content they create if it is protected by intellectual property rights. Google, *Terms of Service*, <https://perma.cc/N4QE-MPLA> (last visited Apr. 15, 2022). The license gives Google the right to analyze user content to provide "recommendations and personalized search results, content, and ads." *Id.* And it indicates that the words someone types into the Google search box belong to the user, not to Google. Google simply has permission to use that information according to the license agreement. There are seemingly infinite combinations of letters, words, and phrases that any person can put together when searching for something online, and according to Google's terms of service, people have a property interest in whatever queries they create.
60. Attendant to this property interest, Google recognizes that its users "expect Google to keep their information safe, even in the event of their death," allowing a user to specify who can have access to their records after death, or in the alternative whether Google should delete the data. *See* Google, *Submit a Request Regarding a Deceased User's Account*, <https://perma.cc/SY7D-LK95> (last visited Apr. 15, 2022). Account holders are also able to download their data and request that Google delete it at any time using the Google Takeout service, however Google Takeout does not give users the option to wholly opt out of data collection. *See* Google, *How to Download Your Google Data*, <https://perma.cc/TGZ3-LVAM> (last visited Apr. 15, 2022). The Google Takeout webpage can only be accessed by users with a registered Google account.
61. The fact that Google fulfills requests from government agencies in response to valid warrants does not undermine anyone's property interest in the underlying data. On the contrary, the fact that the government sought a warrant and now seeks to defend its legality is evidence that a Fourth Amendment search occurred. *See Chatrie*, 2022 WL 628905, at \*20 n.34 (assuming that the government's collection of geofence location data was a "search" because police sought a warrant); *In re Search of Information Stored at Premises Controlled by Google*, 481 F. Supp. 3d 730, 736 (N.D. Ill. 2020) (noting that by obtaining a warrant and arguing for the validity of that warrant, "the government is treating its proposed capture of information as a search"). Moreover, Google's policies set forth discrete circumstances where it will disclose information to law enforcement; all of them imply that law enforcement has identified a known target. They do not suggest that law enforcement will be permitted to conduct fishing expeditions, nor do they inform users of such a possibility.
62. On the contrary, Google represents that information like search history is private user data that cannot be publicly disclosed. It is not Google's data; it is the users' data, which Google holds in trust. Consequently, Google users can exclude others from their account data, which is "one of the most treasured strands" of the property rights bundle. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) ("The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights."); *see also Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (called the right to exclude "one of the most essential sticks" in the in the "bundle of rights that are commonly characterized as property-the right to exclude others"); William Blackstone, 2 Commentaries

on the Laws of England, at \*2 (1771) (defining property as “that sole and despotic dominion ... exercise[d] over the external things of the world, in total exclusion of the right of any other ....”).

63. The Supreme Court recently recognized that individuals have a Fourth Amendment interest in rental cars owned by a third-party company, just as guests have a privacy interest in their rented hotel rooms. *See Byrd v. United States*, 138 S. Ct. 1518, 1528 (2018) (There is “no reason why the expectation of privacy that comes from lawful possession and control and the attendant right to exclude would differ depending on whether the car in question is rented or privately owned...much as it did not seem to matter whether the friend of the defendant in *Jones* owned or leased the apartment he permitted the defendant to use in his absence.”). Indeed, if someone else stole Mr. Seymour’s search records from Google, he could recover damages in a traditional tort action. *Cf. Carpenter*, 138 S. Ct. at 2242 (Gorsuch, J., dissenting). Similarly, anyone who accesses Mr. Seymour’s Google account without authorization could be held criminally liable under the Stored Communications Act (“SCA”). *See* 18 U.S.C. § 2701(a). Here, Google structured its services to reflect the SCA’s mandate, giving users the ability to exclude anyone from accessing their information. As a result, users like Mr. Seymour have a property interest in their Google search history data.
64. When law enforcement searched and seized Mr. Seymour’s Google data, it eliminated his ability to exclude others from it. This intrusion violated Mr. Seymour’s possessory interest in his data, therefore indicating that a Fourth Amendment search occurred.

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65. People have both a reasonable expectation of privacy and a possessory interest in their keyword search data. Consequently, law enforcement’s acquisition of that data was a Fourth Amendment search. Furthermore, the third-party doctrine does not apply because Mr. Seymour did not voluntarily convey his keyword search data to Google.

## **II. The keyword warrant is unconstitutional.**

66. The Fourth Amendment requires that a warrant (1) be supported by probable cause; (2) particularly describe the place to be searched and the things to be seized; and (3) be issued by a neutral disinterested magistrate. *Dalia v. United States*, 441 U.S. 238, 255 (1979). When Fourth Amendment searches implicate First Amendment concerns, courts must be careful to apply the Fourth Amendment’s requirements with “the most scrupulous exactitude,” mindful that “leaving the protection of [First Amendment] freedoms to the whim of the officers charged with executing the warrant” is unconstitutional. *Stanford*, 379 U.S. at 485; *see also Tattered Cover*, 44 P.3d at 1047.
67. The keyword warrant in this case is a prime example of an indiscriminate, “dragnet type law enforcement practice[,]” sweeping up the search history data of billions in the hopes of finding one potential lead. *United States v. Knotts*, 460 U.S. 276, 284 (1983). It is a general warrant, an overbroad request that fails to meet the requirements of probable cause and particularity. It is antithetical to the Fourth Amendment. It is not even close to satisfying the Fourth Amendment requirements with “scrupulous exactitude,” despite the inherent First Amendment

concerns involved. *Stanford*, 379 U.S. at 485. Due to these constitutional deficiencies, the warrant is unconstitutional under the Fourth Amendment and its fruits should be suppressed.

**A. The keyword warrant is a prohibited general warrant.**

68. Keyword warrants pose the same threats that general warrants and writs of assistance posed at the time of the Founding. General warrants “allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity,” and were one of the direct causes that led to American revolution. *Riley*, 573 U.S. at 403. General warrants were despised because they “specified only an offense...and left to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched.” *Steagald v. United States*, 451 U.S. 204, 220 (1981). The same is true of the keyword warrant here. Keyword warrants intrude on the privacy of protected spaces like the home, generating fear that anyone might become the subject government scrutiny in their most private spaces. *See Silverman v. United States*, 365 U.S. 505, 511 (1961) (“At the very core [of the Fourth Amendment] stands the right of a [person] to retreat into his own home and there be free from unreasonable governmental intrusion.”).
69. The prohibition of general warrants remains a central tenet of American ideals, given that opposition to general warrants “helped spark the Revolution itself.” *Carpenter*, 138 S. Ct. at 2213; *see also Riley*, 573 U.S. at 403; *Stanford*, 379 U.S. at 481; *Marcus v. Search Warrant of Property*, 367 U.S. 717, 728 (1961). In fact, general warrants are key to understanding why the Fourth Amendment exists. *See Stanford*, 379 U.S. at 482–83 (describing the “battle for individual liberty and privacy” as won when British courts stopped the “roving commissions” given authority “to search where they pleased”). General warrants did not specify which houses to search or whom to arrest; instead, “discretionary power [was] given to messengers to search wherever their suspicions may chance to fall,” leading to the destruction of property and the arrest of dozens of people. *Wilkes v. Wood*, 98 Eng. Rep. 489, 498 (1763). General warrants left “the liberty of every man in the hands of every petty officer” and were ultimately denounced as “the worst instrument of arbitrary power.” *Stanford*, 379 U.S. at 481 (citation omitted).
70. The prohibition on general warrants restricts the government from exercising “arbitrary power.” *Id.* And by requiring sufficient probable cause and particularity, the Fourth Amendment limits both the scope of searches and the discretionary power of law enforcement. *See* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1298–1305 (2016) (describing the drafting process of the Fourth Amendment). For example, a warrant to search every house in the neighborhood or every person at a bar would be plainly unconstitutional. It is axiomatic that probable cause must be based on individualized facts, not group probabilities. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979); *United States v. Curry*, No. 3:17-CR-130, 2018 WL 1384298, at \*11 (E.D. Va. Mar. 19, 2018) (“[G]eneralized suspicion and fear cannot substitute for specific and articulable facts”) (citations and quotation marks omitted), *aff’d*, 965 F.3d 313 (4th Cir. 2020); *United States v. Glenn*, No. CR-609-027, 2009 WL 2390353, at \*5 (S.D. Ga. 2009) (A “generalized belief that some of the patrons whom [police] had targeted for a systematic patdown might possibly have a weapon was insufficient to justify a cursory frisk of everyone present.” (quotation marks omitted)); *Commonwealth v. Brown*, 861 N.E.2d 504, 505 (Mass. App. Ct. 2007) (finding a warrant “authorizing a search

of ‘any person present’ . . . resulted in an unlawful general search”); *Carroll v. United States*, 267 U.S. 132, 153–54 (1925) (stating it would be “intolerable and unreasonable” to “subject all persons lawfully using the highways to the inconvenience and indignity” to a search just because some cars may contain contraband); *Grumon v. Raymond*, 1 Conn. 40, 43 (1814) (holding a “warrant to search all suspected places” for stolen goods was unlawful because “every citizen of the United States within the jurisdiction of the justice to try for theft, was liable to be arrested”). But, with a keyword warrant like the one, the government defies this fundamental instruction and predicates probable cause on group probabilities. If such a warrant is deemed valid, the government can search more than a home or pockets; it can search through users’ thoughts as expressed in searches, without probable cause or particularized suspicion as to any one individual person.

71. Keyword warrants represent precisely the sort of undirected, unrestrained search of constitutionally protected areas as the reviled general warrants of old. And when deciding if a search is constitutional, the Supreme Court has always been “careful to distinguish between [] rudimentary tracking...and more sweeping modes of surveillance.” *Carpenter*, 138 S. Ct. at 2215 (citing *Knotts*, 460 U.S. at 284). Reverse keyword warrants are nothing if not “sweeping,” and therefore fall in the most concerning category of searches. In *Knotts*, the Supreme Court cautioned against this exact kind of surveillance, noting that “if such dragnet type law enforcement practices . . . should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable.” 460 U.S. at 283–84. That time is now.
72. Law enforcement did not—and could not—identify beforehand whose Google data they planned to search and seize. Consequently, the government failed to establish probable cause as to any one of the billions of Google users whose data it searched. *See Chatrue*, 2022 WL 628905, at \*18 (finding that the warrant violates the Fourth Amendment because the government “[l]acked [p]articulized [p]robable [c]ause as to [e]very Google [u]ser in the [g]eofence). As discussed below, this keyword warrant cannot meet the probable cause and particularity requirements of the Fourth Amendment and is therefore an invalid general warrant.

**B. The keyword warrant lacks probable cause to justify such an overbroad search.**

73. The keyword warrant in this case involved a search of every single Google query over the course of 15 days. It was a modern-day digital dragnet, conducted by the world’s largest search engine company, at the government’s direction. The government commandeered Google to search through nearly a billion private accounts, in addition to the billions of other searches conducted by users who were not logged in.<sup>8</sup> If the government had probable cause to search

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<sup>8</sup> Google does not report daily search statistics, but in 2016 the company reported that it processes “trillions” of searches per year. Danny Sullivan, *Google Now Handles At Least 2 Trillion Searches Per Year*, Search Engine Land (May 24, 2016), <https://perma.cc/5KXC-JC7G>. It is safe to assume that the search engine meant that it processes at least two trillion searches per

one account, it would have done so. It did not. Instead, it searched billions to determine if any of them contained data of interest. The warrant is the very definition of overbroad, and this court should find it unconstitutional.

74. The Supreme Court has been clear that the scope of a search must be tailored to the probable cause in each case. Probable cause is “a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). And a warrant must be “no broader than the probable cause on which it is based.” *United States v. Hurwitz*, 459 F.3d 463, 473 (4th Cir. 2006) (quoting *United States v. Zimmerman*, 277 F.3d 426, 432 (3d Cir. 2002)). Law enforcement must have “a reasonable ground for belief of guilt...particularized with respect to the person to be searched or seized.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citations and quotation marks omitted). Particularized probable cause “cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.” *Ybarra*, 444 U.S. at 91. Rather, there must be a logical “nexus” between the crime and the evidence to be seized, *see* LaFave, 2 Search and Seizure § 3.7(d) (6th ed. 2021), not assumptions about what a suspect might have searched for.
75. Here, the government did not have probable cause to search even one account. The statement of probable cause was nearly identical to the statements used for the first two failed keyword warrants. *Compare* Attachment 1 (Nov. 19 Keyword Warrant) at 3053–59 *with* Attachment 2 (Oct. 1 Keyword Warrant) at 2596–601 and Attachment 3 (Oct. 20 Keyword Warrant) at 3063–68. All of them relied on the same description of surveillance video obtained from a neighboring home, showing three suspects in a yard. Attachment 1 (Nov. 19 Keyword Warrant) at 3055–56. But nothing in that description mentioned a cell phone or Google. It did not state that the suspects were seen holding a phone. It did not state that the suspects were seen using one. Instead, it cited the “personal nature of this offense” and “the amount of planning that likely went into a coordinated attack such as this one,” as well as the fact that the house was not on a corner lot. *See id.* at 3058. Based on nothing more, it concluded that there was a “reasonable probability that one or more of the suspects searched for directions to the victim’s address prior to the fire.” *Id.*
76. This was pure, unsupported conjecture. At the time, investigators simply “didn’t know” who they were looking for. Prelim. Tr. at 84. They thought it might have been someone living in the house. *See id.* at 83. They thought it might have been someone with a personal vendetta against the family. *Id.* at 64–65. They thought it might have been a random person. *Id.* at 84–85. They simply did not know if, whether, or why someone may have searched Google for

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year, which would put average daily Google searches at around 5.5 billion. Given that the volume of Google searches increases substantially year to year, it is likely that the number is significantly higher. *See, e.g.,* Kris Reid, *How Many Google Searches Per Day On Average In 2022?*, Ardor SEO (2022), <https://perma.cc/78HE-HNNK>. Internet Live Stats reports that there are approximately 100,000 Google search queries every second, which would translate to over 8 billion searches per day. *Google Searches in 1 Second*, Internet Live Stats, <https://perma.cc/CG3G-RN67>.

5312 Truckee Street. *Id.* at 84 (“we did not know at all why this had occurred”). In short, investigators lacked probable cause to search any one individual’s search history, so instead relied on speculation and generalized suspicion to search billions.

77. The government’s justification for the keyword warrant is backwards, and it has been recently rejected in analogous geofence cases. For example, a federal court in Illinois rejected a geofence warrant application, finding that the government’s position “resembles an argument that probable cause exists because those users were found in the place...[where] the offense happened,” an argument the Supreme Court rejected in *Ybarra*. See *In re Information Stored at Premises Controlled by Google*, 481 F. Supp. 3d at 751. The court further stated:

[I]f the government can identify that wrongdoer only by sifting through the identities of unknown innocent persons without probable cause and in a manner that allows officials to rummage where they please in order to see what turns up, even if they have reason to believe something will turn up, a federal court in the United States of America should not permit the intrusion. Nowhere in Fourth Amendment jurisprudence has the end been held to justify unconstitutional means.

*Id.* at 754 (citations and quotation marks omitted). More recently in *Chatrie*, the court found “unpersuasive the United States’ inverted probable cause argument—that law enforcement may seek information based on probable cause that some unknown person committed an offense, and therefore search every person present nearby.” *Chatrie*, 2022 WL 628905, at \*24. That inverted probable cause argument is the same one being made regarding keyword warrants in this case and similarly must be rejected.

78. In sum, the keyword warrant here is void for overbreadth. It authorized an unconstitutional search that lacked any individualized suspicion. Indeed, there is no amount of probable cause that could justify a search of such magnitude. Here, law enforcement did not indicate probable cause for even a single Google user caught up in the keyword dragnet. The keyword warrant was therefore unconstitutional for lack of probable cause.

### **C. The keyword warrant lacks particularity.**

79. The Fourth Amendment requires that warrants “particularly describ[e]...the...things to be seized.” U.S. Const. amend. IV. A warrant’s description of “what is to be taken” must leave “nothing...to the discretion of the officer executing the warrant.” *Marron v. United States*, 275 U.S. 192, 196 (1927); see also *Stanford*, 379 U.S. at 481. The particularity requirement demands that a warrant spell out precisely what is within its scope because law enforcement officers are prohibited from “seizure of one thing under a warrant describing another.” *Marron*, 275 U.S. at 196. A valid warrant must confine “the executing [officers’] discretion by allowing them to seize only evidence of a particular crime.” *United States v. Cobb*, 970 F.3d 319, 332 (4th Cir. 2020) (quoting *United States v. Fawole*, 785 F.2d 1141, 1144 (4th Cir. 1986), as amended (Aug. 17, 2020), cert denied, 141 S. Ct. 1750 (2021)). A valid warrant limits searches and seizures exclusively to evidence that is related to a specific crime. See *Andresen v. Maryland*, 427 U.S. 463, 481–83 (1976). Consequently, it is impermissible to search through a person’s data when that person has nothing to do with the crime in question. The keyword warrant here violates the particularity requirement by granting the government and Google

broad discretion to search private data, neglecting the fact that the vast majority of the data searched was inevitably unrelated to the criminal investigation.

80. The warrant did not establish probable cause that is “particularized with respect to the person to be searched or seized.” *Pringle*, 540 U.S. at 371. Instead, it operated in reverse, requiring Google to search and produce data for *all* users who searched for one of nine variations of an address over the course of 15 days. This reverse search process is like the geofence warrant in *Chatrie*, which was found unconstitutional for lack of particularity because it captured data from people who were not even suspected to be involved with the crime. 2022 WL 628905, at \*14. That search swept up people who were nowhere near the incident, including people at home in a nearby apartment complex, dining at a Ruby Tuesday restaurant, and driving next to a nearby church. *Id.* Similarly, here, the keyword warrant encompasses people who may have searched for a local address, with no restrictions to filter out people who searched specific terms for reasons unconnected to the crime under investigation.
81. Additionally, the warrant is not particularized because it does not adequately describe the data to be searched. While it identified an address for Google headquarters, “1600 Amphitheater Parkway,” it did not identify any accounts to be searched there. Instead, it gave law enforcement the discretion to rummage through everyone’s keyword data. By contrast, in *People v. Coke*, the Colorado Supreme Court held that a warrant authorizing a search of a single suspect’s cell phone lacked particularity because it permitted law enforcement to search the device for any incriminating information. 461 P.3d 508, 516 (Colo. 2020). If an unconstrained search of a single, previously identified suspect’s information lacks particularity, then an unconstrained search of a *billion unidentified* users’ information is infinitely more egregious.
82. At the very least, the government should be required to identify the target Google accounts to search through “objective guardrails” and benchmarks. *Chatrie*, 2022 WL 628905, at \*25 But that is not what happened here. The warrant made no attempt to limit the number of accounts subject to search. And the error was only compounded by requiring the disclosure of identifying IP addresses. As discussed in part III(C), *infra*, including IP addresses in the initial warrant return rendered the “de-identification” procedure meaningless and misleading.
83. The particularity requirement is at its most stringent when the items to be searched and seized raise First Amendment concerns. *Stanford*, 379 U.S. at 485. That is because some searches, as with the keyword warrant here, have the potential to burden bystanders’ freedom of inquiry and association. Indeed, disclosing associations to the government “can chill association ‘even if there is no disclosure to the general public.’” *Ams. for Prosperity Found. V. Bonta*, 141 S. Ct. 2372, 2388 (quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)). Likewise, disclosing search queries is as close to mind-reading as the government can get. For most Americans, the Google search box is a place of curiosity, convenience, and even confession. We ask of the machine what we do not dare dream to ask of other people. Google searches are often one of the most private things we do. They reveal not just our activities, but our intentions, our goals, and our deepest fears.
84. In this instance, the search would have swept up anyone looking for directions to a friend’s house or hoping to learn about a colleague. The warrant was not narrow; it required Google to

search *everyone*. And it is not a stretch to imagine similar warrants seeking data about a controversial political event or a local women’s health clinic. The Fourth Amendment is especially important for these reasons, and the warrant here failed to meet the heightened threshold for warrants that raise First Amendment concerns. It was a digital general warrant, lacking both probable cause and particularity, and this Court should find it unconstitutional.

### III. The good-faith exception does not apply.

85. Under Colorado law, the good-faith exception is limited to when law enforcement acts “as a result of a good-faith mistake or a technical violation.” Colo. Rev. Stat. Ann. § 19-2.5-906. This test is substantially similar to the “objectively reasonable” standard articulated by the U.S. Supreme Court in *United States v. Leon*, 468 U.S. 897, 926 (1984), but with a presumption that an officer was acting in good faith if acting pursuant to a warrant. *People v. Randolph*, 4 P.3d 477, 483 (Colo. 2000). Nonetheless, suppression is appropriate and the good-faith exception does not apply if the officer “failed to undertake the search in a good-faith belief that it was reasonable.” *Id.*; see also *Leon*, 468 U.S. at 926. As in *Leon*, the good faith exception does not apply in at least four circumstances: (1) where a warrant is based on knowing or recklessly false statements, *Leon*, 468 U.S. at 914 (citing *Franks v. Delaware*, 438 U.S. 154 (1978)); (2) where the judge acted as a rubber stamp for the police, *id.* (citing *Gates*, 462 U.S. at 239); (3) where a warrant affidavit lacks a substantial basis to determine probable cause, *id.* at 915 (citing *Gates*, 462 U.S. at 239); and (4) where no officer could reasonably presume the warrant was valid. *Leon*, 468 U.S. at 926.
86. Here, the good faith exception does not apply because of (1), (3), and (4). The warrant affidavit misled the court as to the breadth of the search, the lack of statutory authorization, and the so-called “de-identified” nature of the data. And it was so lacking in probable cause and particularity that no officer could reasonably presume it was valid. Instead, it was invalid from the beginning. See *Groh v. Ramirez*, 540 U.S. 551, 558 (2004) (finding a warrant “so obviously deficient” in particularity that “we must regard the search as ‘warrantless’ within the meaning of our case law.”).

#### A. Knowing or Recklessly False Statements

87. Investigators were anxious to solve this case. They obtained search warrants for specific individuals’ cell phone and Google data. Prelim. Tr. at 72-76. But when these efforts proved unfruitful, their tactics shifted. Prelim. Tr. at 47. They cast digital dragnets, each bigger than the last, without identifying any suspects at all. Investigators issued “very general” search warrants, *id.* at 61–62, sweeping up hundreds and thousands of people with two tower dumps and an IMSI catcher, and then hundreds of millions of people with the geofence and Fog Data warrants. Prelim. Tr. at 70–71, 127–28. It was a parade of general warrants, demonstrating investigators’ repeated willingness to violate the privacy rights of Coloradans *en masse*. See *supra*, ¶¶ 8–13. And the keyword warrant was the biggest dragnet of them all.
88. Det. Sandoval submitted the keyword warrant application, and when he did, he was aware, or should have been aware, that it would entail the search of billions of people. Yet the application failed to disclose this critical fact to the issuing judge. It failed to convey that it was seeking to use a novel type of “reverse” warrant to search *everyone*, without limitation, who conducted a



Google search over the course of 15 days. And this lack of candor was highly consequential. *See People v. Winden*, 689 P.2d 578, 583 (Colo. 1984) (recognizing that an application “may be so misleading because of the omission of material facts known to the affiant at the time the affidavit was executed that a finding of probable cause based on such statements may be deemed erroneous”).

89. Had Det. Sandoval said that police planned to conduct a search of billions, no judge in the country would have signed the warrant. Such language would have immediately revealed the complete lack of probable cause to cast such an indiscriminately broad net. But Det. Sandoval omitted the most critical facts with a reckless disregard for the truth, concealing the true scope of the search, and substantially misleading the judge. *See id.*; *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008); *see also Groh*, 540 U.S. at 561 n.4 (where government agent did not alert the magistrate to the defect in the warrant that the agent had drafted, the Court could not be certain whether the magistrate was aware of the scope of the search he was authorizing); *see also United States v. Rettig*, 589 F.2d 418, 422 (9th Cir. 1978) (“By failing to advise the judge of all the material facts, including the purpose of the search and its intended scope, the officers deprived him of the opportunity to exercise meaningful supervision over their conduct and to define the proper limits of the warrant.”).
90. Furthermore, had Det. Sandoval truthfully described the nature of the keyword warrant, it would have been clear that the Stored Communications Act does not authorize such reverse searches. The affidavit relies on the SCA, 18 U.S.C. § 2703, as a basis for the warrant. *See* Attachment 1 (Nov. 19 Keyword Warrant) at 3052. The SCA, however, requires that police identify particular people to search. It limits the government to obtaining a warrant for records pertaining to “a subscriber to or customer of” the provider. 18 U.S.C. § 2703(c)(1). This authorization is phrased in the singular and does not contemplate, let alone permit, astronomically large searches of unidentified people. Furthermore, the SCA prohibits the government from obtaining records that are not “relevant and material” to the ongoing criminal investigation. *See* 18 U.S.C. § 2703(d). Yet, by dint of operation, nearly all of the records searched and seized with a keyword warrant have no connection to the crime under investigation.<sup>9</sup>

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<sup>9</sup> At minimum, the “relevant and material” requirement under the SCA is more demanding than the mere “relevance” standard governing the issuance of administrative and grand-jury subpoenas. *See In re Application of U.S. for an Order for Disclosure of Telecomms. Records & Authorizing the Use of a Pen Register and Trap and Trace*, 405 F. Supp. 2d 435, 448 (S.D.N.Y. 2005) (Gorenstein, M.J.); *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Auth.*, 396 F. Supp. 2d 747, 752 (S.D. Tex. 2005) (Smith, M.J.). Under the lower “relevance” standard, courts have consistently required that the particular records demanded by the government have an actual connection to a particular investigation. *See, e.g., Bowman Dairy Co. v. United States*, 341 U.S. 214, 221 (1951) (invalidating a subpoena’s “catch-all provision” on the grounds that it was “merely a fishing expedition to see what may turn up”). Courts have also rejected or narrowed subpoenas that, because they fail to identify the outer bounds of the categories of records they seek, cover large volumes of *irrelevant* documents. *See In re Grand Jury Subpoena*

91. Where, as here, the government indiscriminately seeks records implicating the privacy of hundreds or thousands of individuals in one fell swoop, it cannot possibly meet the SCA’s “relevant and material” standard, let alone the probable cause standard, needed to search *all* Google search users. *See Chatrie*, 2022 WL 628905, at \*18 (finding that a geofence warrant “[l]acked [p]articlarized [p]robable [c]ause as to [e]very Google [u]ser” searched). Any reliance on the SCA was thus objectively unreasonable. *See Illinois v. Krull*, 480 U.S. 340, 360 n.17 (1987) (declining to apply good faith exception “when police officers act outside the scope of a statute, albeit in good faith”). A reverse keyword warrant is plainly not the kind of search authorized by the SCA and citing it here was reckless and misleading.
92. It is possible that Det. Sandoval did not know exactly how many people would be searched by the keyword warrant, but this is no excuse. He signed the affidavit and then executed the warrant. Thus, “[a]t each stage, he had a duty to exercise his independent good judgment to assure himself that the affidavit was sufficient.” *Randolph*, 4 P.3d at 484. It is not acting in “good faith” to obtain a warrant for a search that the affiant does not understand and fails to explain to the issuing judge. *See Franks*, 438 U.S. at 163 n.6 (recognizing that police cannot “insulate one officer’s deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity”).
93. It is apparent, however, that investigators had at least some idea of the scope of the search. Det. Baker stated, albeit mistakenly, that he believed the search covered the entire state of Colorado. *See Prelim. Tr.* at 81–82 (“I believe we limited it to Colorado for that search – that keyword search on that warrant.”); *see also id.* at 132 (recognizing that “Google is in the data collection business” and that “if you are logged into a Google account and are doing things with your Google products, they will be able to attribute whatever it is that you’re doing back to your account.”). The affidavit, however, does not mention searching everyone in Colorado, let alone the warrant’s true scope: everyone in the world who searched Google.
94. Finally, the application omitted that Google had refused to comply with two previous keyword warrants that were signed by a different judge. Google did not comply with the October 1, 2020, warrant because it violated their policy regarding “de-identification of responsive productions” by seeking full names and addresses for all responsive queries. *See Exhibit 4 (Declaration of Nikki Adeli)* ¶ 11. Likewise, Google did not comply with the October 20, 2020, warrant because it sought detailed user location data in addition to “anonymized” results. *See id.* ¶ 13. But Det. Sandoval failed to provide any of this information to Judge Zobel in the November 19, 2020, warrant application. Had the court been informed of these previous doomed attempts, it would have been apparent that requiring the production of identifying information, including IP addresses, defeats the so-called “de-identification” procedure outlined in the second and third warrants.
95. By requiring Google to provide full IP addresses for every responsive query, investigators knew that they would be able to link individual queries to particular people, regardless of whether Google tried to anonymize the results by using “truncated” GAIA or Cookie IDs.

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*Duces Tecum Dated Nov. 15, 1993*, 846 F. Supp. 11, 12 (S.D.N.Y. 1994) (quashing a grand-jury subpoena that demanded the entire contents of “computer hard drives and floppy disks,” because the materials “contain[ed] some data concededly irrelevant to the grand jury inquiry”).

Investigators knew this because they said so in the December 4, 2020, warrant application seeking subscriber information from internet service providers based on the responsive IP addresses. *See* Attachment 17 (Google Search Warrant) at 2606 (“In addition, email providers often have records of the Internet Protocol address (‘IP address’) used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the email account.”). Indeed, that is how investigators identified Mr. Seymour as a suspect in this case. But Det. Sandoval made no mention of this fact, or of the previous two warrants, in his November 19 application. Had he done so, it would have been apparent that that the “de-identification” procedure described was a farce. Instead, the omission substantially misled the court once again.

96. In sum, the government failed to apprise the judge of critical facts that prevented him from exercising his constitutional function of ensuring that warrants are valid. The government failed to state that the warrant would search billions of people, and at least everyone in Colorado. In so doing, the government also misled the court about the (in)applicability of the Stored Communications Act. And the government failed to note its previous attempts to serve keyword warrants on Google and the reasons Google refused to comply. Had these facts been presented to the judge, it would have been clear that this warrant authorized the search of billions of people, without the promised “de-identification” process. These facts would have revealed the true nature and scope of the keyword warrant, as well as the truth that the police did not—and could not—have probable cause to justify a reverse search of global scale.

### **B. Lacking in Indicia of Probable Cause**

97. Additionally, the good-faith exception does not apply because the keyword warrant was “so lacking in indicia of probable cause” to search Mr. Seymour that it was entirely unreasonable for an officer to rely on it. *See Leon*, 468 U.S. at 923 (citations and quotation marks omitted). The warrant, truthfully understood, authorized the search of billions of Google Search users. But the affidavit did not, and indeed could not, have established probable cause to search so many people at once.
98. The application lacked sufficient “indicia of probable cause” to suggest that evidence of this crime would be found with Google. *See United States v. Gonzales*, 399 F.3d 1225, 1229 (10th Cir. 2005) (rejecting the good-faith exception where law enforcement failed to establish *any* “factual basis connecting the place to be searched to the defendant or suspected criminal activity”) (quoting *Leon*, 468 U.S. at 916); *see also People v. Leftwich*, 869 P.2d 1260, 1270 (Colo. 1994) (rejecting the good-faith exceptions where affidavit “contain[ed] no facts that would allow a reasonable officer to conclude that probable cause existed”). Instead, it was based on pure conjecture. The government simply assumed that a cell phone was involved, and that Google had relevant data, despite the fact that two tower dumps, an IMSI catcher, a data broker warrant, and two Google geofence warrants had all failed to produce any leads. The same logic could be invoked in any case, even if, as here, there are no facts to justify it.
99. The only way to describe the keyword warrant here is a dragnet. It was devoid of any individualized suspicion, and there was nothing to indicate a cell phone or computer was involved. Det. Baker later testified that he “felt” the suspects “possibly could have a cellular

phone with them.” Prelim. Tr. at 43. But the application did not even mention this feeling, and it did not establish a fair probability that Google would have responsive data. In short, it lacked a substantial basis to determine probable cause for searching anyone’s Google data, let alone billions.

100. The so-called “de-identification” process does not change this calculus, because in this case it was meaningless. In addition to “truncated” IDs, the warrant specifically authorized the production of full IP addresses, which the government knew it could use to identify people. And that is exactly what they did to identify Mr. Seymour. *See supra*, ¶¶ 33–36.
101. The government used the same basic statement of probable cause to justify every intrusion in this case, tempered only with vague descriptions of the Orwellian searches they sought to conduct. The keyword warrant was just the last in this long line of digital dragnets, and there was likewise no justification for it, apart from the pressure to solve the case. But even so, obtaining warrants based on conjecture is not “objectively reasonable law enforcement activity.” *See Leon*, 468 U.S. at 919. And any reasonable officer would recognize that a dragnet is still a dragnet, no matter how dressed up it might be. The good-faith exception should therefore not apply.

### C. Facially Deficient

102. Third, the good faith exception does not apply because the keyword warrant was “facially deficient,” and no objective officer could reasonably presume it was valid. *See Leon*, 468 U.S. at 923. A keyword warrant cannot be consistent with the Fourth Amendment because of the broad discretion it gives to police to search and seize data belonging to people with no connection to the crime. It lacks any individualized suspicion and is the digital equivalent of the reviled “general warrants” that gave birth to the Fourth Amendment. *See Carpenter*, 138 S. Ct. at 2213; *see also Riley*, 573 U.S. at 403; *Stanford*, 379 U.S. at 481.
103. Any reasonable officer would have known that such general searches are not only impermissible, but offensive to the most basic principles of American liberty. Indeed, the British use of general warrants was the catalyst for the Fourth Amendment’s warrant requirement.<sup>10</sup> The Founders opposed them because of the discretion they gave to officials, placing “the liberty of every man in the hands of every petty officer” and were thus “the worst

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<sup>10</sup> One of the specific cases that gave rise to the Fourth Amendment was *Wilkes v. Wood*, which concerned a general warrant that ordered the King’s messengers to “apprehend and seize” the printers and publishers of an anonymous pamphlet, the *North Briton* No. 45. The warrant did not specify which houses to search or whom to arrest, but officials ransacked five homes, broke down 20 doors, rummaged through thousands of books and manuscripts, and arrested 49 people. *See* Thomas K. Clancy, *The Framers’ Intent: John Adams, His Era, and the Fourth Amendment*, 86 Ind. L.J. 979, 1007 (2011). The *Wilkes* court condemned the warrant because of the “discretionary power” it gave officials to decide where to search and what to take. 98 Eng. Rep. at 498. The case became wildly famous in the American colonies, one of three influential English cases that led to the rejection of general warrants. *See generally*, Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181. *See also Entick v Carrington*, 19 How St Tr 1029 (CP 1765); *Leach v Money*, 19 How St Tr 1001 (KB 1765).

instrument of arbitrary power.” *Stanford*, 379 U.S. at 481 (citations omitted). They allowed the government to target people without any evidence of criminal activity, “turn[ing] the concept of innocent until proven guilty on its head.” *See* Donohue, 83 U. Chi. L. Rev. at 1317. Instead of having information that the person or place to be searched is engaged in illegal activity, general warrants presume guilt, establishing innocence only after a search. *Id.* Prohibiting such “promiscuous” searches therefore served to protect not only individual rights, but also establish a cornerstone criminal justice of America. *Id.* at 1320.

104. The unique nature of this warrant—a reverse warrant—would have been apparent to investigators. There were no police department policies to follow, no procedures, and no rules about how to conduct a keyword search—because valid warrants do not work this way. The warrant did not direct investigators to seize Mr. Seymour’s data or anyone else’s; instead, it permitted them to rummage through *everyone’s* private Google search history and determine for themselves which to seize. Such “broad authorization” is a “general search” that “violates the particularity demanded by the Fourth Amendment.” *Coke*, 461 P.3d at 516; *see also* *People v. Thompson*, 500 P.3d 1075, 1077 (Colo. 2021) (upholding a trial court’s rejection of the good-faith exception because it did not “even come close to the particularity that, in fairness, should have been described”).
105. There is no such thing as relying on a general warrant in good faith. *See United States v. Winn*, 79 F. Supp. 3d 904, 926 (S.D. Ill. 2015) (“Because the warrant is a general warrant, it has no valid portions.”). Rather, courts have recognized that “[t]he cost to society of sanctioning the use of general warrants—abhorrence for which gave birth to the Fourth Amendment—is intolerable by any measure. No criminal case exists even suggesting the contrary.” *United States v. Christine*, 687 F.2d 749, 758 (3d Cir. 1982); *see also United States v. Wecht*, 619 F. Supp. 2d 213, 236–37 (W.D. Pa. 2009); *Coke*, 461 P.3d at 516. Thus, the “the only remedy for a general warrant is to suppress all evidence obtained thereby.” *United States v. Yusuf*, 461 F.3d 374, 393 n.19 (3d Cir. 2006). Consequently, this court should find that the good faith doctrine does not apply to the keyword warrant in this case and suppress all evidence and fruits thereof.

### REQUEST FOR VERACITY HEARING

106. Both the United States and Colorado Constitutions prohibit the issuance of a search warrant except 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. Pacheco*, 175 P.3d 91, 94 (Colo. 2006).
107. Probable cause must be established within the four corners of the affidavit in support of the search warrant. *Randolph*, 4 P.3d 477. The affidavit establishes probable cause if the affidavit contains “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. Miller*, 75 P.3d 1108, 1112 (Colo. 2003) (citations omitted).
108. “Our cases have recognized the appropriateness of veracity hearings, which are inquiries into the accuracy of statements found in an affidavit supporting a search warrant, ‘at least where

the good faith of the police officer-affiant was explicitly or tacitly at issue.” *People v. Flores*, 766 P.2d 114, 118 (Colo. 1988) (citing *Dailey*, 639 P.2d 1068, 1073 (Colo. 1982)).

109. “[A]s conditions to a veracity hearing testing the truth of averments contained in a warrant affidavit, under our state law we shall require that a motion to suppress (1) be supported by one or more affidavits reflecting a good faith basis for the challenge and (2) contain a specification of the precise statements challenged.” *Dailey*, 639 P.2d at 1075. If both parts of this threshold test are met, then “a veracity hearing must be held in order to comply with the Fourth Amendment of the federal constitution.” *Winden*, 689 P.2d at 581 (citing *Franks*, 438 U.S. 154).
110. As detailed *supra*, ¶¶ 88–97, and in the attached Affidavit of Michael Juba, *see* Attachment 27, the keyword warrant application failed to disclose critical fact to the issuing judge.
111. The application failed to convey that it was seeking a novel reverse warrant to search billions of people without limitation. It failed to disclose that Google had rejected two previous keyword warrants issued by another judge. And it failed to inform the judge that the IP address information sought would defeat the “de-identification” scheme outlined in the warrant.
112. As a result of these omissions, the application demonstrated a reckless disregard for the truth, concealing the true scope of the search, and substantially misleading the issuing judge. *See Winden*, 689 P.2d at 583; *Kerst*, 181 P.3d at 1171.
113. Mr. Seymour therefore requests a veracity hearing to further establish that the keyword warrant application substantially misled the issuing judge.

## CONCLUSION

Keyword warrants represent an unprecedented expansion of the government’s surveillance capabilities. *Carpenter*’s emphasis on the degree to which keyword search data obtained by law enforcement is sensitive or “deeply revealing” suggests that courts are recognizing the need to treat keyword search data differently from physical records. Based on the sensitivity of these records and the scope of the search, keyword warrants are Fourth Amendment searches of the unreasonable variety. The warrant obtained in this case implicates First Amendment concerns, and as such must withstand “scrupulous exactitude” under the Fourth Amendment. Yet this warrant cannot even survive the probable cause and particularity requirements under the Fourth Amendment. Instead, it functions as a constitutionally impermissible general warrant. Finally, because the good faith exception cannot apply to a warrant no reasonable law enforcement officer would in good faith rely on, this keyword warrant is an unconstitutional search.

WHEREFORE, Mr. Seymour moves this Court to order a veracity hearing and suppress all evidence obtained from the November 19, 2020, keyword warrant, as well as fruits thereof.

Respectfully submitted,

Date: June 30, 2022



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Attorney: Michael W. Price, #22PHV6967



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/s/ Jenifer Stinson

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I hereby certify that on this 30th day of June, 2022, a true and correct copy of this motion was served upon all counsel of record.



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Signature

## Exhibit 2

Brief of Amicus Curiae Electronic Frontier Foundation in Support  
of Defendant's Motion to Suppress



DENVER DISTRICT COURT  
Address: 520 W. Colfax Ave., Denver, CO 80204

DATE FILED: July 1, 2022 11:40 AM  
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THE PEOPLE OF THE STATE OF COLORADO

v.

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Juvenile Defendant.

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**I. ▲ COURT USE ONLY ▲**

Case Number: 21CR20001

Div.: 5A

**BRIEF OF AMICUS CURIAE ELECTRONIC FRONTIER FOUNDATION  
IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS**

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

INTERESTS OF AMICUS CURIAE..... 1

INTRODUCTION ..... 1

BACKGROUND ..... 3

    I. Keyword Search Warrants Draw on Vast Repositories of Data Held by Search Engines,  
    Which Are Nearly Indispensable to Browsing the Internet. .... 3

        A. Search Engines Are Indispensable to Browsing the Internet..... 3

        B. Keyword Warrants Allow Access to Billions of Users’ Search Queries and Have  
        the Potential to Implicate Innocent People. .... 8

ARGUMENT ..... 12

    II. Keyword Warrants Are Unconstitutional General Warrants in Violation of the Fourth  
    Amendment and Article II, Section 7..... 12

    III. Keyword Warrants Harm Expressive Freedoms and Cannot Survive Heightened Fourth  
    Amendment Scrutiny..... 14

        A. The Keyword Warrant Compromises Expressive Freedoms..... 15

        B. Given the Expressive Freedoms Implicated by the Keyword Warrant, the Fourth  
        Amendment Must Be Applied with “Scrupulous Exactitude.” ..... 18

    IV. The Colorado Constitution Is Even More Protective than the Federal Constitution..... 18

CONCLUSION..... 21

## TABLE OF AUTHORITIES

### Cases

<i>Andresen v. Maryland</i> , 427 U.S. 463 (1976) .....	12
<i>Bd. of Educ. v. Pico</i> , 457 U.S. 853 (1982) .....	16
<i>Bock v. Westminster Mall Co.</i> , 819 P.2d 55 (Colo. 1991) .....	18
<i>Carpenter v. United States</i> , 138 S. Ct. 2206 (2018) .....	14, 21
<i>Ex parte Jackson</i> 96 U.S. 727 (1878) .....	12
<i>Kleindienst v. Mandel</i> , 408 U.S. 753 (1972) .....	16
<i>Lamont v. Postmaster Gen. of U.S.</i> , 381 U.S. 301 (1965) .....	16, 17
<i>Marron v. United States</i> , 275 U.S. 192 (1927) .....	14
<i>Martin v. City of Struthers, Ohio</i> , 319 U.S. 141 (1943) .....	16
<i>McIntyre v. Ohio</i> , 514 U.S. 334 (1995) .....	17
<i>Payton v. New York</i> , U.S. 573 (1980) .....	15
<i>People v. Coke</i> , 461 P.3d 508 (Colo. 2020) .....	12
<i>People v. McKnight</i> , 446 P.3d 397 (Colo. 2019) .....	18
<i>People v. Muniz</i> , 597 P.2d 580 (Colo. 1979) .....	12
<i>Riley v. California</i> , 573 U.S. 373 (2014) .....	12
<i>Stanford v. Texas</i> , 379 U.S. 476 (1965) .....	2, 15, 18

<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969) .....	17
<i>Talley v. California</i> , 362 U.S. 60 (1960) .....	17
<i>Tattered Cover, Inc. v. City of Thornton</i> , 44 P.3d 1044 (Colo. 2002) .....	<i>passim</i>
<i>United States v. Chatrie</i> , No. 3:19cr130, 2022 WL 628905 (E.D. Va. Mar. 3, 2022) .....	10, 14
<i>United States v. Jones</i> , 565 U.S. 400 (2012) .....	12
<i>United States v. Leary</i> , 846 F.2d 592 (10th Cir. 1988) .....	13
<i>United States v. Playboy Entm't Grp., Inc.</i> , 529 U.S. 803 (2000) .....	16, 17
<i>United States v. Rumely</i> , 345 U.S. 41 (1953) .....	17
<i>United States v. Sells</i> , 463 F.3d 1148 (10th Cir. 2006) .....	13
<i>United States v. Van Leeuwen</i> 397 U.S. 249 (1970) .....	12
<i>Voss v. Bergsgaard</i> , 774 F.2d 402 (10th Cir. 1985) .....	13
<i>Ybarra v. Illinois</i> 444 U.S. 85 (1979) .....	13
<i>Zurcher v. Stanford Daily</i> , 436 U.S. 547 (1978) .....	2, 18
<b>Statutes</b>	
18 U.S.C. § 2703(c) .....	11
<b>Constitutional Provisions</b>	
CO. Const. art. II, § 10 .....	<i>passim</i>
CO. Const. art. II, § 7 .....	2, 12, 21
U. S. Const. amend. I .....	2, 14, 15
U.S. Const. amend. IV .....	<i>passim</i>

## Other Authorities

Aaron Mackey, et al., EFF, <i>Unreliable Informants: IP Addresses, Digital Tips and Police Raids</i> (Sept. 2016) .....	11
Danny Sullivan, <i>How Autocomplete Works in Search</i> , Google (Apr. 20, 2018).....	6
Danny Sullivan, <i>How Google Autocomplete Predictions Are Generated</i> , Google (Oct. 8, 2020).	5
David Nield, <i>A Guide to Using Android Without Selling Your Soul to Google</i> , Gizmodo (July 26, 2018).....	8
<i>Global requests for user information—United States</i> , Google.....	8
<i>Google Searches in 1 Second</i> , Internet Live Stats .....	6
<i>How Google Search Works</i> , Google .....	4
<i>How To Find The IP Address Of A Website</i> , WhatIsMyIP.com.....	3
Jennifer Valentino-DeVries, <i>Tracking Phones, Google Is a Dragnet for the Police</i> , N.Y. Times (Apr. 13, 2019) .....	8
Luke Johnson, <i>How to See EVERY Google Search You’ve Ever Made</i> , Digital Spy (Dec. 27, 2016).....	7
Maryam Mohsin, <i>10 Google Search Statistics You Need to Know</i> , Oberlo (Jan. 2, 2022) .....	6, 7
<i>May 2022 Web Server Survey</i> , Netcraft (May 30, 2022).....	3
Michael Arrington, <i>AOL Proudly Releases Massive Amounts of Private Data</i> , TechCrunch (Aug. 6, 2006).....	5
Michael Barbaro & Tom Zeller Jr., <i>A Face Is Exposed for AOL Searcher No. 4417749</i> , N.Y. Times (Aug. 9, 2006).....	5
Naomi Gilens, et al., <i>Google Fights Dragnet Warrant for Users’ Search Histories Overseas While Continuing to Give Data to Police in the U.S.</i> , EFF (Apr. 5, 2022) .....	10
<i>Search Engine Market Share in 2022</i> , Oberlo .....	6
Siladitya Ray, <i>Google Shared Search Data With Feds Investigating R. Kelly Victim Intimidation Case</i> , Forbes (Oct. 8, 2020).....	9
<i>Supplemental Information on Geofence Warrants in the United States</i> , Google (2021).....	9
<i>The Most Asked Questions on Google</i> , Mondovo.....	5
Thomas Brewster, <i>Cops Demand Google Data on Anyone Who Searched a Person’s Name... Across a Whole City</i> , Forbes (Mar. 17, 2017) .....	8, 9
Thomas Brewster, <i>Exclusive: Government Secretly Orders Google to Identify Anyone Who Searched A Sexual Assault Victim’s Name, Address or Telephone Number</i> , Forbes (Oct. 4, 2021).....	9
Vangie Beal, <i>Dynamic URL</i> , Webopedia (May 24, 2021) .....	4

<i>View &amp; control activity in your account, Google</i> .....	7
<i>Web crawler, Wikipedia (June 26, 2022)</i> .....	4
<i>Year in Search 2021, Google</i> .....	5

## **INTERESTS OF AMICUS CURIAE**

The Electronic Frontier Foundation (“EFF”) is a non-profit, member-supported digital civil liberties organization. Founded in 1990, EFF has over 35,000 active donors and dues-paying members across the United States, including in the state of Colorado. EFF represents the interests of technology users in court cases and broader policy debates surrounding the application of law to technology and defends the right to be free from the government’s use of technology to conduct unreasonable searches and seizures. EFF regularly participates both as direct counsel and as amicus in the Supreme Court, the Colorado Supreme Court, and other state and federal courts in cases addressing the Fourth Amendment and its application to new technologies. *See, e.g., Carpenter v. United States*, 138 S. Ct. 2206 (2018); *Riley v. California*, 573 U.S. 373 (2014); *People v. Tafoya*, 494 P.3d 613 (Colo. 2021).

EFF’s interest in this case is in the preservation of federal and state constitutional guarantees against unreasonable government intrusions into private life and associations and into protected expressive speech.

## **INTRODUCTION**

The Internet is crucial to our understanding of and engagement with the world. But it can be nearly impossible to navigate the billions of sites on the Web and find relevant information without the use of a search engine like Google. Many users have come to rely on search engines to such a degree that they routinely search for the answers to sensitive or unflattering questions that they might never feel comfortable asking a human confidant—even friends, family members, doctors, or clergy. Yet as has become clear in this case, Google retains detailed information on the search queries of everyone who uses its search engine. Over the course of

months and years, there is little about a users' life that will not be reflected in their search keywords, from the mundane to the most intimate. The result is a vast record of some of users' most private and personal thoughts, opinions, and associations.

Because of the breadth and detailed nature of search query data, the use of keyword search warrants by law enforcement is especially concerning. Keyword search warrants are unlike typical warrants for electronic information in a crucial way: they are not targeted to specific individuals or accounts. Instead, they require a provider to search its entire reserve of user data—in this case the queries of one billion Google users—and identify any and all users or devices that searched for words or phrases specified by law enforcement. As in this case, the police generally have no identified suspects when they seek a keyword search warrant. Instead, the sole basis for the warrant is the officer's hunch that the suspect might have searched for something in some way related to the crime.

Keyword warrants are dragnet searches that violate the First and Fourth Amendments to the U.S. Constitution and Article II, Sections 7 and 10 of the Colorado Constitution. Like the 18th century writs of assistance that inspired the Fourth Amendment's drafters, these warrants are especially pernicious because they target protected speech and the corollary right to receive information. *See Stanford v. Texas*, 379 U.S. 476, 482–83 (1965); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1051–52 (Colo. 2002) (en banc), *as modified on denial of reh'g* (Apr. 29, 2002). For this reason, they must be examined with heightened scrutiny. *Zurcher v. Stanford Daily*, 436 U.S. 547, 564, 565 (1978); *Tattered Cover*, 44 P.3d at 1057. Because the warrant in this case targets speech, lacks probable cause to support a search of a billion Google users'



search queries, and is therefore unconstitutionally overbroad, Amicus urges this Court to grant Defendant’s motion to suppress all evidence generated from the warrant.

## **BACKGROUND**

### **I. Keyword Search Warrants Draw on Vast Repositories of Data Held by Search Engines, Which Are Nearly Indispensable to Browsing the Internet.**

#### **A. Search Engines Are Indispensable to Browsing the Internet.**

Keyword warrants are possible because, on the Internet, it is virtually impossible to find a website or any other information without entering search terms (also known as “keywords”) into a search engine. According to some sources, there are over 1.15 billion websites, and tens of billions of webpages.<sup>1</sup> Much as houses and businesses have street addresses in the physical world, the servers that host websites are associated with a numerical address as well. These addresses, known as “Internet Protocol” or IP addresses, are a series of numbers that represent the server or computer where a website is hosted. For example, one of Google.com’s IP addresses is 173.194.215.99.<sup>2</sup> Because IP addresses are difficult to remember, domain names like “google.com” serve as user-friendly stand-ins. However, to navigate to a specific *page* within a website, one would need a link to not just the domain name but also the exact URL (“uniform resource locator”) for that webpage. For example, the domain for the Colorado state courts

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<sup>1</sup> *May 2022 Web Server Survey*, Netcraft (May 30, 2022), <https://news.netcraft.com/archives/category/web-server-survey>; “The size of the World Wide Web (The Internet),” Tilburg University, <https://www.worldwidewebsite.com/>. Websites can contain any number of individual webpages.

<sup>2</sup> IP addresses are not necessarily static and may change. They can be identified using a command line prompt or a simple lookup tool such as <https://www.whatismyip.com/dns-lookup>. See *How To Find The IP Address Of A Website*, WhatIsMyIP.com, <https://www.whatismyip.com/how-to-find-the-ip-address-of-a-website>.

website is [courts.state.co.us](https://www.courts.state.co.us), and the specific URL for the Denver County courts web page is [https://www.courts.state.co.us/Courts/County/Index.cfm?County\\_ID=3](https://www.courts.state.co.us/Courts/County/Index.cfm?County_ID=3). URLs may be quite long and can even be “dynamic,” generated from specific user queries to a site’s database, such as in response to a search on Google or Amazon.<sup>3</sup> For example, to get directions to the Denver courthouse using Google Maps, one would need to enter <https://www.google.com/maps/dir//520+W+Colfax+Ave,+Denver,+CO+80204/@39.7393358,-105.064741,12z/data=!4m8!4m7!1m0!1m5!1m1!1s0x876c78d2fb8e0a7d:0xab7d8a701106d34!2m2!1d-104.994701!2d39.7393568>—or just use a search engine.

Search engines make it possible to find not just the website a person is looking for, but also specific content within that website, including text, video, images, and pdfs. Search engines continuously scour the Internet for content, index and organize the information they find into vast databases, and rank that information based on its relevancy to a search query.<sup>4</sup>

The keywords that users type into search engines can be incredibly revealing of their most intimate and private thoughts, ideas, and concerns. Internet users frequently search for answers to pressing medical questions for themselves and loved ones, information about world events and controversial ideas, discussions of gender and sexuality, and directions on how to get to various places, to give just a few examples out of the nearly limitless possibilities. Specialized users may search for seemingly more “incriminating” information; a crime novelist could search

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<sup>3</sup> Vangie Beal, *Dynamic URL*, Webopedia (May 24, 2021), [https://www.webopedia.com/TERM/D/dynamic\\_URL.html](https://www.webopedia.com/TERM/D/dynamic_URL.html).

<sup>4</sup> *Web crawler*, Wikipedia (June 26, 2022), [https://en.wikipedia.org/wiki/Web\\_crawler](https://en.wikipedia.org/wiki/Web_crawler); *How Google Search Works*, Google, <https://www.google.com/search/howsearchworks/how-search-works>.

for unique ways to kill people, a historian of the civil rights era could search for racist language, or a policy analyst could search for specifics on how drugs are manufactured and used. Some of the top questions posed to Google are “how to register to vote,” “how to get pregnant,” “how to have sex,” and “how to be happy alone.”<sup>5</sup> Even a simple query for an address can be revealing. For example, knowing that a person searched for “7155 E 38th Ave, Denver,” could lead to an inference that the person was seeking an abortion. (This is the address of Planned Parenthood.) Searches can be so specific to an individual that even the most innocuous queries can quickly reveal who that person is. In 2006, AOL published three months of de-identified search history data from 650,000 users.<sup>6</sup> With that data, the *New York Times* was easily able to identify “Thelma Arnold, a 62-year-old widow who lives in Lilburn, Ga., frequently researches her friends’ medical ailments and loves her three dogs.”<sup>7</sup>

Under some circumstances, the search queries that users enter may differ from those they originally intended. Modern search engines provide users with a feature called “autocomplete,” which relies on sophisticated algorithms to make predictions about what the user might be looking for based on data like the user’s geographic location, other things they have searched for in the past, their language, and “common and trending queries.”<sup>8</sup> Search engines like Google

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<sup>5</sup> *The Most Asked Questions on Google*, Mondovo, <https://www.mondovo.com/keywords/most-asked-questions-on-google>; *Year in Search 2021*, Google, <https://trends.google.com/trends/yis/2021/US>.

<sup>6</sup> Michael Arrington, *AOL Proudly Releases Massive Amounts of Private Data*, TechCrunch (Aug. 6, 2006), <https://techcrunch.com/2006/08/06/aol-proudly-releases-massive-amounts-of-user-search-data>.

<sup>7</sup> Michael Barbaro & Tom Zeller Jr., *A Face Is Exposed for AOL Searcher No. 4417749*, N.Y. Times (Aug. 9, 2006), <https://www.nytimes.com/2006/08/09/technology/09aol.html>.

<sup>8</sup> Danny Sullivan, *How Google Autocomplete Predictions Are Generated*, Google (Oct. 8, 2020), <https://blog.google/products/search/how-google-autocomplete-predictions-work>.

provide a list of five to ten contextualized suggestions almost immediately after the user starts typing a query in the search bar, and those suggestions change as a user types in more letters.<sup>9</sup> So, for example, a user in San Francisco, California, who types in “san” could immediately get suggestions for “San Francisco,” “San Francisco weather,” “San Francisco Giants,” and also “Sandra Bullock.” The user can click on any of the terms in the list to go straight to search results for that query. This feature can be particularly helpful and timesaving when searching on a mobile device’s smaller screen and letter keys. However, the ease with which a user can click on a predicted search term can also lead to users entering queries they never intended. This may be particularly true with less-common queries, such as addresses.

Google Search is far and away the most popular search engine, with 92.49% worldwide market share (87.72% in the United States),<sup>10</sup> and “more than 1 billion average monthly users.”<sup>11</sup> Most people use Google to search the Internet at least 3 times per day,<sup>12</sup> and Google reportedly processes approximately 100,000 search queries every second.<sup>13</sup> This translates to over 8.5

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<sup>9</sup> Danny Sullivan, *How Autocomplete Works in Search*, Google (Apr. 20, 2018), <https://www.blog.google/products/search/how-google-autocomplete-works-search>.

<sup>10</sup> *Search Engine Market Share in 2022*, Oberlo, <https://www.oberlo.com/statistics/search-engine-market-share>.

<sup>11</sup> Declaration of Nikki Adeli ¶ 4 (hereinafter “Google Decl.”).

<sup>12</sup> Maryam Mohsin, *10 Google Search Statistics You Need to Know*, Oberlo (Jan. 2, 2022), <https://www.oberlo.com/blog/google-search-statistics>.

<sup>13</sup> *Google Searches in 1 Second*, Internet Live Stats, <https://www.internetlifestats.com/one-second/#google-band>.

billion searches per day.<sup>14</sup> As of 2019, 63% of those searches were conducted on mobile devices.<sup>15</sup>

Due to its market dominance and the importance of search engines to using the Internet, Google possesses massive amounts of information about users' searches. For Google users logged into their accounts, Google keeps a record of all search queries and stores that data along with other information about the user, including what videos they have watched, what images they have viewed, what websites they have visited, where they have traveled, and who they are.<sup>16</sup> Google now allows users to delete their search history and to turn off Google's collection of that data.<sup>17</sup> However, if users do not take active steps to delete their data, Google will likely have a record of everything they have ever searched for dating back years to when they first set up their Google account.<sup>18</sup>

Even turning off Google's collection of search history data does not stop Google from tracking search queries; it only divorces that collection from other details in a user's account. As this case reveals, Google retains data on *anyone* who uses its search engine, not just Google users who are logged into their accounts. Google links searches to a device's IP address and Internet service provider and, using that information, an officer can easily "track that back and relate that

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<sup>14</sup> Mohsin, *supra* n.12.

<sup>15</sup> *Id.*

<sup>16</sup> See *View & control activity in your account*, Google, <https://support.google.com/accounts/answer/7028918>.

<sup>17</sup> *Id.*

<sup>18</sup> Luke Johnson, *How to See EVERY Google Search You've Ever Made*, Digital Spy (Dec. 27, 2016), <https://www.digitalspy.com/tech/a805172/how-to-see-every-google-search-youve-ever-made>.

search” to a specific person.<sup>19</sup> Given this, it is very difficult to search Google anonymously. This is true whether users are searching using a personal computer or a handheld device like a phone.<sup>20</sup> It is unclear how long Google retains search history data from people who are not logged into Google accounts, but if it is anything like other data Google collects on users, Google’s database could go back a decade or more.<sup>21</sup>

**B. Keyword Warrants Allow Access to Billions of Users’ Search Queries and Have the Potential to Implicate Innocent People.**

The use of keyword search warrants is relatively new—the first press report of their use was in 2017<sup>22</sup>—and it is unclear how many are issued each year. Google produces public reports that include the total number of warrants it receives every six months, but it does not break out the number of keyword warrants.<sup>23</sup> If keyword warrants are anything like another novel dragnet

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<sup>19</sup> Prelim. Hr’g Tr. 197:7–10, Nov. 12, 2021 (Testimony of Special Agent Mark Sonnendecker).

<sup>20</sup> For Android device users, it is particularly difficult to search without being logged into a Google account. David Nield, *A Guide to Using Android Without Selling Your Soul to Google*, Gizmodo (July 26, 2018), <https://gizmodo.com/a-guide-to-using-android-without-selling-your-soul-to-g-1827875582>.

<sup>21</sup> Jennifer Valentino-DeVries, *Tracking Phones, Google Is a Dragnet for the Police*, N.Y. Times (Apr. 13, 2019), <https://www.nytimes.com/interactive/2019/04/13/us/google-location-tracking-police.html> (noting at the time of the article that Google’s Location History data goes back nearly a decade).

<sup>22</sup> Thomas Brewster, *Cops Demand Google Data on Anyone Who Searched a Person’s Name... Across a Whole City*, Forbes (Mar. 17, 2017), <https://www.forbes.com/sites/thomasbrewster/2017/03/17/google-government-data-grab-in-edina-fraud-investigation/?sh=5fe5045d7ade>.

<sup>23</sup> See *Global requests for user information—United States*, Google, [https://transparencyreport.google.com/user-data/overview?user\\_requests\\_report\\_period=series:requests,accounts;authority:US;time:&lu=user\\_requests\\_report\\_period](https://transparencyreport.google.com/user-data/overview?user_requests_report_period=series:requests,accounts;authority:US;time:&lu=user_requests_report_period).

method used to identify suspects—“geofence warrants”<sup>24</sup>—their use is likely increasing year over year as more police agencies around the country learn about them. Geofence warrants now make up 25% of all warrants Google receives, and in Colorado, the number of geofence warrants increased by a factor of more than 10 between 2018 and 2020.<sup>25</sup>

While several known keyword warrants have, as in this case, sought to identify everyone who searched for a specific address,<sup>26</sup> in other cases police have asked Google for everyone who searched for variations of a victim’s name or the name of someone else related to the case.<sup>27</sup> In at least two cases, the search queries have been far broader. In response to a series of pipe bombs in Austin, Texas, police sought everyone who searched for words like “low explosives” and “pipe bomb.”<sup>28</sup> And in Brazil, Google is currently challenging a warrant that sought identifying information for everyone who searched for the name of a popular politician who was

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<sup>24</sup> Geofence warrants, also known as reverse location searches, seek information on every device that might have been within designated geographic areas and time periods in the past. Like keyword warrants, geofence warrants do not identify in advance any specific target device.

<sup>25</sup> *Supplemental Information on Geofence Warrants in the United States*, Google, at 2 (2021), [https://services.google.com/fh/files/misc/supplemental\\_information\\_geofence\\_warrants\\_united\\_states.pdf](https://services.google.com/fh/files/misc/supplemental_information_geofence_warrants_united_states.pdf) (follow “Download supplemental data as a CSV” hyperlink). This document shows that police in Colorado sought 27 geofence warrants in 2018, 164 geofence warrants in 2019, and 308 geofence warrants in 2020.

<sup>26</sup> See, e.g., Siladitya Ray, *Google Shared Search Data With Feds Investigating R. Kelly Victim Intimidation Case*, Forbes (Oct. 8, 2020), <https://www.forbes.com/sites/siladityaray/2020/10/08/google-shared-search-data-with-feds-investigating-r-kelly-victim-intimidation-case/?sh=7a4a7b847c62>.

<sup>27</sup> Brewster, *Cops Demand Google Data On Anyone Who Searched A Person’s Name... Across A Whole City*, *supra* n.22; Thomas Brewster, *Exclusive: Government Secretly Orders Google to Identify Anyone Who Searched A Sexual Assault Victim’s Name, Address or Telephone Number*, Forbes (Oct. 4, 2021), <https://www.forbes.com/sites/thomasbrewster/2021/10/04/google-keyword-warrants-give-us-government-data-on-search-users/?sh=545cc7b87c97>.

<sup>28</sup> Brewster, *Exclusive: Government Secretly Orders Google to Identify Anyone Who Searched a Sexual Assault Victim’s Name, Address or Telephone Number*, *supra* n.27.

assassinated, as well as the name of a cultural center and a well-trafficked street in Rio de Janeiro where the crime occurred.<sup>29</sup>

It appears Google must search its entire database of users' search queries within the relevant time period to comply with a keyword warrant, including users well outside the area of the crime.<sup>30</sup> *See* Declaration of Nikki Adeli ¶ 4 (hereinafter Google Decl.) (stating that Google queries the records of users' searches conducted through Google Search and Maps to comply with a keyword warrant and noting that Google has on average one billion monthly users). This is because the warrant does not identify a particular account or device but instead seeks *any* device that may have searched for the terms specified by the officer during the relevant time period.

Google appears to have designed a multi-step approach to respond to keyword warrants. It states that it de-identifies the data provided in its initial response to police by “truncat[ing] account-identifying information in the results” and then provides “identifying information about responsive users” in a second step or in response to a second warrant. Google Decl. ¶¶ 7–9. However, in this case, Google provided enough information to allow the police to identify the source of search queries in the first step by providing full IP addresses in its initial production to Denver police. If police know the Internet service provider or carrier in addition to the IP

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<sup>29</sup> Naomi Gilens, et al., *Google Fights Dragnet Warrant for Users' Search Histories Overseas While Continuing to Give Data to Police in the U.S.*, EFF (Apr. 5, 2022), <https://www.eff.org/deeplinks/2022/04/google-fights-dragnet-warrant-users-search-histories-overseas-while-continuing>.

<sup>30</sup> *See United States v. Chatrue*, No. 3:19cr130, 2022 WL 628905, at \*4 (E.D. Va. Mar. 3, 2022) (“Google has to compare *all* the data in the Sensorvault [database] in order to identify users within the relevant timeframe of a geofence.”).



address,<sup>31</sup> they do not need to rely on Google to determine the source of the search query; instead, they can submit a simple subpoena to the carrier for billing records—including name and address—associated with that IP address.<sup>32</sup>

Given the fact that keyword warrants do not identify specific suspect devices but instead require Google to search its entire data repository, all keyword warrants have the potential to implicate innocent people who just happen to be searching for something an officer believes is somehow linked to the crime. For example, the warrant in this case sought everyone who searched for a specific address on “Truckee” street. However, there are streets named “Truckee” in several cities and towns in Colorado, as well as in Arizona, California, Idaho, and Nevada. Keyword warrants could also allow officers to target people based on political speech and by their association with others. Police used multiple geofence warrants to identify people at political protests in Kenosha, Wisconsin, and Minneapolis after police killings in those cities.<sup>33</sup> Similarly, with keyword warrants, officers could seek to identify everyone who searched for the location or the organizers of a protest.

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<sup>31</sup> It is possible to determine the ISP associated with an IP address using a simple lookup tool, such as <https://www.whatismyip.com/ip-address-lookup>.

<sup>32</sup> Aaron Mackey, et al., EFF, *Unreliable Informants: IP Addresses, Digital Tips and Police Raids* 8 (Sept. 2016), [https://www.eff.org/files/2016/09/22/2016.09.20\\_final\\_formatted\\_ip\\_address\\_white\\_paper.pdf](https://www.eff.org/files/2016/09/22/2016.09.20_final_formatted_ip_address_white_paper.pdf); 18 U.S.C. § 2703(c)(2) (requiring providers to disclose certain customer records to law enforcement).

<sup>33</sup> Thomas Brewster, *Google Dragnets Harvested Phone Data Across 13 Kenosha Protest Acts of Arson*, *Forbes* (Aug. 31, 2021), <https://www.forbes.com/sites/thomasbrewster/2021/08/31/google-drag-nets-on-phone-data-across-13-kenosha-protest-arsons>; Zack Whittaker, *Minneapolis Police Tapped Google to Identify George Floyd Protesters*, *TechCrunch* (Feb. 6, 2021), <https://techcrunch.com/2021/02/06/minneapolis-protests-geofence-warrant>.

## ARGUMENT

### **II. Keyword Warrants Are Unconstitutional General Warrants in Violation of the Fourth Amendment and Article II, Section 7.**

The Denver Police Department’s warrant to Google for “any Google accounts” that searched for specific addresses during the fifteen days preceding the crime is an unconstitutional general warrant. General warrants, which permit “a general, exploratory rummaging in a person’s belongings,” are prohibited by both the Fourth Amendment and the Colorado Constitution. *Andresen v. Maryland*, 427 U.S. 463, 480 (1976); *People v. Coke*, 461 P.3d 508, 516 (Colo. 2020). They “are as objectionable today as they were when the Federal Constitution was drafted.” *People v. Muniz*, 597 P.2d 580, 582 (Colo. 1979) (en banc).

Data that can reveal sensitive, personal, and private details about a person—like keywords—can only be seized and searched with a warrant. *See Riley v. California*, 573 U.S. 373, 396 (2014) (quoting *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring) and requiring a warrant to search a cell phone because it contains “a wealth of detail about [a person’s] familial, political, professional, religious, and sexual associations”). That warrant must satisfy all the Fourth Amendment’s familiar requirements—that it be issued by a neutral and detached judicial officer, supported by probable cause, and describe with particularity the place to be searched and the items to be seized. *See Ex parte Jackson*, 96 U.S. 727, 733 (1877); *United States v. Van Leeuwen*, 397 U.S. 249, 251 (1970).

The keyword warrant in this case fails each of these requirements. The warrant lacks particularity because it does not identify any specific person or profile to be searched. It is overbroad because it asked Google to search through the private data of a billion users. *United*

*States v. Leary*, 846 F.2d 592, 601–02, 606 (10th Cir. 1988) (search warrant is “impermissibly overbroad” if it “contains no limitation on the scope of the search”). And the warrant cannot be supported by probable cause because there are no facts indicating that any particular person in Google’s database was in any way personally connected to the crime. *Id.* at 605 (“a search warrant is also impermissibly overbroad if it authorizes the search and seizure of evidence that is not supported by probable cause”). The mere possibility that the perpetrator might have searched for the address of the scene of the crime sometime before the crime occurred is insufficient to support probable cause to search through *all* users’ data.<sup>34</sup> See *Ybarra v. Illinois*, 444 U.S. 85, 91–92 (1979) (“mere propinquity” to criminal activity insufficient to establish probable cause).

In effect, this warrant gave law enforcement authorization to conduct a digital dragnet search through the search history of a billion Google users; and it gave the police the authority and discretion to require Google to produce more information about particular devices that the police, alone, deemed of interest. By starting with a broad search that seeks information from *all* accounts that might have searched for a specific term, keyword warrants give the police unrestricted license to search each of those accounts and then, without clear limiting criteria or further judicial oversight, to conduct a more detailed search of a subset of those accounts. This is

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<sup>34</sup> Neither the convenience of gathering information on all individuals nor the fact that a broad warrant such as this one might return some information relevant to the investigation—and might therefore be “particular” as to that information—can justify a warrant after the fact or in any event allow that particular or particularly helpful information to be severed and introduced. See, e.g., *Leary*, 846 F.2d at 600 (citing *Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir. 1985)) (categorical descriptions in warrant failed to “ensure that [the] search is confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause”); *United States v. Sells*, 463 F.3d 1148, 1158 (10th Cir. 2006) (noting severance cannot “sav[e] a warrant that has been rendered a general warrant by nature of its invalid portions despite containing some valid portion”).

in direct contrast to a valid search warrant, where “[n]othing is left to the discretion of the officer executing the warrant.” *Marron v. United States*, 275 U.S. 192, 196 (1927).<sup>35</sup> Keyword warrants are, instead, modern general warrants.

The warrant here is arguably even broader than the general warrants and “writs of assistance” that inspired the Fourth Amendment’s drafters because it is not necessarily limited by physical geography or officer manpower. It provides officers a window into the search queries of a billion Google users—search queries that were entered well before the investigation ever began or the crime even occurred. A warrant like this was not conceivable or possible 20 years ago, much less at the nation’s founding, and it “gives police access to a category of information otherwise unknowable.” *Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018).

The breadth of the warrant here, coupled with the absence of specific information about the accounts or devices to be searched, renders it invalid under the Fourth Amendment.

### **III. Keyword Warrants Harm Expressive Freedoms and Cannot Survive Heightened Fourth Amendment Scrutiny.**

The keyword search warrant does not just authorize indiscriminate interference with privacy rights, it also compromises protections for expressive freedoms guaranteed by the First Amendment and Article II, Section 10 of the Colorado Constitution.

Cases like this one that involve the intersection of expressive freedoms and government searches directly motivated the Framers’ disapproval of general warrants and the adoption of the

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<sup>35</sup> Even if Google, rather than the police, insists on narrowing the identified suspects at the second step, this is insufficient to save an otherwise unconstitutional warrant. As a federal district court held recently in reviewing a geofence warrant issued to Google, “Fourth Amendment protections should not be left in the hands of a private actor.” *Chatrue*, 2022 WL 628905, at \*25 n.44.

Fourth Amendment. Discussing the British “use of general warrants as instruments of oppression,” the U.S. Supreme Court commented that “this history is largely a history of conflict between the Crown and the press.” *Stanford v. Texas*, 379 U.S. 476, 482 (1965). In particular, two British cases of the 1760s, *Wilkes v. Wood* and *Entick v. Carrington*, both centered on general warrants intended to suppress allegedly libelous publications. *Id.* at 483. “The bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression.” *Id.* at 484; *Payton v. New York*, 445 U.S. 573, 608 (1980) (White, J., dissenting) (“decisions granting recovery to parties arrested or searched under general warrants on suspicion of seditious libel” were “fresh in the colonists’ minds”).

The fact that this warrant threatens protections guaranteed by the First Amendment and Article II, Section 10—including the freedom of speech, freedom of press, and freedom of association—reinforce the conclusion that the warrant violates the Fourth Amendment and its Colorado counterpart.

### **C. The Keyword Warrant Compromises Expressive Freedoms.**

By targeting Google users’ search queries, the keyword warrant is directed entirely at expressive activity, beginning with the literal words of the targeted queries. Because search engines are an indispensable tool for finding information on the Internet, querying a search engine implicates not just the First Amendment’s well-known protection for the freedom of speech, but also the rights to distribute and receive information, and to freely and privately associate with others.

The U.S. Supreme Court has repeatedly held that the right to receive information is a “corollary of the rights of free speech and press” belonging to both speakers and their audience. *Board of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (plurality op.); *see also Kleindienst v. Mandel*, 408 U.S. 753, 762–763 (1972) (cataloging right to receive information in a “variety of contexts”); *Martin v. City of Struthers*, 319 U.S. 141, 146-47 (1943) .”) (“Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that . . . it must be fully preserved. The Colorado Supreme Court agrees. *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1051 (Colo. 2002) (en banc), *as modified on denial of reh’g* (Apr. 29, 2002) (right to receive, “though not explicitly articulated in either the Federal or Colorado Constitution, [is] necessary to the successful and uninhibited exercise of the specifically enumerated right to ‘freedom of speech’”). A speaker’s exercise of the freedom to speak and disseminate information would be futile if others were prohibited from receiving it. “It would be a barren marketplace of ideas that had only sellers and no buyers.” *Pico*, 457 U.S. at 867 (quoting *Lamont v. Postmaster Gen.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring)).

The right to receive information is also “a necessary predicate to the recipient’s meaningful exercise of his *own* rights of speech, press, and political freedom.” *Id.* (emphasis added). It is through listening to others’ speech that “our personalities are formed and expressed” and “our convictions and beliefs are influenced, expressed, and tested” so that we can “bring those beliefs to bear on Government and on society.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 817 (2000). Hence, “[t]he citizen is entitled to seek out or reject certain ideas or

influences without Government interference or control.” *Id.*; *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).

As a result, the U.S. and Colorado Supreme Courts have expressed special concern for attempts by the government to discover people’s interest in specific reading material. *See Stanley*, 394 U.S. at 565; *Tattered Cover*, 44 P.3d at 1051. Searches of places such as bookstores and libraries that allow people to search for and access reading material are especially disfavored. “Once the government can demand of a publisher the names of the purchasers of his publications, . . . [f]ear of criticism goes with every person into the bookstall.” *United States v. Rumely*, 345 U.S. 41, 57 (1953) (Douglas, J., concurring). As the Colorado Supreme Court held in *Tattered Cover*, readers are entitled to anonymity in requesting information “because of the chilling effects that can result from disclosure of identity.” 44 P.3d at 1052 (citing *McIntyre v. Ohio*, 514 U.S. 334, 357 (1995); *Talley v. California*, 362 U.S. 60, 64–65 (1960)).

Investigations of users’ online search queries raise identical concerns to investigations seeking records held by physical bookstores and libraries. Like bookstores, search engines are “places where a citizen can explore ideas, receive information, and discover myriad perspectives on every topic imaginable.” *Tattered Cover*, 44 P.3d at 1052. And as with reading lists, disclosure of users’ search queries chills their rights to seek out information and deters participation in the “uninhibited, robust, and wide-open debate and discussion” contemplated by the Constitution. *Lamont*, 381 U.S. at 307 (holding unconstitutional a requirement that readers affirmatively request to receive their own communist political mail); *see also Tattered Cover*, 44 P.3d at 1050 (detailing evidence that search warrant for bookstore’s patron list deterred customers’ willingness to purchase “controversial books”).

**D. Given the Expressive Freedoms Implicated by the Keyword Warrant, the Fourth Amendment Must Be Applied with “Scrupulous Exactitude.”**

The keyword warrant’s substantial impact on expressive freedoms only compounds the many Fourth Amendment deficiencies described above and in Defendant’s Motion to Suppress. When a government search directly implicates expressive activity, the U.S. Supreme Court has required that the Fourth Amendment “preconditions for a warrant—probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness” be applied with “scrupulous exactitude.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 565, 564 (1978) (quoting *Stanford*, 379 U.S. at 485). Given the substantial discretion left to agents executing the keyword warrant in this case, as well as the impossibility of demonstrating probable cause to support a search through the query history of hundreds of millions of innocent Google users, it is clear these preconditions were not met with anything approaching scrupulous exactitude.

**IV. The Colorado Constitution Is Even More Protective than the Federal Constitution.**

Even if the Fourth Amendment could be satisfied in this case—and it cannot—Article II, Section 10 provides additional grounds to find the warrant unconstitutional. The Colorado state constitution affords stronger protections against both unlawful searches and seizures and against government intrusions on expressive activity. *People v. McKnight*, 446 P.3d 397, 406–07 (Colo. 2019) (Colorado Constitution “impos[es] more stringent constraints on police conduct than does the Federal Constitution.” (citations omitted)); *Bock v. Westminster Mall Co.*, 819 P.2d 55, 59–60 (Colo. 1991) (en banc) (recognizing state’s extensive history of affording broader protection for expressive rights under the state constitution).



In some cases, a specific, limited search or seizure may be described in a warrant that satisfies the “scrupulous exactitude” standard under the Fourth Amendment. Yet under Article II, Section 10, “the substantial chilling effects that could occur if this hypothetical search warrant were executed” require that “the police should be entirely precluded from executing the warrant.” *Tattered Cover*, 44 P.3d at 1055–56. This is especially true where the government’s warrant is based on the content of the information sought by the customer. *Id.* at 1059. Because the warrant in this case sought everyone who searched for specific keywords and compromised untold numbers of Google users’ expressive freedoms, this is such a case.

In *Tattered Cover*, the Colorado Supreme Court considered a bookstore’s preenforcement challenge to a warrant authorizing a search of the bookstore for evidence in a drug investigation. 44 P.3d at 1048. State and federal agents identified four suspects living in a trailer and discovered evidence of “drug operations” and a mailer addressed to “Suspect A” from the Tattered Cover bookstore in some trash from the trailer. *Id.* Acting on a warrant, they searched the trailer and found evidence of a meth lab, as well as two books with instructions on manufacturing drugs. *Id.* at 1048–49. The lead officer then sought a search warrant for Tattered Cover’s customer records in the hopes of linking Suspect A to the instructional books. *Id.* at 1049. The bookstore refused to comply. *Id.*

In holding that the Tattered Cover warrant was invalid, the supreme court took note of the substantial harm to the expressive rights of the bookstore and its patrons that would result from the search. “The dangers, both to Suspect A and to the book-buying public, of permitting the government to access the information it seeks, and to use this proof of purchase as evidence of Suspect A’s guilt, are grave.” 44 P.3d at 1063. Taking note of the long line of U.S. Supreme

Court cases protecting the right to receive information, the court explained that the Colorado Constitution has been interpreted to provide even broader protections, including the right to buy books anonymously. *Id.* at 1052–54. As a result, the court imposed a heightened standard of review above and beyond the Fourth Amendment’s warrant requirement: “law enforcement officials must demonstrate a sufficiently compelling need . . . *for the precise and specific information sought.*” *Id.* at 1058 (emphasis original). This standard includes a consideration of whether the intrusion was “limited in scope so as to prevent exposure of other constitutionally protected materials.” *Id.*

Applying this test, the court refused to enforce the Tattered Cover warrant. It noted that the very reason that the government sought the information—tying Suspect A to the content of the books—was “precisely the reason” the warrant was “likely to have chilling effects on the willingness of the general public to purchase books about controversial topics.” 44 P.3d at 1063. Even if the suspect were shown to have purchased the books, he might have done so for “any of a number of reasons, many of which are in no way linked to his commission of any crime,” including buying them for a friend or out of idle curiosity. *Id.* And even if these explanations were less likely than the government’s, “Colorado’s long tradition of protecting expressive freedoms cautions against permitting the City to seize the Tattered Cover’s book purchase record.” *Id.*

This Court should find that the keyword warrant in this case fails the standards of Article II, Section 10 for the reasons articulated in *Tattered Cover*. Like customers of a bookstore, users seek out information of every sort from search engines like Google. *See supra* Section I.A. Many queries reflect individuals’ most private thoughts, political and spiritual beliefs, and intimate and

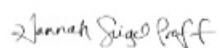
personal details about themselves. Search queries are also not infrequently attempts to satisfy idle or eccentric curiosity that the searcher would otherwise never express publicly. The purported probable cause supporting the keyword warrant assumes that if a person searched for that address of the crime scene, they are likely to have committed the crime. Just as in the *Tattered Cover* case, individuals who ran the queries targeted in the keyword warrant could have had any number of motivations to do so, unrelated to any crime.

However, the scope of the keyword warrant in this case is far broader than the *Tattered Cover* warrant. In *Tattered Cover*, the police sought to link the book purchase to a single pre-identified suspect, whereas here, the warrant named no suspects at all. This dragnet search therefore raised the possibility of sweeping in many more innocent individuals. Hence, the “exposure of other constitutionally protected materials” is even greater, and the government’s need for the “specific information sought”—the unbounded results of its warrant—is correspondingly insufficient. *Tattered Cover*, 44 P.3d at 1058.

### **CONCLUSION**

For the reasons above and in keeping with the intent of the Framers to protect against “too permeating police surveillance,” *Carpenter*, 138 S. Ct. at 2214, Amicus respectfully urges the Court to hold that this keyword warrant violates the both the Fourth Amendment and Article II, Section 7 and to suppress all evidence.

Dated this day: July 1, 2022



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I hereby certify that on July 1, 2022 a true and correct copy of this amicus brief was served upon all counsel of record.

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## Exhibit 3

Response to Motion to Suppress Evidence from a Keyword  
Warrant and Request for a Veracity Hearing

District Court, City and County of Denver, Colorado Lindsey-Flanigan Courthouse, Room 135 520 W. Colfax Ave. Denver, CO 80204	DATE FILED: August 12, 2022 4:20 PM FILING ID: 2FAF5905195A8 CASE NUMBER: 2021CR20001
Plaintiff: The People of the State of Colorado	▲ COURT USE ONLY ▲
Defendant: GAVIN SEYMOUR	
Joseph M. Morales, Reg. No. 24706 Chief Deputy District Attorney Courtney Johnston, Reg. No. 39266 Chief Deputy District Attorney Katherine A. Hansen, Reg. No. 25464 Senior Deputy District Attorney For: Beth McCann, Reg. No. 5834 District Attorney 201 W. Colfax Ave. Dept. 801 Denver, CO 80202 Phone Number: 720-913-9000 Fax Number: 720-913-9035	Case Number: 21CR20001  Div: Criminal Ctrm 5A
<b>RESPONSE TO MOTION TO SUPPRESS EVIDENCE FROM A KEYWORD          WARRANT AND REQUEST FOR A VERACITY HEARING</b>	

Beth McCann, District Attorney, in and for the Second Judicial District, City and County of Denver, State of Colorado, by and through the undersigned Chief Deputy District Attorney, respectfully submits the following Response to the Defendant’s Motion to Suppress Evidence From a Keyword Warrant and Request for a Veracity Hearing.

**FACTUAL BACKGROUND**

The following relevant facts were included in the affidavit in support of a warrant for production of records from Google in regards the keyword search warrant:

- On August 5, 2020, Denver Police Officer and Denver Firefighters were dispatched to 5312 N. Truck Street at approximately 2:40 a.m. on a house fire.
- Upon their arrival, first responders saw that the house was fully engulfed in fire.
- One officer was able to determine that there was at least one deceased victim inside the front door of the house.
- Investigators later determined that three other residents of the house had escaped the fire by jumping out the second story window into the backyard. These three victims were transported to a local hospital for treatment for their injuries from jumping from the second-story window.
- These surviving victims later disclosed that five other individuals may have still been in the home.

- The body the officer saw inside the front door, along with four other bodies were recovered from the remains of the badly burned house. All five victims were pronounced dead on the scene.
- Surveillance video footage from the next-door neighbor's camera showed three masked individuals standing in the side yard of the victims' home.
- At 2:26 a.m. the video footage showed the three individuals were stationary in the backyard and were looking around. The individuals appeared to be wearing dark hooded sweatshirts with hoods up and full masks which appeared light in color.
- At 2:27 a.m. a second video footage showed the same individuals in the same area pointing to an area on the northeast corner of the victim's home.
- At 2:28 a.m. a third video footage from the same camera shows the same three individuals running westbound from the backyard area of the victims' home through the side yard and out the gate towards the front of the residence.
- At 2:40 a.m. a camera located on the northeast corner of the neighbor's residence captured flames coming out of the lower level of the home and individuals can be heard screaming.
- Detectives interviewed the surviving victims and learned that eight people, three separate families, were in the residence when the fire started, and that they all were from Senegal Africa.
- Through their investigation Detectives were unable to develop a motive for anyone to target the victims that survived and that were deceased.
- Arson investigators believed that an accelerant was used to start the fire, and that the fire started in the rear of the residence where the suspects were seen on the video footage running from. The arson investigation showed signs of an accelerant found inside of the home from the back-door area indicating that the suspects possibly entered the home.
- 5312 N. Truckee Street is single family home in a densely populated subdivision and is not unique or a house that would be picked at random. It was not on a corner lot, but instead located between numerous other residences.
- Based on the lack of motive and the extensive planning that had to have taken place to carry out what detectives believed to be a very personal attack, they concluded that one or more of three suspects seen on video footage searched for directions to the victims' address prior to the fire.

## **ARGUMENT**

### ***I. THE MOTION TO SUPPRESS SHOULD BE DENIED***

The defendant challenges the search warrant issued to Google to provide de-identified accounts of users who searched variations of the victims' address within a two-week period immediately prior to the arson/homicide, along with the IP addresses associated with those searches. He claims that this warrant was a general warrant, lacking in particularity and probable cause. He also argues that this warrant was an impermissible infringement on the freedom of individuals to engage in searches of immensely private information. For all of the reasons set forth below, his claims must fail.

#### **A. Standard of Review**



When reviewing the sufficiency of a warrant affidavit, a judge’s probable cause determination is given great deference and is not reviewed *de novo*. *People v. Pacheco*, 175 P.3d 91, 94 (Colo. 2006); *Henderson v. People*, 879 P.2d 383, 391 (Colo. 1994); *People v. Leftwich*, 869 P.2d 1260 (Colo. 1994); *People v. Titus*, 880 P.2d 148, 150 (Colo. 1994). “[A] reviewing court should presume the affidavit is valid...” *People v. McKay*, 2021 CO 72, ¶ 10. The duty of the court reviewing the sufficiency of the warrant affidavit is simply to ensure that the issuing judge had a substantial basis for concluding that probable cause existed. *People v. Pate*, 878 P.2d 685 (Colo. 1994); *People v. Wilson*, 819 P.2d 510, 513 (Colo. App. 1991); *Titus, supra*. In making that determination, the reviewing court must restrict itself to the four corners of the affidavit and must analyze the affidavit in a practical, nontechnical, and common-sense fashion. *People v. Atley*, 727 P.2d 376, 377 (Colo. 1986); *Wilson, supra*; *Titus, supra*.

## **B. Standing and Scope of the Warrant**

The defendant repeatedly claims that the keyword search warrant required Google to conduct a search of “billions” of “search queries,” “private accounts,” “users,” and even “people.” These arguments ignore two very basic realities. First, the defendant does not have standing to object to the search of “billions” of anything – he only has standing, if at all, to object to a search of his own account. *Rakas v. Illinois*, 439 U.S. 128, 133-134 (1978); *Alderman v. United States*, 394 U.S. 165, 183 (1969); *People v. Juarez*, 770 P.2d 1286, 1288 (Colo. 1989); *People v. Curtis*, 959 P.2d 434, 437 (Colo. 1998) (before a criminal defendant can challenge the constitutional validity of a search, the defendant must demonstrate standing).

Second, the search conducted by Google was not of “people” or “users” but of a database comprised of digital data, to which Google apparently typed in search parameters (at its base level – numbers and letters) and allowed its computer algorithms to seek a match between the numbers and letters it input (at their base level, ones and zeroes) and the combinations of ones and zeroes already contained within its database (*See* Defendant’s Attachment 4). Here, the search was simply for an address, and encompassed several variations of that same address. The People are not suggesting that this was not a search at all, but simply that it was not the type of search that would expose, even to the Google employee conducting the search, “deeply private facts about a person, things they might not share with friends, family, or clergy: “psychiatrists in Denver;” “abortion providers near me;” “is my husband gay;” “does God exist;” “bankruptcy;” “herpes treatment.” Indeed, it does not appear that the search conducted by Google resulted in a viewing of any data other than the existence of accounts that conducted the targeted search and the IP addresses that were used to conduct that search (*Id.*).<sup>1</sup>

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<sup>1</sup> The defendant claims that the information requested of Google was not truly “deidentified” because the warrant requested, and Google provided, the full IP addresses associated with each matching search. He states that IP addresses are not anonymous and can be used to identify the individual who conducted the search. This claim is based on a faulty premise - although IP addresses can be tracked to a device and/or router used to connect to the internet to conduct the search, the identifying information for the IP source cannot be obtained (and was not obtained in this case) without additional legal process. While IP addresses can be searched through open source resources to identify their general source (e.g., a Comcast router or a wireless carrier), the *actual* source (e.g., the physical address of a router or the specific wireless device where the of the IP address originated) cannot be determined without an additional warrant – a procedure which was employed in this case.

Along these same lines, the search warrant did not implicate the type of “expressive activities” that would require the balancing analysis set forth in *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1051 (Colo. 2002), which held that the First Amendment and Article II, Section 10 of the Colorado Constitution “safeguard the right of the public to buy and read books anonymously, free from governmental intrusion.” Here, the search was for *an address*, and did not implicate “expressive ideas” or any intent to gain information about topics that would invoke the protections of the First Amendment. Moreover, even if the analysis set forth in *Tattered Cover* was warranted, the warrant at issue here would unquestionably survive this scrutiny: clearly there was a compelling need for this information as the suspects in this horrific crime had evaded detection for months, all other investigative strategies had failed to yield fruitful leads, there did not appear to be other reasonable methods of identifying the suspects, and the search warrant did not seek out persons who had searched for the type of “expressive ideas” that would raise First Amendment concerns.

The bulk of the defendant’s arguments suggest, essentially, that because a keyword search warrant can be used to violate an individual’s right to privacy, particularly in situations where the individual and the search itself has no connection to the crime being investigated, this Court should find that the keyword search in this case was invalid. However, these arguments seek a policy determination from this Court that because keyword searches are subject to abuse they should not be allowed. This is *not* the proper scope of an inquiry into whether the warrant actually issued in this case was proper. Moreover, “courts must avoid making decisions that are intrinsically legislative. It is not up to the court to make policy or to weigh policy.” *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 38 (Colo. 2000). Whether or not keyword search warrants should be permitted because they *may* infringe on the right to search for highly personal matters is a matter to be address left to the legislature, as well as the executive agency (i.e., law enforcement or prosecutorial agency) seeing the warrant in the first instance.

### **C. The Keyword Warrant was Constitutional**

Under the Fourth Amendment to the United States Constitution, for a warrant to be valid, it must satisfy three general requirements: 1) particularity in the location to be searched; 2) particularity in the items to be seized; and 3) probable cause to believe that the items to be seized are in the location to be searched. *U.S. Const. amend IV; Colo. Const. art. II, § 7; Groh v. Ramirez*, 540 U.S. 551, 557 (2004).

#### *1. Particularity in the location to be searched.*

“The test for determining the adequacy of the description of the location to be searched is whether the description is sufficient to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched.” *Harman v. Pollock*, 446 F.3d 1069, 1078 (10th Cir.

2006). Here, the records were maintained by Google, which was identified with particularity as the location of the data being sought.

## 2. *Particularity in the data to be searched and seized.*

So-called “general warrants,” which permit “a general, exploratory rummaging in a person’s belongings,” are prohibited. *People v. Coke*, 461 P.3d 508, 516 (Colo. 2020); *People v. Herrera*, 357 P.3d 1227 (Colo. 2015). To prevent general, exploratory searches, the Fourth Amendment requires a particular description of the things to be seized. *People v. Noble*, 635 P.2d 203, 209 (Colo. 1981) (“[T]he description [in the warrant] of the property to be seized should be such that ‘the officer charged with the duty of executing the warrant will be advised with a reasonable degree of certainty of the property to be seized.’” (quoting *People v. Schmidt*, 172 Colo. 285, 473 P.2d 698, 700 (1970))).

In other words, “[t]he requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is taken, nothing is left to the discretion of the officer executing the warrant.” *People v. Roccaforte*, 919 P.3d 799, 802 (Colo. 1996).

The second particularity requirement is met if the warrant describes the data to be seized with sufficient detail to allow the person conducting the search (in this case, Google) to know what data is encompassed within the warrant’s authorization (i.e., which data they are authorized to release to the requestor). When this occurs, the warrant is not a “general warrant,” and this constitutional requirement is met.

Here, the keyword search warrant asked Google to locate and provide two pieces of information: 1) accounts (de-identified) that had conducted a search of a particular address (using several variations of that address) during a specified, narrow time period, and 2) the IP addresses associated with each matching search. These parameters clearly indicated to the entity in possession of the records what they were authorized to search for and provide to the requestor. The Affidavit provided by Google (Attachment 4) explained the procedures used to comply with the warrant’s demands, and clearly shows that the warrant was sufficiently particular in its scope to advise Google within a “reasonable degree of certainty of the property to be seized.” *Noble*, *supra*.

It is important to note that a search warrant does not lack particularity simply because it is broad. *United States v. Pinto-Thomaz*, 352 F. Supp. 3d 287, 307 (S.D.N.Y. 2018). “A warrant may be broad, in that it authorizes the government to search an identified location or object for a wide range of potentially relevant material, without violating the particularity requirement.” *United States v. Gatto*, 313 F. Supp. 3d 551, 560–61 (S.D.N.Y. 2018). Here, assuming Google had to search its entire database to locate accounts that matched the parameters provided in the warrant, this does not render the warrant overbroad or lacking in particularity. As argued above, the process used to locate responsive material was simply a computer inquiry of a database using general computing processes to identify data matching the data being input. Even if the pool of data containing the specific data being requested is large, this did not impact the ability of the business entity to understand the scope of the data to be searched for and then provided to the requestor.

Moreover, a warrant is not constitutionally “overbroad” simply because it authorizes a search and seizure of a potentially large amount of data. ***A warrant is “overbroad” when the probable cause in the affidavit is insufficient to justify a search of one or more of the items listed as “items to be seized.”*** See *People v. Roccaforte*, 919 P.2d 799, 802 (Colo. 1996) (emphasis added) (“The primary function of the particularity requirement of the Warrants Clause is to ensure that government searches are ‘confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause.’” citing *Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir. 1985); see also *United States v Kidd*, 386 F Supp 3d 364 (S.D.N.Y 2019) (a warrant is overbroad if its description of the objects to be seized is broader than can be justified by the probable cause upon which the warrant is based); *United States v Wey*, 256 F Supp 3d 355 (S.D.N.Y 2017) (a search warrant is legally invalid for overbreadth to the extent it permits officers to search or seize items without probable cause that they contain evidence of a crime). As demonstrated below, there was ample probable cause to support this warrant.

The test for particularity “is a pragmatic one” that “may necessarily vary according to the circumstances and type of items involved.” *United States v. Torch*, 609 F.2d 1088, 1090 (4<sup>th</sup> Cir. 1979), quoting *United States v. Davis*, 542 F.2d 743, 745 (8<sup>th</sup> Cir. 1976).). Here, the circumstances involve a computer-aided search of a database (which did not require a visual review of the data contained in those accounts) for data that matched the data input by Google staff conducting the search. In this circumstance, in order to ensure that the proper data was searched for and seized, the warrant was required to identify the specific data to be searched for and provided. The warrant satisfied these requirements.

3. *Probable cause to believe that evidence relevant to the arson/homicide would be located in the data requested.*

Probable cause for a search exists when the affidavit in support of the warrant alleges sufficient facts to cause a person of reasonable caution to believe that contraband or other evidence of criminal activity is located at the place to be searched. *Henderson, supra; Leftwich, supra; Titus, supra.*

The following are well-established principles that must be considered when reviewing the sufficiency of probable cause set forth in support of a search warrant:

- The task of the issuing magistrate is simply to make a practical, common-sense decision whether given all the circumstances set forth in the affidavit before him there is a *fair probability* that contraband or evidence of a crime will be found in a particular place.
- Probable cause determinations must be approached in a practical way because probable cause is a flexible common-sense standard.
- Probable cause is a fluid concept, turning on the assessment of probabilities in particular factual contexts, not readily, or even usefully, reduced to a neat set of legal rules.
- Probable cause is more than a mere suspicion, but considerably less than what is necessary to convict someone.
- Probable cause does not deal with hard certainties, but with probabilities.
- The court must look at the totality of the circumstances as set forth in the affidavit to determine whether probable cause exists.

- Such a determination requires courts to consider the cumulative weight of the information in connection with reasonable inferences that the officer is permitted to make based upon the officer’s specialized training and experiences.
- The probable cause standard does not demand any showing that a good-faith belief be correct or more likely true than false; rather, it requires only such facts as make wrongdoing or the discovery of evidence thereof probable.
- A probable cause determination does not require absolute certainty that evidence of criminal activity will be found at a particular place.
- A search warrant application is not required to guarantee that evidence will be found.
- Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the probable-cause decision.
- Probable cause may be based on common-sense conclusions about human behavior.
- The preference for warrants is most appropriately effectuated by according great deference to a magistrate’s determination.
- Probable cause is not a high bar.

*See Kaley v. United States*, 134 S.Ct. 1090, 1103 (2014); *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *Texas v. Brown*, 460 U.S. 730, 742 (1983); *Maryland v. Pringle*, 540 U.S. 366, 370 (2003); *United States v. Arvizu*, 534 U.S. 266, 27 (2002); *United States v. Ventresca*, 380 U.S. 102 (1965); *People v. Crippen*, 223 P.3d 114, 117 (Colo. 2010); *People v. Polander*, 41 P.3d 698, 702 (Colo. 2001); *People v. Scott*, 227 P.3d 894, 897 (Colo. 2010); *People v. Atley*, 727 P.2d 376, 377 (Colo. 1986); *People v. Vincent*, 628 P.2d 107, 109 (Colo. 1981); *People v. Gutierrez*, 222 P.3d 925, 937 (Colo. 2009); *United States v. Yusuf*, 461 F.3d 374, 390 (3d Cir. 2006); *United States ex. rel Campbell v. Rundell*, 327 F.2d 153, 163 (3d Cir. 1964); *United States v. Wicks*, 995 F.2d 964, 972 (10th Cir. 1993); *United States v. Gatto*, 313 F. Supp. 3d 551, 558 (S.D.N.Y. 2018); *State v. Everett*, 89 So. 3d 463, 469 (La. App. 3 Cir. 2012); *Stevenson v. State*, 168 A.3d 967, 977-78 (Md. 2017); *Kaley v. United States*, 134 S.Ct. 1090, 1103 (2014).

“Probable cause to search a location does not depend on **direct evidence or personal knowledge that evidence [] is located there**. . . . It is enough when the affidavit establishes a nexus between the objects to be seized and the place to be searched from which a person of reasonable caution would believe that the articles sought would be found there.” *United States v. Wiseman*, 158 F. Supp. 2d 1242, 1247 (D. Kan. 2001) (emphasis added), citing *United States v. Hargus*, 128 F.3d 1358, 1362 (10th Cir. 1997); *Ornelas v. United States*, 517 U.S. 690, 700 (1996) (a warrant affidavit need not include direct evidence that the evidence sought would be found in the place to be searched – “direct evidence has never been required by the Fourth Amendment”).

The nexus between the place to be searched and the items to be seized may be established by the nature of the evidence and normal inferences of where one would likely find such evidence. *United States v. Anderson*, 851 F.2d 727, 729 (4th Cir. 1988); *United States v. Arellano*, 410 F. App’x 603, 607 (4th Cir. 2011); *Commonwealth v. O’Day*, 798 N.E.2d 275 (Mass. 2003) (magistrate may make probable cause determination in part based on “normal inferences as to where a criminal would be likely to hide evidence of the crime”); *People v. Green*, 70 P.3d 1213 (Colo. 2003) (“An affidavit need only establish “a fair probability that officers executing [a] warrant will find contraband or evidence of crime at the location to be searched.” “The link

between the suspected crime and the place to be searched can be established by circumstantial evidence and reasonable inferences drawn from such evidence.” “In other words, although direct evidence in the affidavit connecting evidence of the crime to the place to be searched is helpful in establishing probable cause, it is not necessarily required. Rather, the facts alleged in the affidavit, together with reasonable inferences drawn from those facts, may be enough”) (internal citations omitted).

Here, the historical facts and reasonable inferences therefrom created a “fair probability” that evidence related to this arson/homicide would be found in the Google data to be searched for and seized, i.e., persons who searched for the victims’ address in the approximately two weeks prior to the offense. In addition to the facts set forth regarding the crime itself and information learned in the ensuing investigation, the affidavit specifically explained why it was reasonable to believe that the persons involved in this case (at least three suspects) would have searched the address where the fire occurred prior to the offense:

*Based on the extreme nature of this crime and the extensive planning it must have taken to carry out the events involved in this offense, Your Affiant feels that this crime was very personal and involved a substantial amount of anger towards someone in the victim residence and/or was intended to send some sort of message. This belief is based on years of investigation of violent crimes and the motives associated with such crimes that Your Affiant has been exposed to over the years. Considering the personal nature of this offense, the actions of the suspects as observed on the surveillance videos, and the amount of planning that likely went into a coordinated attack such as this one, Your Affiant believes that there is a reasonable probability that one or more of the suspects searched for directions to the victim’s address prior to the fire.*

*The victim’s home is in a densely populated subdivision and does not “stick out” as a house that would likely have been picked at random. It is not on a corner lot, which would be an easier target residence as there would be more area to move in before and after setting the fire. As such, it is reasonable to believe that this home was targeted, and that the person or persons targeting the home sought its location and/or directions in planning this attack.*

The defendant claims that the warrant was lacking in particularity and/or probable cause because the affidavit did not contain personalized suspicion as it relates to every account holder whose data was contained in the pool of data being searched. However, this argument ignores the reality of what occurred. “Every account” was not searched - a database was accessed to identify, through computer algorithms, accounts that conducted a search matching the narrow parameters entered. The particularized suspicion was set forth in the paragraphs cited above, which made clear that only the accounts that had conducted the search – which was specific to the crime being investigated - were sought because it was reasonable to believe that those accounts belonged to persons involved in or with knowledge of this offense. It was not necessary to specify/identify the users of the particular accounts at the outset in order for the warrant to be valid. *See e.g., Dixon v. United States*, 211 F.2d 547, 549 (5<sup>th</sup> Cir. 1954) (“it is not essential to the validity of a search warrant that the owner or occupant of the premises be named”). It is enough that the affidavit established a link between the accounts being targeted

(i.e., the accounts that conducted the relevant search), and reasonable grounds to believe that obtaining evidence of these accounts (even though initially deidentified) would aid in the identification of evidence relevant to the arson/homicide (in the form of identification of the perpetrators of this offense). See *Warden v. Hayden*, 387 U.S. 294, 307 (1967) (a search warrant may be issued to obtain evidence to “aid in a particular apprehension or conviction.”).<sup>2</sup>

#### **D. The Officers Reasonably Relied on the Warrant in Good Faith.**

As demonstrated above, the keyword search warrant was carefully crafted to identify only those individuals involved in this offense, and complied with all constitutional requirements for a valid search warrant. However, in the event that this Court disagrees, suppression of all of the evidence obtained from the Google Keyword Search warrant is not the proper remedy. Because a warrant was obtained, the good faith rule must be applied here, unless the Defendant can establish that one of the exceptions to the rule apply. He has failed to do so.

Section 16-3-308, C.R.S. (2022) creates a presumption that an officer was acting in good faith if he was acting pursuant to a warrant. *People v. Altman*, 960 P.2d 1164 (Colo. 1998). “The statutory good-faith exception to the exclusionary rule provides that evidence should not be suppressed in a criminal proceeding if it was obtained because of a peace officer’s good faith mistake...” *People v. Saint-Veltri*, 935 P.2d 34, 37 (Colo. App. 1996). The ultimate question under the statute is whether the officer had a good faith belief in the validity of the warrant, focusing on whether the officer’s reliance on the warrant was objectively reasonable. *Altman, supra*.

There are four circumstances in which an officer’s reliance on a warrant would not be objectively reasonable: (1) where the issuing magistrate or judge was misled by a knowing or recklessly made falsehood; (2) where the issuing magistrate wholly abandoned his or her judicial role; (3) where the warrant is so facially deficient that the officers cannot reasonably determine the particular place to be searched or things to be seized; and (4) where the warrant is based on an affidavit “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Altman, supra*. None of these exceptions apply in this case.

The defendant has first failed to show that the issuing judge was misled by a knowing or recklessly made falsehood. He claims that Det. Sandoval submitted the keyword warrant application knowing that it would entail the search of “billions of people,” and the failure to disclose this fact to the issuing judge constituted a “lack of candor” precluding reliance on the good faith exception. As demonstrated above, however, this is not what actually occurred. Moreover, Det. Sandoval was not obligated to discuss the manner in which Google would carry out its search and cannot be considered a material omission, much less a knowing or recklessly made falsehood.

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<sup>2</sup> The defendant suggests that probable cause is lacking because there was no evidence that the suspects were seen holding or using a phone during the offense. This ignores the fact that the scope of the keyword search was for accounts that searched for the address prior to the offense, not that their possession or use of their devices during the crime would establish their involvement. Considering the basis for the keyword search did not involve devices present during the crime but on actions taken in the two weeks prior to the crime, whether the suspects had their devices on their person or were using them during the offense is of no moment.

It is also irrelevant that the affidavit did not discuss the previous two applications that were crafted but not executed in an attempt to obtain the information ultimately obtained through the third keyword warrant. As the defendant recognizes in his motion, “[r]everse keyword warrants are a new type of search. They are unlike anything courts have approved in the past. No keyword warrant has been tested in an adversarial proceeding, and there are no reported decisions concerning their constitutionality.” As such, it is certainly understandable that it might take multiple efforts to craft a warrant that would be sufficiently narrow to identify the suspects but consistent with Google’s capabilities and concerns. These efforts were essentially immaterial to the question of whether there was sufficient probable cause and particularity to justify issuing the third warrant.

“An affidavit need not describe all steps taken, information obtained, and statements made during an investigation but must contain any material adverse facts. An adverse fact is material in this context only if its omission would render the affidavit ‘substantially misleading as to the existence of probable cause.’” *People v. McKay*, 2021 CO 72, ¶ 9. The previous steps taken to craft a proper warrant do not constitute “material adverse facts,” much less was the omission of these steps “substantially misleading as to the existence of probable cause” – indeed, they do not bear on anything other than the efforts of law enforcement and Google to ensure that the warrant was constitutionally sound.

The defendant has not alleged that the issuing judge wholly abandoned his or her judicial role; as such, this exception does not apply.

There is similarly no evidence the warrant “is so facially deficient that the officers cannot reasonably determine the particular place to be searched or things to be seized.” *Altman, supra*. The warrant was directed at Google, to be executed by Google, and was very specific as to the information being sought.

Finally, the defendant claims that the good-faith exception does not apply because the keyword warrant was so lacking in indicia of probable cause that it was entirely unreasonable for an officer to rely on it. This argument, like many in the defendant’s motion, is based on the faulty premise that the warrant “authorized the search of billions of Google Search users.” For the same reasons outlined above, this is not what occurred. And because it is not what occurred, nor is it what was contemplated by the plain language of the warrant itself, it simply cannot be said that no reasonable officer would have relied upon this warrant.

The affidavit established probable cause to believe that a crime occurred, that three suspects were involved, that the victims’ house was targeted yet there was no reason to believe that any individuals who associated with the victims would have committed this crime, and because of this there was reason to believe that the persons who targeted this house would have likely conducted a search of the address in order to locate the residence and commit this crime. The affidavit was not asking Google to conduct a visual review all of the search history of all of its users to identify these individuals. A reasonable person considering this warrant would understand that this “search” for the persons who conducted an online query for this address would be a computer-facilitated search wherein the search terms would be entered and only the matching data would be returned and viewed. It stretches credulity to think that either the affiant



or the issuing judge would have construed this warrant as invading the privacy of “billions” of people. As such, it simply cannot be said that it was not reasonable to have relied upon the validity of this warrant. *See Altman, supra* (“Good faith can only be impugned by showing it would have been **entirely unreasonable** for officers to rely on the warrant”).

*II. A VERACITY HEARING IS NOT WARRANTED.*

The defendant last contends that a veracity hearing is required because the keyword warrant application failed to disclose the following “critical facts” to the issuing judge: 1) the application failed to convey that it was seeking a novel reverse warrant to search billions of people without limitation; 2) it failed to disclose that Google had rejected two previous keyword warrants issued by another judge; 3) it failed to inform the judge that the IP address information sought would defeat the “de-identification” scheme outlined in the warrant.

A defendant may contest the sufficiency of a warrant affidavit on the ground that the statements of the affiant are false. *People v. Reed*, 56 P.3d 96, 99 (Colo. 2002). If the defendant shows some good faith basis in fact to question the accuracy of an affidavit for a search warrant, a veracity hearing should be held. *People v. Dailey*, 639 P.2d 1068, 1074-75 (Colo. 1982).

None of the three “critical facts” set forth above constitute false statements. For the reasons outlined above, the affidavit need not have conveyed that the warrant would involve a search of “billions of people” without limitation, because that it itself not accurate. It was unnecessary to disclose the previous two keyword search warrants, and any failure to do so could not constitute a “false” statement. And finally, it need not have informed the court that the IP addresses sought would defeat the “de-identification” procedures outlined in the warrant, because the IP addresses themselves, without further legal process, are not identifiable as to any particular person or location. There were simply no “false statements” included in the affidavit, and as such, a veracity hearing is not warranted.

For the above reasons, the People respectfully request that this Court deny the motion to suppress the keyword search warrant.

Dated: August 12, 2022

Respectfully submitted,  
Beth McCann  
District Attorney

by: /s/Joseph M. Morales  
Joe Morales  
Chief Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on the 12th day of August, 2022, I E-served through CCE, a true and complete copy of the foregoing to:

Counsel for the defendant

By: /s/ Joseph M. Morales

## Exhibit 4

Nikki Adeli's Declaration of Legal Investigations Support Analyst

## **Declaration of Legal Investigations Support Analyst**

1. I, Nikki Adeli, am a Policy Specialist on the Legal Investigations Support team at Google LLC (“Google”). I have worked in this role since September 2019. In my role on this team, I am a duly authorized custodian of records for Google, and am responsible in part for analyzing U.S. domestic legal process for validity; asserting objections when appropriate; and searching for, collecting, and producing records in response to U.S. domestic legal process directed to Google, including for search warrants that seek to identify who may have searched for certain words or phrases on Google’s products and services. I have personal knowledge of the information in this declaration and could testify competently thereto if called as a witness.

### **Background on Google’s Procedures for Responding to Legal Process**

2. Google receives legal process from governmental agencies around the world that ask Google to disclose information about Google users. Google reviews each piece of legal process to ensure that it satisfies applicable law, works to narrow legal process when it is overbroad, and also objects to producing user information when appropriate. One category of compulsory legal process that Google receives is U.S. domestic search warrants that direct Google to identify to issuing law enforcement which users of Google Search (and often Google Maps), if any, searched for specific words or phrases during a specified period of time.

3. To help ensure legal and privacy protections for Google users and to guard against overbroad disclosures, Google requires that the search parameters for such warrants be specific and narrowly tailored to reveal information connected to the alleged crime under investigation. Google generally employs a staged process that includes de-identification and narrowing measures when responding to this category of search warrants.

4. First, a member of the Google LIS team creates a text-based query (that can include letters, numbers, or characters) based on the requirements of the warrant. That query is then run over the records of searches conducted through Google Search and Maps. It has been reported by Google and publicly that Google Search has more than 1 billion average monthly users, and each day, Google Search receives billions of queries. *See, e.g.*, Alphabet Q4 2015 Earnings Call (Feb. 1, 2016) *available at* <https://www.youtube.com/watch?v=rgDBpPy1xi4> (CEO Sundar Pichai acknowledging at 18:45 that Search had 1 billion monthly active users); Danny Sullivan, Google, “How Google updates Search to improve your results” (June 2, 2021), <https://blog.google/products/search/how-we-update-search-improve-results/>; *see also* Popular Science, “Google Has 7 Products With 1 Billion Users” (Feb. 26, 2016) *available at* <https://www.popsci.com/google-has-7-products-with-1-billion-users/>.

5. Before running this query, Google and its records custodians do not know which, if any, users may have undertaken searches that would be responsive to the warrant in question. Moreover, even if a user conducted a responsive search during the relevant time period, records of that query may not exist at the time the Google LIS team conducts the query. This is because searches conducted from an authenticated user's account can be deleted by the user either manually or automatically based on the user's account settings.

6. The results of that query are returned to the LIS team member in the form of a CSV file that reflects queries containing the specified search term(s). Depending on the requirements of the warrant, Google may limit the results to queries that contain only the search terms listed in the warrant and no other words or, more commonly, the results may extend to queries that include the specified search terms as part of a query that contains other words. For example, a search warrant might compel Google to produce every query containing the phrase

“1600 Amphitheatre Parkway.” The results returned on that query may include queries for “1600 Amphitheatre Parkway” along with additional terms like “Mountain View, CA”, “94043” or “Google Headquarters”. Where a search warrant specifies a search for only an exact phrase, Google would conduct a query for only that exact phrase and not other, broader phrases.

7. The CSV results are then de-identified by the analyst (explained more below) to truncate account-identifying information in the results. The de-identified “production version” of the potentially responsive data typically includes the following categories of information: (1) the date and time of the search, (2) coarse location information inferred from the IP address from which the search was conducted, (3) the Query (search query entered by the user), (4) the Result (the result generated by Google from a user’s queried search), (5) the Host (the Google domain name that the user contacted (e.g., google.com and google.fr.)), (6) the Request (the latter part of the URL, following the host, that is associated with the user’s search. ‘GET’ and ‘POST’ distinguish background requests made of Google’s servers), (7) a truncated Google identifier (known as a GAIA ID), if the search was conducted from an authenticated user’s account, or a truncated version of a Browser Cookie ID, if the search was not conducted from an authenticated user’s account and (8) the associated user agent string. An LIS analyst de-identifies the data produced to the government at this step by truncating either the GAIA ID or the Browser Cookie ID, as applicable, before making a production. Google’s policies and practices regarding the scope of information included in this initial production may have differed in the past, including during the time period in this matter.

8. This de-identified production is then produced to the issuing law enforcement agency for it to determine if any of these de-identified results might be relevant to its investigation. For example, an initial de-identified production from Google might show that

seven users searched for a partial address during a particular time period, but law enforcement who reviews that de-identified production might exclude any searches where the complete query revealed additional search terms reflecting the address search was for a different city or state than the one of relevance to the investigation.

9. Next, if the initial search warrant further authorizes the law enforcement agency to seek identifying information about responsive users, the government can compel Google to provide additional information for those users the government has determined to be relevant to its investigation based on the de-identified production. For queries that included a truncated GAIA ID, this information includes the IP address associated with the search (if available), the full GAIA ID, and basic subscriber information for that GAIA ID, as defined in 18 U.S.C. § 2703(c)(2). For queries that included a truncated Browser Cookie ID, this additional information includes the IP address associated with the search (if available) and a full Browser Cookie ID. If the initial search warrant does not authorize the government to seek identifying information about responsive users, Google requires that the government apply for an additional warrant authorizing disclosure of identifying information for those users relevant to its investigation.

10. Government agencies from around the world ask Google to disclose user information. We carefully review each request to make sure it satisfies applicable laws. Google does not provide templates or sample language to law enforcement for their search warrants that might direct Google to identify to issuing law enforcement which users of Google Search (and often Google Maps), if any, searched for specific words or phrases during a specified period of time. If a search warrant asks for too much information, Google tries to have it narrowed, and in some cases Google objects to producing any information at all.

### **The Search Warrants in This Matter**

11. In this case, Google received a search warrant (Google Reference No. 4061789) dated October 1, 2020. It requested information about any and all Google users that searched for the following terms between July 22, 2020, at 00:01 MST and August 5, 2020, at 0245 MST:

“5312 Truckee”  
“5312 Truckee St”  
“5312 Truckee Street”  
“5312 N Truckee St”  
“5312 N. Truckee St.”  
“5312 N. Truckee St”  
“5312 N Truckee St.”  
“5312 North Truckee”  
“5312 North Truckee Street”

The warrant did not comply with Google’s policy regarding de-identification of responsive productions, and was escalated to outside counsel for Google. Google understands that the warrant was thereafter withdrawn, and Google did not produce data in response to it.

12. Google received a second search warrant (Google Reference No. 4120751) dated October 20, 2020. Seeking the same set of information as the first warrant, and including language regarding de-identification that again did not comply with Google’s policy regarding de-identification of responsive data for this type of search warrant, and it was escalated to outside counsel for Google. Google understands that this search warrant was thereafter withdrawn, and Google did not produce data in response to it.

13. Google received a third search warrant (Google Reference No. 4754430) dated November 19, 2020, that was submitted to Google’s online system, the Law Enforcement Response System, through Detective Ernest Sandoval’s verified account on that same day. The warrant requested information about any Google users that searched the following terms between July 22, 2020, at 00:01 MST and August 5, 2020, at 0245 MST:

“5312 Truckee”



“5312 Truckee St”  
“5312 Truckee Street”  
“5312 N Truckee St”  
“5312 N. Truckee St.”  
“5312 N. Truckee St”  
“5312 N Truckee St.”  
“5312 North Truckee”  
“5312 North Truckee Street”

The warrant directed Google to produce anonymized information and the IP addresses used to conduct relevant searches. The warrant also indicated that the government could seek additional legal process for basic subscriber information for any users deemed relevant to the investigation, but did not direct production of basic subscriber information for those users in the initial keyword search warrant.

14. An LIS analyst executed a query for responsive data based on the warrant parameters. The query returned 61 responsive searches that were associated with 5 unique GAIA IDs and 3 unique Browser Cookie IDs.

15. Consistent with Google’s policies as described above, the LIS analyst in this matter de-identified the “production copy” of the results and produced the de-identified results to the government. The initial production file included the fields set forth in paragraph 7, and also a field containing IP address information as required by the warrant. A true and correct copy of Google’s transmittal letter that accompanied this production is attached as Exhibit A.

16. Here, the warrant did not authorize the production of basic subscriber information without additional legal process. On December 8, 2020, Google received an additional search warrant (Google Reference No. 5147305) dated December 4, 2020 from Detective Sandoval seeking information associated with the 5 truncated GAIA IDs from the deidentified production. In response to this warrant, Google produced only the basic subscriber information for the five accounts. A true and correct copy of Google’s transmittal letter that accompanied this production

is attached as Exhibit B. Google objected to the warrant to the extent it required disclosure of content or other records based on a truncated GAIA ID and advised that new legal process would be required to obtain additional information.

17. I am unaware of any errors in attribution associated with the queries conducted in response to RSH warrants and have no reason to believe there is any attribution error.

Executed on June 17, 2022 at Austin Texas

By:  56DEAB57D243496...

Nikki Adeli

# Exhibit A



11/25/20

Detective Ernest Sandoval  
Denver Police Department (CO)  
1331 Cherokee St.  
Denver, CO 80204

**Re: Search Warrant dated November 19, 2020 (Google Ref. No. 4754430)  
20-472026**

Dear Detective Sandoval:

Pursuant to the Search Warrant issued in the above-referenced matter, we have conducted a diligent search for documents and information accessible on Google's systems that are responsive to your request. Our response is made in accordance with state and federal law, including the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq.

Accompanying this letter is responsive information to the extent reasonably accessible from our system associated with the Google search term(s), *5312 TRUCKEE, 5312 TRUCKEE ST, 5312 TRUCKEE STREET, 5312 N TRUCKEE ST, 5312 N. TRUCKEE ST., 5312 N. TRUCKEE ST, 5312 N TRUCKEE ST., 5312 NORTH TRUCKEE, 5312 NORTH TRUCKEE STREET*, as specified in the Search Warrant. We have also included a signed Certificate of Authenticity which includes a list of hash values that correspond to each file contained in the production. Google may not retain a copy of this production but does endeavor to keep a list of the files and their respective hash values. To the extent any document provided herein contains information exceeding the scope of your request, protected from disclosure or otherwise not subject to production, if at all, we have redacted such information or removed such data fields.

Based on the number of search results, the file produced contains truncated GaiaIDs for signed-in users and truncated cookie IDs for non-signed-in users. For the search results that law enforcement narrows and finds to be relevant to the investigation, law enforcement may request under this search warrant the non-truncated information by emailing [USLawEnforcement@google.com](mailto:USLawEnforcement@google.com) with the Google reference number in the Subject Line and the truncated identifier requested. Google may provide basic subscriber information as defined in 18 U.S.C. § 2703(c)(2) with non-truncated GaiaIDs in response, if the non-truncated search results remain available from this search warrant. Once such information is produced, further information relating to other non-truncated identifiers cannot be provided without a new reverse search warrant. The truncated identifiers are not valid target identifiers that can be used to search for information separately from this search warrant.

Finally, in accordance with Section 2706 of the Electronic Communications Privacy Act, Google may request reimbursement for reasonable costs incurred in processing your request.

Under Google's user notice policy, Google will notify the users of the Google accounts identified unless such notice is prohibited by law (e.g., non-disclosure order).

Google LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043



USLawEnforcement@google.com

[www.google.com](http://www.google.com)

For a Google Custodian of Records, we will require a subpoena and confirmation from you of the time and date of the appearance, the scope of testimony, any Google Reference Number(s) associated with the case, and the travel for the appearance at least one week in advance in order to identify, make the appropriate plans for, and prepare a custodian for trial.

Finally, in accordance with Section 2706 of the Electronic Communications Privacy Act, Google may request reimbursement for reasonable costs incurred in processing your request.

Regards,

Claire Cole  
Google Legal Investigations Support



## CERTIFICATE OF AUTHENTICITY

I hereby certify:

1. I am authorized to submit this affidavit on behalf of Google LLC ("Google"), located in Mountain View, California. I have personal knowledge of the following facts, except as noted, and could testify competently thereto if called as a witness.
2. I am qualified to authenticate the records because I am familiar with how the records were created, managed, stored and retrieved.
3. Google provides Internet-based services.
4. Attached is a true and correct copy of records pertaining to the Google search term(s), *5312 TRUCKEE, 5312 TRUCKEE ST, 5312 TRUCKEE STREET, 5312 N TRUCKEE ST, 5312 N. TRUCKEE ST., 5312 N. TRUCKEE ST, 5312 N TRUCKEE ST., 5312 NORTH TRUCKEE, 5312 NORTH TRUCKEE STREET*, with Google Ref. No. 4754430 ("Document"). Accompanying this Certificate of Authenticity as Attachment A is a list of hash values corresponding to each file produced in response to the Search Warrant.
5. The Document is a record made and retained by Google. Google servers record this data automatically at the time, or reasonably soon after, it is entered or transmitted by the user, and this data is kept in the course of this regularly conducted activity and was made by regularly conducted activity as a regular practice of Google.
6. The Document is a true duplicate of original records that were generated by Google's electronic process or system that produces an accurate result. The accuracy of Google's electronic process and system is regularly verified by Google.
7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

\_\_\_\_\_/s/ Claire Cole\_\_\_\_\_  
(Signature of Records Custodian)

Date: 11/25/20

Claire Cole  
(Name of Records Custodian)

Google LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043



[USLawEnforcement@google.com](mailto:USLawEnforcement@google.com)

[www.google.com](http://www.google.com)



**Attachment A: Hash Values for Production Files (Google Ref. No. 4754430)**

4754430.Search.2.csv:

MD5- 43d9b525bae7d4d5b69dfe927f4802e8

SHA512-

bdcdf6c12f93e37cf2fa8e13ca6860c78fcda2b191d7fd2baace00e7a2eff9e24e8dae034200b98c3d9  
9397236ba208b6271c666e0c79882add5932654665f3

4754430.Search.csv:

MD5- cfee99354222ce6dea3830023caab0ac

SHA512-

fa9d80a1b10ddc66d492556a31f050b15ccfc46c88550a34a036081a799c99b877be2ad1219004550  
2880b64463ebe322b7fd61b64417397a2163bc01d7d015f



# Exhibit B



12/22/20

Detective Ernest Sandoval  
Denver Police Department (CO)  
1331 Cherokee St.  
Denver, CO 80204

**Re: Search Warrant dated December 04, 2020 (Google Ref. No. 5147305)  
2020-472026**

Dear Detective Sandoval:

Pursuant to the Search Warrant issued in the above-referenced matter, we have conducted a diligent search for documents and information accessible on Google's systems that are responsive to your request. Our response is made in accordance with state and federal law, including the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq.

Accompanying this letter is responsive information to the extent reasonably accessible from our system associated with the Google search term(s), *5312 TRUCKEE, 5312 TRUCKEE ST, 5312 TRUCKEE STREET, 5312 N TRUCKEE ST, 5312 N. TRUCKEE ST., 5312 N. TRUCKEE ST, 5312 N TRUCKEE ST., 5312 NORTH TRUCKEE, 5312 NORTH TRUCKEE STREET*, as specified in the Search Warrant. We have also included a signed Certificate of Authenticity which includes a list of hash values that correspond to each file contained in the production. Google may not retain a copy of this production but does endeavor to keep a list of the files and their respective hash values. To the extent any document provided herein contains information exceeding the scope of your request, protected from disclosure or otherwise not subject to production, if at all, we have redacted such information or removed such data fields.

We understand that you are seeking content or other records associated with truncated GaiaIDs for signed-in users surfaced from a reverse search history warrant (Google Ref. No. 4754430). Truncated identifiers are not valid target identifiers that can otherwise be used to search for information. Truncated GaiaIDs identifiers are used only for distinguishing signed-in users in the reverse search history results. Pursuant to the anonymization and narrowing required for reverse search history warrants, Google has only provided basic subscriber information, as defined in 18 U.S.C. 2703(c)(2), for the requested truncated GaiaIDs. If you require content or other records for these accounts, you may submit new legal process specifically identifying that account by its email address or other unique Google identifier.

Finally, in accordance with Section 2706 of the Electronic Communications Privacy Act, Google may request reimbursement for reasonable costs incurred in processing your request.

Under Google's user notice policy, Google will notify the users of the Google accounts identified unless such notice is prohibited by law (e.g., non-disclosure order).

For a Google Custodian of Records, we will require a subpoena and confirmation from

Google LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043



USLawEnforcement@google.com

[www.google.com](http://www.google.com)

you of the time and date of the appearance, the scope of testimony, any Google Reference Number(s) associated with the case, and the travel for the appearance at least one week in advance in order to identify, make the appropriate plans for, and prepare a custodian for trial.

Finally, in accordance with Section 2706 of the Electronic Communications Privacy Act, Google may request reimbursement for reasonable costs incurred in processing your request.

Regards,

Kody Sun  
Google Legal Investigations Support



## CERTIFICATE OF AUTHENTICITY

I hereby certify:

1. I am authorized to submit this affidavit on behalf of Google LLC ("Google"), located in Mountain View, California. I have personal knowledge of the following facts, except as noted, and could testify competently thereto if called as a witness.
2. I am qualified to authenticate the records because I am familiar with how the records were created, managed, stored and retrieved.
3. Google provides Internet-based services.
4. Attached is a true and correct copy of records pertaining to the Google search term(s), *5312 TRUCKEE, 5312 TRUCKEE ST, 5312 TRUCKEE STREET, 5312 N TRUCKEE ST, 5312 N. TRUCKEE ST., 5312 N. TRUCKEE ST, 5312 N TRUCKEE ST., 5312 NORTH TRUCKEE, 5312 NORTH TRUCKEE STREET*, with Google Ref. No. 5147305 ("Document"). Accompanying this Certificate of Authenticity as Attachment A is a list of hash values corresponding to each file produced in response to the Search Warrant.
5. The Document is a record made and retained by Google. Google servers record this data automatically at the time, or reasonably soon after, it is entered or transmitted by the user, and this data is kept in the course of this regularly conducted activity and was made by regularly conducted activity as a regular practice of Google.
6. The Document is a true duplicate of original records that were generated by Google's electronic process or system that produces an accurate result. The accuracy of Google's electronic process and system is regularly verified by Google.
7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

\_\_\_\_\_/s\_ Kody Sun\_\_\_\_\_  
(Signature of Records Custodian)

Date: 12/22/20

Kody Sun  
(Name of Records Custodian)

Google LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043



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[www.google.com](http://www.google.com)



**Attachment A: Hash Values for Production Files (Google Ref. No. 5147305)**

1095648799279.1095648799279.GoogleAccount.SubscriberInfo\_001.zip:

MD5- 2324252e35401545b39bc0d8c434af99

SHA512-

ffaf4152a1b8f7b9a7e8d836aef6b83b89afbdec3feba176b26371df34045bff891613a6b38bc747d00  
236011130f3549c8cd0d14bbd852505d90b03f2689516

464320931891.464320931891.GoogleAccount.SubscriberInfo\_001.zip:

MD5- f7a3b859447f68824a4c8c049a103da7

SHA512-

6f676d3a6e8c614240c0f9d75a15198b7dc2986abad0c9c3a9ae6f8873e89f925c382920bdaedf43cd  
f34a5e2ed32fe6c184bfe5f7c7e19be00d66c0235b8453

4754430.Supplemental.1.csv:

MD5- 192f2a7eb3f31a3906241f897c3f77e0

SHA512-

847bb9d31a547c892932efbd48665ca01bec243467226b62b8293af8e50fe0091491b8073413ba01  
c70577a96484b215c974728a4bc3f4b64d61c1134c8e53d2

4754430.Supplemental.2.csv:

MD5- d4d62e2feea8c2d986a2b2d8e40fe834

SHA512-

ca29f19b242dd2ae070ca6a51dc6cdfafb95d4b11f45ff3879c1a4a0b77b66a849b3ddf606684d928f  
9b17febd0d2c0aa39c6842b76a68a2b4d1422e6f592cc2

5389485823.5389485823.GoogleAccount.SubscriberInfo\_001.zip:

MD5- 521f6cb75c5e913f0aded2e4174240ec

SHA512-

3a7428312b07a6cda9489594cd3980366fde775c8fc7821b33b77635ed24c9f34ff9cd4970729b739  
defb86b1be8778d914c0480895639c5a2718f476d795e9a

577076180068.577076180068.GoogleAccount.SubscriberInfo\_001.zip:

MD5- a6d6339c7ab2c361da2855c3c13ac717

SHA512-

c0ce9aac232141dc5adc00c6783842c66eeaf721b2514bbcc5b150e5af438fff62a780ff82b8e9718e2  
18959d6c792d07c579cf40d603fe3cb45f3f2e6764827

641539151813.641539151813.GoogleAccount.SubscriberInfo\_001.zip:

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1600 Amphitheatre Parkway  
Mountain View, California 94043



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MD5- d7b408600cf62377231a4736ff4f12fa

SHA512-

6d1517286fdb96a165c31a6e19ac81e27222c4f2cd37a384a02bc92c273ccc87f9c47e45ee579c193

9c8a290f4d21c532fb344d55ed3a1fb4e1a1f70e821387e

## Exhibit 5

Defendant's Reply to People's Responses to Motion to Suppress Evidence From a Keyword Warrant and Motions to Suppress Evidence Unlawfully Obtained



<p>DISTRICT COURT, DENVER COUNTY, COLORADO 520 W. Colfax Denver, Colorado 80204</p>	<p>DATE FILED: September 16, 2022 4:12 PM FILING ID: EA234FC1E8E7F CASE NUMBER: 2021CR20001</p>
<p>PEOPLE OF THE STATE OF COLORADO, Plaintiff,</p> <p>v.</p> <p>GAVIN SEYMOUR, Juvenile Defendant.</p>	<p>σ COURT USE ONLY σ</p>
<p>JENIFER STINSON (#35993) Stinson Law Office 1245 E. Colfax Avenue, Suite 300 Denver, Colorado 80218 Phone: (303) 483-3161 E-mail: JStinsonLaw@gmail.com</p> <p>MICHAEL S. JUBA (#39542) Juba Law Office, PLLC 675 N. Grant Street Denver, CO 80203 Phone: (303) 974-1080 E-mail: Juba@JubaLawOffice.com</p> <p>MICHAEL W. PRICE (#22PHV6967) National Association of Criminal Defense Lawyers 1660 L Street NW, 12th Floor Washington, DC 20036 Phone: (202) 465-7615 E-mail: MPrice@NACDL.org</p>	<p>Case Number: 21CR20001</p> <p>Division: 5A</p>
<p><b>DEFENDANT’S REPLY TO PEOPLE’S RESPONSES TO MOTION TO SUPPRESS EVIDENCE FROM A KEYWORD WARRANT AND MOTIONS TO SUPPRESS EVIDENCE UNLAWFULLY OBTAINED [DEF-25], [DEF-26], [DEF-27], [DEF-29], [DEF-30], AND [DEF-37]</b></p>	

Gavin Seymour, through counsel, submits the following Reply to the People’s Responses:

*Factual Background:*

1. On June 17, 2022, counsel filed the following Motions relevant to this Reply:

- (a) Motion to Suppress Evidence Unlawfully Obtained (Accounts) [DEF-25]
  - (b) Motion to Suppress Evidence Unlawfully Obtained (Cellphone Records) [DEF-26]
  - (c) Motion to Suppress Evidence Unlawfully Obtained (Cellphone Data) [DEF-27]
  - (d) Motion to Suppress Evidence Unlawfully Obtained (Home) [Def-29]
  - (e) Motion to Suppress Evidence Unlawfully Obtained (Social Media) [DEF-30]
  - (f) Motion to Suppress Statements and Observations Obtained in Violation of Gavin Seymour's Constitutional Rights to Remain Silent and To Counsel [Def-37]
2. On June 30, 2022, counsel also filed a Motion to Suppress Evidence from a Keyword Warrant and Request for a Veracity Hearing.
3. On July 15, 2022, the People filed a Motion For Court to Set Deadline for People's Responses to Defendant's Motions. On July 18, 2022, this Court issued an order requesting guidance from the People regarding how much time the People would need to prepare adequate responses and what would constitute a reasonable deadline for such responses. On July 21, 2022, the People responded stating that they would need until August 12, 2022, and this Court granted the motion on July 26, 2022.
4. August 12, 2022, the People filed the following Responses relevant to this Reply:
  - (a) Response to Motion to Suppress Evidence Unlawfully Obtained (Accounts) [DEF-25]
  - (b) Response to Motion to Suppress Evidence Unlawfully Obtained (Cellphone Records) [DEF-26]
  - (c) Response to Motion to Suppress Evidence Unlawfully Obtained (Cellphone Data) [DEF-27]
  - (d) Response to Motion to Suppress Evidence Unlawfully Obtained (Home) [Def-29]
  - (e) Response to Motion to Suppress Evidence Unlawfully Obtained (Social Media) [DEF-30]
  - (f) Response to Motion to Suppress Statements and Observations Obtained in Violation of Gavin Seymour's Constitutional Rights to Remain Silent and To Counsel [Def-37]
  - (g) Response to Motion to Suppress Evidence from a Keyword Warrant and Request for a Veracity Hearing.
5. On August 19, 2022, this Court held a Motions Hearing. During the hearing, the Court received testimony from two witnesses: Nikki Adeli from Google and Det. Ernest Sandoval from the Denver Police Department. *TR 8/19/22, pp. 24-91 (Attachment 1)*.
6. At the conclusion of the hearing, this Court permitted counsel and the People to file supplemental briefings due September 16, 2022.
7. Mr. Seymour requests the Court suppress the evidence unlawfully obtained from the warrants referenced above based upon violations of the Fourth Amendment to the United

States Constitution, and article II, Section 7 of the Colorado Constitution. Mr. Seymour requests the Court suppress Mr. Seymour's statements to police during his in-custody interview under *Miranda v. Arizona*, 384 U.S. 436 (1966).

## **I. Keyword Warrant**

8. The keyword warrant in this case compelled Google to search the private data of billions of users based on a mere "hunch" that someone responsible for the arson had searched for 5312 Truckee Street. *TR 8/19/22, pp. 83:2 (Attachment 1)*. In applying for this general warrant, Det. Sandoval failed to disclose that he had no experience or training on how the search would be executed, that it would necessitate a search across billions of private accounts, that it would not be limited to the terms contained in the warrant, that it had no geographic limits, or that the "deidentified" data was actually identifiable. The government now urges the court to ignore evidence withheld from the issuing judge and ask this court to find, in part, that the government acted in "good faith."
9. Mr. Seymour maintains that the keyword warrant used to search his Google account, as well as billions of other accounts, violated the Fourth Amendment of the United States Constitution and Article II, Section 7 of the Colorado Constitution. U.S. Const. amend. IV; Colo. Const. art. II, § 7.
10. Mr. Seymour had a privacy interest in his Google search history because, as Google testified, the data belongs to him. It is definitively not a business record. Search history is also such intensely private data that Mr. Seymour had a reasonable expectation of privacy in it.
11. Mr. Seymour has standing to challenge the warrant because his data was searched. Furthermore, the search was overbroad because, as Det. Sandoval testified, there was no probable cause to search Mr. Seymour's data, nor the data of billions of other Google users. *TR 8/19/22, pp. 83:16-22 (Attachment 1)*. The warrant failed to identify Mr. Seymour's account as a target of the search, and indeed failed to identify any account at all, rendering it wholly unparticularized.
12. Finally, Mr. Seymour urges this court to find that the good faith doctrine does not apply. The keyword warrant was the digital equivalent of an unconstitutional general warrant, upon which there can be no reliance in good faith. Additionally, it was based on knowing or recklessly false statements, lacked a substantial basis to determine probable cause, and was so unparticularized that no officer could have reasonably presumed it was valid. *See United States v. Leon*, 468 U.S. 897, 914-15; 926 (1984).

### **A. Mr. Seymour Had Fourth Amendment Property and Privacy Interests in His Search History Data.**

13. Mr. Seymour's search history data is his property. Google does not own it; Mr. Seymour does. As Ms. Adeli testified on behalf of Google, search history is a part of a user's "account contents." *TR 8/19/22, pp. 27:2-7; 31:2-4 (Attachment 1)*. Just like emails,

photos, or documents that a user stores with Google, their search history is data that belongs to them.

14. That is why Mr. Seymour retains the right to exclude other people from accessing his account contents. *See id.* at 31; *see also Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (calling the right to exclude “one of the most treasured strands” of the property rights bundle); *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (calling the right to exclude “one of the most essential sticks” in the property rights bundle).
15. It is also why Mr. Seymour can delete his search history. *See TR 8/19/22*, pp. 27:24-25; 28:1-2; 28:3-6 (*Attachment 1*) (“[I]t’s up to the user if they’ve kept the searches saved.”); *see also* Google, Privacy Policy (Oct. 26, 2019), <https://policies.google.com/privacy#infodelete> (consistently referring to user data as “your information,” which can be managed, exported, and even deleted from Google’s servers at “your” request). Businesses do not let customers delete the company’s records at will. Rather, search history is part of a user’s account contents—i.e., their property. *TR 8/19/22*, pp. 27:2-7; 31:2-4 (*Attachment 1*). Mr. Seymour merely entrusted his information to Google, as so many people do.<sup>1</sup> *TR 8/19/22*, pp. 31 (*Attachment 1*). His account contents, however, are not Google’s “business records.”
16. Consequently, any intrusion into Mr. Seymour’s Google account data, even one that does not implicate strong privacy interests, is a trespass under the Fourth Amendment. For example, in *Soldal v. Cook County*, the Supreme Court unanimously held that removal of a tenant’s mobile home was a Fourth Amendment seizure even though the owner’s “privacy” was not invaded. 506 U.S. 56, 62 (1992) (“[O]ur cases unmistakably hold that the Amendment protects property as well as privacy.”). Likewise, in *Kyllo v. United States*, Justice Scalia found that the use of a thermal imager on a home was a search, even though it only produced a “crude visual image” and “[n]o intimate details of the home were observed.” 533 U.S. 27, 37 (2001) (“The Fourth Amendment’s protection of the home has never been tied to measurement of the quality or quantity of information obtained.”). Indeed, the *Kyllo* Court noted that “well into the 20th century, our Fourth Amendment jurisprudence was tied to common-law trespass.” *Id.* at 40. And finally, in *United States v. Jones*, the Court’s opinion rested on trespass grounds. 565 U.S. 400, 404-05 (2012). The *Jones* Court found that placement of a GPS tracker on a car was a “physical intrusion” that “would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.”
17. Mr. Seymour’s account contents are his digital property. They are his “papers” and “effects,” explicitly protected by the state and federal constitutions, and on par with one’s person and home. *See* U.S. Const. amend. IV; Colo. Const. art. II, § 7. Any trespass to

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<sup>1</sup> As Justice Gorsuch explained in *Carpenter v. United States*, “[e]ntrusting your stuff to others is a bailment. A bailment is the ‘delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose.’” 138 S. Ct. 2206, 2268–69 (2018) (Gorsuch, J., dissenting). Here, Google is the bailee, and it owes a duty to the bailor, Mr. Seymour, to keep his data safe.

one's digital papers and effects is a Fourth Amendment search or seizure, requiring a valid warrant.

18. At the August 19 hearing, the Court asked about the difference between searching the FBI's fingerprint or DNA databases and searching Google users' search history data. The Court remarked that "it strikes me to be a difference between fingerprints and blood and digital stuff is who owns the database." Tr. at 103. Indeed, the question of who owns search history data is critical to the Fourth Amendment question at bar. But it is now clear that Mr. Seymour—not Google or the government—owns his account contents, including search his search history. *See* Tr. at 103-04.
19. With respect to ownership, therefore, Google account contents are fundamentally different from fingerprints or blood, which are physical items abandoned at a crime scene. And consequently, the database housing Google users' search histories is not like the FBI's Integrated Automated Fingerprint Identification System ("IAFIS") (fingerprint database) or its Combined DNA Index System ("CODIS"). *See* Tr. at 103-04, 108, 112. For both IAFIS and CODIS, the government collected and analyzed the fingerprints and DNA samples in those databases. The FBI owns the data and can search it without a warrant. By contrast, a user's Google account contents belongs to the user—not to Google, not to the government, and not to anyone else. The database where Google stores users' search data is not some meaningless collection of "ones and zeroes," as the government argues. *People's Response to Motion to Suppress Evidence From a Keyword Warrant and Request for a Veracity Hearing*, pp. 3. Rather, a more apt analogy would be a digital bank vault containing billions of safe deposit boxes, the online homes for the digital papers and effects of Google users. It is a repository of their personal papers and effects—their search history and other account contents—which belong to them. *See TR at 36 (Attachment 1)*. A warrant to search of all Google search history records would be like making that bank search the contents of every safe deposit box, worldwide, for evidence of a crime.
20. In addition to a property interest, Mr. Seymour also had a reasonable expectation of privacy in his Google search history. In fact, the government appears to concede this point, stating that "[t]he People are not suggesting that this was not a search at all." *People's Response*, pp. 3. Instead, the government seeks to diminish its intrusion by emphasizing that its search was for a street address. *Id.* ("[I]t was not the type of search that would expose . . . 'deeply private facts about a person.'").
21. But as the Electronic Frontier Foundation ("EFF") observes in its *amicus* brief, "[e]ven a simple query for an address can be revealing. For example, knowing that a person searched for '7155 E 38th Ave, Denver,' could lead to an inference that the person was seeking an abortion. (This is the address of Planned Parenthood.)" *EFF amicus*, pp. 5. Likewise, a search for "6260 E Colfax Ave" (an HIV/AIDS screening center) or "2525 W Alameda Ave" (SEIU Local 105 headqarfarters) could be equally telling. Indeed, as the Supreme Court recognized in *Jones and Carpenter*, it takes little imagination to conjure up a parade of indisputably private examples, including "trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or

church, the gay bar and on and on.” *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring); *accord. Carpenter*, 138 S. Ct. at 2217.

22. The Court should therefore follow the test established by *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1059 (Colo. 2002), for searches involving the contents of “expressive activities.” The “expressive activities” at issue in *Tattered Cover* concerned the “reading history of customers”—*i.e.*, the information people read or intend to read. *Id.* at 1053. Today, people use Google search to find and read information of all kinds; but as in *Tattered Cover*, they “may have done so for any of a number of reasons, many of which are in no way linked to [the] commission of any crime.” *Id.* at 1063. Consequently, warrants tied to the content of Google searches, as here, are precisely the type of warrants likely to have unwanted chilling effects on people’s willingness to search for and obtain information on Google or other search engines.
23. Basic Fourth Amendment protections, however, do not turn on whether a search raises special First Amendment concerns. It is enough that the government searched the contents of Mr. Seymour’s Google account. Just as the Fourth Amendment draws “a firm line at the entrance to a house,” *Payton v. New York*, 445 U.S. 573, 590 (1980), it will not bear even a cursory inspection of one’s private “papers” and “effects” without a warrant. *See Entick v. Carrington*, (1765) 19 How. St. Tr. 1029 (K.B.) 1029. In *United States v. Warshak*, for example, the Sixth Circuit did not need to inquire about the contents of Mr. Warshak’s emails to find that they were constitutionally protected. 631 F.3d 266, 285-86 (6th Cir. 2010) (“Given the fundamental similarities between email and traditional forms of communication, it would defy common sense to afford emails lesser Fourth Amendment protection.”). And in *Carpenter*, the Supreme Court found that Mr. Carpenter’s cell phone location (at a string of cell phone store robberies) was protected by the Fourth Amendment. *See* 138 S. Ct. at 2212-13. Indeed, the evidence the government seeks may have no First Amendment value whatsoever, but a valid warrant is still required.
24. Here, Mr. Seymour had both a property interest and a privacy interest in his Google search history data. And the government admittedly commanded Google to search that data—along with the data belonging to every other user of Google during the relevant timeframe—and provide it to the Denver Police Department. *See People’s Response*, pp. 3. That the search concerned a street address does not lessen the Fourth Amendment’s guarantees. On the contrary, the keyword warrant directly infringed on Mr. Seymour’s Fourth Amendment interests in order to identify and obtain evidence against him.

## **B. Overbreadth**

25. If, on November 19, 2020, the Denver police had sought a warrant for only Mr. Seymour’s Google data, they would not have had probable cause to support it. By Det. Sandoval’s own admission, he did not know who Mr. Seymour was prior to the third keyword warrant. *TR 8/19/22*, pp. 83:4-22 (*Attachment 1*). Mr. Seymour was not a suspect in the case before that point, and Det. Sandoval admitted he did not have probable cause to search him. *Id.* And specifically, Det. Sandoval testified that he did not believe he had probable cause to search Mr. Seymour’s Google account prior to the

keyword warrant. *TR 8/19/22, pp. 83:19-22 (Attachment 1)* (“Q. Would you say you had cause, by which I mean probable cause, to search [Mr. Seymour’s] Google account prior to the keyword search warrant? A. I don’t believe so, and we did not do that.”).

26. Det. Sandoval’s admission is highly probative. If the police did not have probable cause to search Mr. Seymour’s account, then they also did not have probable cause to search Mr. Seymour’s account plus billions more. The government complains that Mr. Seymour does not have standing to assert the Fourth Amendment rights of these other Google users, *People’s Response, pp. 3*, but Mr. Seymour does no such thing. Rather, Mr. Seymour agrees with Det. Sandoval that the police had no probable cause to search his data and submits that nothing more is needed to find the keyword warrant overbroad.
27. In reality, it is the government that relies on the broad and programmatic nature of the keyword warrant, given that it does not specify any accounts to search. The warrant’s entire purpose was to cast a digital dragnet, so it is not surprising that the affidavit offered only broad generalizations about the popularity of Google and speculation that the suspects used Google to search for the Truckee St. address. *People’s Response, pp. 8; TR 8/19/22, pp. 11 (Attachment 1)*.
28. The truth of the matter, according to Det. Sandoval, was that police had nothing more than a “hunch” that the address “could have possibly been searched.” *TR 8/19/22, pp.83:2-3 (Attachment 1)*. A “hunch,” however, is plainly not probable cause. A “hunch” is not even enough to create reasonable suspicion, and it is “obviously less than is necessary for probable cause.” *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (quoting *Navarette v. California*, 572 U.S. 393, 397 (2014)).
29. The government maintains that because they describe the evidence they want with sufficient detail, they do not need probable cause to search any particular account. *Response, pp. 8*. The Fourth Amendment, however, requires probable cause for both the things to be seized and the place to be searched. *See People v. Cox*, 429 P.3d 75, 79 (Colo. 2018).
30. Thus, for example, when seeking a warrant to search an apartment or apartments in a multi-unit dwelling, it is insufficient to merely identify the larger structure and not the particular subunits to be searched. *See People v. Avery*, 478 P.2d 310, 312 (Colo. 1970) (“The basic philosophy that a man’s home is his castle applies no less to an apartment dweller’s apartment or to a roomer’s room; and it is not to be invaded by any general authority to search and seize his goods and effects.”). This is equally true when officers “knew or should have known” that the house was not a one-family residence. *See People v. Alarid*, 483 P.2d 1331, 1332 (Colo. 1971); *see also* 2 Wayne R. LaFave, *Search & Seizure: A Treatise On The Fourth Amendment* § 4.5(b) (6th ed. 2021) (“[T]he probable cause requirement would be substantially diluted if a search of several living units could be authorized upon a showing that some one of the units within the description, not further identifiable, probably contained the items sought.”).

31. In this case, the warrant identifies Google’s headquarters as the place to be searched. But Google’s search history database is like an apartment building with billions of units.<sup>2</sup> The data inside belongs to individual users and is a part of each user’s account contents, which in turn are private and inaccessible to other users. *See TR 8/19/22, pp. 27, 31 (Attachment 1)*. Moreover, police knew that they would be searching the data from more than one account in the database, even if they did not know exactly how many. Det. Sandoval testified that he believed the search would cover at least the accounts in Colorado. *See TR 8/19/22, pp. 79 (Attachment 1)*.
32. It was therefore insufficient for the warrant to merely identify “1600 Amphitheater Parkway” as the place to be searched, as the affidavit did not establish probable cause for each account subject to the reverse keyword query. Instead, as has been standard practice for decades, the warrant should have identified specific accounts and established probable cause to search them. It is not enough to believe that evidence exists in some to-be-determined Google account. *See Com. v. Douglas*, 503 N.E.2d 28, 30 (Mass. 1987). There must be a nexus between the crime and each account to be searched. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) (“Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.”).
33. Similarly, the warrant failed to establish probable cause for the search history that police seized, just as it did not establish probable cause to search it. Probable cause to seize data must also be particularized. *See United States v. Chatrie*, No. 3:19CR130, 2022 WL 628905, at \*19 (E.D. Va. Mar. 3, 2022). Here, however, the warrant did not include any facts to justify collecting private search history data from each individual whose data was produced to the police. *See id.* at \*21. In fact, it remains unclear exactly how many users had their data seized. *See Motion to Suppress, pp. 9-10; see also TR 8/19/22, pp. 60-62 (Attachment 1)*. At the preliminary hearing, the government testified that Google produced data regarding five “accounts,” *TR 11/12/21, pp. 192*, but the warrant return contains search data associated with four additional “Cookie IDs” as well as 12 distinct IP addresses, suggesting that the data belonged to five, nine, or 12 different people. *See Motion to Suppress, pp. 9-10*.

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<sup>2</sup> It is appropriate for this Court to consider the nature of Google’s search history database, just as it was appropriate for the Colorado Supreme Court to consider the nature of the residences in *Avery* and *Alarid*. *See Avery*, 478 P.2d at 312; *Alarid*, 483 P.2d at 1332. The *Cox* decision only considered extrinsic evidence in the context of a probable cause determination. *See* 429 P.3d at 81. It did not discuss the use of extrinsic evidence in a particularity challenge, which necessarily requires the use of such evidence. For example, in *Alarid* the warrant appeared to be sufficiently particularized on the four corners because it named a specific address. However, based on extrinsic evidence introduced at the hearing the court found that it was insufficiently particular. *See* 483 P.2d at 1332. Moreover, the *Cox* Court recognized that evidence outside the “four corners” of the affidavit will often be necessary to assess the affiant’s good faith and veracity. *See* 429 P.3d at 79.



34. Furthermore, the affidavit assumed that a search for the Truckee St. address was indicative of criminal activity, but it did not account for the fact someone may have conducted an address search for any of number of reasons unrelated to the commission of a crime. *See Tattered Cover*, 44 P.3d at 1063. This is evident from the fact that the government seized user data about 61 searches for Truckee St., many of which involved searches conducted outside Colorado or unrelated to the crime. In fact, as the EFF observes, “there are streets named ‘Truckee’ in several cities and towns in Colorado, as well as in Arizona, California, Idaho, and Nevada.” *EFF amicus*, pp. 11. Moreover, 45 of the 61 searches returned contained additional terms that went beyond the nine variations of “5312 Truckee St.” specified in the warrant, rendering its execution overbroad as well. *See Motion to Suppress*, pp. 9-10. In sum, the seizure of search history data was overbroad on its face as well as in its execution.

### C. Particularity

35. The keyword warrant lacks particularity for many of the same reasons it lacks probable cause. That is because, like the multi-family dwelling cases, the constitutional concerns here “fall at the confluence of the Fourth Amendment’s probable cause and particularity requirements.” *United States v. Clark*, 638 F.3d 89, 94 (2d Cir. 2011). Here, the description of the place to be searched—“1600 Amphitheater Parkway”—is so broad and all-encompassing that it outruns any measure of probable cause in the affidavit and thus fails to limit police discretion. *See id.*
36. According to Google, there are more than 1 billion average monthly users of Google Search. *TR 8/19/22*, pp. 40 (*Attachment 1*). And there are also more than 1 billion average monthly users of Google Maps. *Id.* When executing a keyword warrant, Google testified that it queries data belonging to authenticated (*i.e.*, signed-in) users of both services. *Id.* at 26, 37. Google also testified that they search the data belonging to unauthenticated (*i.e.*, not signed-in) users, *id.* at 37, although it remains unclear how many additional users that represents. In any event, since 2016, Google has publicized the fact that it has a billion monthly users for both Google Search and Google Maps. *See Adeli Decl. at para. 4*. Thus, police should have known that searching 15 days of search history data at “1600 Amphitheater Parkway” would potentially intrude on the property and privacy interests of over a billion Google users.
37. As a result, it was insufficiently particular to describe the place to be searched as Google headquarters instead of identifying specific user accounts to search. *See Alarid*, 483 P.2d at 1332; *Avery*, 478 P.2d at 312; *see also Chatrie*, 2022 WL 628905, at \*21. The failure to identify Mr. Seymour’s account, or any other account, left it up to Google and the government to determine which accounts to search and what data to seize. And in so doing, it led to an unprecedented dragnet of private account data that was inevitably unrelated to the investigation. *See Chatrie*, 2022 WL 628905, at \*19.
38. The government misconstrues *Dixon v. United States*, 211 F.2d 547 (5th Cir. 1954), in support of its argument that “[i]t was not necessary to specify/identify the users of the particular accounts at the outset in order for the warrant to be valid.” *People’s Response*, pp. 8. *Dixon* concerned a warrant *caption* that did not identify Mr. Dixon by name, but

where the affidavit stated that an officer “saw the defendant and several other men at the defendant’s home handling jugs of moonshine whiskey, and that he knew the defendant had this whiskey for sale.” 211 F.2d at 548. And unlike the affidavit in this case, it “contain[ed] definite statements of fact, as distinguished from mere suspicions or conclusions, [and] . . . describe[d] the offense, the premises to be searched and the property to be seized.” *Id.* at 549.

39. The government also cites *Warden v. Hayden*, 387 U.S. 294 (1967), which likewise offers no support for its position. *Hayden* abolished the “mere evidence” rule prohibiting the seizure of evidence for evidential value only. *Id.* at 300-01. The Court repeatedly emphasized, however, that the probable cause and particularity requirements must be met with respect to all evidence sought. *Id.* at 302, 307, 309. In *Hayden*, the Court determined that exigent circumstances justified the warrantless entry of a home while in pursuit of a suspect seen entering a residence less than five minutes prior. *Id.* at 298. And unlike this case, that information gave police probable cause to search a particular house, 2111 Cocoa Lane. *Id.* They would not have been justified, however, in searching every home in the neighborhood, or every home in Maryland. Far from supporting the government’s position, *Hayden* and *Dixon* highlight what was missing in this case: probable cause to search a single Google account, let alone Mr. Seymour’s.
40. Finally, the warrant failed to cabin the data that the government could seize. The government attempts to justify the warrant by claiming that the search parameters describe the data to be seized with sufficient detail. *People’s Response*, pp. 5. But the warrant did not specify how to determine which search history data was responsive. Google testified that there are two ways to count responsive data: 1) “exact matches” to the search terms in the warrant, or 2) searches that “contain other words.” *TR 8/19/22*, pp. 43-44 (*Attachment 1*). Google “more commonly” follows the second method, even where the search results strongly imply that a search is irrelevant, *Adeli Decl.* at ¶¶ 6-8, but testified that it relies on what the warrant specifies. *TR 8/19/22*, pp. 45 (*Attachment 1*).
41. Where, as here, the warrant does not specify one way or the other, Google escalates the matter to legal counsel. *Id.* And in this case, Google’s counsel did communicate with Det. Sandoval on multiple occasions prior to complying with the third keyword warrant. *Tr.* at 74-75. Nonetheless, Det. Sandoval testified that he does not “know what Google does when they conduct these searches,” *Tr.* at 78, and it is not clear how the decision was made here. What is clear, however, is that only five of the 61 searches produced to police matched the terms in the warrant (45 contained “other words” and 11 had no search terms at all). *See Motion to Suppress*, pp. 9-10. And most importantly, it is clear that Judge Zobel had no role in deciding whether police could seize this additional account data, either when approving the warrant or afterwards. *See TR 8/19/22*, pp. 77 (*Attachment 1*). Placing such discretion in the hands of Google and the government is the hallmark of an unparticularized warrant, leading here to the over-seizure of 56 search history records.

#### D. Good Faith / Veracity

42. There is no good faith in relying on a general warrant. *See Groh v. Ramirez*, 540 U.S. 551, 558 (2004) (finding a warrant “so obviously deficient” in particularity that “we must regard the search as ‘warrantless’ within the meaning of our case law.”). To hold otherwise would incentivize the kind of “systemic error” and “reckless disregard of constitutional requirements” that the Supreme Court has cautioned against. *Herring v. United States*, 555 U.S. 135, 144 (2009); *see also United States v. Krueger*, 809 F.3d 1109, 1123 (10th Cir. 2015) (Gorsuch, J., concurring) (finding that when a warrant is void, “potential questions of ‘harmlessness’” do not matter); *United States v. Winn*, F. Supp. 3d 904, 926 (S.D. Ill. 2015) (“Because the warrant is a general warrant, it has no valid portions.”). The warrant here is nothing short of a general warrant, antithetical to the Fourth Amendment. As such, the good faith doctrine does not apply.
43. Even under the *Leon* good-faith test, this keyword warrant falls far short on at least three fronts: (1) it was based on knowing or recklessly false statements; (2) it lacked a substantial basis to determine probable cause; and (3) no officer could reasonably presume it was valid. *See* 468 U.S. at 914-15, 926.
44. First and foremost, Det. Sandoval recklessly omitted critical information about the unprecedented scope of the search and did not inform the court about the likelihood of seizing sizable amounts of unrelated data. In other words, the affidavit relied on false statements in the form of material omissions. *See People v. Winden*, 689 P.2d 578, 583 (Colo. 1984); *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008); *Leon*, 468 U.S. at 914 (citing *Franks v. Delaware*, 438 U.S. 154 (1978)) (stating that the good faith exception does not apply where a warrant is based on knowing or recklessly false statements). The court should suppress the fruits of the keyword warrant for this reason alone, but it also speaks to the absence of good faith.
45. Had Det. Sandoval apprised Judge Zobel of the true scope of the search and seizure requested, it would have become immediately apparent that the application lacked a substantial basis to find probable cause to search the private account contents of more than a billion Google users. It would have become apparent that there was no probable cause to search even a single account, including Mr. Seymour’s. It would have become apparent that the keyword warrant was a general warrant. And undoubtably, Judge Zobel would not have signed it. But that is not what happened.
46. Instead, the government obscured the warrant’s deficiencies by cloaking them in the “complexities of novel technology.” *Chatrie*, 2022 WL 628905, at \*20. Even Det. Sandoval testified that he did not understand “what Google does when they conduct these searches”; that he does not know “how they input it”; and that he does not know “how they look for it.” Tr. at 78. Nonetheless, he asked Judge Zobel to rely on his “training and experience” in support of his keyword warrant application. *Keyword Warrant 3 Affidavit*, pp. 2-3; *see also TR 8/19/22, pp. 144 (Attachment 1)*.
47. In truth, Det. Sandoval had received no training on keyword warrants. He had no training from the Denver Police Department because there were no police policies, procedures, or

memos concerning keyword warrants. *See TR 8/19/22, pp. 68-69 (Attachment 1)*. The technique had not been vetted by the Department or the District Attorney's office. *Id.* at 69. And Det. Sandoval remains unclear whether, two years later, the Department has approved it. *Id.*

48. Similarly, Det. Sandoval received no training on keyword warrants from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), where he served as a deputy agent during this case. *Id.* at 69. Det. Sandoval testified that he was not aware of any ATF policies or procedures for obtaining a keyword warrant, and that he had received no official training from ATF regarding them. *Id.*
49. The fact remains, however, that a keyword warrant demands the search of private data belonging to billions of Google users. Det. Sandoval was or should have been aware of this fact, given Google's highly public pronouncements about their active monthly users. *See Adeli Decl. at para. 4*. At a minimum, Det. Sandoval believed the warrant would apply to anyone in Colorado. *See TR 8/19/22, pp. 79 (Attachment 1)*. Nonetheless, he failed to inform Judge Zobel that execution of the warrant would entail searching the data belonging to millions or billions of Google users, based within and without Colorado.
50. It does not lessen the intrusion to call the place where their data is stored a "database," as the government contends. *See People's Response, pp. 5* (arguing that the search "was simply a computer inquiry of a database"). The type of database matters. And the database here is the digital equivalent of a billion-story apartment building, housing the modern-day papers and effects of every person who has used Google Search or Google Maps. Providing the street address for Google headquarters as the place to be searched is meaningless if not highly misleading. It is like serving a warrant on the apartment building manager to have them peek inside every resident's diary in every unit.
51. Simply put, Det. Sandoval misled Judge Zobel about his training and experience and omitted material facts about how the keyword warrant would operate. He did not explain that the warrant would require Google to search the data belonging to billions of people. *TR 8/19/22, pp. 77 (Attachment 1)*. Indeed, he later testified that he did not know "what it took for Google to conduct the search." *id.*, even though he expected that the warrant would sweep at least statewide. *Id.* at 79.
52. Similarly, Det. Sandoval implied that the search was more limited or different than it really was by invoking the federal Stored Communications Act ("SCA"), 18 U.S.C. § 2703, as authorization for the search. The SCA permits the government to search data belonging to "a subscriber" of a third-party service. It does not, however, permit bulk searches, and Det. Sandoval did not inform Judge Zobel that the keyword warrant was unlike anything contemplated by the SCA, a law enacted in 1986 *See TR 8/19/22, pp. 84-85 (Attachment 1)*.
53. Likewise, the promise of providing "deidentified" data is empty and misleading. Although the process outlined in the warrant required Google to produce only an "Anonymized List" of results, it also required Google to provide identifying information in the form of IP addresses. *TR 8/19/22, pp. 86 (Attachment 1)*. Det. Sandoval was aware

that he could use an IP address to identify the physical location associated with the search history data. *See TR 8/19/22, pp. 86-88 (Attachment 1)*. In fact, Det. Sandoval did so with the data provided in this case, showing one IP address linked to Mr. Seymour's address. *Id.* And while Det. Sandoval obtained an additional warrant for this information, that warrant relied on the fruits of the keyword warrant—the IP addresses.

54. Furthermore, Det. Sandoval did not inform Judge Zobel that Google had refused to comply with two previous keyword warrants issued by a different judge. Tr. at 76. Google had rejected them both because they sought identifying information and were not truly “anonymized.” *TR 8/19/22, pp. 73-76 (Attachment 1)*. And in the process, Det. Sandoval had multiple conversations with Google's legal counsel at Perkins Coie, LLP, about those perceived deficiencies and how to correct them. *See id.* Nonetheless, the keyword warrant here required Google to produce full IP addresses, which Det. Sandoval knew to be personally identifiable. He did not apprise Judge Zobel of these facts, however, and consistently characterized the data sought as “anonymized information” and the “Anonymized List.” *Keyword Warrant 3 Affidavit, pp. 2.*<sup>3</sup>
55. Omitting such material facts demonstrates Det. Sandoval's knowing or reckless disregard for the true nature of the dragnet search that occurred in this case. At a minimum, Det. Sandoval should have been aware of the unprecedented nature of this search based on his repeated discussions with Google's counsel. But to the extent Det. Sandoval remained unaware of how a keyword warrant works, he assumed the risk of suppression by recklessly omitting critical information and making false representations in his affidavit.
56. In addition to Det. Sandoval's lack of veracity, the good-faith doctrine should not apply because the affidavit lacked a substantial basis to find probable cause, and no officer could reasonably presume such a warrant was valid.
57. The affidavit was completely devoid of any particularized probable cause, as discussed *supra*. *See also Motion to Suppress, pp. 26-27*. Det. Sandoval even admitted that he did not think he had probable cause to search Mr. Seymour's Google account and that the keyword warrant was based on a mere “hunch.” *TR 8/19/22, pp. 83 (Attachment 1)*. No reasonable officer could rely on such a warrant.
58. Similarly, the warrant was so obviously lacking in particularity that no reasonable officer could presume it was valid. *See Motion to Suppress, pp. 27-28*. It failed to identify a single account, instead describing the place to be searched as simply “1600 Amphitheater Parkway,” the street address for the digital equivalent of a billion-story apartment building. It failed to limit or adequately describe what the government could seize,

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<sup>3</sup> Google, for its part, states that it no longer provides full IP addresses in response to keyword warrants, although it is not clear how recently this change occurred. *See Adeli Decl., pp. 3, para 7* (“Google's policies and practices regarding the scope of information included in this initial production may have differed in the past, including during the time period in this matter.”).

resulting in a warrant return where the overwhelming majority of the data produced was inconsistent with its terms.

59. There is a lot that that is new about this case, but it is not new that warrants must be supported by probable cause. And it is not new that warrants must be particularized. Rather, it was or should have been clear to Det. Sandoval that the warrant here was so profoundly overbroad and lacking particularity that it was nothing short of a general warrant. And there is no such thing as relying on a general warrant in good faith. Rather, courts have recognized that “[t]he cost to society of sanctioning the use of general warrants—abhorrence for which gave birth to the Fourth Amendment—is intolerable by any measure. No criminal case exists even suggesting the contrary.” *United States v. Christine*, 687 F.2d 749, 758 (3d Cir. 1982); *see also United States v. Wecht*, 619 F. Supp. 2d 213, 236-37 (W.D. Pa. 2009). Thus, the “the only remedy for a general warrant is to suppress all evidence obtained thereby.” *United States v. Yusuf*, 461 F.3d 374, 393 n.19 (3d Cir. 2006).
60. Mr. Seymour moves this Court to order to suppress all evidence obtained from the November 19, 2020, keyword warrant, as well as fruits thereof.

## **II. Accounts, Cellphone Records, Cellphone Data, Home, and Social Media Search Warrants**

61. “The Fourth amendment to the United States Constitution and article II, section 7 of the Colorado Constitution prohibit the issuance of a search warrant without probable cause supported by oath or affirmation particularly describing the place to be searched or the things to be seized.” *People v. Hebert*, 46 P.3d 473, 482 (Colo. 2002). “This constitutional bulwark ‘safeguard[s] the privacy and security of individuals against arbitrary invasions by government officials.’” *People v. Coke*, 461 P.3d 508, 516 (Colo. 2020).
62. Although a search conducted pursuant to a warrant is typically reasonable, “so-called ‘general warrants,’ which permit ‘a general, exploratory rummaging in a person’s belongings,’ are prohibited,” thereby necessitating the probable cause and particularity requirements. *Id.*, citing *Andreson v. Maryland*, 427 U.S. 463, 480 (1976).
63. “Probable cause 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.” *Id.*, citing *People v. Quintana*, 785 P.2d 934, 937 (Colo. 1990).
64. “The affidavit must supply a ‘sufficient nexus between criminal activity, the things to be seized, and the place to be searched.’” *Id.*, citing *People v. Kazmierski*, 25 P.3d 1207, 1211 (Colo. 2001). “An affidavit containing only vague allegations that the defendant engaged in illegal activity without establishing a nexus between the alleged criminal activity and place to be searched cannot establish probable cause.” *Kazmierski*, 25 P.3d at 1211, citing *People v. Randolph*, 4 P.3d 477, 482 (Colo. 2000).

65. When searching a home, for example, “[t]he connection between the residence and the evidence of criminal activity must be specific and concrete, not ‘vague’ or ‘generalized.’” *United States v. Brown*, 828 F.3d 375, 382 (6th Cir. 2016). “The critical element in a reasonable search is not that the owner of property is suspected of crime, but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” *United States v. Frazier*, 423 F.3d 526, 532 (6th Cir. 2005) (citation omitted).
66. “While an officer’s ‘training and experience’ may be considered in determining probable cause, such training and experience cannot substitute for an evidentiary nexus, prior to the search, between the place to be searched and any criminal activity.” *People v. Eirish*, 165 P.3d 848, 852 (Colo. App. 2007).
67. The particularity requirement is violated where the areas to be searched are unreasonably broad. “The purpose of this particularity requirement is to prevent the use of general warrants authorizing wide-ranging rummaging searches in violation of the Constitution’s prohibition against unreasonable searches and seizures.” *Id.* (citation omitted).

#### **A. Accounts [DEF-25]**

68. Counsel addressed several warrants in the Motion to Suppress Evidence Unlawfully Obtained (Accounts) [DEF-25]: the warrants requesting information regarding Mr. Seymour’s Google and Apple accounts; the warrant requesting information regarding the Comcast IP address belonging to Mr. Seymour’s mother; and the warrant requesting information regarding T-Mobile IMSIs. The Motion also addressed the warrants for information pertaining to anonymized Google accounts. One of those warrants requested information pertaining to 3 devices, which law enforcement obtained as a result of the first geofence warrant. The second warrant requested information pertaining to 14 devices, which law enforcement obtained as a result of the second geofence warrant (after narrowing the number of devices down from 2,103). Lastly, the Motion addressed the warrant directed at Google for information pertaining to five anonymized targets, which law enforcement obtained as a result of the keyword search warrant.
69. The People argue that the motion to suppress the evidence obtained from the warrants referenced above should be denied for two reasons. First, the People argue that Mr. Seymour lacks standing to challenge the constitutionality of the search warrants for data contained in accounts belonging to others. *People’s Response to Motion to Suppress Evidence Unlawfully Obtained (Accounts) [Def-25]*, pp. 3. Second, the People argue that the warrants for records related to Mr. Seymour’s Google and Apple accounts were constitutionally sufficient because (1) there was particularity in the location to be searched; (2) there was particularity in the data to be searched and seized; and (3) there was probable cause to believe that evidence related to the incident would be located in the data requested. *Id.*, pp. 4.

##### *(a) Standing*

70. First, Mr. Seymour is not challenging the constitutionality of the search warrants for Google and Apple data belonging to his co-defendants, Mr. Bui and D.S. He is challenging the constitutionality of the search warrants as they pertain to him. The same goes for the Comcast account belonging to his mother, because the IP address is used by the entire household.
71. Furthermore, Mr. Seymour was swept up in the anonymized account information that law enforcement issued a warrant for after receiving the results from the keyword search warrant. One of those five accounts belonged to Mr. Seymour, and law enforcement obtained all of the information from Mr. Seymour's account that was requested in that warrant, which encompassed the entire account.

*(b) Probable Cause*

72. The People argue that the warrants meet the probable cause requirement. The People first argue that there was probable cause to believe “that the three defendants in this case were the three masked persons who were in the backyard of the victims’ residence minutes before it went up in flames.” *Id.*, pp. 8.
73. In support of this assertion, the People argue that the “records obtained from Google,” i.e., the keyword search warrant, narrowed down the number of devices that searched for the address of the arson. *Id.* The People state that this led to the identification of Mr. Seymour, Mr. Bui, and D.S., who were “linked together by where they live, what schools they attended, their known associates and their social media postings.” *Id.*, pp. 9.
74. The People also argued that there were “reasonable grounds” to believe that the accounts listed would contain evidence relevant to the arson. *Id.* The People argue that “because the video footage showed that three individuals were involved in the homicide, there was a substantial likelihood that communications between any of these individuals would include details relevant to this offense.” *Id.*
75. The People further argue that location data would “also be highly relevant,” because it could establish presence at locations relevant to the offense. *Id.* The People state that “[o]ther substantive content was relevant as well, such as photos and videos,” because they could establish connection between the involved parties, and because a video of the arson could be found in Mr. Seymour's accounts. *Id.* The People also reference the importance of metadata being recovered. *Id.*
76. Lastly, the People argue that usage of social media or cloud accounts are important to establish “establish attribution for the substantive content deemed relevant to the offense,” to essentially prove ownership of the account, which necessitates “looking at longer periods of data than the time just before and after an offense.” *Id.*, pp. 10.
77. Despite the People's contentions, these warrants lack a sufficient nexus between the alleged criminal activity, the things to be seized, and the places to be searched.



78. All of these warrants stemmed from the earlier keyword search warrant directed at Google. When law enforcement drafted the subsequent warrants, they only had information that at some point, the address of the arson was entered into a Google search bar, and they had identifying information for which Google accounts were connected to those searches.
79. Despite this, there is a lack of nexus tying that search to Mr. Seymour's data in all of these different accounts, particularly his iCloud account through Apple. After law enforcement identified Mr. Seymour as a suspect, they thought of every account he could feasibly have, and listed every single piece of information they could possibly find in those accounts, without articulating why evidence of the arson would be present in, for example, "iWorks (including Pages, Numbers, and Keynote), or "iCloud Keychain."
80. The warrants also authorized law enforcement to search the content of *all* of Mr. Seymour's emails, along with the data attached to those emails, regardless of who Mr. Seymour was contacting. Similarly, there is no nexus between the alleged offense and the content of Mr. Seymour's emails, regardless of who they were to or what they contained.

(c) *Particularity*

81. The People argue that there was particularity in the location to be searched, because the warrants "identify the entities in control of the records being requested." *Id.*, pp. 4. The People also argue that there was particularity in the data to be searched and seized. *Id.*
82. Regarding particularity in the data to be searched, the People cite *United States v. Pinto-Thomaz*, 352 F.Supp. 3d 287 (S.D.N.Y. 2018), for the proposition that a warrant does not lack particularity simply because it is broad. *People's Response*, pp. 5. The People failed to include, however, that the defendant in *Pinto-Thomaz* was accused of insider trading. *Pinto-Thomaz*, 352 F.Supp. 3d 287. The court in that case specifically noted that "[t]he level of specificity required depends on the nature of the crime," and cited *United States v. Levy*, 803 F.3d 120 (2nd Cir. 2015), which held that a broad warrant was justified by the complexity of the alleged fraud. *Id.* at 305. The court also cited *United States v. Dupree*, 781 F.2d 115, 149 (E.D.N.Y. 2011), which stated that "[t]he nature of the crime... may require a broad search" including where "complex financial crimes are alleged." *Id.*
83. The People also cite *People v. Roccaforte*, 919 P.3d 799 (Colo. 1996) for the similar proposition that the quantity of items listed in a warrant does not necessarily have a bearing on the validity of the search itself. *People's Response*, pp. 5. The defendant in *Roccaforte* was accused of financial crimes in 1996, before cellphones were widely available and used. *Roccaforte*, 919 P.3d 799. In *Roccaforte*, law enforcement obtained one warrant for the search of the defendant's home, and one warrant for the search of a storage space rented by the defendant's company. *Id.* at 801. The issued warrants authorized searches for books, records, and any other business-related documents in the name of the defendant's business and in the name of the defendant, the co-defendant, and the defendant's wife, who was a co-owner, for a thirty-day period. *Id.*

84. The *Roccaforte* court agreed with the lower court and the defendant's assertion that the warrants at issue were "essentially 'all records' warrants." *Id.* at 803. However, the court stated that the fact that the warrants were "all records" warrants was "not dispositive of the question of whether they were sufficiently particularized to be valid." *Id.* The court stated that "[a]n 'all records' warrant is appropriate where there is probable cause to believe that the crime alleged encompasses the entire business operation and that evidence will be found in most or all business accounts... In this case, the alleged crime is tax fraud," which the court found encompassed the entire business. *Id.* (citation omitted) (emphasis added).
85. The People then cite *United States v. Gatto*, 313 F.Supp. 3d 551 (S.D.N.Y. 2018) for the proposition that a warrant to search for a wide range of potentially relevant material does not necessarily violate the particularity requirement. *People Response*, pp. 5. *Gatto*, like *Pinto-Thomaz* and *Roccaforte*, is a case involving wire fraud and money laundering, specifically an allegation that the defendant was bribing high school basketball players to sign with certain universities. *Gatto*, 313 F.Supp. 3d at 554. The warrant at issue in *Gatto* was to search the defendant's cellphone using a Cellebrite download. *Id.* Importantly, the warrant authorized law enforcement to search for "evidence of schemes" to "pay NCAA coaches in exchange for those coaches using their influence with NCAA players to convince those players and/or their families to retain certain agents, financial advisors, or others," and "pay high school and NCAA players and conceal those payments from universities." *Id.* at 555-56. The warrant also authorized law enforcement to search for "evidence of 'schemes to make payments from the universities attended or intended to be attended by the players.'" *Id.* at 556. Crucially, the warrant "specified the categories of evidence responsive to the warrant," and "tracked the language in the applications with respect to the procedures from finding such evidence," and detailed "various targeted search techniques." *Id.*
86. The cases cited by the People are outdated, unrelated to the type of offense at issue here, and unrelated to the type of digital media at issue here.
87. Overall, regarding particularity, the People contend that the "warrant described the data to be seized with sufficient detail to allow the executing officer/personnel to know what data is encompassed within the warrant's authorization (i.e., which data they are authorized to release to the requestor)." *People's Response*, pp. 6. The People argue that the warrants here are described in "substantial detail," because it provided a list of the "**types** of data being requested" and provided a time frame. *Id.* The People argue that "while the categories listed do encompass a large portion of the data available in the accounts or records, this alone does not violate the particularity requirement." *Id.*
88. Lastly, the People argue that the warrants were sufficiently particularized because they specify that the requested data would be searched for information that related to the incident, without detailing how this would be done. *Id.*

89. These warrants do not merely encompass a “large portion” of the data available in the accounts or records. The warrants encompass everything contained within the accounts. Separating types of data into different categories does nothing if the sum of the requested data is the entirety of the account. At that point, the warrant may as well not list any categories at all.
90. During the Motions Hearing, in response to this motion, and to all of the other motions discussed below, the People stated:

“Counsel then says, Well, they’re too broad or they encompass too much. Each one of these search warrants said, Yes, we’re going to ask for this data, abut we’re going to tell you, whoever provides it to us and we’re telling the Court that we’re going to bring it back to Denver police headquarters, and we’re only going to look for any evidence that’s related to the arson homicide investigation of August 5th.”

*TR 8/19/22, pp 144:24-25, 145:1-6 (Attachment 1).*

91. This is a gross mischaracterization of what law enforcement is permitted to do. The People admit that this amount of data is massive, and the way they obtained it all was through a general rummaging of Mr. Seymour’s entire digital world. Although courts have held that searches of a wide breadth are permissible, the techniques employed to decide what to *seize* must be specific and targeted. *See Gatto*, 313 F.Supp. 3d at 556.
92. Law enforcement is not permitted to go through all of a person’s belongings and then decide what is relevant to their case after the fact. The warrants need to be sufficiently particular at their inception, to prevent casting the kind of wide net that law enforcement did here.

#### **B. Cellphone Records [DEF-26]**

93. In the Motion to Suppress Evidence Unlawfully Obtained (Cellphone Records) [DEF-26], counsel addressed the January 6, 2021, search warrant directed at AT&T, which requested records pertaining to Mr. Seymour’s cellphone number, for a sixty-nine-day period.

##### *(a) Probable Cause*

94. The People recite the same argument here as they did in their response to the motion regarding Mr. Seymour’s accounts. The People argue that there was probable cause to search Mr. Seymour’s phone records and cite the same inapplicable authority. *People’s Response to Motion to Suppress Evidence Unlawfully Obtained (Cellphone Records) [Def-26], pp. 8.*

95. The People, again, argue that there was probable cause to believe that the “three defendants in this case” were the three people seen on surveillance video on the date of the arson. *Id.*
96. The People argue that Mr. Seymour’s phone records would establish his location on the date of the arson, and they would establish who he communicated with in order to determine who “may have assisted him or who may have knowledge of his actions and/or his state of mind at the time the offense was committed,” and would also be able to “establish his familiarity” with the location of the arson, “as well as the nature of his relationships between others involved in this case.” *Id.*
97. The People also argue that “[p]atterns of usage of a cellphone account,” can be “used to establish attribution of a person to the account itself.” *Id.*
98. Lastly, the People argue that the time period “had the reasonable potential” to contain relevant evidence “as well as important attribution data.” *Id.*, pp. 9.
99. The People fail to articulate what nexus exists between the alleged offense and Mr. Seymour’s cellphone records. Law enforcement had information from a keyword warrant that a particular address was searched. There is no information about how this information ties into Mr. Seymour’s cellphone, particularly because there is no evidence that a cellphone was used during the offense, or at any stage or step of the offense.
100. The fact that people carry cellphones, and that data on a cellphone can show who uses that cellphone, is not sufficient probable cause to believe that evidence of the alleged offense would be present in Mr. Seymour’s cellphone records from AT&T.

*(b) Particularity*

101. As with the Response to the motion regarding Mr. Seymour’s accounts, the People again argue that the warrant describes the types of data being sought within a specified time period, and that this made the warrant sufficiently particularized, in spite of the fact that the data requested encompassed the entire account. *Id.*, pp. 5.
102. In support of this proposition, the People cite several cases, some of which are inapplicable entirely, and others which are more relevant to cellphone data as opposed to cellphone records and are discussed below.

**C. Cellphone Data [DEF-27]**

103. In this Motion to Suppress, counsel addressed the February 2, 2021, warrant authorizing a forensic “cellphone dump” of Mr. Seymour’s cellphone. The warrant authorized the search of Mr. Seymour’s all of cellphone data and did not contain a specified time frame.

*(a) Probable Cause*

104. The People's argue that the "historical facts" establish probable cause that Mr. Seymour was involved in the offense, and the affidavit "set forth numerous direct facts as well as reasonable inferences upon which the court was entitled to rely..." *People's Response to Motion to Suppress Evidence Unlawfully Obtained (Cellphone Data)* [Def-27], pp. 12. The People contend that one piece of "direct evidence" are "text messages" between Mr. Seymour and Mr. Bui, even though this warrant would be the one to garner texts sent or received by Mr. Seymour. *Id.*

105. The People's only other argument regarding probable cause is that "[o]ther portions of the nexus are based on reasonable inferences from the facts set forth in the warrant as well as common sense understandings about how individuals use their phones." *Id.*

106. Again, the fact that cellphones are nearly ubiquitous is not a sufficient nexus to show probable cause to search a specific person's cellphone for evidence of a crime, particularly when law enforcement seeks a complete "dump" of all information contained within the phone, with no temporal limitation.

(b) Particularity

107. The People's response is, again, largely the same as the responses filed regarding the motions to suppress Mr. Seymour's account information and his cellphone records.

108. Here, despite noting that cellphones store a massive amount of personal, private data, the People repeat, verbatim, the same argument that the breadth of a warrant does not necessarily mean that it is not sufficiently particular, again citing the same authority. *Id.*, pp. 5.

109. The People state that "[e]ven where a warrant authorizes the search of an entire phone, this is appropriate so long as it is supported by probable cause." *Id.*, pp. 6. To support this proposition, the People cite *United States v. Rankin*, 442 F.Supp. 2d 225 (E.D. Pa. 2006), *People v. Goynes*, 927 N.W. 2d 346, and *United States v. Gatto*, 313 F.Supp. 551 (S.D.N.Y. 2018). *Id.* *Gatto's* inapplicability is already discussed above. In *Rankin*, law enforcement searched a home for a long list of items for evidence of tax crimes and is also inapplicable here.

110. In *Goynes*, the court stated that to satisfy the particularity requirement, a warrant must "be sufficiently definite to enable the searching officer to identify the property to be seized" and that "the broader the scope of a warrant, the stronger the evidentiary showing must be to establish probable cause." 313 F.Supp. at 355. The court also stated that "a warrant for the search of the contents of a cell phone must be sufficiently limited in scope to allow a search of only that content that is related to the probable cause that justifies the search." *Id.*

111. In *Goynes*, to establish the defendant's involvement, the affidavit for the search warrant for the defendant's cellphone stated that a witness heard shots fired and gave officers the description of a man she saw holding a handgun, walking towards a white, four-door sedan. *Id.* at 349-50. The officers located surveillance video showing the same sedan. *Id.* at 350. The officers then conducted interviews with two witnesses who told officers that they observed the shooting, knew the identity of the suspect, and named the defendant. *Id.* One of these witnesses was the defendant's cousin. *Id.* She positively identified all of the involved parties in photographic lineups and stated that she was "100% sure' Goynes was the shooter." *Id.* at 351.
112. The court compared the affidavit for Goynes' cellphone to the affidavit in *State v. Henderson*, 854 N.W.2d 616. *Id.* at 354. In that case, the affidavits "established that there was a fair probability that the defendant...was involved in the shootings and that he had a cell phone in his possession when he was taken into custody *shortly after the shootings.*" *Id.* (emphasis added).
113. The court noted that "[a]lthough the content of the affidavits pertaining to how suspects use cell phones standing alone may not always be sufficient probable cause, when considered with all the facts recited above...the affidavit provided a substantial basis to find probable cause existed to search the cell phone data." *Id.* at 355.
114. The facts in *Goynes* differ from the facts here. In that case, law enforcement had multiple witnesses to the crime, one of whom identified the defendant as the shooter. The court cited another case where the defendant was arrested with his phone shortly after a shooting, and that made it reasonably more likely that he was carrying that cellphone during the shooting itself.
115. Here, on the other hand, all law enforcement had was results from a keyword search warrant showing that the address of the arson was entered into a Google search bar, as opposed to the type of background facts present in *Goynes*. Furthermore, although Mr. Seymour was carrying his cellphone at the time of his arrest, he was arrested long after the arson occurred.
116. The People here admit that "the categories listed do encompass the entirety of the cellphone." *People's Response*, pp. 7. However, the People allege that "[t]he particularity requirement was met here because the warrant lists with specificity the categories within the device that are subject to search and seizure." *Id.*
117. This dichotomy is precisely the issue. The People cannot claim particularity due to the categories being specified when those categories are the sum of the entire device.
118. Lastly, the People contend that "any relevant/incriminating" data would need to be "attributed to its source." *Id.*, pp. 12. The People argue that this is "not simply a search for 'evidence of ownership,' which was deemed improper under *Herrera*. *Id.*

119. In *People v. Herrera*, 357 P.3d 1227, 1228 (Colo. 2015), a warrant authorized a search of the defendant’s cellphone for text messages between the defendant and an underaged girl, as well as for “indicia of ownership.” There, “[t]he People contend[ed] that the warrant thus permitted a search of text messages” contained in a particular folder on the phone “because any message found there would reveal Herrera as the owner of the phone.” *Id.* at 1230. The court stated that “the People argue that any piece of data on the phone, including any text message on the phone, would have the possibility of revealing Herrera’s ownership of the phone,” and that “rationale transforms the warrant into a general warrant that fails to comply with the Fourth Amendment’s particularity requirement.” *Id.* This was also unnecessary because “the phone was seized from Herrera during his arrest, and he never disputed ownership of the phone.” *Id.* at 1231.
120. As was the case in *Herrera*, Mr. Seymour’s cellphone was taken from him when he was arrested, and he has never disputed ownership of the phone. Despite this, the warrant authorized the search of all “[d]ata which tends to show possession, dominion and control over said equipment,” transforming the warrant into a general warrant in violation of Fourth Amendment.

#### **D. Home [DEF-29]**

121. In this Motion to Suppress, counsel addressed the January 26, 2021, warrant authorizing a search of Mr. Seymour’s home. In the affidavit, Detective Sandoval stated that law enforcement should be able to search the home because Mr. Seymour carries a cellphone, and analysis of the cellphone could show where the cellphone was at a particular time. The warrant also authorized law enforcement to look for accelerants, several items of clothing, firearms evidence, surveillance equipment, any electronic devices capable of storing location information, any material evidence tending to establish the motive or identity of any suspect or witness, and any articles of personal property tending to establish the identity of the person in control or possession of the place.
122. The People contend that there was a sufficient nexus between the place to be searched and the item to be seized because “probable cause” existed that Mr. Seymour was involved in the offense, and that items worn on the night of the arson or electronic devices used to search for the address could be located inside. *People’s Response to Motion to Suppress Evidence Unlawfully Obtained (Home) [Def-29]*.
123. The People also argue that due to the fact that Mr. Bui was engaged in narcotics distribution and possessed weapons, and the fact that Mr. Bui and Mr. Seymour were close, Mr. Seymour “may as well be someone who would possess a firearm.” *Id.*, pp. 6-7.
124. This warrant is precisely the type of general search warrant prohibited by cases such as *Eirish*, 165 P.3d at 854. The warrant described two specific items of clothing, and then listed general categories, including *any* material evidence developed by a thorough crime scene investigation, *all* articles of personal property that would establish identification, and *all* electronic devices. As to “material evidence” and “articles of

personal property,” the number of possible items that could be swept up in that net is endless, giving no direction to law enforcement about which items to seize.

125. The warrant affidavit also contained no information that Mr. Seymour was involved in dealing narcotics or in possessing firearms, and the People’s post hoc assertions that Mr. Seymour may carry a firearm because he is friends with Mr. Bui are insufficient to establish probable cause.

126. Lastly, the People argue that for the firearms evidence and surveillance evidence, the court may sever deficient portions of the warrant. The motion does not become “moot and irrelevant,” as the People contend, just because no firearms or surveillance evidence were located. Although the court may sever deficient *portions* of a search warrant without invalidating the entire warrant, that principle does not apply if the entire warrant itself is violative of the Fourth Amendment.

127. Law enforcement cannot be unable to name what items they are seeking in a defendant’s house but still execute a warrant because there could be something in the house linking the defendant to a crime. That is what occurred here, and that is insufficient under the Fourth Amendment standard.

#### **E. Social Media [DEF-30]**

128. Lastly, in this Motion to Suppress, counsel addressed the December 31, 2020, warrant directed at Mr. Seymour’s Instagram for a 183-day period, the January 4, 2021, warrant directed at Mr. Seymour’s Facebook account, for a 188-day period, and the January 12, 2021, warrant directed at Mr. Seymour’s Snapchat account for a 196-day period.

##### *(a) Standing*

129. The People first contend that Mr. Seymour does not have standing to challenge the constitutionality of search warrants for data contained in accounts belonging to others. *People’s Response to Motion to Suppress Evidence Unlawfully Obtained (Social Media) [Def-30]*, pp. 3-4. Mr. Seymour is not challenging the constitutionality of the search warrants as they pertain to data belonging to Mr. Bui and D.S. Mr. Seymour’s accounts were targeted in those warrants, and as such he is challenging the warrants’ constitutionality as they pertain to his accounts.

##### *(b) Probable Cause*

130. The People again argue that there was probable cause to believe that the three defendants in this case were the three people seen on surveillance video on the day of the arson. *Id.*, pp. 8. The People also argue that there were “reasonable grounds” to believe that these accounts would contain evidence relevant to the offense in the form of communication between the individuals, location data, photos and videos such as news videos captured after the incident, and metadata. *Id.*, pp. 9.



131. The People also argue that patterns of usage of the accounts can establish attribution for substantive content. *Id.*, pp. 9-10.

(c) *Particularity*

132. To no surprise, the People's response to this motion is nearly identical to the other People's other filed responses, and the People do not provide any case law regarding the application of the particularity requirement to social media accounts in support of their argument.

133. The People rely on the same broad argument that the warrants described the data sought from all of the accounts within a specified time period, again stating that the particularity requirement was met because the warrant lists the categories of data within the accounts that are subject to seizure.

134. As with all of the other warrants in this case, the social media warrants request every piece of information contained in the accounts for very lengthy time periods. Law enforcement again went through massive amounts of data to look for what they think could later be relevant to their case. There is no nexus between the results of the keyword search warrant, which at the time was the only evidence naming Mr. Seymour as a suspect, and his social media accounts, particularly when the warrants authorized a search of the entire accounts.

**F. Good Faith Exception**

135. In each response, the People allege that the good faith rule must rescue each deficient warrant, because it was not entirely unreasonable for the affiants to rely on the warrants issued in this case

136. "When evidence is obtained in violation of the Fourth Amendment, the judicially developed exclusionary rule usually precludes its use in a criminal proceeding against the victim of the illegal search and seizure." *Illinois v. Krull*, 480 U.S. 340 (1987). However, if the evidence was "obtained in objectively reasonable reliance" on the "subsequently invalidated search warrant," it should not be suppressed. *United States v. Leon*, 468 U.S. 897, 922 (1984). In short, "the exclusionary rule should not automatically apply every time a Fourth Amendment violation is found; rather, it should apply only in those circumstances where its remedial objectives are actually served by suppression." *People v. Gutierrez*, 222 P.3d 925, 941 (Colo. 2009).

137. "For this exception to apply, the affidavit must contain 'a minimally sufficient nexus between the illegal activity and the place to be searched.'" *Brown*, 828 F.3d at 385.

138. "[A]n officer's reliance on a warrant is not always objectively reasonable." *Id.* There are "four situations in which an officer's reliance on a warrant would not be objectively reasonable and suppression would therefore continue to be an appropriate

remedy: (1) where a warrant is based on knowingly or recklessly made falsehoods; (2) where the issuing magistrate wholly abandons his judicial role; (3) where the warrant is so lacking in specificity that the officers could not determine the place to be searched or the things to be seized; or (4) where the warrant is so lacking in indicia of probable cause that official belief in its existence is unreasonable – in other words, a warrant issued on the basis of a ‘bare-bones’ affidavit.” *Id.*, citing *Leon*, 468 U.S. 897 (1984).

139. “An affidavit is considered ‘bare-bones’ and therefore an officer cannot reasonably rely on it, where the affidavit fails to establish a ‘minimally sufficient nexus between the illegal activity and the place to be searched.’” *Id.*, citing *United States v. Carpenter*, 360 F.3d 591, 596 (6th Cir. 2004). “An affidavit that provides the details of an investigation, yet fails to establish a minimal nexus between the criminal activity described and the places to be searched, is nevertheless bare-bones.” *Id.*
140. “Blanket suppression is an extraordinary remedy that should be used only when the violations of search warrant requirements are so extreme that the search is essentially transformed into an impermissible general search.” *Eirish*, 165 P.3d 848, citing *United States v. Uzenski*, 434 F.3d 690 (4th Cir. 2006).
141. As to Mr. Seymour’s home, the warrant was so lacking in specificity regarding, for example, what evidence of “motive” law enforcement was entitled to seize.
142. Furthermore, the affidavits for the other warrants are “bare-bones” affidavits. Each affidavit made sure to recount every detail of the investigation, without establishing any nexus, much less a minimal nexus, between the arson and the places, or the massive amounts of personal data, to be searched.
143. These warrants and “bare-bones” affidavits were so lacking in indicia of probable cause that official belief in their existence was unreasonable. It is clear, just from looking at the warrants and affidavits, that they were asking for every single piece of information from every account that Mr. Seymour could have feasibly had, without the necessary probable cause and particularity.
144. Although blanket suppression is an extraordinary remedy, these violations of search warrant requirements are so extreme that the searches were transformed into impermissible general searches. These searches cast the widest net possible, and enabled law enforcement to comb through all of Mr. Seymour’s accounts, so that law enforcement could later pick out what could be relevant to their case.
145. These searches were so violative of the Fourth Amendment that suppression of the evidence gathered as a result of the warrants is the only just result. The good faith exception cannot save these warrants that were so lacking in indicia of probable cause and particularity.
146. Mr. Seymour therefore requests this Court order to suppress all evidence obtained from these search warrants as well as fruits thereof.

### **III. Motion to Suppress Statements and Observations [Def-37]**

147. Mr. Seymour moves this Court to suppress all statements made during the police interrogation of Gavin Seymour on January 27, 2021, prior to advising Mr. Seymour of his *Miranda* rights, including the statement of his mother regarding his cell phone carrier.

#### **A. Admitting the Statement of Gavin Seymour’s Mother Made During the Custodial Interrogation of Her 16-Year-Old-Son Would Subvert the Purpose of the Additional Protections of Colorado Children’s Code Provision C.R.S. 19-2.5-203(1)**

148. In addition to the constitutional protections afforded to every accused person, the Colorado Children’s Code provides the additional protection to children under the age of 18 that no statement or admission of juvenile during custodial interrogation by law enforcement is admissible unless (1) a parent, guardian or legal custodian is present, and (2) the juvenile and the parent or guardian are advised of the child’s *Miranda* rights. C.R.S. 19-2-511(now located at C.R.S. 19-2.5-203(1)); *People v. Knapp*, 505 P.2d 7 (Colo. 1973)(provision rooted in the 5<sup>th</sup> and 6<sup>th</sup> amendments of the U.S. Constitution); *People v. Blankenship*, 119 P.3d 552 (Colo. App. 2005)(19-2-511 doesn’t diminish the 5<sup>th</sup> and 6<sup>th</sup> amendments, but provides additional protection to children). The legislative purpose of this provision is to safeguard the privilege against self-incrimination and is designed to provide a child parental guidance during police interrogation, thereby providing at least some assurance that the child’s waiver of rights is knowing and voluntary. *People v. Raibon*, 843 P.2d 46 (Colo. App. 1992).

149. C.R.S. 19–2.5–203(1)’s requirement of the presence of a parent or guardian during the child’s *Miranda* advisement and interrogation serves 2 purposes. First, this requirement codifies *Gault* by extending *Miranda* to juveniles. *People in the Interest of A.L.-C.*, 382 P.3d 842, 845 (Colo. 2016), citing *People v. Legler*, 969 P.2d 691, 694 (Colo. 1998). Second, the requirement provides “an additional and necessary assurance that the juvenile’s Fifth Amendment right against self incrimination...will be fully afforded to him.” *Id.*, quoting *People v. Saiz*, 620 P.2d 15, 19-20 (Colo. 1980).

150. In this case, 16-year-old Gavin Seymour’s parents were only present at his in-custody interview for the purpose of fulfilling the requirement that a parent be present for the *Miranda* advisement and interrogation. The objective of the attempted interview was to speak with Gavin Seymour about his involvement in the case, and the presence of Gavin’s mother, was solely to extend *Miranda* to Gavin and to fully afford him his constitutional rights. To distort that purpose by using Gavin’s mother’s statement identifying his cell phone carrier would subvert the very legislative intention of having her present at the interview in the first place.

#### **B. Gavin Seymour’s Statement was Not Voluntary**

151. A defendant’s statements must also be suppressed if they are involuntarily given. To be admissible, a defendant’s statements must be voluntarily given without the

influence of coercive police activity. *Colorado v. Connelly*, 479 U.S. 157 (1986); *People v. Mendoza-Rodriguez*, 790 P.2d 810, 816 (Colo. 1990); *People v. Breidenbach*, 875 P.2d 879 (Colo. 1994). To be voluntary, “[s]tatements must not be the result of official coercion, intimidation, or deception. Official coercion includes any sort of threats, or any direct or implied promises or improper influences, however slight.” *People v. Blankenship*, 30 P.3d 698, 703 (Colo. App. 2000), citing *Colorado v. Connelly*, 479 U.S. 157 (1986); *People v. May*, 859 P.2d 879 (Colo.1993); *People v. Mendoza–Rodriguez*, 790 P.2d 810 (Colo.1990). A defendant’s mental condition is a factor to be considered in determining whether he may be susceptible to coercion. *People v. Parks*, 579 P.2d 76 (Colo. 1978).

152. The prosecution has the burden of establishing the voluntariness of the statement by a preponderance of the evidence. *People v. Mounts*, 784 P.2d 792 (Colo. 1990) Voluntariness of a statement is determined on the basis of the totality of the circumstances under which it is given, including events and occurrences surrounding the statement and the mental condition of the maker. *Id.*

153. In this case, sixteen-year-old Gavin Seymour, who had never before been arrested or accused of a crime, was awakened and arrested from his home very early in the morning. Following the arrest, police took Mr. Seymour to a small interrogation room where he was confronted by two police officers who began asking him questions before advising him of his *Miranda* rights despite their awareness of their obligation to *Mirandize* the teen. Gavin Seymour’s young age, inexperience with police, arrest from his home, and detention in a small room in the presence of two law enforcement officers who chose to begin interrogating him before informing him of his rights combined to make his statements involuntary. Therefore, Gavin’s statements should be suppressed as involuntary.

**C. Custodial interrogation about Gavin Seymour’s phone number must be suppressed because police did not advise him of his *Miranda* rights prior to the statement.**

154. It is undisputed that police formally arrested Gavin Seymour at his home and subsequently subjected him to express questioning, an interrogation, while in-custody at the Denver Police Department.

155. Before advising Mr. Seymour of his *Miranda* rights, Detective Sandoval asked Gavin Seymour to confirm his phone number, which Gavin did in direct response to the question. Right *after* obtaining this statement, Detective Sandoval then advised Gavin Seymour of his *Miranda* rights.

156. Importantly, Gavin Seymour immediately and unambiguously exercised his right to remain silent after being advised of those rights. In response to Detective Sandoval’s question “with these rights in mind, are you willing to answer any questions at this time?” Gavin replied, “No, sir.” This evidences not only that Gavin Seymour did not wish to talk

about the specific incident, but that he did not want to answer *any* questions, which would include questions about his phone number.

157. Police in this very interview asserted their belief of the importance of cell phone records to the evidence in the case inasmuch as they described to Gavin their belief that his cell phone records were one of the primary reasons that they believed he was involved in the crimes that were the subject of the interview. Far from being a mere confirmation of basic identification, questioning Gavin Seymour about his cell phone number without a *Miranda* advisement was a substantive violation of his constitutional and statutory rights to remain silent and to have a lawyer present.

158. Therefore, Gavin Seymour's statement regarding his phone number must be suppressed.

WHEREFORE, Mr. Seymour moves this Court to suppress all evidence derived from the keyword search warrant, all evidence derived from the search warrants for his accounts, cellphone records, cellphone data, home, and social media, and all evidence derived from his unlawful interrogation.

Respectfully submitted,

Dated this day: September 16, 2022

/s/ Jenifer Stinson

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Attorney: Jenifer Stinson, #35993



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Attorney: Michael S. Juba, #39542



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Attorney: Michael W. Price, #22PHV6967

I hereby certify that on this 16<sup>th</sup> day of September, 2022, a true and correct copy of this motion was served upon all counsel of record.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a cursive flourish.

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Signature

## Exhibit 6

People's Reply to Defendant's Motion to Suppress

District Court, City and County of Denver, Colorado Lindsey-Flanigan Courthouse, Room 135 520 W. Colfax Ave. Denver, CO 80204	DATE FILED: September 30, 2022 2:57 PM FILING ID: 2A5A0905EDE07 CASE NUMBER: 2021CR20001
Plaintiff: The People of the State of Colorado	
Defendant: GAVIN SEYMOUR	
Joseph M. Morales, Reg. No. 24706 Chief Deputy District Attorney Courtney Johnston, Reg. No. 39266 Chief Deputy District Attorney Katherine A. Hansen, Reg. No. 25464 Senior Deputy District Attorney For: Beth McCann, Reg. No. 5834 District Attorney 201 W. Colfax Ave. Dept. 801 Denver, CO 80202 Phone Number: 720-913-9000 Fax Number: 720-913-9035	▲ COURT USE ONLY ▲  Case Number: 21CR20001  Div: Criminal Ctrm 5A
<b>PEOPLE'S REPLY TO DEFENDANT'S MOTIONS TO SUPPRESS</b>	

Beth McCann, District Attorney, in and for the Second Judicial District, City and County of Denver, State of Colorado, by and through the undersigned Senior Deputy District Attorney, respectfully submits the following reply to the defendant's motions to suppress.

**The Google Keyword Search Warrant**

On August 5, 2020, five innocent people lost their lives in what can only be described as an abhorrent act. The Denver community, particularly the Senegalese community, was devastated, as for months it was feared that this was a hate crime.

The Denver Police Department, with the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives, began an investigation into this horrific offense, using many different investigative strategies. Numerous leads were followed, and avenues of investigation pursued, but for over two months, although the police had reason to believe that the crime was committed by three individuals wearing masks, not one of these suspects were identified.



In October 2020, Detective Sandoval submitted a search warrant to Google to identify users that had conducted a search of the victims' address within a 15-day time period prior to the arson/homicide. In addition to outlining the offense and investigation, Detective Sandoval explained why, under the specific facts of this case, and considering the totality of the circumstances, there was reason to believe (not simply a "hunch") that the person or persons who committed this crime would have conducted a search for the victims' address prior to the offense:

*Based on the extreme nature of this crime and the extensive planning it must have taken to carry out the events involved in this offense, Your Affiant feels that this crime was very personal and involved a substantial amount of anger towards someone in the victim residence and/or was intended to send some sort of message. This belief is based on years of investigation of violent crimes and the motives associated with such crimes that Your Affiant has been exposed to over the years. Considering the personal nature of this offense, the actions of the suspects as observed on the surveillance videos, and the amount of planning that likely went into a coordinated attack such as this one, Your Affiant believes that there is a reasonable probability that one or more of the suspects searched for directions to the victim's address prior to the fire.*

*The victim's home is in a densely populated subdivision and does not "stick out" as a house that would likely have been picked at random. It is not on a corner lot, which would be an easier target residence as there would be more area to move in before and after setting the fire. As such, it is reasonable to believe that this home was targeted, and that the person or persons targeting the home sought its location and/or directions in planning this attack.*

Detective Sandoval submitted two warrants to Google that were later withdrawn because they did not satisfy Google's requirements for these types of search warrants. However, Detective Sandoval had never prepared a warrant like this, and so he and Google spoke so that he could understand better what Google was able to do in order to draft a proper keyword search warrant. Detective Sandoval did not know how Google was going to conduct this search or exactly what a search of this nature entailed; indeed, it is unlikely that anyone other than Google employees know exactly what is done to comply with a warrant for information in Google's possession.<sup>1</sup>

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<sup>1</sup> Contrary to the defendant's claims, Detective Sandoval was not required to address these previous withdrawn warrants in the third warrant as they did not constitute exculpatory information, any failure to mention the previous warrants did not render the affidavit "substantially misleading," the warrants did not bear on the question of probable cause, and this fact was simply irrelevant. *See People v. McKay*, 2021 CO 72, ¶ 9

Detective Sandoval then submitted a third warrant to Google that asked for two types of information: 1) whether any searches had been conducted during a 15-day period immediately prior to the arson/homicide using Google services (i.e., Chrome, Google Maps) that included the address of 5312 North Truckee Street (and its multiple variations); and 2) the IP addresses associated with those searches. Detective Sandoval explicitly requested that any responsive search be presented in anonymized fashion, rendering the identity of the user that conducted the search completely unknown at this stage.

Then, Detective Sandoval said, Law Enforcement would review the responsive records and rule out searches associated with IP addresses “that do not resolve to a location relevant to the investigation.” This phrase made clear that only those searches conducted in Colorado would be included in any follow up search warrants. Because it is possible to conduct an open-source search of an IP address to determine its general source location (at most, a state, rather than a particular location), having the IP addresses would not identify a particular person or address, but instead would simply allow investigators to rule out searches conducted by persons outside of Colorado.

Finally, Detective Sandoval specified that IF identifying information was needed in order to associate a search to a specific person or location, further legal process would be pursued.

Considered in its totality, the search warrant only *requested* and, as established by the Google employee’s affidavit and hearing testimony, only *involved* a query of a database maintained by Google to identify searches that were conducted during the specified time frame that matched the parameters provided in the warrant and used by Google to conduct the query. The defendant’s attempt to characterize this process as a search of a “billion people” is simply inapt. The defendant’s claim that the warrant was invalid because it did not specify the method by which Google should conduct its search is similarly unpersuasive. There is no requirement that a search warrant dictate the manner in which the business entity in possession and control over the records being sought must conduct its search. *See* §16-3-301 et seq., Crim. P. 41. Such a requirement would be almost impossible to satisfy as law enforcement officers seeking search warrants would have no information about how a third-party business stores its records, how it searches through its records to identify responsive materials, and how it presents such materials to the Affiant. Indeed, Detective Sandoval testified as such.<sup>2</sup>

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<sup>2</sup> The defendant has failed to cite to any authority that suggests that the validity of a warrant is determined by what data is ultimately provided. Whether Google provided data in addition to the data requested in the warrant cannot undermine the warrant as law enforcement has no control over what a business chooses to turn over. This argument is similar to a claim that the validity of a search can be based on the fact that incriminating evidence was ultimately found, even if such evidence

Contrary to the defendant's claims, the warrant was sufficiently particularized; it sought data related to specific individuals who conducted a matching search. The fact that the identify of those specific individuals was not known does not contravene the "particularity" requirement. *See e.g., United States v. Besase*, 521 F.2d 1306, 1308 (6th Cir. 1975).

Moreover, the defendant's argument that the anonymization of the accounts was rendered meaningless because of the IP addresses ignores the fact that Detective Sandoval would have to submit additional legal process to obtain the user information or physical location associated with that IP address. That legal process would have to establish probable cause to believe that the particular user associated with the IP address was involved in or had knowledge about the arson/homicide. As such, it is incorrect to state that provision of the IP addresses essentially unmasked the anonymized user data.

Many of the defendant's challenges to this warrant revolve around speculative "what ifs" – what if this strategy allows law enforcement to identify persons searching for a location to obtain an abortion, what if it reveals the searches of people seeking immensely private information, etc. The defendant's invitation to this Court to speculate about how this strategy could be abused or violate another person's rights should be declined, as the only question properly before this Court is whether the warrant issued *in this case* is constitutionally valid. The defendant simply has no standing to challenge search warrants not yet issued or searches relating to persons other than himself.

Similarly, the search for an address does not involve "expressive activities" that might otherwise invoke the First Amendment concerns identified in *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002). The fact that other Google searches involving other topics might involve "expressive activities" is simply irrelevant to this case. Most of the authorities cited in support of this argument address whether a warrant is needed in the first instance – a question not before this Court because clearly a warrant was obtained in this case.

Even if this Court determines that the warrant failed to satisfy any one or more of the constitutional requirements of particularity and probable cause, this Court should nevertheless uphold the warrant under the Good Faith exception. *See* §16-3-308, C.R.S. (2022); *People v. Altman*, 960 P.2d 1164 (Colo. 1998). As Detective Sandoval testified, he had never prepared a Google Keyword search warrant before and did not know how Google would conduct its search or how they would provide the data requested. The defendant has failed to establish that any of the statements made in the warrant

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was not specified in the warrant. Clearly, this is not a proper inquiry under the Fourth Amendment, and the analogous argument made by the defendant should be similarly rejected.

application were false, much less “knowing or recklessly made falsehoods.” *Id.* The information that the defendant claims should have been included in the warrant application (i.e., the previous withdrawn warrants, the fact that a “billion people” would be searched, etc.) is information that is either unnecessary to include or patently inaccurate. It was entirely reasonable for Detective Sandoval to rely on a warrant that he had consulted with Google on, and which included extensive information about the crime, investigation, and reasons why the suspects would have searched for the address before the offense. Simply put, nothing in the affidavit has been shown to be false, and it was entirely reasonable for Detective Sandoval to have relied on the warrant in seeking the records from Google. As such, the Good Faith exception applies.

### **The Warrants for Third-Party Account Data, Call Detail Records, and Cellphone Data**

Once the Google Keyword search warrant identified five accounts that had repeatedly searched for the victims’ address, and data relating to three of these accounts identified the defendant, Kevin Bui, and D.S. as the persons who conducted those searches, subsequent investigative strategies led to the identification of social media accounts and phone numbers associated with these three suspects. As demonstrated in the affidavits submitted in support of these warrants, there was substantial evidence that the defendant, Bui, and D.S. had been the three persons observed in surveillance video and who had committed this crime. Moreover, the evidence showed that these three juvenile boys all maintained accounts on various social media platforms, were “friends” with each other on those platforms, and posted photos of themselves together.

For the reasons outlined in the affidavits in support of the call detail records and social media warrants, there was reason to believe that data related to the offense would be located in those accounts. This would include not only data directly related to the commission of the offense, such as the fact that the three are associated, the nature of their relationships, what they communicated about prior to and after the offense, their location surrounding the time of the offense, as well as data corroborative of other evidence implicating the three suspects in this crime.

In addition to evidence directly incriminating the defendant in these crimes, data in the account unrelated to the crime itself was nevertheless properly included in this warrant for its ability to attribute any incriminating data to its proper source. For example, if a message was found in the account data that implicated the defendant in this crime, it would be necessary to authenticate that message and show that it was made by the defendant. Other messages sent around the same time could be used to show who was likely in possession of the device at the time the incriminating text was sent. Location data associated with the sending of that text could be compared to call detail records for the defendant’s phone to determine that the defendant was the one who likely sent that message. In fact, there is a myriad of ways in which benign account data can be used to authenticate the user of an account as well as the creator/sender/recipient of content

within that account. This is not a “fishing expedition,” this is simply an assessment of a data source to ensure that a piece of evidence is what it purports to be (and who it is purported to be associated to). Finally, contrary to the defendant’s claims, this did not constitute a search of the entirety of his accounts – the data was limited to a time frame appropriate for this case.

The search warrant for the defendant’s cellphone was obtained towards the end of the investigation, after a substantial amount of additional evidence implicating the defendant, Bui, and D.S. had been obtained. The investigation had also uncovered the likely motive for the offense. Investigators knew that these boys had committed this offense, that they had spoken about it before it occurred as well as afterwards, that their phone records had placed at least two of them at the scene of the crime and showed that they were frequently together, and that they had committed acts implicating themselves such as purchasing the masks and the gasoline used to commit the offense. Simply put, the evidence against the defendant, Bui, and D.S. at this point was overwhelming. The nexus between the data in the phone and the crime itself was based on similar reasoning as that set forth in the social media warrants.

All of the social media and cellphone warrants described the data to be searched for and seized with particularity – there can be no real question that the data was described in sufficient detail that anyone conducting the search would know what they were allowed to seize. For all of the warrants, probable cause was established through the recitation of the historical facts, the information learned at that point in the investigation, and the detailed explanations of why each type of data would be relevant to this investigation. It is within these explanations – based on the facts, inferences from the facts, common sense understandings about human behavior, and the officers’ training and experience – that the nexus was established to each type of data listed. The law surrounding probable cause, cited in detail in the People’s initial responses, establishes that probable cause can be based on each of these sources of information. The affidavits supporting the search warrants in this case amply established probable cause and the warrants were constitutionally valid.

### **Good Faith**

Because warrants were obtained for all of the data sought and received in this case, none of the data can be suppressed unless the defendant can show that at least one of the exceptions to the Good Faith rule applies. Those exceptions are (1) where the issuing magistrate or judge was misled by a knowing or recklessly made falsehood; (2) where the issuing magistrate wholly abandoned his or her judicial role; (3) where the warrant is so facially deficient that the officers cannot reasonably determine the particular place to be searched or things to be seized; and (4) where the warrant is based on an affidavit “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Altman, supra*.

The defendant has completely failed to satisfy this burden. In one example, he claims that the warrant was required to describe what kind of evidence of “motive” law enforcement was allowed to seize. However, imagine if a warrant was required to describe every logical basis upon which every piece of evidence that might be encountered during a search could be used in a criminal case. At the time the warrant is submitted, this evidence has not been found yet, so explaining its significance at that point would be impossible. Moreover, it is certainly reasonable to allow trained law enforcement officers conducting a search to be able to identify what evidence might be relevant to “motive,” just as they are able to identify items located in a house as “drug paraphernalia” or evidence of “grooming” in a sexual assault suspect’s messages to a child victim.

In sum, the warrants being challenged in this case were carefully crafted to ensure that the data being sought was narrowed to its proper scope, was sufficiently described, and was supported by reasonable grounds to believe that it would be both located in the places described and relevant to the heinous crime that occurred in this case. The nexus section of every warrant is critical and must be read in conjunction with the historical facts in order to properly assess the probable cause requirement. The People believe that properly reviewed, this Court will see that the warrants were not only constitutional, but that reliance upon them by the detectives investigating this case was entirely reasonable.<sup>3</sup>

For the foregoing reasons and authorities, the People respectfully request that this Court deny the defendant’s motions to suppress.

Dated: September 30, 2022

Respectfully submitted,  
Beth McCann  
District Attorney

by: /s/ Katherine A. Hansen  
Katherine A. Hansen, Reg. No. 25464  
Senior Deputy District Attorney

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<sup>3</sup> The People rely on the arguments made in the initial written responses and at the hearing with regard to the remaining searches and statements.

CERTIFICATE OF SERVICE

I certify that on the 30<sup>th</sup> day of September, 2022, I E-served through CCE, a true and complete copy of the foregoing to:

Counsel for the defendant

By: /s/Katherine A. Hansen

## Exhibit 7

Defendant's Response to People's Written Arguments on  
Defendant's Motions to Suppress





suppress evidence unlawfully obtained regarding his accounts, his cellphone records, his cellphone data, his home, and his social media. *See Motion to Suppress Evidence From a Keyword Warrant & Request for a Veracity Hearing, Motion To Suppress Evidence Unlawfully Obtained (Accounts) [Def-25], Motion to Suppress Evidence Unlawfully Obtained (Cellphone Records) [Def-26], Motion to Suppress Evidence Unlawfully Obtained [Cellphone Data] [Def-27], Motion to Suppress Evidence Unlawfully Obtained (Home) [Def-29], and Motion to Suppress Evidence Unlawfully Obtained (Social Media) [Def-30].* Mr. Seymour states as follows:

## **I. The Keyword Warrant**

### **A. Fourth Amendment Interests**

1. The government felt the need to obtain a warrant for the search history data in this case—in fact, they sought three of them. They also conceded, at least initially, that a “search” occurred. *See People’s Written Arguments on Defendant’s Motions to Suppress* at 3 (“[t]he People are not suggesting that this was not a search at all.”). Yet they now argue that no warrant was required because Mr. Seymour did not have an expectation of privacy in his search terms. *See Id.* at 2.
2. The government asserts that the keyword warrant was somehow not a search because it involved a “computer [that] provided a list of accounts” from a “database.” *See Id.* at 3. The government is wrong. There is no “computer inquiry”-exception to the Fourth Amendment. *Id.* at 5. And that is especially true when the database in question is full of the search history belonging to billions of Google users, including Mr. Seymour.
3. In the digital world, all that exists are “ones and zeroes.” *See Id.* at 3. But that does not deprive those digital bits of their Fourth Amendment protections. *See Riley v. California*, 573 U.S. 373, 395–96 (2014), *Carpenter v. United States*, 138 S. Ct. 2206, 2210 (2018). A warrant is required to search one’s private papers and effects, and that commandment does not disappear by dint of describing documents as mere ink on paper. The same is true of one’s digital papers and effects, even if they amount to a heap of zeroes and ones on a server. In *Riley*, the Supreme Court specifically identified “Internet search and browsing history” as an example of private data stored on a cell phone that requires a warrant to search. 573 U.S. at 395–96. The Court recognized that it “could reveal an individual’s private interests or concerns” and was precisely the sort of information that the Fourth Amendment should protect. *Id.*
4. The fact that the same search data may also be stored in a user’s Google account does not diminish their Fourth Amendment interests in it. On the contrary, the Supreme Court has repeatedly emphasized that digital data deserves constitutional guarantees suited to the digital era. And as a result, the Court has been clear that judges are not to “mechanically apply” the third-party doctrine in the digital context. *Carpenter*, 138 S. Ct. at 2210; *see also United States v. Jones*, 565 U.S. 400, 417 (2012) (Sotomayor, J., concurring) (describing the third-party doctrine as “ill suited to the digital age”).

5. The government now cites to Google’s Privacy Policy as support for its position, but it ignores Google’s testimony that search history *is* a part of a user’s “account contents,” Tr. at 27; 31, just like email messages, documents, and photos. Moreover, the documents the government cites are Google’s current policies, not the ones in place at the time Mr. Seymour created his account. In fact, Mr. Seymour was still a child—twelve years old—when he created his Google account in 2016. And as Mr. Seymour has previously noted, Google’s own terms require individuals to be at least 13 years old to create an account, meaning that Mr. Seymour could not have provided voluntary or meaningful consent. Google, *Age Requirements on Google Accounts*, <https://perma.cc/Z6XG-N795> (last visited June 30, 2022).
6. Additionally, Mr. Seymour has a possessory interest in his search history data. Mr. Seymour has repeatedly made this argument to the Court in detail. *See* MTS at 15-17; Def. Reply at 3-6. The government, however, has failed to respond to it in any way. Instead, the government continues to mischaracterize the nature of the search, calling it a mere “database” search. This ignores the fact that the data in that database belongs to billions of individual users like Mr. Seymour. It does not belong to Google. Google stores it for their users, but at the end of the day, it is a part of an individual’s “account contents,” like email or photos. Tr. at 27, 31. Users retain the right to exclude others from it and they also retain the right to delete it. *See* Def. Reply at 3-6. Consequently, searching Mr. Seymour’s search history was a trespass under the Fourth Amendment, just as it was for the billions of other Google users who also have a property interest in their data. It does not matter that the government did not search the “full accounts of Google users,” *People’s Written Arguments on Defendant’s Motions to Suppress* at 3, because any intrusion into Mr. Seymour’s Google data, even a small one, is a Fourth Amendment trespass.
7. Finally, the fact that Google employees use an automated process to execute the keyword warrant only heightens Fourth Amendment concerns. The government argues that it somehow lessens the intrusion because Google employees do not personally review the contents of each user account. *Id.* at 3. But as the Supreme Court recognized in *Carpenter*, a central aim of the Fourth Amendment was “to place obstacles in the way of a too permeating police surveillance.” 138 S. Ct. at 2214. Thus, it mattered to the Supreme Court in *Jones* that it was cheap and easy to track a car using GPS. To achieve the same effect without technology would have required a “constable” to have “secreted himself somewhere in a coach and remained there for a period of time,” *id.* at 420 (Alito, J., concurring), a feat which “would have required either a gigantic coach, a very tiny constable, or both—not to mention a constable with incredible fortitude and patience.” *Id.* at 420 n3. And in *Carpenter*, the Court found it significant that, “[i]n the past, attempts to reconstruct a person’s movements were limited by a dearth of records and the frailties of recollection,” but “because location information is continually logged for all of the 400 million devices in the United States,” “... [w]hoever the suspect turns out to be, he has effectively been tailed every moment of every day for five years.” 138 S. Ct. at 2218. Here, the fact that there is a record of nearly all Google searches, stretching untold years, that can be quickly and automatically searched, provides the government with the same kind of “retrospective” information that would be “otherwise unknowable.” *Id.*

8. Accordingly, this Court should “assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted,” *id.* at 2214, and recognize that Mr. Seymour had both privacy and possessory interests in his Google search history data.

### **B. Overbreadth & Lack of Particularity**

9. The keyword warrant here was a digital general warrant. It was unconstitutional in any iteration, no matter how many steps were involved. The “staged” process Google describes, *Exhibit – Attachment to Notice of Declaration of Legal Investigations Support Analyst Nikki Adeli (Google Declaration)* at ¶ 3, does not cure the warrant’s fundamental constitutional defects: the absence of probable cause to search Mr. Seymour’s data (or anyone else’s), and a profound lack of particularity with respect to the accounts to be searched and the data to be seized.
10. The government attempts to obscure these defects by calling the search a “database inquiry,” but the reality of what occurred is not so benign. It is not as if a Google employee looked at a user’s search history and then repeated that search a billion times. It is far worse because it can be done automatically in the blink of an eye. It does not require the kind of resources and manpower that would have made such a search impossible in centuries past. It is easy, and that is the concern.
11. The fact remains that this “database inquiry” entailed scanning the private search history belonging to billions of Google users, including Mr. Seymour, over the course of 15 days. And critically, the government cannot point to a single account that it had probable cause to search, let alone Mr. Seymour’s. Even Det. Sandoval admitted that before executing the keyword warrant, he did not have probable cause to search Mr. Seymour’s Google account. *See* Tr. at 83 (“Q. Would you say you had cause, by which I mean probable cause, to search [Mr. Seymour’s] Google account prior to the keyword search warrant? A. I don’t believe so, and we did not do that.”).
12. Because the government had no probable cause to search Mr. Seymour’s data, they rely on the “staged” warrant process and the fact that the house was “not on a corner lot.” *People’s Written Arguments on Defendant’s Motions to Suppress* at 4. But the warrant process is no substitute for probable case and the location of the house only gave rise to a “hunch” that the address “could have possibly been searched.” Tr. at 83. In short, the government lacked probable cause to search of anyone’s Google data and it should not be permitted to pretend that a digital dragnet, however pointed, is a constitutional replacement.
13. With respect to particularity, the government focuses on the object of the search but ignores the that the place to be searched is Google Headquarters instead of specifying individual accounts. As Mr. Seymour has argued, it does not matter how precisely the government can describe what it is looking for if they cannot identify where to search. *See Defendant’s Reply to People’s Responses to Motion to Suppress Evidence From a Keyword Warrant and Motions to Suppress Evidence Unlawfully Obtained* at 7-8. Supplying the street address for a company that stores the personal data for billions of users is not sufficiently particular. Like a warrant to search an apartment in a multi-family dwelling, it is critical to identify the

individual accounts to be searched. *See id.* It is not enough to identify a suspect after searching every apartment in the building, even if the intrusion was just a quick check of residents' cell phones for evidence of specific search activity.

14. Furthermore, the government does not challenge the fact that some of the data returned by Google does not match the terms in the keyword warrant, indicating that either the warrant was executed improperly or that it failed to adequately specify the data to be seized. *See Gov. Arg.* at 4. In fact, just five of the 61 searches produced by Google matched the search terms in the warrant—45 contained additional terms and 11 had no terms at all. *See Motion to Suppress Evidence From a Keyword Warrant* at 9-10; *Defendant's Reply to People's Responses to Motion to Suppress Evidence From a Keyword Warrant and Motions to Suppress Evidence Unlawfully Obtained* at 10. The government asserts that the Court should not consider this information because, it contends, it “does not bear on the constitutional or statutory requirements for a search warrant” and it is not “contained within the four corners of the warrant.” *Written Arguments on Defendant's Motions to Suppress* at 4. On the contrary, the failure to adequately specify the things to be seized is basic grounds for invalidating a warrant and the fact that the government's conduct is not described in the warrant is no obstacle to challenging the scope and execution of the search. *See People v. Staton*, 924 P.2d 127, 131 (Colo. 1996) (finding the warrant failed to delineate the evidence to be seized but that the incorporated affidavit was sufficiently particular); *People v. Donahue*, 750 P.2d 921, 923 (Colo. 1988) (failing to specify the items to be seized); *People v. King*, 292 P.3d 959, 961 (Colo. App. 2011) (scope of warrant exceeded); *United States v. Young*, 263 F. App'x 710, 716 (10th Cir. 2008) (same).

### C. Good Faith / Veracity

15. The government misstates Mr. Seymour's position with respect to the good faith doctrine. Mr. Seymour's argument is *not* “based solely on what he claims are ‘omissions’ in the affidavit.” *People's Written Arguments on Defendant's Motions to Suppress* at 5. Rather, as Mr. Seymour made clear in his original motion to suppress, the good faith exception should not apply here for three reasons: (1) the warrant was based on Det. Sandoval's knowing or recklessly false statements; (2) the warrant affidavit lacked a substantial basis to determine probable cause; and (3) no officer could reasonably presume the warrant was valid. *See Motion to Suppress Evidence From a Keyword Warrant* at 23; *Defendant's Reply to People's Responses to Motion to Suppress Evidence From a Keyword Warrant and Motions to Suppress Evidence Unlawfully Obtained* at 11; *see also Leon*, 468 U.S. at 926. The government chooses to respond only to the first argument, but Mr. Seymour has thoroughly briefed the other two and reiterates that the good faith doctrine should not apply for any of these three reasons.
16. With respect to Det. Sandoval's affidavit, the government does not dispute that he failed to inform Judge Zobel that the warrant would involve the search of a billion accounts. *People's Written Arguments on Defendant's Motions to Suppress* at 5. Instead, the government contends that Det. Sandoval should be off the hook because “he had never prepared a keyword search warrant before and he did not know how the search would be conducted.” *Id.*

17. But Det. Sandoval asked Judge Zobel to rely on his “training and experience”—of which he had none for keyword warrants. *See Attachment 3 to Motion to Suppress Evidence From a Keyword Warrant (Keyword SW 3)* at 2-3; *see also* Tr. at 144. That was reckless. Det. Sandoval knew he had no experience with keyword warrants, but instead misled the judge to believe he understood what he was asking for. Had he understood, and had he conveyed that information to Judge Zobel, there is little doubt that the application would have been rejected. The fact that Google rejected the first two keyword warrants should have been a red flag as well. But instead, Det. Sandoval forged ahead with a new judge and recklessly omitted critical facts about the search.
18. Had Det. Sandoval included these facts, it would have become apparent that the warrant was an impermissible general warrant. It would have been obvious that the affidavit lacked a substantial basis for probable cause to search Mr. Seymour, and that the warrant did not identify a single Google account out of the billions it sought to search. *See Motion to Suppress Evidence From a Keyword Warrant* at 26-28; *Defendant’s Reply to People’s Responses to Motion to Suppress Evidence From a Keyword Warrant and Motions to Suppress Evidence Unlawfully Obtained* at 11-14.
19. Furthermore, had Det. Sandoval properly informed the court, it also would have become clear that the Stored Communications Act simply does not apply to dragnet searches like this one. The Dictionary Act does not control because here, “the context indicates otherwise.” 1 U.S.C. §1. The SCA also prohibits the government from obtaining records that are not “relevant and material” to the ongoing criminal investigation. *See* 18 U.S.C. § 2703(d). And at minimum, the “relevant and material” requirement under the SCA is more demanding than the mere “relevance” standard governing, for which courts have consistently required the government show an actual connection to a particular investigation. *See, e.g., Bowman Dairy Co. v. United States*, 341 U.S. 214, 221 (1951) (invalidating a subpoena’s “catch-all provision” on the grounds that it was “merely a fishing expedition to see what may turn up”). Courts have also rejected or narrowed subpoenas that, because they fail to identify the outer bounds of the categories of records they seek, cover large volumes of *irrelevant* documents. *See In re Grand Jury Subpoena Duces Tecum Dated Nov. 15, 1993*, 846 F. Supp. 11, 12 (S.D.N.Y. 1994) (Mukasey, J.) (quashing a grand-jury subpoena that demanded the entire contents of “computer hard drives and floppy disks,” because the materials “contain[ed] some data concededly irrelevant to the grand jury inquiry”). Where, as here, the government indiscriminately seeks records implicating the privacy of billions of individuals in one fell swoop, it cannot possibly meet the standard in establishing a “relevant and material” need for *all* of those records. A keyword warrant is plainly not the kind of search authorized by the SCA and Det. Sandoval should have known or disclosed that.

## **II. The Motions to Suppress: Accounts, Cellphone Records, Cellphone Data, Home, and Social Media**

20. The People again rely on the “nexus” sections contained in the affidavits associated with each warrant. These warrants lack a sufficient nexus between the alleged criminal activity, the data and items to be seized, and the places to be searched.

21. The People argue that the particularity requirement was satisfied for each of the warrants because the data to be searched for and seized or to be provided to law enforcement was described with “sufficient detail that the persons executing the search knew exactly what data they were authorized to seize/provide.” *People’s Written Arguments on Defendant’s Motions to Suppress* at 6. This is not, as the People contend, “all that is required” by *People v. Roccaforte*, 919 P.3d 799, 802 (Colo. 1996). *See Id.* at 6.
22. *Roccaforte* provides instead that an “all records” warrant is not sufficiently particularized unless there is “probable cause to believe that the crime alleged encompasses the entire business operation and that evidence will be found in most or all business accounts.” *Id.* There is a significant difference between the facts in *Roccaforte* and the facts in this case. Despite the People’s argument regarding nexus, there is no nexus between the requested information in the search warrants and the alleged offense.
23. The People also again rely on the fact that most people today possess and use cellphones, despite the fact that the surveillance videos do not show anyone using a cellphone before, during, or after the arson.
24. Lastly, the People again argue that the evidence collected needs to be attributed to its source. The People originally made this argument in relation to Mr. Seymour’s cellphone data. Mr. Seymour’s cellphone was taken from him when he was arrested. There was no dispute over who had possession of his cellphone, and pursuant to *People v. Herrera*, 357 P.3d 1227, 1228 (Colo. 2015), a warrant authorizing a search of all data which “tends to show possession” over a cellphone transforms the warrant into a general warrant violative of the Fourth Amendment.

## CONCLUSION

WHEREFORE, Mr. Seymour moves this Court to order to suppress all evidence obtained from the November 19, 2020, keyword warrant, as well as fruits thereof, as well as his motions to suppress evidence unlawfully obtained regarding his accounts, his cellphone records, his cellphone data, his home, and his social media.

Respectfully submitted,

Dated this day: September 30, 2022

/s/ Jenifer Stinson

---

Attorney: Jenifer Stinson, #35993



---

Attorney: Michael S. Juba, #39542

A handwritten signature in black ink, appearing to be 'MSJ', with a long horizontal line extending to the right.

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Attorney: Michael W. Price, #22PHV6967

I hereby certify that on this 30<sup>th</sup> day of September, 2022, a true and correct copy of this motion was served upon all counsel of record.

A handwritten signature in blue ink, appearing to be 'MP', with a long horizontal line extending to the right.

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Signature



## Exhibit 8

Reporter's Transcript 11/16/2022

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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**FOR THE PEOPLE:** JOSEPH M. MORALES  
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AFTERNOON SESSION - NOVEMBER 16, 2022

\* \* \* \* \*

(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

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REPORTER'S CERTIFICATE

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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

## Exhibit 9

Reporter's Transcript 11/12/2021



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DENVER DISTRICT COURT  
CITY AND COUNTY OF DENVER  
STATE OF COLORADO  
LINDSEY-FLANIGAN COURTHOUSE  
520 WEST COLFAX  
DENVER, COLORADO 80204-2069

*^COURT USE ONLY^*

**THE PEOPLE OF THE STATE OF COLORADO,**  
  
vs.  
  
**KEVIN BUI,**  
  
Defendant.

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

**THE PEOPLE OF THE STATE OF COLORADO,**  
  
vs.  
  
**GAVIN SEYMOUR,**  
  
Defendant.

**REPORTER'S TRANSCRIPT**

This matter came on for preliminary hearing  
on Friday, November 12th, 2021, before the HONORABLE  
MARTIN F. EGELHOFF, Judge of the District Court.

**A P P E A R A N C E S**

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**I N D E X**

PAGE:

WITNESSES FOR THE PEOPLE:

DETECTIVE NEIL BAKER

Direct Examination by Ms. Johnston	14
Cross-Examination by Mr. Juba	60
Cross-Examination by Mr. Earle	93
Redirect Examination by Ms. Johnston	113

SPECIAL AGENT MARK SONNENDECKER

Direct Examination by Ms. Johnston	118
Cross-Examination by Mr. Juba	159
Cross-Examination by Ms. Lanzen	173
Redirect Examination by Ms. Johnston	220
Recross-Examination by Ms. Lanzen	223

PEOPLE'S EXHIBITS:

ADMITTED:

1	Photo: Aerial view of Green Valley Ranch	13
2	Photo: Aerial view of 5312 N. Truckee	13
3	Photo: 5312 N. Truckee (front of house on fire)	13
4	Photo: 5312 N. Truckee (back of house on fire)	13
5	Photo: 5312 N. Truckee (interior of house)	13
6	Photo: Djibril Diol	13
7	Photo: Adaj Salamat Diol	13
8	Photo: Hasaan Diol	13
9	Photo: Khadija Diol	13
10	Photo: Hawa Baye	13
11	Photo: Three masked men (side yard)	13
12	Photo: 5312 N. Truckee (Ring video still photo)	13
13	Photo: Suspect car in neighborhood after fire	13
14	Photo: Defendant Bui's car	13

**I N D E X (continued)**

	PEOPLE'S EXHIBITS:	ADMITTED:
1		
2		
3	15 Photo: Enhanced Ring photo (gas can)	13
4	16 Photo: Party City web page (masks)	13
5	17 Photo: Dillon Siebert	13
6	18 Photo: Bui, Seymour, and Siebert together	13
7	19 Photo: Bui and Siebert together with unknown	13
8	20 Snapchat exchange between Bui and Seymour	13
9	21 Photo: screenshot of "Kevin's iPhone"	13
10	22 Diagram: Location of phones near Party City	13
11	23 Diagram: Location of phones near gas station	13
12	24 Diagram: Location of Seymour's phone	13
13	25 Diagram: Location of Bui's phone	13
14	26 Video: Side of 5312 N. Truckee (arriving)	13
15	27 Video: Side of 5312 N. Truckee (pointing)	13
16	28 Video: Side of 5312 N. Truckee (fleeing)	13
17	29 Video: Bui's confession after arrest	13
18		
19		
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2 (The following proceedings commenced at the hour  
3 of 8:51 a.m. with all parties present, the defendants  
4 appearing in custody:)

5 \* \* \* \* \*

6 THE COURT: Please be seated. Calling case  
7 number 21CR20000, People versus Kevin Bui, and 21CR20001,  
8 People versus Gavin Seymour.

9 Appearances, please.

10 MS. JOHNSTON: Good morning, Your Honor.  
11 Courtney Johnston and Joe Morales for the People.

12 MR. JUBA: Michael Juba and Jenifer Stinson on  
13 behalf of Gavin Seymour. He appears in custody to my  
14 right.

15 MR. EARLE: Your Honor, Christian Earle and  
16 Rachel Lanzen on behalf of Mr. Kevin Bui, who appears in  
17 custody on my left.

18 THE COURT: All right. Thank you.

19 MR. BITTAN: Your Honor, Brad Bittan. I'm  
20 guardian ad litem for Gavin Seymour.

21 MS. JENSEN: Good morning, Your Honor. Alison  
22 Jensen, guardian ad litem for Kevin Bui.

23 THE COURT: All right. Thank you.

24 So we're set for a preliminary hearing as to  
25 both defendants this morning. Is everybody ready to

1 proceed this morning?

2 Mr. Morales, are you ready to proceed?

3 MS. JOHNSTON: We're ready, Your Honor.

4 THE COURT: Ms. Johnston. I'm sorry.

5 MS. JOHNSTON: The People have two brief matters  
6 to take up with the Court.

7 THE COURT: Pray tell.

8 MS. JOHNSTON: First, the People are asking for  
9 Detective Neil Baker to be advisory counsel for purposes  
10 of the preliminary hearing today.

11 THE COURT: That's granted.

12 MS. JOHNSTON: And the second issue -- and I've  
13 spoken to Defense about this. In Count 56 of the  
14 Complaint and Information, only for Kevin Bui, not for  
15 Mr. Seymour, we did not indicate the deadly weapon in  
16 that count. And so we are asking the Court to amend that  
17 count by interlineation. We will follow up with a  
18 written motion.

19 THE COURT: That's a crime of violence count?

20 MS. JOHNSTON: Yes.

21 THE COURT: All right. And as to the  
22 preliminary hearing, the crime of violence counts are set  
23 as enhancers, so there's no right to a PH on those counts  
24 in any event; yes?

25 MS. JOHNSTON: Correct, Your Honor. I just

1 wanted to clarify the record this morning before we  
2 began.

3 THE COURT: Okay. Thank you.

4 Are there any preliminary matters on behalf of  
5 either defendant before we begin?

6 MR. JUBA: For Mr. Seymour, we would ask for a  
7 sequestration of witnesses, Your Honor.

8 THE COURT: Okay.

9 MR. JUBA: We would also ask for -- I believe  
10 this is going to be streamed on Webex; is that correct?

11 THE COURT: Yes, that's correct.

12 MR. JUBA: We would just ask the Court to  
13 reiterate its order that it issued earlier regarding the  
14 recording of the proceedings on Webex.

15 THE COURT: Sure.

16 MR. JUBA: And we have one other matter that we  
17 would ask to approach to address, Your Honor.

18 THE COURT: Okay. Before you do so, the Court  
19 will grant the request for sequestration. And so any  
20 witness testifying at this hearing needs to absent him-  
21 or herself from the courtroom, with the exception of  
22 Detective Baker, and may not discuss their testimony with  
23 any other witness.

24 I will also reiterate that there's a standing  
25 chief judge order which this Court has adopted which

1 strictly prohibits the filming in any way, shape, or form  
2 of these proceedings. And so -- and that applies to  
3 anyone present in the courtroom.

4 The Court has agreed to provide public access to  
5 this hearing by way of Webex. That does not, however,  
6 mean that these proceedings can be otherwise reproduced,  
7 filmed, or redistributed in any way, shape, or form.

8 And, Counsel, if you wish to approach, that's  
9 fine. And let's go over to the side bar so it gets  
10 recorded.

11 (The following proceedings were held during a  
12 bench conference:)

13 THE COURT: If you just want to speak into that  
14 little whisper mic there. And it's -- don't touch it.  
15 Just speak into it here.

16 MR. JUBA: Your Honor, Mr. Seymour did make a  
17 proffer in this case. Part of that proffered agreement  
18 was that that evidence, those statements, would not be  
19 able to be used in any proceedings against Mr. Seymour.

20 This is a joint proceeding. It's my  
21 understanding that Mr. Bui's attorneys intend to use the  
22 statements at this proceeding. We're asking the Court to  
23 issue an order that the statements could not be used in  
24 any way at this proceeding.

25 THE COURT: Who else wants to be heard on this?



1 MS. JENSEN: Your Honor, we do intend to  
2 introduce a number of the statements made by the  
3 codefendant as they're highly exculpatory and negate  
4 probable cause as to a number of the elements of the  
5 charges against Mr. Bui.

6 I don't think the fact that they made a proffer  
7 that's part of their agreement not to use it against the  
8 codefendant should impact our ability to introduce that  
9 evidence, especially if it does, in fact, negate probable  
10 cause.

11 If the codefendant's counsel wanted to keep that  
12 out as to their client, they should have asked for a  
13 bifurcation of the preliminary hearing because this is  
14 highly exculpatory evidence that we would be introducing.

15 I know the Court could -- as for judicial  
16 economy, intended to have these preliminary hearings  
17 together. There is a jury instruction if evidence is  
18 introduced at a trial saying that it can be admissible  
19 against one defendant and not the other codefendant.

20 We would ask that the Court kind of honor that  
21 theory of law, that when we introduce statements made by  
22 the codefendant, they could be used to negate probable  
23 cause in our case but can't be used against the  
24 codefendant based on this proffer.

25 We would use language like "statement." We

1 wouldn't say "proffer." We wouldn't indicate that it  
2 seems like he's making a statement to get a benefit in  
3 the case. We would just say that that is something that  
4 he said during the statement and try to change the  
5 language to sanitize it as much as possible.

6 THE COURT: So let me make sure I understand  
7 what we're talking about. So Mr. -- I'm sorry. Which  
8 defendant made the proffer?

9 MR. JUBA: Mr. Seymour.

10 THE COURT: Mr. Seymour made a proffer?

11 MR. JUBA: Yes.

12 THE COURT: And the agreement is it can't be  
13 used against him in this PH; is that correct?

14 MR. JUBA: It cannot be used in any proceeding  
15 against him.

16 THE COURT: Against him. But it can be used --  
17 what's to prohibit it to be used in some fashion as to  
18 the other defendant?

19 I mean, I understand the argument that if  
20 there's some agreement that Mr. Bui's statements can't be  
21 used against him, for example, to establish probable  
22 cause, if it negates probable cause to somebody else, why  
23 can't it be used? I don't understand that.

24 MR. JUBA: Our position is that this is a joint  
25 proceeding, and so that agreement is that it cannot be

1 used in any proceeding. This is a proceeding involving  
2 Mr. Seymour, and the agreement would preclude its use at  
3 this proceeding at all. That's our position.

4 THE COURT: Okay. And this is -- do you want to  
5 be heard on this?

6 MS. JOHNSTON: You know, Your Honor, we  
7 certainly don't intend to introduce it for the reasons  
8 stated by Mr. Juba. I do believe that the proffer is not  
9 allowed to be used against Mr. Seymour in this  
10 proceeding. I would defer to the Court as to Mr. Bui.

11 THE COURT: If there's been a statement -- I  
12 could understand that -- if there's some agreement with  
13 the Prosecution as to how the statement is to be used, I  
14 can understand how it could not be used against the  
15 defendant who made the statement. But if he made  
16 statements that have been disclosed to the other party  
17 which is -- which negates probable cause, I can certainly  
18 separate the two out and not use it against Mr. Seymour  
19 but use it for purposes of establishing or negating  
20 probable cause as to a codefendant.

21 I think -- I don't think there's a basis to  
22 exclude it. So I won't use the statement in any way as  
23 against the individual that made the statement. But to  
24 the extent it -- they are statements that are made that  
25 negates probable cause, that's something that the

1 codefendant is entitled to use in this joint proceeding.

2 (The bench conference was concluded.)

3 THE COURT: Okay. So any other preliminary  
4 matters before we begin?

5 MS. JOHNSTON: Not from the People.

6 MR. EARLE: Your Honor, I think the -- just that  
7 we would ask that Mr. Ian Champa, who is our lead  
8 investigator on this case, be allowed to sit as an  
9 advisory witness throughout the course of this  
10 proceeding.

11 THE COURT: Any problem with that, Ms. Johnston  
12 or Mr. Morales?

13 MS. JOHNSTON: No, Your Honor.

14 THE COURT: Okay. Let's begin, then. The  
15 Prosecution's first witness.

16 MS. JOHNSTON: Thank you. The People call  
17 Detective Neil Baker.

18 DETECTIVE NEIL BAKER,  
19 called as a witness on behalf of the People, having been  
20 first duly sworn, was examined and testified as follows:

21 THE COURT: And, Detective, you can remove your  
22 mask while you testify, but please speak into the  
23 microphone. Okay, sir?

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

1 Counsel, please proceed.

2 MS. JOHNSTON: Thank you, Your Honor.

3 And there is one additional housekeeping matter.

4 We did confer with both defense counsel, and they are  
5 stipulating -- there's a stipulation to the admission of  
6 all the exhibits that we had previously tendered to them.  
7 And we tendered a list, and I believe --

8 THE COURT: 1 through 28?

9 MS. JOHNSTON: Yes.

10 THE COURT: And those are all received by  
11 stipulation; is that correct?

12 MR. EARLE: Yes, Your Honor.

13 MR. JUBA: Correct.

14 THE COURT: Okay. So 1 through 28 [sic] are  
15 received for purposes of this hearing.

16 (Exhibits 1 through 29 were admitted.)

17 MS. JOHNSTON: Thank you. And I believe  
18 Mr. Morales will be able to share them from his computer  
19 if the Court will allow it.

20 THE COURT: Sure. What does that mean?

21 MS. JOHNSTON: The exhibits, like to publish  
22 them.

23 THE COURT: Are they going to pop up somewhere,  
24 Mr. Morales?

25 MR. MORALES: If you give me access to the

1 Prosecution table, I think it should, so that we don't  
2 have to approach.

3 THE COURT: You've got the --

4 MR. MORALES: There you go.

5 THE COURT: Okay.

6 MR. MORALES: Does everybody else see it?

7 MR. JUBA: Yes.

8 MR. MORALES: All right.

9 THE COURT: Thank you.

10 MS. JOHNSTON: Great. Thank you.

11 DIRECT EXAMINATION

12 BY MS. JOHNSTON:

13 Q. Good morning, Detective. Could you please  
14 introduce yourself to the Court and spell your first and  
15 last name.

16 A. Yes. Detective Neil Baker. The first name is  
17 N-e-i-l. The last name is B-a-k-e-r.

18 Q. Where do you work?

19 A. I'm a detective assigned to the homicide unit  
20 for the Denver Police Department.

21 Q. How long have you been assigned to the homicide  
22 unit?

23 A. Approximately three years now.

24 Q. How long have you been with the Denver Police  
25 Department?

1           A. I've been with the Denver Police Department  
2 since 2004. Prior to that I was with the Littleton  
3 Police Department, since 1991. So 30 years total.

4           Q. Were you assigned to work an investigation  
5 involving a fire, suspected arson, death of five  
6 individuals on August 5th, 2020?

7           A. Yes.

8           Q. And did you ultimately respond to the scene as  
9 the -- at the time that the fire was in -- fully involved  
10 in the house?

11          A. I did.

12          Q. Can you tell us about what time you got there?

13          A. Approximate, 4:30. I believe we received the  
14 call somewhere around 3:30 in the morning. It took about  
15 an hour from my house to get there.

16          Q. Are you the primary detective on this case?

17          A. Yes, ma'am.

18          Q. Can you tell us how this fire was initially  
19 reported?

20          A. My supervisor, Sergeant Scott Hagen, called me  
21 about the fire, said that there were some individuals  
22 that were deceased inside the home. He wasn't sure  
23 exactly the number or anything like that. At the time,  
24 he wanted me to respond to the scene as we do with pretty  
25 much all death investigations.

1           When I arrived on scene, obviously, there was a  
2 lot of fire personnel, a lot of police officers present  
3 at the house. The house was still pretty much fully  
4 engulfed when I -- when I arrived. I was pretty much  
5 informed by officers, by other individuals at the scene,  
6 that there was probably, we think, five individuals that  
7 had perished in that fire that were still inside the  
8 residence.

9           Q. And let's back up a little bit. How is this  
10 fire initially reported?

11          A. Officer Gordon King, who is a District 5 patrol  
12 officer, was in the area, I think -- I believe just south  
13 of that neighborhood, and he observed smoke coming from  
14 the neighborhood. He initially responded to the area of  
15 Truckee Street and saw the house on fire, saw people --  
16 individuals outside. Then he obviously radioed in that  
17 information to Dispatch.

18           And then, as he arrived, he was able to get the  
19 address, he was able to call the fire department, and  
20 basically asked for additional help, additional units to  
21 that house.

22          Q. What was the address of that house?

23          A. 5312 North Truckee Street.

24          Q. Was that then and is that now in the state of  
25 Colorado, city and county of Denver?



1           A. It is.

2           Q. Can you describe this house, where it sits on  
3 the block?

4           A. It sits just north of 52nd -- I'm sorry, 53rd.  
5 And it is not the corner house. It's an interior lot.  
6 So it's two houses -- the second house in from 53rd. It  
7 sits on the east side of Truckee Street. The front door  
8 faces west.

9           Q. Residential neighborhood?

10          A. Yes.

11          MS. JOHNSTON: Your Honor, at this time I would  
12 like to publish Exhibit 1.

13          THE COURT: Sure. And you don't need to ask for  
14 permission, Counsel.

15          MS. JOHNSTON: Okay.

16          THE COURT: Just go ahead and do it.

17          MS. JOHNSTON: And I actually -- great. Thank  
18 you.

19          All right. And we can turn it back. I just  
20 want to make sure it's what I thought it was.

21          Q. (BY MS. JOHNSTON) Can you tell us what  
22 Exhibit 1 is?

23          A. It's an aerial view of just the area  
24 encompassing 5312 Truckee and the neighborhood. It's  
25 basically 30th Avenue and 48th Avenue to the south, 56th

1 Avenue to the north, Chambers to the west. And  
2 Picadilly, I guess, Road would be to the east. It just  
3 encompasses that. Tower Road runs north and south,  
4 pretty much in the middle of that photograph. And then  
5 Green Valley Ranch Boulevard is the main road running --  
6 going east to west.

7 Q. Exhibit 2?

8 A. That's a close-up photograph, it looks like,  
9 taken from Google Maps of the neighborhood where  
10 5312 Truckee Street is at. That's the neighborhood that  
11 we were talking about.

12 Q. And can you orient us as to where -- is there an  
13 indication here of where the house is?

14 A. Not on the camera -- or not on the picture  
15 itself. But it's pretty much in the middle of that  
16 photograph to the left, but -- I can point it to you, but  
17 you can -- you can see the house from there.

18 Q. Okay. That's okay.

19 And you mentioned that Officer King -- when he  
20 arrived on scene, there were already people that were  
21 outside, correct?

22 A. Correct.

23 Q. Were those people occupants of the house or some  
24 other people?

25 A. At the time, he didn't know they were there. He

1 asked if anybody was inside. He didn't get much of a  
2 response from anyone. The garage door was open. He  
3 entered the garage, and it was -- the garage was not on  
4 fire at the time. He did try and open the interior door  
5 that leads from the garage into the home.

6 When he did that, obviously, it was very -- the  
7 fire was very intense at that time. He could see the  
8 fire. He could see the smoke when the door was open. He  
9 had to back out because it was too intense for him to  
10 attempt to enter. He left the garage, went to the front  
11 door and observed an individual trying to enter a code  
12 into the keypad to get into the front door, and that  
13 person was unsuccessful. So Mr. -- Officer King ended up  
14 kicking the front door open.

15 The fire was very intense, as he described. He  
16 could not enter the home because the fire was just inside  
17 the door. He did see an individual child laying probably  
18 about three feet inside of the doorway. He could see --  
19 he could see that child was deceased. He described it  
20 pretty graphically. But he could tell that the child was  
21 not alive. So he had to back away because of the intense  
22 flames. And -- and then other units obviously arrived on  
23 scene.

24 Q. When other units arrived on scene, was it  
25 determined whether anybody escaped from the fire?

1           A. Yes. Officers were getting word that  
2 individuals had escaped from a back window at the back of  
3 the house. The homeowner was located around the corner,  
4 I believe, to the rear of the residence, at another  
5 house.

6           It was determined that the homeowner, whose  
7 name -- his name is Amadou Sow. I'm sorry if I'm  
8 pronouncing it wrong, but that's how I interpreted it.  
9 He and his wife and then his 11-year-old and -- I believe  
10 11-year-old daughter at the time all escaped from the  
11 second-floor window on the back side of the house. So  
12 that's what they determined.

13           And then he also had advised the officers of his  
14 roommates that were living there in the house. At the  
15 time, I don't believe he knew that they were inside or  
16 outside. But we knew that there was other individuals  
17 that were residing in that residence.

18           Q. Was the Denver Fire Department able to make  
19 entry into that house?

20           A. They were. They got into the front door and  
21 other parts of the house. But they were able to remove  
22 the small child from the doorway, mostly because that's  
23 where -- were the entrance and exit points for  
24 firefighters to go in and work the fire. They moved that  
25 child's body to the front yard of the residence.

1 Q. Who was that child?

2 A. That child that was moved to the front was  
3 Khadija Diol, D-i-o-l. And I apologize if I don't get  
4 the name correct as far as pronunciation.

5 MS. JOHNSTON: Exhibit 3, please.

6 Q. (BY MS. JOHNSTON) What is Exhibit 3?

7 A. That is a photograph taken from the -- of the  
8 front of 5312 Truckee Street. As you can see, the fire  
9 is pretty intense there at the front part of the house.

10 In the middle of that photograph, the triangle  
11 portion, that is the front door of the residence. To the  
12 right is the window to the, I guess, living room area.  
13 And to the left, obviously, is the garage, which was open  
14 at the time.

15 Q. Exhibit 4?

16 A. That is the rear of the house. And that -- the  
17 photograph was taken from the neighbor just to the rear.  
18 And that's obviously the -- you know, the back door is in  
19 the middle, and then windows. And then the window  
20 that -- to the left of the photograph -- you can't really  
21 see the upstairs window. That would be the -- Mr. Sow's  
22 bedroom that they escaped from.

23 Q. And we'll talk more about Mr. Sow later.

24 But you said his bedroom -- you can't really see  
25 his window. But where they jumped, was that into the

1 backyard?

2 A. Yes. It was straight down to the backyard.  
3 There's some rocks, I guess, from the landscaping there.  
4 But, yeah, it would have been right down into the  
5 backyard.

6 Q. You mentioned the child, Khadija Diol, that was  
7 recovered from the entryway of the house.

8 Were there other deceased victims that were  
9 recovered inside the home?

10 A. Yes. In the picture before that, the window to  
11 the right of the door is like a living room area. In  
12 that room -- in that room, there were the bodies of four  
13 other individuals there, three adults and one child.

14 Q. So five total?

15 A. Yes, ma'am.

16 Q. And those bodies were all found on the first  
17 floor, then, you said, in that living room/entry room?

18 A. Correct.

19 Q. Were those victims all pronounced deceased on  
20 scene?

21 A. Yes. An official pronouncement was made at 3:37  
22 in the morning, I believe.

23 Q. I want to talk to you a little bit about the  
24 autopsies that were performed on these five victims.

25 Did you attend the autopsies of these victims?

1 A. I did, on the following day, on August the 6th.

2 Q. Do you remember who performed them?

3 A. Dr. Puffenberger was the main pathologist.

4 Q. Was the cause of death for all five the same?

5 A. Yes.

6 Q. What was it?

7 A. The cause of death was smoke inhalation with the  
8 toxic effects of carbon monoxide.

9 Q. And let's talk about Khadija Diol first. How  
10 old is she -- or was she?

11 A. Khadija was approximately a year old.

12 Q. Did she have burns on her body?

13 A. Yes. There were severe burns, I believe, on  
14 95 percent of her body.

15 Q. What was the manner of death that  
16 Dr. Puffenberger found for her?

17 A. Homicide.

18 Q. Adja Diol -- did you attend the autopsy of Adja  
19 Diol?

20 A. Yes. That is the adult female -- one of the  
21 adult females in the room. And she was 23 years old, I  
22 believe, at the time.

23 Q. And was her body burned?

24 A. Yes. I believe it was 95 percent burned.

25 Q. The manner of death for her?

1 A. Homicide.

2 Q. Djibril Diol?

3 A. He was the adult male, a 29-year-old. And the  
4 same manner of death was homicide. And 80 percent of his  
5 body was severely burned.

6 Q. Hassan Diol?

7 A. Hassan was the other female. She was 25, I  
8 believe, at the time. And 90 -- I'm sorry. The same  
9 manner of death; it would be homicide. And I believe it  
10 was 80 percent of her body was burned.

11 Q. Hawa Beye?

12 A. Hawa Beye was her child, approximately -- I'm  
13 going to say seven months, an infant child, and  
14 95 percent burned. The manner of death also was  
15 homicide.

16 Q. Were the Denver Fire Department investigators  
17 able to describe how Hawa Beye was found as it relates to  
18 Hassan Diol, her mother?

19 A. Yes. Hassan Diol was located in that room. She  
20 was laying on her -- face down. And the child,  
21 Hawa Beye, was underneath her arm, pretty much in her  
22 arms.

23 MS. JOHNSTON: Exhibit 6, please.

24 Q. (BY MS. JOHNSTON) What is Exhibit 6?

25 A. That is a photograph of Djibril Diol. He's one



1 of the victims of the fire. He goes by Jibi. That's  
2 what the community and his friends call him, and that's  
3 kind of what I call him. But that's his name.

4 Q. Exhibit 7?

5 A. That's Adja Diol. And I'm sorry if I pronounce  
6 it incorrectly. But that is Jibi's wife.

7 Q. Exhibit 8?

8 A. That is Hassan Diol. That is Jibi's sister.  
9 She's also one of the victims.

10 Q. Exhibit 9?

11 A. That's Khadija Diol. That is Jibi and Adja's  
12 daughter.

13 Q. And this is the child that was found first  
14 inside, right?

15 A. That was the child that was found inside the  
16 doorway and that was taken outside to the lot.

17 Q. Exhibit 10?

18 A. Hawa Beye. I'm not really sure how to pronounce  
19 the last name. But that is Hassan's daughter.

20 Q. We will talk in a little more detail about the  
21 Sow family and their statements later, but I do want to  
22 first talk about injuries that they might have suffered.

23 So the three Sow family members, you said that  
24 they jumped out of the second-floor window into the  
25 backyard; is that correct?

1           A. That's correct.

2           Q. Did they suffer injuries because of that jump?

3           A. Yes. Amadou Sow, the homeowner, suffered a  
4 fracture on a -- I believe on his left foot. I'm not  
5 sure exactly medically what it's called or where it was,  
6 but it's on his left foot. And his wife suffered -- her  
7 name is Hawa Ka, K-a -- she suffered two fractures in her  
8 vertebrae.

9           Q. And did doctors in the emergency department  
10 determine that they both suffered severe bodily injury?

11          A. They did.

12          Q. All right. I want to talk to you now about  
13 surveillance footage that was found on scene.

14                 First of all, you mentioned that you responded  
15 to the scene. Is it typical for DPD Homicide to respond  
16 to fires that involve fatalities?

17          A. Yes. There are some cases where -- on death  
18 investigations that we would not respond to, natural-type  
19 deaths that are obvious. And the medical examiner is  
20 probably there. But in things like this -- we respond to  
21 pretty much all death investigations.

22                 In this case, we were not sure what type of fire  
23 this was, if this was an accidental electrical fire or  
24 something. We just don't know. We do know there's  
25 fatalities, and that's why we respond there. And then we

1 also use the assistance of the fire department because it  
2 is a fire, and they have their investigators there as  
3 well.

4 Q. And do their -- Denver Fire Department  
5 investigators, do they have special training as it  
6 relates to fire investigations?

7 A. Yes. They -- I'm not sure exactly what they go  
8 through and what their training is, but there are  
9 dedicated personnel that deal with arson-type-related  
10 fires.

11 Q. As you were on scene, was there information that  
12 came forward about potential surveillance that uncovered  
13 possibly suspects?

14 A. Yes. As I was standing there talking to other  
15 investigators in front of -- in the street in front of  
16 the home, I was approached by a neighbor that lives just  
17 to the north, next door to the victims' residence. His  
18 name is Mr. Reza. I think it's Noe or -- N-o-e is the  
19 first name. He lives at 5318 Truckee Street, which is  
20 directly next door.

21 So he approached me, said that he has  
22 video-surveillance cameras on his house, that he has some  
23 footage on his phone that he would like to show me. We  
24 walked over to his driveway area where he showed me video  
25 clips that he had taken that -- that were downloaded, I

1 guess, from his surveillance system that goes directly to  
2 his phone.

3 Q. And you were able to watch those right there on  
4 his phone --

5 A. Yes.

6 Q. -- in the driveway?

7 A. Yes, ma'am.

8 Q. Talk to us about the -- first of all, the -- is  
9 there a time stamp on those videos?

10 A. There is.

11 Q. What is the first time stamp of when there's  
12 activity or movement in front of the house?

13 A. The camera system that he has, it's motion  
14 activated, so videos would only show up if there's  
15 motion.

16 The first one he showed me was at 2:26 a.m. that  
17 morning, and it showed -- the camera is -- that he showed  
18 me was on the southeast corner of his house, and it faced  
19 his -- pretty much the -- the south side of his house and  
20 the north side of 5312 Truckee, the side yard, which is  
21 divided by a fence. It showed that side -- whole side  
22 yard area.

23 At that time, at 2:26, it was activated because  
24 there were three individuals that were on the  
25 5312 Truckee side of the fence, in the side yard. They

1 were standing pretty much in the -- you know, in the  
2 middle of the house, between the front and back, closer  
3 to the back. All three individuals had hoodies on and  
4 they all had full face masks.

5 At the time of the video we were looking at,  
6 they were light-colored hoodies, as far as what the  
7 camera shows, and dark/black masks, because the video is  
8 black and white in a night vision type of mode. The  
9 individuals were kind of looking around -- standing  
10 still, looking around.

11 MS. JOHNSTON: Exhibit 11, please.

12 Q. (BY MS. JOHNSTON) Is this what is depicted in  
13 Exhibit 11?

14 A. Yes. That's a still shot from that video clip.

15 Q. Can you talk to us a little bit more about the  
16 color issue? They appear in this video to be in white or  
17 light-colored hoodies, like you said, and black masks.  
18 Can you talk to us a little bit about that?

19 A. Yes. Well, in my limited experience with video  
20 cameras, I know there's a night-vision mode.

21 At the time, myself and other detectives --  
22 Detective Sandoval was assigned as a secondary  
23 detective -- we had thought that the images were -- that  
24 the colors were reversed because of the night vision.

25 So we were thinking that the hoodies were

1 probably black or a dark color and the face masks were  
2 white, we thought, at the time. We weren't positive on  
3 that. But we did send out a bulletin with the colors  
4 reversed to try to portray what they probably looked like  
5 based on what we thought the camera was doing.

6 Q. We'll talk more about the masks later. But were  
7 you ultimately able to determine what the actual color  
8 was of the masks that were worn?

9 A. Yeah. Through our investigation, we were able  
10 to determine that those hoodies were dark in color, black  
11 or just a dark color, and the face masks were black.

12 MS. JOHNSTON: Okay. Exhibit 12, please.

13 Q. (BY MS. JOHNSTON) What is Exhibit 12?

14 A. That is another camera on Mr. Reza's home at  
15 5318 Truckee Street. That is on the back side of his  
16 house, close to the back door. It is facing south,  
17 pretty much, covering his backyard. And you can also see  
18 the fence.

19 And then in the upper right corner, that is the  
20 address of 5312 Truckee. And you can see the bright  
21 area. That's fire coming from the lower level of that  
22 home.

23 Q. And Exhibit 25, which is a video -- we can keep  
24 going while he works on that.

25 All right. So you talked about the first video,

1 and we looked at Exhibit 11, which shows three people in  
2 hoodies and masks. Was there a second video that you  
3 saw?

4 A. Yes. That one was at 2:26 in the morning.

5 The second one was at 2:27. Like I said, these  
6 are motion activated. It also depends on how long these  
7 cameras will take clips for. So the second clip was at  
8 2:27, and it shows the same three individuals in the --  
9 pretty much the same location, point -- one individual  
10 was pointing at an area towards the back corner of the  
11 5312 Truckee address.

12 Q. You said the back corner of the victims' house?

13 A. Uh-huh.

14 Q. And then is there a third video?

15 A. Yes. There's another video at, I believe, 2:38.  
16 So a little bit longer of time, maybe 11 minutes. It  
17 shows that same video camera as the first two, but it --  
18 it showed the three individuals running, basically, from  
19 east to west through that side yard toward the front of  
20 the house. All three individuals were running.

21 Q. And then is there a fourth video?

22 A. Yes, at 2:40. The -- this camera that we see  
23 now picks up that picture of the fire coming out of the  
24 back of the residence.

25 There's also sound on both cameras. So you can

1 hear the individuals running on that camera before, and  
2 in this one you can hear the individuals -- you can see  
3 an individual in the backyard and you can hear people --  
4 someone screaming.

5 Q. And this is two minutes after the video showing  
6 those hooded, masked individuals leaving?

7 A. Correct.

8 Q. All right. We'll try to --

9 MR. MORALES: It won't.

10 MS. JOHNSTON: Oh, okay. So I just do it the  
11 old-fashioned way? Don't worry about it?

12 Q. (BY MS. JOHNSTON) All right. We'll move on.

13 Now, was there another video -- surveillance  
14 video -- or video surveillance that captured the backyard  
15 of the victims' home?

16 A. Yes. I believe that the very -- the house  
17 that's at the back of the home, when we saw the pictures  
18 of the back of the house engulfed in flames, that same  
19 residence has a video camera on the back of their house  
20 as well that captures motion. It did capture -- at about  
21 2:42 in the morning, it captures the house being on fire,  
22 and it shows an individual -- it looks like they're  
23 trying to put a water -- a garden hose to the house. It  
24 also shows a young female in the backyard of the  
25 neighbor, in their actual backyard, just kind of walking



1 around, appearing very distressed.

2 Q. Were there other houses that were impacted by  
3 this arson?

4 A. Yes. Mr. Reza's home, the one that's on the  
5 screen now, on the north side of the residence, it had  
6 quite a bit of damage to the siding and the side of the  
7 house. And then the house on the other side of this  
8 address -- I believe it's 5302; I'm not 100 percent on  
9 that -- but that house also received quite a bit of  
10 damage to the side of their house from the fire.

11 Q. So there were two other houses that were  
12 damaged, you said, by the fire?

13 A. Yes, ma'am.

14 Q. All right. I want to spend some time talking in  
15 more detail about the scene.

16 You said that Denver Fire Department  
17 investigators also assisted in this investigation,  
18 correct?

19 A. Correct.

20 Q. Were they able to determine whether there was  
21 the presence of any accelerant that was used?

22 A. Yes. They were pretty early able to determine  
23 the origin where the fire, they believe, started, which  
24 was in the back of the home, around the back-door area.

25 They do have K-9 dogs that do the -- I guess

1 sniff the area or are able to look for certain types of  
2 accelerants, were able to hit on certain things.

3 I was told by investigators that a lot of the  
4 house was very badly burned and a lot of things were  
5 just -- were undetermined because it's so -- it was so  
6 much fire. The dog, he -- I was told that they did hit  
7 on certain areas of the house around the back of the  
8 house where they believed this somewhat may have began.

9 They also found some evidence of an accelerant  
10 on the inside of the house, just inside the back door, on  
11 a living room wall. So inside of the -- inside of the  
12 home, which they -- they believe that the accelerant was  
13 used and that someone had used accelerant that was inside  
14 of the home and not on the outside of the home.

15 Q. Now, going back to those videos that you talked  
16 about earlier, you said that there was one video showing  
17 the individuals in masks and hoodies pointing to an area  
18 in the back of the house?

19 A. Yes.

20 Q. Is that the same area that you're describing now  
21 where the arson investigators determined there was  
22 accelerant that was used?

23 A. Correct.

24 Q. Was there any other area in the house or outside  
25 where accelerant was found?

1           A. I was informed that there was some accelerant  
2 the dog had indicated -- had on the street. On 52nd,  
3 just south of the residence, where -- I believe it would  
4 be on the south side of 52nd Avenue and -- I guess you  
5 could say just south of that residence.

6           Q. And did you later learn that the suspect car had  
7 been parked in that area?

8           A. Yes.

9           MS. JOHNSTON: Exhibit 5, please.

10          Q. (BY MS. JOHNSTON) Okay. Can you tell us what  
11 Exhibit 5 is?

12          A. That is looking through the back-door area of  
13 the victims' home. That is an interior wall, like a  
14 living room wall. There's a -- that's a living room  
15 area. To the left of that is the kitchen. And then you  
16 can see an opening kind of to the left, and that's kind  
17 of the hallway going towards the stairs and then toward  
18 that living room in the front of the residence where the  
19 victims were found.

20                 That wall where the can is, where the can be  
21 seen -- and that can is used by our fire department to  
22 collect evidence -- but that wall is where accelerant was  
23 found on.

24          MS. JOHNSTON: Exhibit 15.

25          Q. (BY MS. JOHNSTON) What is Exhibit 15?

1           A. That is one of the individuals in the side yard  
2 holding a gas can.

3           Q. And were you ultimately able to determine from  
4 speaking with this individual that this was a gas can?

5           A. Yes.

6           Q. Who did you learn this individual to be?

7           A. It was Kevin Bui, B-u-i.

8           Q. Let's go back to the Sows. Amadou Sow, you  
9 said, is the homeowner. He's one of the three occupants  
10 who was able to jump from the second-floor window and  
11 survived this fire.

12                   Were you able to interview him?

13           A. Yes. He had -- he was transported to the  
14 hospital, but then he -- he was then released and  
15 transported to Denver Police headquarters. I was able to  
16 meet with him that morning, sometime after 9:00 a.m.

17           Q. Where is he from, originally?

18           A. Senegal, Africa.

19           Q. And the rest of the victims that were in the  
20 home, were they also from Senegal?

21           A. Yes.

22           Q. What did Mr. Sow tell you about who lived in the  
23 home?

24           A. He stated that he lived there. He had been  
25 there approximately two years. He had come from

1 Silverthorne, Colorado; that he lived there with his wife  
2 and his son, whose name is Oumar Sow -- I believe he was  
3 22 at the time -- and then his 11-year-old daughter,  
4 Adama, I believe is how you pronounce her name. They --  
5 that's his immediate family.

6 He also described he had roommates that we --  
7 all five individuals that we talked about were his  
8 roommates. Jibi had come to live with him from  
9 Silverthorne as well. He had gone to school and he had  
10 come to live with him, and then his wife and child soon  
11 came after to live there with him. And then his sister  
12 and her daughter had also come to live with them. They  
13 had been there probably about three months. They had  
14 come from Columbus, Ohio, that area. Originally from  
15 Senegal, but they all came to live there.

16 Q. Where did Mr. Sow work?

17 A. He worked at Walmart.

18 Q. And where did his wife, Hawa Ka, work?

19 A. Walmart, I believe, as well.

20 Q. His son, you said -- Oumar Sow, you said he was  
21 22 at the time. Where did he work?

22 A. He worked at 7-Eleven, not too far from there,  
23 off of, I believe, 88th or something, somewhere around  
24 there, in Green Valley.

25 Q. What did Mr. Sow say happened the night before

1 they went to bed and before the fire happened?

2 A. He said they were all watching TV. And that  
3 would have been the area where the accelerant on the wall  
4 would have been, in that living room area, closer to the  
5 kitchen. They were all watching TV. He said that Jibi  
6 and his wife and daughter went to bed -- and also his  
7 sister, Hassan, and her daughter -- went to bed around  
8 10:00 p.m. That would have been on the 4th. He and his  
9 family went to bed about 11:00 p.m.

10 They all live upstairs. All the bedrooms are  
11 upstairs. He shares a bedroom with his wife and  
12 daughter. His son Oumar has his own room. Jibi and his  
13 family have a room. I believe his sister and her  
14 daughter are sharing a room.

15 His son -- well, at the time, he didn't know,  
16 but his son had left for work around 11:20 p.m. to go to  
17 7-Eleven. He arrived at work around 11:30 p.m. So they  
18 were all in bed at least by -- by 11:00 to 11:30, they  
19 were all asleep, where Oumar was at work.

20 Q. And then what alerted him to the fire?

21 A. He said he woke up to the fire alarm going off.  
22 He said he got out of bed and then he went to the bedroom  
23 door, opened the bedroom door and observed a lot of smoke  
24 and fire. Immediately he closed the door, ran to the  
25 window, and he was able to push the screen out of the

1 window. He was able to jump from the window to the  
2 ground.

3 He explained that his wife had -- threw his  
4 daughter out the window and he caught her. And then he  
5 had ran and placed her over the fence to the neighbor's  
6 yard. That's when his wife, Hawa Ka, had jumped from the  
7 window to the ground.

8 Q. What did he do next?

9 A. He described that he ran around to the front of  
10 the residence. He picked up a rock and tried to throw it  
11 at a window that his son Oumar -- was his bedroom. The  
12 window didn't break. But he did notice that Oumar's car  
13 wasn't there and then realized -- thought that he was at  
14 work.

15 Q. And then did you -- then what did he do next?

16 A. He opened the garage door. He did not try to go  
17 in the door. I believe he said the door -- he normally  
18 locks that door that goes into the house. But there is a  
19 cooktop in there with a propane tank. He had grabbed  
20 that because the garage was not on fire; the house was.  
21 So he grabbed that, pulled it out to the driveway because  
22 he didn't want the propane tank to catch fire. He said  
23 he then tried to go to the front door but was unable to  
24 get in.

25 Q. Is he the person that Officer King described

1        seeing somebody punching in the code, trying to get in  
2        the front door when he arrived?

3            A.    Yes.

4            Q.    Did he tell you whether he knew of anybody that  
5        was trying to do him harm or anybody in his home harm?

6            A.    No.    He didn't know of anybody who would want to  
7        hurt them.    I talked to him about his son because of his  
8        age; he's 22.    He wasn't there at the time.    He also said  
9        that his son works.    He didn't know if anybody would want  
10       to hurt him either.    Or the Diol family, he didn't know  
11       if anybody would want to hurt them as well.

12           Q.    And did you have an opportunity to interview  
13        Hawa Ka, Mr. Sow's wife?

14           A.    I did.    A little later that morning, I went to  
15        the hospital because she was still at the hospital.    I  
16        did talk to her in her hospital bed.    I did have an  
17        interpreter with me to help with the language barrier,  
18        although she did speak English, but not as well.    Mr. Sow  
19        spoke it a little bit better.    But we did talk.

20                  She did give the -- pretty much the same events  
21        that her husband had explained to me about what happened,  
22        how they woke up.    And the only difference is that when  
23        she was -- before she had jumped out of the window, she  
24        could hear who she described as Jibi trying to get his  
25        family out.    She could hear him say something to the fact



1 of: This way, this way. So she thought that, you know,  
2 he was getting out -- his family out, and then she got  
3 out of the window herself.

4 Q. And did you have an opportunity to interview  
5 Oumar Sow?

6 A. Yes.

7 Q. And he is the son of Hawa Ka and Amadou Sow,  
8 correct?

9 A. Correct. The same day, he came down with his  
10 parents -- with his dad to police headquarters. I was  
11 able to talk to him. He verified that he left there, the  
12 home, at about 11:20 to go to work. He arrived there at  
13 about 11:30 to work. We talked about his schedule, when  
14 he normally works. The reason why he was working late  
15 that night was because of, you know, deliveries and  
16 things like that.

17 We -- I had talked to him about the same thing,  
18 about is anybody wanting to hurt him, things like that.  
19 He said that he couldn't think of anybody.

20 He started to think of different, you know, cars  
21 he saw that night and maybe they were suspicious. He was  
22 trying to help me find anything we possibly could. But  
23 he said he was at work.

24 He was advised by some police officers that  
25 showed up to tell him that his house was on fire and that

1 he needed to go home, so he did. He left work to go home  
2 and found that his family had been transported to the  
3 hospital and that he had -- he eventually went to the  
4 hospital to be with his family.

5 I did contact individuals with the 7-Eleven  
6 corporation and obtained video footage from the store and  
7 was able to verify Mr. Oumar Sow was, in fact, at work  
8 the entire time the fire had happened.

9 Q. Did you develop information as to a suspect car  
10 in this case?

11 A. I did.

12 Q. How did you do that?

13 A. Well, at first, when all of this started to  
14 unravel -- the video footage of the three individuals --  
15 obviously, this case became criminal pretty quick, as far  
16 as the investigation goes.

17 I was told by Mr. Reza, who had the video-camera  
18 footage, that he has obviously a wireless router in his  
19 home. And just from prior experience dealing with these  
20 types of cases, the three individuals on the side of the  
21 house I felt possibly could have a cellular phone with  
22 them. A lot of times, cellular phones, as I -- from my  
23 experience, will try to connect to wireless routers.

24 So I contacted Special Agent Ryan McKone from  
25 the ATF and also Mark Sonnendecker from ATF and asked for

1 their help. I asked for them to come out to the scene to  
2 help me with the digital-type evidence. I guess that's  
3 beyond my expertise. He also informed me that his team  
4 was going to also respond out there to help with  
5 canvassing the neighborhood for any video footage around  
6 the neighborhood to possibly see these three individuals  
7 running or possibly see a vehicle associated.

8 And so we did blanket that neighborhood over the  
9 next several days, and we were able to determine a  
10 vehicle that we believed that was involved in this. We  
11 were able to determine through all the video evidence  
12 that we collected in the neighborhood an ingress into the  
13 neighborhood and the suspects' egress from the  
14 neighborhood in that vehicle.

15 MS. JOHNSTON: Exhibit 13, please.

16 Q. (BY MS. JOHNSTON) What is Exhibit 13?

17 A. That is taken from a Ring camera. It's blown up  
18 a little bit. But that is the vehicle we believed was  
19 involved that the three individuals were associated with.  
20 That was taken right about 52nd and -- I'm trying to  
21 think of the -- Ventura, I believe, is the street. That  
22 was -- would be after the fire was set, and that would be  
23 the vehicle fleeing the neighborhood.

24 MR. EARLE: Could you go back to Exhibit 2.

25 Q. (BY MS. JOHNSTON) You said you were able to

1 determine the ingress and egress of the suspect car  
2 through combing the neighborhood for Ring videos; is that  
3 correct?

4 A. Yes.

5 Q. So tell us what that was. Let's start with the  
6 ingress.

7 A. At about 1:55 a.m., we see a vehicle traveling  
8 southbound on Tower Road, and that vehicle turns onto  
9 East 54th Avenue. It turns westbound. Then we see the  
10 vehicle through other camera angles continue traveling  
11 where 54th Avenue, as you can see, turns into Ventura  
12 Street. The vehicle is southbound on Ventura Street.

13 We then see that same vehicle -- we believe to  
14 be that same vehicle on northbound -- on Truckee Street,  
15 around 2:00 a.m., northbound. And then when the vehicle  
16 gets to Elmendorf Drive, up to the top of your screen, we  
17 notice the vehicle make a U-turn and then go back south  
18 down Truckee Street.

19 We know from the time stamp when the three  
20 individuals are on the side of the house and then the --  
21 so right about -- it was -- so 2:38 a.m. was when the  
22 individuals were seen running away from the house,  
23 running down the -- in the side yard.

24 At 2:39, approximately a minute later, we see a  
25 vehicle eastbound on 52nd from the Truckee Street area.

1 Then it turns south on Ventura Street. This is all after  
2 the fire. The vehicle is seen driving -- traveling down  
3 to 52nd Avenue and then turning east on 52nd Avenue and  
4 then eastbound to 52nd Place where it turns northbound.  
5 It then curves back around and goes west to Walden  
6 Court -- I had to read that again -- but Walden Court  
7 where it turns northbound.

8 Then it finally gets back to Elmendorf Drive and  
9 then turns eastbound back to Tower Road where it turns to  
10 southbound. Then it is seen southbound on Tower Road,  
11 turning west onto Green Valley Ranch Boulevard, then  
12 leaving the neighborhood, crossing 470, and then out  
13 of -- we follow cameras all the way out to about  
14 Chambers, and then we lost video footage from there.

15 Q. Aside from this information about the suspect  
16 car as well as the surveillance video depicting the three  
17 individuals, did you have information as to the  
18 identification of the suspects in the early stages of  
19 this investigation?

20 A. No.

21 Q. Did you have a belief as to whether or not this  
22 was a targeted attack or a random attack?

23 A. It was believed that it was more targeted based  
24 on the fact that the house was not a corner house -- it  
25 was an interior-type house -- and the way the individuals

1 are dressed with the gas canister. It was believed -- to  
2 us, it appeared to be that the house was targeted.

3 The vehicle was -- it entered the neighborhood  
4 around 1:55 in the morning. This didn't happen until  
5 about 2:40 in the morning when the fire was possibly set  
6 around that time. The car was just in the area and then  
7 also making the U-turn back on Truckee Street. It  
8 appeared that they were canvassing that area and then  
9 went to that home.

10 Q. Did you and other members of the Denver Police  
11 Department homicide unit complete and obtain search  
12 warrants for numerous pieces of information from various  
13 cell providers and other potential sources of information  
14 in this case?

15 A. Yeah. We wrote quite a few search warrants for  
16 different things like cell towers. We wrote search  
17 warrants to -- to Google to see if there's any devices  
18 that were in that area based on the fact that we know  
19 exactly which -- what time that vehicle was traveling.  
20 We have the individuals on video at the site of that  
21 residence. We were looking for information of possible  
22 devices around that area where those individuals were  
23 standing.

24 There was quite a few search warrants written  
25 for digital evidence.

1           Q. And we're not going to go through all of those,  
2 but is it fair to say that many of those were not  
3 fruitful?

4           A. Correct.

5           Q. Was there one search warrant that you and your  
6 partner in this case wrote that was fruitful?

7           A. Yes.

8           Q. We obviously had -- this had been going on for a  
9 while, the investigation. It was determined that --  
10 through just talking with other individuals in our unit  
11 and amongst ourselves, that we were going to write a  
12 search warrant to Google to see if there's any type of  
13 searches of that address, any keyword searches for the  
14 address of 5312 Truckee Street.

15           A warrant was written. Detective Sandoval wrote  
16 a search warrant to Google for that information using  
17 that language, obviously spelling Truckee Street  
18 differently and using different variations of that  
19 address, to see if anybody would have Googled that  
20 address, searched it prior to the fire.

21           Obviously, a lot of people have afterward,  
22 myself included, because I had to be able to get there.  
23 So prior to that -- and then we went back, I believe, a  
24 month or so to see if anybody had searched that address.

25           Q. Did that search yield any results?

1           A. It did.

2           Q. And can you tell us generally what -- what those  
3 results were?

4           A. We noticed that several individuals had searched  
5 that address back in July, the end of July, around the  
6 20th or sometime around that time frame. There was three  
7 individuals that we observed that had searched that  
8 address multiple times.

9           Some of the searches were suspicious to us as  
10 far as why they were searched the way they were. One was  
11 searched for "5312 Truckee Street interior." And to us,  
12 it would be they were wanting to know what the interior  
13 looked like of the house. So those were -- those were  
14 red flags for us as far as those searches.

15           These individuals -- these three individuals  
16 were also from the Green Mountain area in Lakewood, which  
17 is completely on the other side of the metro area from  
18 this house.

19           These three individuals were -- once we had dug  
20 into that information, we had to write, obviously, other  
21 search warrants to be able to identify who these  
22 individuals are. There was other investigation that we  
23 did to pinpoint the exact individuals.

24           We observed that they were all juveniles at the  
25 time and they were all friends on -- social media friends



1 who went to the same school. And so that was -- and it  
2 didn't really match why they would be searching for that  
3 house. So that's why we focused our investigation on  
4 those three.

5 Q. You mentioned earlier Agent Mark Sonnendecker.  
6 Is he with ATF?

7 A. He is.

8 Q. He will be our second witness, and he is going  
9 to spend more time going into detail about these searches  
10 and other aspects of digital evidence. But can you talk  
11 a little bit about the relationship between DPD and ATF  
12 as it relates to this type of investigation?

13 A. Well, for one, this is a fire, so ATF is  
14 interested as well. ATF stands for alcohol, tobacco, and  
15 firearms. Special Agent Mark -- I'm sorry -- Ryan McKone  
16 works in our office a lot and helps assist us with  
17 different aspects of our investigations when it comes to  
18 firearms, mostly.

19 Agent Sonnendecker is known to our unit as --  
20 that he is an expert in digital-type evidence; cell  
21 phones, generally. We contact him quite often. They  
22 work for a task force; it's called RAVEN. I'm not going  
23 to be able to tell you what RAVEN stands for. He  
24 probably can. But it's a task force that -- we have also  
25 Denver detectives that work in that task force.

1           Mark -- or I'm sorry. Gerald Sloan is one of  
2 those detectives. He's a Denver detective that works in  
3 that task force with Agent Sonnendecker and Agent McKone.

4           So we work pretty closely with that unit, with  
5 RAVEN, on all kinds of different types of investigations.  
6 So it's not uncommon that we reach out to them for  
7 assistance.

8           Q. In this case, when you would obtain information  
9 from, let's say, cell providers or when you do the Google  
10 keyword search, you obtain that information, but then do  
11 you share it with the ATF agents that are working this  
12 case as well so that they can help interpret that data?

13          A. Yes. The warrant returns from Google, from the  
14 cell -- cellular phone companies, any type of return  
15 information we get back, it comes to us. We are the  
16 investigators -- the primary investigators. We then  
17 share those results and returns with the special agents,  
18 mostly Special Agent Sonnendecker. He's an expert in  
19 reviewing this type of data. They have access to  
20 programs and things like that to help read certain data.

21           That's stuff that I just -- it's beyond my  
22 expertise. So we use -- we provide that information to  
23 them.

24          Q. You said that when -- when you received the  
25 return on the Google keyword search, that really there

1 were three suspects that you found to be most suspicious  
2 based on the types of searches they were doing and  
3 because of the relationships you were able to determine  
4 on social media as well as them being -- two of them  
5 going to the same school, you mentioned; is that correct?

6 A. Yes. There was multiple people. One of the  
7 individuals, Kevin Bui, who we had identified in there,  
8 his sister Tanya Bui was also one of the names that came  
9 out because she owns the cell phone at the time and  
10 things like that. So there's other individuals, but we  
11 narrowed it down through our investigation to be the  
12 three juvenile male suspects that we're talking about.

13 Q. Is it fair to say, then, that those three did  
14 become your suspects going forward?

15 A. Yes.

16 Q. What are their names?

17 A. Kevin Bui, Gavin Seymour, and Dillon Siebert.

18 Q. Again, this is another area we'll talk more  
19 about with Agent Sonnendecker, but were you involved in a  
20 search of the cell phone -- the call detail records and  
21 the cell tower data for the phones of all three of these  
22 young people?

23 A. Yes, I was involved. As far as analyzing it,  
24 that would have been Agent Sonnendecker.

25 Q. Did you become aware of whether or not the

1 phones of Kevin Bui and Gavin Seymour, whether those  
2 phones and the search of those phones yielded any data  
3 related to the timing of this particular crime?

4 A. Yes. Both Kevin Bui and Gavin Seymour's phones  
5 were in the area of 5312 Truckee Street at the time of  
6 the fire.

7 Q. All right. I want to switch gears and talk  
8 about the masks. We spent some time about the masks  
9 earlier. Based on all the search warrants and the data  
10 that was collected about these three defendants, were you  
11 able to determine whether the mask had been purchased?

12 A. Yes.

13 Q. Can you tell us a little bit about that?

14 A. Yes. Searching the phone records and social  
15 media accounts for the three individuals, Kevin Bui made  
16 a search for different stores. There was a search, I  
17 believe, for a Spirit Halloween store, which drew our  
18 attention because of the masks. There was also a search  
19 for Party City.

20 And the same with Dillon Siebert. There was a  
21 search and -- matter of fact, there was a search on the  
22 4th, approximately eight, yeah, nine hours before the  
23 fire, for Party City. So we -- early on in the  
24 investigation, we did go through different stores trying  
25 to figure out possibly where these masks had come from.

1 Party City was on our list as one of these stores that  
2 could have had a mask that it could have come from.

3 Based on the results of the searches of their  
4 digital data and the searches for Party City, I  
5 contacted -- I got online and looked and found several  
6 masks that resembled the one that we were looking for.  
7 They have a special identifier, a SKU number, that's  
8 associated with that item. I did go to a Party City  
9 around my neighborhood, just to look, and they do have --  
10 sell those masks with the same SKU number.

11 I contacted the corporate office. I believe I  
12 spoke to someone out in California, asked if there's any  
13 way to search the Denver area of anyone who bought  
14 anything -- any one of these masks with that SKU number  
15 around that time. I was able to find out that three  
16 masks were purchased -- three black masks were purchased  
17 in the Denver area in -- over at a store in Belmar, which  
18 is in Lakewood, a Party City.

19 I did go to the store. Actually, I went to  
20 another store to see how the masks are sold. And they  
21 are sold separately; singles, not in a package.

22 I contacted management of that store with the  
23 SKU number information and with the date that I was  
24 provided from corporate, and they were able to find  
25 purchase of three black masks on August the 4th at

1 approximately 6:00 -- 6:08, I think, or somewhere around  
2 that time in the evening, which would have been about  
3 nine -- eight and a half to nine hours before the fire.  
4 I was provided with a receipt for that purchase. I  
5 believe it was a cash purchase, and they were just for  
6 the three masks.

7 I inquired about video surveillance of the  
8 store.

9 MR. JUBA: Your Honor, I'm going to object to  
10 nonresponsive and narrative.

11 THE COURT: Overruled.

12 Go ahead.

13 A. I looked for video surveillance at the store at  
14 the time. Too much time had passed since August the  
15 5th -- or August the 4th, the time of the purchase, for  
16 the time of my request. There was no video footage  
17 available in the store. I did contact security for  
18 Belmar itself because there are outdoor cameras. It is a  
19 big shopping area. I was able to find --

20 THE COURT: One second. Everyone who has a cell  
21 phone, turn it off unless you use it for the interpreter.  
22 All right? So if you have a cell phone in your  
23 possession, make sure it's turned off. If I hear a cell  
24 phone go off again, I'm going to ask the sheriff to take  
25 it and give it to me.

1 I'm sorry to interrupt, Detective. Please  
2 proceed.

3 A. I was able to find video footage from that day  
4 from the security cameras on the outside, in the parking  
5 lot area of the Party City. I was able to review that  
6 footage and compare it to the time of the purchase.

7 At the time of the purchase, right before that,  
8 just several minutes prior to the purchase, I observed a  
9 vehicle, which I believe was the -- our suspect vehicle  
10 that we had seen in the prior video footage, enter that  
11 parking lot and then park. Two individuals get out of  
12 the car to go into Party City. The purchase is made  
13 while they are inside the Party City. And then the  
14 individuals leave the parking lot same way they came out.

15 MS. JOHNSTON: Exhibit 16, please.

16 Q. (BY MS. JOHNSTON) What is Exhibit 16?

17 A. That is a picture -- I'm sorry. That is the  
18 online -- the Party City masks that I had found online.  
19 At the time, I just wanted to make sure they had black  
20 and white. It shows the SKU number. That's the -- the  
21 masks that the individuals bought at the Party City on  
22 August the 4th.

23 MS. JOHNSTON: Exhibit 14, please.

24 A. Around January 1st, we found that Kevin Bui had  
25 moved from the original address that he was living at in

1 Lakewood. This was a Littleton address off of Rockland  
2 Drive, close to, I guess you would say, the 470 and  
3 Kipling area. I drove to that address. I saw that  
4 vehicle that I believed that we were looking for that --  
5 that was driven by Kevin Bui, and that's the photograph  
6 that I took.

7 Q. (BY MS. JOHNSTON) And is this -- this car that  
8 we see depicted here, is this consistent with the  
9 surveillance video of the suspect car from August 5th,  
10 2020?

11 A. Yes.

12 Q. And is this car that we see in Exhibit 14  
13 consistent with the surveillance video from Belmar for  
14 the purchase of the masks at Party City on August 4th?

15 A. Yes.

16 Q. Were these three suspects ultimately arrested?

17 A. They were.

18 Q. Do you recall about when that took place?

19 A. January 27th of 2021.

20 Q. Was Kevin Bui interviewed that day?

21 A. He was.

22 Q. The person that you interviewed and that you  
23 know as Kevin Bui, do you see him present in the  
24 courtroom today?

25 A. Yes. He is at the defendant's table. He is on



1 the far side, wearing a black shirt, tan pants. But he's  
2 wearing a white COVID mask. I believe he has a green  
3 collar on his shirt.

4 MS. JOHNSTON: Your Honor, may the record  
5 reflect this witness has identified the defendant, Kevin  
6 Bui?

7 THE COURT: Yes.

8 MS. JOHNSTON: Thank you.

9 Q. (BY MS. JOHNSTON) Exhibit 28, which has already  
10 been admitted by stipulation, is the interview that you  
11 conducted with Mr. Bui; is that correct?

12 A. Correct.

13 Q. And we are not going to go into detail about  
14 that interview. The Court has already reviewed this  
15 interview. But can you tell us, in short, whether or not  
16 Bui admitted to planning and executing this arson  
17 homicide?

18 A. He did.

19 Q. Can you tell us whether or not he admitted to  
20 the involvement of Gavin Seymour?

21 A. He did.

22 Q. In the course of your investigation, along with  
23 working with ATF, were you able to develop information  
24 about who Gavin Seymour was?

25 A. I did.

1 Q. Do you see him present in the courtroom today?

2 A. Yes. He is also sitting at the defendant's  
3 table, closest to me, in the dark or black polo shirt,  
4 tan pants, and he has a COVID mask.

5 MS. JOHNSTON: Your Honor, may the record  
6 reflect this witness has identified the defendant Gavin  
7 Seymour?

8 THE COURT: Yes.

9 Q. (BY MS. JOHNSTON) And that Gavin Seymour, is  
10 that the Gavin that Kevin Bui references in this  
11 interview as being involved in committing this crime?

12 A. Yes.

13 Q. Can you tell us briefly about why Mr. Bui said  
14 they did this?

15 A. Mr. Bui said that he was around the City Park  
16 area back in -- I believe it was July. He was attempting  
17 to purchase a gun from someone when he was robbed. His  
18 phone was stolen as well as his shoes and various other  
19 items. He had -- he got on his application, I believe on  
20 his iPad, to track his iPhone to Find My iPhone, and the  
21 iPhone, at the time, pinged back to 5312 Truckee Street.  
22 He believed that his phone and the individuals that  
23 robbed him had lived there at that address. That's when  
24 he planned to go to the -- go to the house. That's  
25 when -- to get -- you know, to either get his stuff back

1 or to confront these individuals.

2 He admitted to setting the house on fire. He  
3 admitted to researching the address -- him and his two  
4 codefendants researching the address, planning to go out  
5 there that day, buying the masks that day prior to that,  
6 getting gasoline on the way to the residence, and then  
7 ultimately, after the fire was set, searching for the  
8 news story the next day, things like that, and then  
9 basically talking about -- to his codefendants about not  
10 speaking about this to anyone.

11 Q. And despite what you just mentioned about all of  
12 the planning that went into committing this crime, did  
13 Mr. Bui ever indicate whether they did any research into  
14 who actually lived in this home?

15 A. Well, the next day, it was all over the news.  
16 They had researched news stories on their phones and  
17 realized that the people that were victims of this were  
18 not the individuals that had robbed him and they were  
19 not -- it was not the right residence.

20 Q. And did Mr. Bui mention whether he did any  
21 research prior to committing this crime as to who  
22 actually lived in this house?

23 A. Other than the address itself, no, as far as who  
24 lived there. They just had -- they just researched the  
25 address itself.

1 MS. JOHNSTON: Nothing further. Thank you,  
2 Detective Baker.

3 THE COURT: Okay. So in terms of order, do you  
4 folks have a preference as to who goes first?

5 MR. JUBA: I am going to go first, Your Honor.

6 THE COURT: All right. Go ahead, Mr. Juba.

7 CROSS-EXAMINATION

8 BY MR. JUBA:

9 Q. Good morning, Detective. How are you?

10 A. Good.

11 Q. Detective, you said on direct examination that  
12 you are the lead detective in this case?

13 A. That's correct.

14 Q. You're familiar with all of the evidence in the  
15 case?

16 A. Yeah, I am.

17 Q. You're familiar with the interviews that were  
18 done by you and the other officers involved?

19 A. Yes.

20 Q. You're also familiar with all of the search  
21 warrants that were done in this case?

22 A. I am.

23 Q. Physical evidence collected?

24 A. Correct.

25 Q. Is there anything about this case that you're

1 unfamiliar with as the lead detective?

2 A. I'm familiar with everything. I can't -- as far  
3 as the analysis and things like that of the digital data,  
4 things like that that are not my expertise, I couldn't go  
5 into any type of expert testimony about that stuff. But,  
6 yes, I am aware of everything that was written search  
7 warrant-wise and generally what was returned.

8 Q. So you don't know how the analysis of the  
9 digital evidence was done, but you know the results of  
10 that evidence, right?

11 A. Correct.

12 Q. Okay. And how many search warrants were issued  
13 in this case?

14 A. I'm going to say roughly 60 search warrants  
15 total. Some were rewritten for other reasons that -- for  
16 different language and things like that that Google or --  
17 wanted in the warrants, things like that. But roughly 60  
18 search warrants.

19 Q. Is it fair to say that there were search  
20 warrants that were specific -- for instance, you were  
21 looking to search specific areas, residences, search  
22 specific cell phones -- and there were also search  
23 warrants that were very general; is that correct?

24 A. Correct.

25 Q. Okay. And so when I'm talking about general

1 search warrants, you got search warrants to search kind  
2 of general areas, right?

3 A. Yes.

4 Q. Who may have been in the general area at a  
5 specific time?

6 A. Yes. Like cell phone tower searches? Is that  
7 what you're referring to?

8 Q. Correct. And we'll get there in a minute. I  
9 want to start with some of the first search warrants you  
10 authored, yourself.

11 A. Okay.

12 Q. One of the initial interviews that was done was  
13 with Amadou Sow?

14 A. Yes.

15 Q. And you learned from him that he was the  
16 homeowner of the house, right?

17 A. Yes.

18 Q. He and his family lived there, right?

19 A. Correct.

20 Q. And then there was another family with the five  
21 other people, right?

22 A. Yes.

23 Q. And he was not related to that other family?

24 A. They were not related.

25 Q. You also had information on his son that --

1 Oumar Sow, that was the one that was at the 7-Eleven,  
2 right?

3 A. Yes.

4 Q. And he was interviewed by the police officers  
5 immediately after the fire started?

6 A. I believe officers had spoken to him.

7 Q. Officers met with him at the 7-Eleven and told  
8 him about the fire?

9 A. Correct.

10 Q. Some of the information that you learned from  
11 Mr. Amadou Sow led you to get a search warrant against  
12 him, right, or his cell phone?

13 A. I did -- I did get a search warrant for his cell  
14 phone, yes.

15 Q. You initially learned information that Mr. Sow,  
16 one, was in the process of refinancing his house, right?

17 A. Yes.

18 Q. He was sending money overseas?

19 A. Correct.

20 Q. He obtained an insurance payout?

21 A. As far as I know, yes.

22 Q. Everyone in his family survived the fire, right?

23 A. Correct.

24 Q. And you actually got a -- during the interview  
25 of him, you received his cell phone number?

1           A. His cell phone number?

2           Q. Correct.

3           A. Correct.

4           Q. And you authored a search warrant to get all of  
5 the information on his cell phone records, right?

6           A. Correct.

7           Q. Now, that initial search warrant was based on  
8 your belief that someone inside of the house may have  
9 been involved in this crime, right?

10          A. I wasn't sure. We -- we were going over  
11 different -- different angles of what could have  
12 happened. And part of that was to either -- to see what  
13 was going on with Mr. Sow, to possibly rule him as -- out  
14 or as possible -- as someone of interest. So that was  
15 the reason why we authored a search warrant for his  
16 phone.

17          Q. The initial search warrant stated that you were  
18 obtaining the search warrant based on the extreme nature  
19 of the crime and the extensive planning that it must have  
20 taken to carry out the events -- the events involved in  
21 this offense, right?

22          A. Yes. Correct.

23          Q. And you also thought that the crime was very  
24 personal and involved a substantial amount of anger  
25 towards someone in the victim residence or was intended



1 to send a sort of message, right?

2 A. At the time, that's what I believed. Correct.

3 Q. And so the conclusion that you drew from that  
4 was that someone -- and this was in the search warrant --  
5 someone who lived in the house could have had  
6 communications with the suspect or suspects or with  
7 someone who ordered or otherwise knew about the crime?

8 A. It was a thought.

9 Q. And then the actual information that you  
10 obtained from Mr. Sow's cell phone included all calls  
11 incoming and outgoing, right?

12 A. I believe so.

13 Q. All subscriber information?

14 A. Correct.

15 Q. All text messages?

16 A. I don't know about text messages. Depending on  
17 the carrier.

18 Q. So this was with AT&T. Did you request all  
19 incoming and outgoing text messages in the warrant?

20 A. I believe we request all of that. Whether or  
21 not the cell phone company will provide that information  
22 or even stores that information, I don't know. That's a  
23 question for Agent Sonnendecker.

24 Q. So that was the -- that was the question. In  
25 the search warrant, it was requested, right?

1 A. Correct.

2 Q. And you obtained all of that information?

3 A. I'm not sure exactly what -- sitting here, what  
4 we obtained from that phone. But we requested  
5 information from it. We did receive results from AT&T.

6 Q. The question was: You got a return on that  
7 warrant, right?

8 A. Yes, sir.

9 Q. And then that information was reviewed?

10 A. Yes.

11 Q. And that information was not fruitful to your  
12 investigation, right?

13 A. Correct.

14 Q. You also started getting very general search  
15 warrants; is that right?

16 A. Correct.

17 MR. JUBA: So if we could go back to -- I think  
18 it's Exhibit 2. If we could place that up.

19 Q. (BY MR. JUBA) Exhibit 2, this shows the area of  
20 the Truckee Street address, right?

21 A. Yes.

22 Q. You obtained numerous search warrants relating  
23 to devices that were in that area, right?

24 A. Correct.

25 Q. One of the search warrants that you obtained

1 attempted to get information about any Google devices  
2 that were anywhere within that neighborhood, right?

3 A. Yes.

4 Q. Your information was that Google actually  
5 collects and retains location data if someone either has  
6 an Android phone or has any Google applications on their  
7 cell phone, right?

8 A. To my knowledge, yes. That's why I requested  
9 that.

10 Q. And the warrant actually requested all phones  
11 that were in that area, right?

12 A. Anything that they could provide us.

13 Q. You also requested search warrant information  
14 regarding any phones that had traveled the major  
15 thoroughfares in that area?

16 A. Well, the Google search warrant is limited to  
17 the area around the home itself and then the video  
18 footage of the vehicle. They're not specific -- they're  
19 very specific in location. The other warrants obtained  
20 would be for --

21 (Webex interruption.)

22 THE COURT: I'm sorry. We've got some Webex  
23 interference here. I don't know why they're not muted.

24 Go ahead, please.

25 A. We did search warrants for cell towers in the

1 area, which obviously would give us any cellular phones  
2 from different cellular companies or different devices  
3 that have attached themselves to that phone at that  
4 particular time. So we did do cell phone tower searches,  
5 which would encompass, I believe, some of the major  
6 thoroughfares, yes.

7 Q. (BY MR. JUBA) Well, sure. And I was asking  
8 about a different search warrant than you're describing.

9 So, for instance, you got a search warrant for  
10 all cell phones that had traveled in the 4800 block of  
11 North Tower Road, right?

12 A. Correct.

13 Q. You also got a search warrant to obtain the  
14 information about all cell phones that had traveled in  
15 the Green Valley Ranch Boulevard and Chambers Road  
16 intersection, right?

17 A. Yeah, I'm not real sure what you're referring to  
18 or which warrant that was to. Was that a cell tower  
19 warrant or was that some type of other -- I'm not sure  
20 which one you're referring to.

21 MR. JUBA: If I could approach --

22 Q. (BY MR. JUBA) Would it refresh your  
23 recollection to look at the warrant?

24 A. Yes.

25 MR. JUBA: Okay. I'm going to approach and show

1 the detective, starting on Bates stamp 418 --

2 Q. (BY MR. JUBA) Okay. Detective, do you mind if  
3 I --

4 A. No. Go ahead.

5 Q. I'm going to show you a search warrant that  
6 starts on Bates stamp 418 involving Google, and then I'm  
7 just going to reference you down to the following pages  
8 with the pictures of the areas.

9 A. Okay. I understand what warrants you're looking  
10 at now.

11 Q. Okay.

12 A. That is the Google warrant. And those were the  
13 ones I was talking about being very specific to an area  
14 and -- which would be 4800 Tower because we have video  
15 footage of the vehicle traveling. So we -- we plot an  
16 area around that location using GPS coordinates to make a  
17 box that you can -- if you will, around that area to find  
18 out if there's any cell phones or devices that are in  
19 that box, in that area, at a specific time.

20 We used that for the different areas that we saw  
21 a vehicle, that we thought we could capture it in that  
22 spot at that date and exact time. And also the -- and  
23 around the residence itself where the three individuals  
24 were seen on camera, we plotted a box around that  
25 residence as well. So very specific to Google on the

1 location of those searches.

2 Q. The search warrants were --

3 THE COURT: Excuse me. I'm sorry. Mr. Juba,  
4 I'm sorry to interrupt you, sir. Two things. Sorry.  
5 There was apparently some issue with the interpreter not  
6 being able to hear. I hope we fixed that.

7 And just FYI, Counsel, we're going to go to  
8 about 10:30 and then just take a break, unless there's  
9 some earlier place to pause. Okay?

10 MR. JUBA: Okay.

11 THE COURT: Just for your information.

12 Q. (BY MR. JUBA) These search warrants to Google  
13 were requesting all devices in the areas, right?

14 A. In the areas specified in the warrant. Correct.  
15 Any devices that they have access to.

16 Q. And then the next type of search warrants that  
17 you were talking about were the tower dump search  
18 warrants?

19 A. Correct.

20 Q. And so that is any cell phone that's connecting  
21 to certain cell phone towers in the area, right?

22 A. Yes.

23 Q. And, again, you had geographic-specific search  
24 warrants, right?

25 A. Correct.

1 Q. And, again, it was a search warrant requesting  
2 information on every single device that had connected to  
3 towers in the area, right?

4 A. Yes.

5 Q. And one search warrant that you authored -- or  
6 that was authored to T-Mobile provided information on  
7 over 1,000 people, correct?

8 A. That's fair to say, yes.

9 Q. So all these general warrants are obtaining  
10 information on the devices of thousands of people,  
11 potentially, in the area, correct?

12 A. Yes.

13 Q. You also did search warrants to try and  
14 determine which devices belonged to the area, right?

15 A. That's correct.

16 Q. And those kinds of search warrants searched for  
17 devices that had been there for a longer period of time  
18 or were there prior or after the fire, right?

19 A. Yes.

20 Q. And you tried to weed out the other devices that  
21 had only been in the area for a short period of time,  
22 right?

23 A. Yes.

24 Q. And so for those search warrants, again, you got  
25 information on hundreds of different people that lived in

1 the area, right?

2 A. Correct.

3 Q. The other specific search warrants that you  
4 obtained involved several different individuals, correct?

5 A. Yes.

6 Q. You got search warrants involving Mr. Trevondus  
7 Estes?

8 A. Yes.

9 Q. You got information that Trevondus Estes might  
10 have had information about this crime?

11 A. That's correct.

12 Q. Trevondus was incarcerated, he had pending  
13 cases, right?

14 A. Yes.

15 Q. He stated to a prosecutor that he knew or had  
16 information of who had committed the -- the arson?

17 A. Yes.

18 Q. And so you got a search warrant to search his  
19 cell phone, right?

20 A. I did.

21 Q. During the interview -- he was interviewed at  
22 some point, right?

23 A. Correct.

24 Q. During the interview, he gave you his cell phone  
25 number?



1 A. Yes.

2 Q. And you obtained same type of information on his  
3 cell phone?

4 A. Correct.

5 Q. Which is all records that were potentially  
6 available?

7 A. Yes. We also got a warrant for his physical  
8 phone itself.

9 Q. So that's, again, all incoming/outgoing  
10 messages, all text messages, all voicemails, any piece of  
11 information on the phone?

12 A. Correct.

13 Q. He also told you about somebody else;  
14 Mr. Horton, right?

15 A. Galius Horton (phonetic), yes.

16 Q. And Mr. Estes said that it was Mr. Horton that  
17 was potentially involved in the arson?

18 A. Yes.

19 Q. You got a search warrant for Mr. Horton's cell  
20 phone?

21 A. I did.

22 Q. And it was the same thing, right?

23 A. Correct.

24 Q. The same type of information requested?

25 A. Yes.

1 Q. You got search warrants for three individuals  
2 who were pulled over several weeks after this incident,  
3 right?

4 A. Correct.

5 Q. And that's Shannon O'Neil, Jordan Thomas, and  
6 Kyle O'Neil?

7 A. Yes.

8 Q. They were pulled over, and that either all three  
9 of them or two of them were arrested at the time?

10 A. Yes. Up in the mountains, they were pulled over  
11 by state patrol.

12 Q. They had drugs, gun, and masks in their car?

13 A. Correct.

14 Q. And so you got search warrants for all their  
15 cell phones?

16 A. Yes.

17 Q. And it was the same type of information, every  
18 single piece of digital evidence relating to the phone?

19 A. Yes.

20 Q. You also had information relating to a  
21 Mr. Gonzalez, right?

22 A. Correct.

23 Q. And that was based on an anonymous tip?

24 A. I don't recall.

25 Q. Do you recall Mr. Gonzalez's involvement in the

1 investigation?

2 A. No.

3 Q. Mr. Gonzalez at some point became a potential  
4 suspect?

5 A. I don't recall if he became a suspect.

6 Q. You agree that you got all of his cell phone  
7 records?

8 A. I believe we did. I just don't remember exactly  
9 what reason we had behind that. I don't recall.

10 Q. Would it refresh your recollection to look at  
11 the warrant?

12 A. Yes.

13 MR. JUBA: If I could approach with Bates stamp  
14 828.

15 Q. (BY MR. JUBA) So, Detective, I'm showing you,  
16 starting with Bates stamp 828, a search warrant authored  
17 by Special Agent Sonnendecker. So you can just review  
18 that if you want to refresh your recollection.

19 A. Okay. I just need to review the -- is that the  
20 affidavit?

21 Q. Yes.

22 A. -- review why.

23 Okay. I believe I understand why he was -- we  
24 did a search warrant for his phone.

25 Q. Okay. And why that?

1           A. I believe Special Agents Sonnendecker and McKone  
2 had got his phone number off of one of the cell towers.  
3 And because it was in an area at a certain time that we  
4 were looking for around the time of this fire, that they  
5 wanted to -- where he was in relation and the  
6 direction -- I guess he had left the area, which was  
7 similar to what we were looking for. That's why they  
8 looked at Mr. Gonzalez. And then eventually, he was  
9 ruled out as any type of suspect we were looking for.

10           Q. So to be fair, Mr. Gonzalez's phone number came  
11 up on one of those general searches that you were talking  
12 about?

13           A. I believe so, yes.

14           Q. And so he was just one of the potentially  
15 thousands of people that was in the area, right?

16           A. Yes.

17           Q. And then you got every single piece of digital  
18 evidence on his phone?

19           A. I believe as much as they provide.

20           Q. Okay.

21           THE COURT: Counsel, I'm sorry to interrupt you,  
22 but we're going to just pause for a second --

23           MR. JUBA: That's fine. Thank you.

24           THE COURT: -- and take a break. We've been  
25 going an hour and a half. So we'll take a recess for 15

1 minutes. I don't want folks just bolting from -- to the  
2 doors. So I would like the sheriffs to help coordinate  
3 the exit from the courtroom.

4 We'll be in recess until 10:45. Thank you.

5 MS. JOHNSTON: Thank you, Your Honor.

6 MS. STUART: Your Honor, could we approach?

7 (The following proceedings were held during a  
8 bench conference:)

9 THE COURT: Speak into that without touching it,  
10 please. And just identify yourself for the reporter.

11 MS. STUART: Okay. My name is Johnna Stuart.  
12 I'm with the public defender's office. I've been  
13 appointed to represent the juvenile Dillon Siebert, who  
14 is not here today but one of the third codefendants.  
15 Your Honor, he is still in juvenile court, with Judge  
16 Woods presiding over his case.

17 On August -- or I'm sorry. On February 6th of  
18 last year, there was an agreement with the Prosecution  
19 that Dillon Siebert's name would not be mentioned to the  
20 media in any form and in any hearing. And during the  
21 course of this proceeding, his name was mentioned several  
22 times.

23 I've noticed about half a dozen media members in  
24 the audience. I did ask one if they would be reporting  
25 on the information during the break. They indicated they

1 would be.

2 I am asking this Court to adopt the juvenile's  
3 record and agreement by the Prosecution that he only be  
4 referred to by his initials of D.S. rather than his full  
5 name of Dillon Siebert.

6 And I can pull up the Court order if the Court  
7 would allow me one minute -- or the minute order.

8 THE COURT: And this was an order entered by  
9 Judge Woods?

10 MS. STUART: Uh-huh.

11 THE COURT: Okay.

12 MS. STUART: And I'm sorry, Your Honor. I  
13 didn't think about it until I heard it in the middle of  
14 the hearing, and I didn't want to interrupt the court  
15 proceedings.

16 THE COURT: Okay.

17 MS. STUART: But I think if the media is  
18 instructed, and then the observers online are also  
19 instructed, not to mention his full name, then we're  
20 within compliance.

21 THE COURT: Okay. I'll deal with it when I come  
22 back. Anything else?

23 MS. STUART: No.

24 THE COURT: Okay.

25 MS. STUART: Does the Court want to see it?

1 THE COURT: I trust you.

2 MS. STUART: Okay. Thank you. Sorry to  
3 interrupt the proceedings.

4 THE COURT: No, that's okay. Thank you.  
5 Will do. Thank you.

6 MS. STUART: Okay. Thank you.

7 (Recess taken, 10:32 a.m. to 10:48 a.m.)

8 THE COURT: All right. We're back on the record  
9 on 21CR20000 and 21CR20001. Parties and counsel are  
10 present.

11 Before I resume, I want to reiterate -- first of  
12 all, I want to reiterate my previous order, which I've  
13 said now twice, is that if you have a cell phone in -- if  
14 you're in the courtroom with a cell phone, make sure it  
15 is turned off and not used in the courtroom unless it's  
16 for some court-related purpose, such as the interpreter.  
17 There's been two interruptions so far. Those devices  
18 need to be turned off. And if they're not turned off,  
19 the phones will be confiscated for the duration of the  
20 hearing. That's number one.

21 Number two, I want to reiterate my order that  
22 although these proceedings are being provided to the  
23 public by way of Webex, these proceedings are not allowed  
24 to be recorded in any way, shape, or form, either audio,  
25 video, still. Any sort of recording is prohibited by

1 virtue of the chief judge order as adopted by this Court.  
2 And so there is to be no recording of these proceedings  
3 in any way, shape, or form.

4 Lastly, I was advised over the break that --  
5 first of all, there's been reference to a third juvenile  
6 that was alleged to have been involved in this case.  
7 I've been made aware of an order that was entered by  
8 Judge Woods in the juvenile court who presides over that  
9 particular case and that particular juvenile. Judge  
10 Woods has entered an order limiting the disclosure of  
11 that juvenile's identity to the initials D.S. The Court  
12 is adopting that order as an order of this Court.

13 There was a reference to that juvenile's full  
14 name. I'm going to order that the parties, counsel,  
15 witnesses refer to that individual -- to the extent that  
16 you're going to refer to him, that it be by the initials  
17 D.S. and not by the full name.

18 I'm likewise ordering, pursuant to Judge Woods'  
19 and then my order, that with respect to any reporting of  
20 that individual's identity, that it be reported only as  
21 the initials D.S. and not by the entirety of the name.

22 So with that, let's proceed, please.

23 Q. (BY MR. JUBA) Detective, I was questioning you  
24 about the search warrant, so I'm going to continue.

25 One of the additional search warrants that I



1 wanted to ask about was an additional general search  
2 warrant that was issued in the case that was executed  
3 against AT&T, Sprint, Verizon, and T-Mobile, which  
4 requested all phone numbers within a 1-mile radius of the  
5 fire; is that correct?

6 A. Yes. I don't know if I would label it as  
7 "general," but it's specific to the area.

8 Q. And that returned, again, thousands of people's  
9 phone numbers?

10 A. Yes.

11 Q. The last general search warrant I want to talk  
12 about is the warrant that you were discussing on direct  
13 examination for Google. That was a Google keyword search  
14 warrant?

15 A. That was a very specific warrant, yes.

16 Q. And that warrant was issued to Google to provide  
17 the anonymous identifiers of anybody who had searched  
18 specific search terms, right?

19 A. Correct.

20 Q. And the scope of that warrant included -- was it  
21 anybody in the nation that had searched that search term?

22 A. We limited it -- I believe we limited it to  
23 Colorado for that search -- that keyword search on that  
24 warrant.

25 Q. So any person in Colorado that had searched

1 those specific search terms relating to that address?

2 A. The search terms for that address, no specific  
3 time frame. Correct.

4 Q. The return on that warrant -- did the return on  
5 that warrant include all anonymous identifiers of people  
6 only in Colorado or did it include anonymous identifiers  
7 outside of Colorado?

8 A. I don't recall.

9 Q. The basis or the partial basis of that search  
10 warrant was the conclusion that the people that had set  
11 fire to the house didn't know the location of the house,  
12 right?

13 A. That was -- that was one of the assumptions that  
14 I made.

15 Q. And it was based on kind of the same analysis  
16 that you had in that very initial search warrant against  
17 Mr. Sow, right?

18 A. What's the question?

19 Q. In the initial search warrant against Mr. Sow,  
20 the conclusion was this was an extreme -- based on the  
21 extreme nature of the crime and the extensive planning,  
22 the conclusion was somebody inside the house was  
23 involved, right?

24 A. That was not the reason why we wrote that  
25 specific warrant to Google.

1           It was, yes, the -- we believed it took a lot of  
2 planning and things like that, but we weren't -- we did  
3 not write that Google search warrant specifically because  
4 we felt someone in the house was involved.

5           Q. So I'll rephrase the question.

6           The initial search warrant for Mr. Sow's phone  
7 information was based upon the extreme nature of the  
8 crime and the extensive planning that it must have taken  
9 to carry out the events involved, right?

10          A. At the time, yes.

11          Q. And that it was also involved on a personal  
12 nature and a substantial amount of anger towards someone  
13 in the residence, right?

14          A. At the time, yes, that --

15          Q. And so the conclusion was it must have been  
16 somebody inside of the house that had information about  
17 the fire, right?

18          A. I don't believe it must have been. It was a  
19 thought, yes.

20          Q. That someone inside of the house either set it  
21 up or otherwise had information about who had committed  
22 the fire itself, right?

23          A. Yes. It could have been a possibility at the  
24 time.

25          Q. That same analysis was used in the Google search

1 warrant that we're talking about now, right?

2 A. Not specific to someone living in the home. But  
3 we did not know at all why this had occurred.

4 Q. You used that exact same language in the Google  
5 search warrant, asking for anybody that had searched  
6 those terms, right?

7 A. Correct.

8 Q. Based on the extreme nature of the crime, the  
9 extensive planning it must have taken to carry out the  
10 events involved in the offense, you believed it was  
11 personal and involved a substantial amount of anger  
12 towards someone in the house, right?

13 A. We believed that, yes.

14 Q. And then the conclusion from that was  
15 essentially the opposite from that initial conclusion; it  
16 wasn't someone inside the house, it must have been a  
17 random person that needed to look up the address, right?

18 A. We didn't know.

19 Q. That was the conclusion in that warrant for  
20 Google, right?

21 A. The conclusion was what we have in the return of  
22 who searched the address. We didn't know why they  
23 searched the address.

24 Q. The partial basis for that warrant to Google was  
25 based on that, right?

1 A. On what?

2 Q. Based on the extreme nature of the crime and the  
3 extensive planning, that it must have been personal?

4 A. Yes.

5 Q. And that it must have been -- or it could have  
6 been a random person that needed to search the address?

7 A. Correct.

8 Q. The additional information that you obtained in  
9 the specific search warrants related to the three  
10 juveniles that we've been talking about, right?

11 A. Correct.

12 Q. So it's Gavin Seymour, Kevin Bui, and D.S.?

13 A. Correct.

14 Q. And the information relating to those three  
15 individuals -- you obtained several specific search  
16 warrants relating to the three of those individuals,  
17 right?

18 A. Yes.

19 Q. You obtained specific search warrants for all  
20 three of their cell phone records, right?

21 A. Yes.

22 Q. And so, again, that would include all calls to  
23 and from the phones, all messages, and all data, and the  
24 records themselves?

25 A. We asked for everything.

1 Q. You also obtained the -- all information  
2 relating to social media for those three individuals,  
3 right?

4 A. In a separate search warrant. Correct.

5 Q. And it was some sort of combination with the  
6 three individuals involved, search warrants related to  
7 Facebook records, Instagram records, and probably if we  
8 could name another social media, but all the social  
9 media, right?

10 A. Correct.

11 Q. And those search warrants related to, again, all  
12 information obtained in the social media records?

13 A. Yes.

14 Q. And that includes, again, messages sent to and  
15 from that -- those accounts, right?

16 A. Correct.

17 Q. The cell phone information also obtained -- or  
18 contained, I'm sorry, location data, right?

19 A. We -- we hoped, yes.

20 Q. Some of the social media returns on the warrants  
21 also contained --

22 (Webex interruption.)

23 THE COURT: I don't know who is not muted.

24 Okay. Great. Thank you.

25 Sorry, Counsel.

1 Q. (BY MR. JUBA) The return on the -- some of the  
2 social media warrants also contained location data?

3 A. We asked for it, yes.

4 Q. And I think I remembered the other social media.  
5 The Snapchat accounts, right?

6 A. Correct.

7 Q. You received location data based on social media  
8 Snapchat accounts?

9 A. I believe we did get location data.

10 Q. In this investigation, as was stated on direct  
11 examination, Kevin Bui was interviewed, right?

12 A. Correct.

13 Q. And he was interviewed the morning that he was  
14 arrested?

15 A. Yes.

16 Q. And D.S., the morning he was arrested, declined  
17 an interview?

18 A. Correct.

19 Q. And has D.S. been interviewed since he declined  
20 that initial interview?

21 A. Not -- no.

22 Q. Has Mr. Bui been interviewed since that initial  
23 interview?

24 A. No.

25 Q. Some of the information that you had obtained

1 from the warrant returns detailed the actions of Gavin  
2 Seymour, Kevin Bui, and D.S. the day before the incident,  
3 right?

4 A. Correct.

5 Q. It also contained the information about when and  
6 how often they had searched this address?

7 A. Yes.

8 Q. Kevin Bui was the first one to start searching  
9 that address?

10 A. Yes.

11 Q. He searched it the most number of times?

12 A. I believe so.

13 Q. On August 4th, the day before the fire, you  
14 obtained location data of Kevin Bui and D.S., right?

15 A. Correct.

16 Q. And you learned that Kevin Bui and D.S. were  
17 together -- together sometime in the early afternoon of  
18 that day, right?

19 A. Yes.

20 Q. And Kevin Bui and D.S. were searching for the  
21 mask stores, right?

22 A. Yes.

23 Q. They were searching for the Spirit Halloween  
24 stores and the Party City stores?

25 A. The Spirit Halloween search was, I believe,



1 earlier on. But Party City was the specific location  
2 they were searching for on August the 4th.

3 Q. Kevin Bui and D.S. were the only ones that had  
4 been searching for either the Spirit Halloween or the  
5 Party City stores?

6 A. Yes. I believe the Spirit Halloween store was  
7 an actual phone call. So it was a phone number that came  
8 back to that address. I don't think it was a specific  
9 search. But, correct, they were the only two that  
10 searched for Party City.

11 Q. And Kevin Bui and D.S. were the two that had  
12 traveled to the Party City store to purchase the masks?

13 A. Yes.

14 Q. Gavin Seymour never searched those terms, right?

15 A. Not that I saw.

16 Q. He didn't travel with them to get the masks?

17 A. No.

18 Q. There's no indication that he bought any masks?

19 A. No.

20 Q. It was Kevin Bui's car that was the car at that  
21 Party City store, right?

22 A. Yes.

23 Q. Kevin Bui was driving and D.S. was the front  
24 passenger?

25 A. Yes.

1 Q. No other people in that car?

2 A. I'm sorry?

3 Q. No other people were in that car?

4 A. Not that I'm aware of.

5 Q. It was only several hours later that Gavin  
6 Seymour met up with the two of them, right?

7 A. Yes.

8 Q. After the masks had been purchased, right?

9 A. Yes.

10 Q. And after both Kevin Bui and D.S. were back at  
11 Kevin's Bui's house?

12 A. I believe they all met back up at Kevin Bui's  
13 home in Lakewood at the time.

14 Q. You've reviewed Kevin Bui's statement the day he  
15 was arrested, right?

16 A. Yes.

17 Q. Kevin Bui admits that he was the one that came  
18 up with this plan?

19 A. Yes.

20 Q. That he had a motive to get back at the people  
21 that he believed had robbed him?

22 A. Yes.

23 Q. He was the initial one that searched and found  
24 where the phone was?

25 A. Yes.

1 Q. And his plan was he wanted -- let me rephrase.

2 During his interview, he was questioned quite a  
3 few times about the involvement of D.S. and Gavin  
4 Seymour, right?

5 A. Yes.

6 Q. During the interview, Kevin Bui was asked about  
7 the planning that went into this, right?

8 A. Yes.

9 Q. He told investigators that there really wasn't a  
10 plan, right?

11 A. Correct.

12 Q. He says when he was researching the house, he  
13 says he was alone when he was researching it, right?

14 A. Some of the searches, yes.

15 Q. He said a part of what he wanted to accomplish  
16 by going to the house was he might be able to find his  
17 phone, right?

18 A. Correct.

19 Q. Other possible plans that he had was -- Kevin  
20 Bui said he might want to vandalize the house or break  
21 the windows?

22 A. I don't recall him telling me that. I don't  
23 know.

24 Q. Would it refresh your recollection to listen to  
25 the interview?

1           A. Yes.

2           If it -- if it says that in the interview, I'm  
3 not going to dispute it. I just don't remember that  
4 specific comment.

5           Q. Okay. Do you recall the quote by Kevin Bui:  
6 Our plan was to maybe vandalize the house -- we've got to  
7 vandalize the house and break the windows?

8           A. I don't specifically recall the quote, but it  
9 was transcribed. I believe if -- if that's what the  
10 transcription says, then I don't dispute that.

11          Q. Talking about Gavin Seymour's involvement and  
12 D.S.'s involvement, Kevin Bui said: Gavin and D.S.  
13 really didn't know anything. They just went in blind.  
14 It was just spur of the moment.

15          A. Yes.

16          Q. And according to Kevin Bui, he didn't have any  
17 indication that anybody was actually home, right?

18          A. I believe that's not correct.

19          Q. Let me ask a different question.

20                 The people who were in the home, he certainly  
21 didn't know that those people were home, right?

22          A. Correct.

23          Q. At the time that this happened, Mr. Bui thought  
24 the people that had robbed him were the ones that were  
25 actually in the home?

1           A. Correct. Or his -- I believe he said his --  
2 their family.

3           MR. JUBA: All right. Thank you. No further  
4 questions.

5           THE COURT: Thank you, Counsel.

6           Cross-examination on behalf of Mr. Bui?

7                                   CROSS-EXAMINATION

8 BY MR. EARLE:

9           Q. Good morning, Detective.

10          A. Good morning.

11          Q. A lot of ground has been covered, so I'll try to  
12 limit my questions here.

13          A. Okay.

14          Q. You -- you said that Mr. Bui, the morning that  
15 he was arrested, he was ultimately interviewed by you?

16          A. Correct.

17          Q. And D.S. ultimately declined to be interviewed  
18 at that time?

19          A. Yes.

20          Q. And then the same with Gavin Seymour. When he  
21 was originally arrested, he didn't give a statement  
22 either, did he?

23          A. Correct.

24          Q. But he has since given a statement to you?

25          A. He has.

1 Q. Okay. And that conversation happened fairly  
2 recently; is that correct?

3 A. Correct.

4 Q. It took place with you and his attorneys?

5 A. Yes.

6 Q. And no promises, really, had been made at that  
7 point?

8 A. None that I'm aware of.

9 Q. And this was the first time that he had made any  
10 statements to law enforcement?

11 A. Yes.

12 Q. Now, I want to talk about, you know, the  
13 statements that you said -- or that cocounsel brought up  
14 with regards to Mr. Bui.

15 There was a lot of conversations with Kevin Bui  
16 about the involvement of D.S. and Gavin?

17 A. Correct.

18 Q. And -- and he really, for all intents and  
19 purposes, basically kind of distanced them from the  
20 event. Is that fair to say?

21 A. It's fair to say.

22 Q. But based on the course of your investigation  
23 and everything, that didn't seem to be quite the case; is  
24 that true?

25 A. That's true.

1           Q. It was your position that D.S. and Gavin Seymour  
2 were much more involved in this whole incident than  
3 Mr. Bui was originally saying?

4           A. Yes.

5           Q. But to be clear, one of the things that Mr. Bui  
6 did indicate to you was that there wasn't -- you know,  
7 there really wasn't a major plan in place that night?

8           A. Yes.

9           Q. Despite the fact that they had gone looking  
10 after the house or looking into the house, they didn't  
11 really know what they were going to do when they got  
12 there?

13          A. I don't -- I disagree. I -- I -- from what he  
14 said, yes. But from --

15          Q. That's --

16          A. -- what the evidence shows, no.

17          Q. That's what he told you?

18          A. Yes.

19          Q. Okay. And, in fact, you know, he did say that,  
20 you know, what he was primarily looking for was to try  
21 and get his phone back?

22          A. I believe so, yes.

23          Q. Okay. And/or potentially, as you indicated,  
24 vandalize the house?

25          A. Yes.

1           Q. You were also asked questions about whether or  
2 not he knew there was anybody in the house?

3           A. Yes.

4           Q. He didn't affirmatively say that he knew if  
5 there was anybody actually in the house at the time?

6           A. He believed they were sleeping upstairs. He  
7 wasn't sure.

8           Q. He didn't know if there was people sleeping  
9 upstairs, but if -- if there were, they would be asleep?

10          A. Yes.

11          Q. But he never affirmatively said, I knew there  
12 were people upstairs?

13          A. Correct.

14          Q. Now, more just the -- the conversation that you  
15 had with Mr. Seymour, obviously the intent was to get his  
16 version of the events, you know, leading up to that  
17 night?

18          A. Yes.

19          Q. As well as his version of what happened that  
20 night?

21          A. Yes.

22          Q. And before we kind of get into some of those  
23 things, I want to talk a little bit about -- you  
24 established the relationship between all of the parties  
25 involved, correct?



1 A. Yes.

2 Q. It's safe to say, based on your understanding  
3 and reviewing the history, that Mr. Seymour, Mr. Bui, and  
4 D.S. were all very close friends?

5 A. Yes.

6 Q. They were a fairly tight-knit group?

7 A. Yes.

8 Q. They went to school together -- at least two of  
9 them went to school together?

10 A. Yes. Mr. Seymour and Mr. Bui went to school  
11 together.

12 Q. But --

13 A. D.S. went to a separate school.

14 Q. They played football together?

15 A. Correct.

16 Q. But all three of them hung out quite frequently?

17 A. Yes.

18 Q. Now, Gavin indicated that he was also familiar  
19 with Kevin's parents because he had been over to his  
20 house many times?

21 A. Yes.

22 Q. And he had met his parents on several occasions?

23 A. Yes.

24 Q. He didn't really know them or interact with them  
25 due to a language barrier?

1           A. I believe that's correct.

2           Q. And you understand that Mr. Bui's parents are  
3 Vietnamese?

4           A. I do.

5           Q. And Mr. Seymour told you that they just really  
6 didn't speak English very well, so he didn't talk with  
7 them that much?

8           A. Yes.

9           Q. But Mr. Seymour was also familiar with Tanya  
10 Bui?

11          A. Yes.

12          Q. And that name has come up.

13                 Who is Tanya Bui?

14          A. She is Kevin Bui's sister.

15          Q. Is it older sister or younger sister?

16          A. Older sister.

17          Q. Okay. And based on your understanding and  
18 review of the cell phone data, social media data,  
19 et cetera, Gavin and Tanya spoke with each other quite  
20 frequently?

21          A. They do.

22          Q. Sometimes independent of Mr. Bui?

23          A. Yes.

24          Q. Okay. Now, I want to focus on a couple of  
25 specific portions of Mr. Seymour's conversation with you.

1 And if you need a copy of the transcript, let me know, if  
2 it helps.

3 A. Okay.

4 Q. But there was a point when you were talking with  
5 Mr. Seymour about things that had happened after the  
6 fire, and specifically, he was telling you about a time  
7 that he and Mr. Bui and a third friend of theirs by the  
8 name of Andrew ended up camping together somewhere?

9 A. That's correct.

10 Q. And there came a time in this camping trip where  
11 Gavin -- excuse me -- Mr. Seymour and Mr. Bui were able  
12 to kind of walk away together and they were chatting  
13 about the fire itself?

14 A. Yes.

15 Q. Okay. And Gavin expressed to you that -- I'm  
16 sorry. Mr. Seymour expressed to you that Mr. Bui was  
17 concerned about D.S. Do you recall that?

18 A. Vaguely.

19 Q. Specifically, he was concerned about how D.S.  
20 was doing emotionally?

21 A. I do recall that.

22 Q. Mentally?

23 A. Yes.

24 Q. And there came a point when Mr. Seymour  
25 specifically asked Mr. Bui, Well, were you the one who

1 lit the fire?

2 A. Yes.

3 Q. And Mr. Bui told Mr. Seymour, No, D.S. was the  
4 one that lit the fire?

5 A. That's what Mr. Seymour told me, yes.

6 Q. Okay. And that's why Mr. Bui was expressing  
7 concern for D.S., because he was concerned that he was  
8 having emotional -- he might be having emotional problems  
9 due to his involvement in the case?

10 A. That's what Mr. Seymour said.

11 Q. Okay. As far as you know, there's been no  
12 communication between Mr. Seymour and Mr. Bui since  
13 either of them have been arrested?

14 A. Not that I'm aware of.

15 Q. Okay. But you also talked with Mr. Seymour  
16 about the plan and what had been discussed between  
17 everybody prior to the actual fire?

18 A. Correct.

19 Q. And he -- he agreed with you that the three of  
20 them had been talking about all of this?

21 A. Yes.

22 Q. They knew that Mr. Bui had been robbed, and they  
23 knew that he wanted to try and get his phone back?

24 A. Yes.

25 Q. Mr. Seymour told you that -- when you asked him,

1       like, what was the plan, he told you that the original  
2       plan was just to go and vandalize the house?

3             A.   That's what he originally said.

4             Q.   To throw rocks at the windows?

5             A.   Yes.

6             Q.   And those were some kind of activities that the  
7       three of them, he admitted, had done in the past to other  
8       people?

9             A.   Yes.

10            Q.   Like TPing houses?

11            A.   Yes.

12            Q.   Throwing eggs at houses?

13            A.   I don't recall, specifically, but, yes.

14            Q.   Simple -- more simple criminal mischief-type  
15       stuff?

16            A.   Correct.

17            Q.   You then went on to ask him, Mr. Seymour, do you  
18       guys discuss what you're going to do when you get there?  
19       And Mr. Seymour responded, There -- there was not a lot  
20       of planning, we just winged it, a lot of it?

21            A.   I believe that's what he said.

22            Q.   Now, obviously, you know, there was a tremendous  
23       amount of work that went into this case?

24            A.   Yes.

25            Q.   And we've talked about it already, but reviewing

1 the social media accounts of all three of the  
2 codefendants, correct?

3 A. Yes.

4 Q. Including Tanya Bui?

5 A. That's correct.

6 Q. Instagram, Snapchat, Google Mail, all of these  
7 things?

8 A. Yes.

9 Q. A considerable amount of time was spent  
10 reviewing the conversations between all of these  
11 individuals?

12 A. Yes.

13 Q. As it was between Mr. Bui and Mr. Seymour?

14 A. Yes.

15 Q. Mr. Bui and D.S.

16 A. Yes.

17 Q. Mr. Bui and his sister, and on and on?

18 A. Correct.

19 Q. Everybody was talking with each other in one  
20 capacity or another?

21 A. Yes.

22 Q. During your review of the copious amounts of  
23 data, the endless conversations between all of these  
24 teenagers through social media, not once did you come  
25 across any conversations where anybody said they intended

1 to kill anybody?

2 A. I wouldn't use those words, but there -- there  
3 was comments about burning the house down.

4 Q. There's a comment about burning the house down?

5 A. Correct.

6 Q. But, again, through the thousands and thousands  
7 of pages in discovery, days leading up to it, days after  
8 it, not once does anybody say they were trying to kill  
9 anybody?

10 A. The word "kill" I did not see.

11 Q. Or hurt anybody physically?

12 A. I don't recall.

13 Q. Okay. Just as a side track, I mean -- and,  
14 again, as far as you knew, the motive kind of behind all  
15 of this was a robbery of a cell phone and maybe some  
16 shoes?

17 A. Yes. And, I believe, money as well.

18 Q. Okay. As it relates to this robbery, was  
19 anything done to substantiate any of that information, to  
20 probe into that event?

21 A. Yeah. Well, talking to Mr. Bui to find out who  
22 he was meeting with, things like that, yes. Correct. We  
23 tried to figure out possibly who he was meeting and were  
24 unsuccessful.

25 Q. You weren't able to get anything based off of

1 his cell phone search and social media data of who he was  
2 potentially involved with?

3 A. On that day, no. There's lots of people he was  
4 meeting up with.

5 Q. Okay.

6 A. But on that day, we were unsuccessful.

7 Q. And so you have no idea whether or not those  
8 individuals had any association whatsoever with the  
9 Truckee address?

10 A. We -- not that we were aware of.

11 Q. Okay. And Mr. Seymour also indicated that -- he  
12 told you that when everybody was driving over to the  
13 house, everyone was a bit nervous?

14 A. I believe so, yes.

15 Q. He -- nobody really knew what to expect?

16 A. Correct.

17 Q. And he had already established with you that at  
18 that point there was really no solid plan in place,  
19 according to him?

20 A. In the beginning, yes, he --

21 Q. Okay.

22 A. That's what he alluded to.

23 Q. Okay. He never said he knew who actually lived  
24 in that house?

25 A. He said he did not know who lived in the house.



1 Q. He didn't know if anybody was actually in the  
2 house at the time?

3 A. Correct.

4 Q. There were concerns that if there -- people were  
5 there, they might be armed and dangerous?

6 A. Yes.

7 Q. Based on the fact that Mr. Bui had been robbed  
8 with a gun?

9 A. Yes.

10 Q. But there appeared to be a lot of kind of  
11 speculation on that part? We didn't know this, we didn't  
12 know that?

13 A. Yes.

14 Q. Now, given the time of day, the location of the  
15 house, certainly it was possible that there were people  
16 in the house, but he never said he knew for sure,  
17 correct?

18 A. Correct.

19 Q. And, again, based on all of the conversations  
20 that were reviewed between Mr. Seymour, D.S., Mr. Bui,  
21 and even Tanya Bui, there was no evidence to suggest that  
22 they knew people would be in the house that night?

23 A. Correct.

24 Q. Towards the end of this statement, you know, you  
25 start to talk to Mr. Seymour about, you know, how -- how

1 he felt about all of this after he realized what had  
2 happened, kind of like the next morning?

3 A. Yes.

4 Q. And he relayed to you how he felt terrible about  
5 all of this?

6 A. Yes.

7 Q. And you proceeded to ask him a question, and I  
8 think what you were trying to get at -- and you said,  
9 Well, how would you have felt if it were these guys? How  
10 would you have felt if it were the actual people who had  
11 robbed Mr. Bui that had perished in the fire?

12 A. I believe that --

13 Q. I think that's what you're trying to say, right?

14 A. Correct.

15 Q. And he basically said: I would feel the same  
16 way. I would feel terrible.

17 A. That's what he said.

18 Q. Okay. And he told you the intention wasn't to  
19 kill anyone?

20 A. Correct.

21 Q. Throughout this entire statement, Mr. Seymour  
22 never once told you that they were trying to kill  
23 anybody?

24 A. He did not.

25 Q. Or even hurt anybody?

1 A. He did not.

2 Q. And, in fact, he explained -- or displayed, you  
3 know, extreme remorse about the whole event?

4 A. He said he did, yes.

5 Q. Okay. And, again, to be clear, according to  
6 Mr. Seymour, he understood that D.S. was the one who  
7 actually set the fire?

8 A. That's what he told me in the interview.

9 Q. Because according to Mr. Seymour, he stayed  
10 outside when D.S. and Mr. Bui went inside?

11 A. That's what Mr. Seymour said.

12 Q. So I want to talk a little bit about the arson  
13 investigation itself.

14 Have you been involved in many arson  
15 investigations in the past?

16 A. No.

17 Q. Okay. And I think you indicated that, you know,  
18 there's -- the fire department has the experts that  
19 really kind of help with these kinds of situations?

20 A. As far as the fire itself and the accelerants  
21 used, things like that, yes, they are trained in that.

22 Q. Okay. During the course of your investigation,  
23 did you take any steps to evaluate, like, the actual  
24 structure of the house, get building records, building  
25 materials, to determine whether or not the house was up

1 to code?

2 A. I personally did not.

3 Q. Was that part of the investigation at all?

4 A. I'm not aware.

5 Q. Okay. Do you know if there was any evidence to  
6 positively disprove that there not -- there were not  
7 additional accelerants already inside the house besides  
8 the gasoline that was apparently detected by the K-9  
9 unit?

10 A. I did speak with Mr. Sow and asked him  
11 specifically about gasoline. He did not keep any  
12 gasoline in the house, according to him, Mr. Sow.

13 Q. Okay. You talked about where the accelerant was  
14 located. It was both inside and outside --

15 A. Yes.

16 Q. -- the house?

17 A. My understanding. Correct.

18 Q. And based on your understanding of the arson  
19 investigation, are they able to determine how much  
20 accelerant was actually used?

21 A. I don't know.

22 Q. Is there a way to tell or do you -- can you  
23 tell?

24 A. That would be a question for them.

25 Q. Okay. But it was in, basically, these two

1 distinct areas?

2 A. I believe there was three that I could recall:  
3 One on the outside of the house, in the back of the house  
4 where the back-door area is; and then on the interior  
5 wall that we had just discussed earlier; and then on the  
6 street where we now know the vehicle was parked.

7 Q. Presumably, when somebody was removing the gas,  
8 it might have splashed out?

9 A. Presumably.

10 Q. Okay. Suffice it to say it wasn't, like,  
11 splashed all throughout the house?

12 A. According to your client, yes, it was poured on  
13 the floor in -- in the area of the kitchen and the living  
14 area there.

15 Q. And even according to the arson experts, there  
16 wasn't, like, accelerants found by the front door or on  
17 the stairs?

18 A. Not that I have been told. And, also, I was  
19 told that much of the evidence is destroyed by the fire  
20 itself. It's a -- it was very heavily damaged.

21 Q. Okay. Just a moment, please.

22 Now, you said that there was a search done about  
23 the interior of the Truckee address?

24 A. There was a search -- a keyword search made by  
25 Mr. Seymour about -- it was -- I believe it was

1 specifically 52 -- I'm sorry -- 5312 Truckee Street  
2 interior. It was specific to the interior of the house.

3 Q. Were you able to search if that search elicited  
4 any results, such as the layout of the house or anything  
5 like that?

6 A. I believe that's what the search was for. I  
7 don't know exactly what it came up with because --

8 Q. Okay.

9 A. -- I don't know what the internet will do six  
10 months later.

11 Q. Understood. Based on your review of kind of the  
12 social media conversations between everybody after that  
13 search was done, there's no indication that there's this  
14 many rooms, this is where we should go in, like that?

15 A. I don't know.

16 Q. Okay. There's no evidence that any of these  
17 individuals, like, Google searched for, like,  
18 construction materials used to manufacture these homes?

19 A. Not that I'm aware of.

20 Q. No evidence that any of them had Googled  
21 anything about setting fires with gasoline?

22 A. Not that I'm aware of, no.

23 Q. Doing research to figure out how quickly a fire  
24 could possibly spread?

25 A. Not that I saw.

1 Q. Or how flammable gasoline actually is?

2 A. Not that I saw.

3 Q. And to be sure, to kind of fully understand the  
4 extent and severity of the fire, we need to utilize the  
5 arson experts to kind of help us understand -- I mean,  
6 obviously, you can see it?

7 A. Yes. It's very apparent in the videos, but I --  
8 I couldn't tell you how fires react to certain things.  
9 It's not my...

10 Q. Okay. So, I mean, you -- you indicated that in  
11 the videos from the neighbor's house, the video shows the  
12 individuals running away at 2:38?

13 A. Yes.

14 Q. Do you know how accurate that time stamp is?

15 A. I believe it's accurate. Based on speaking with  
16 Special Agent Sonnendecker --

17 Q. Okay.

18 A. -- and going through -- testing the -- the  
19 system, I believe it's accurate.

20 Q. And Officer King was basically -- in his report  
21 he indicates that he was on scene, based on his physical  
22 observation of the fire, and was calling in for backup by  
23 2:40?

24 A. Yes. He was sitting south of the neighborhood  
25 and noticed the smoke, and that's what drew him to drive

1 to the neighborhood when he saw the fire and called it  
2 in.

3 Q. And so, quite literally, within a matter of  
4 minutes --

5 A. Correct.

6 Q. -- this house was essentially engulfed in  
7 flames?

8 A. Yes. As you can see in the video, it's from  
9 2:38, from them running, to 2:40 to -- actually, to 2:42,  
10 from the neighbor's house, it was in -- pretty much  
11 being engulfed.

12 Q. And just to be clear, in all of the  
13 conversations with both Mr. Seymour and Mr. Bui, neither  
14 one of them said they expected this to happen?

15 A. They went to set the house on fire. That's the  
16 statement that I received. But I -- I don't know what  
17 you're asking.

18 Q. They both -- I mean, they both told you they  
19 never intended, like, the house to completely burn up  
20 that quickly the way that it did?

21 A. In those words, no. They said they start --  
22 went to start the fire.

23 Q. Right. And, again, looking back to original  
24 conversations with them -- because their intent was to  
25 vandalize the house?



1           A. That's what they said.

2           MR. EARLE: Okay. I have nothing further at  
3 this time, Judge. Thank you.

4           THE COURT: Thank you.

5           Is there any -- is there redirect?

6           MS. JOHNSTON: Thank you. I do.

7                               REDIRECT EXAMINATION

8 BY MS. JOHNSTON:

9           Q. Detective Baker, we can start there, Counsel's  
10 last comment that the intent was to vandalize the house.  
11 And we've heard mention of Mr. Bui in his interview  
12 saying that he planned -- they planned to break windows  
13 and vandalize the house.

14                       In those videos -- those surveillance videos  
15 that are depicting those three suspects approaching the  
16 house, do they have anything in their hands other than  
17 the gas can?

18           A. Not that I could see.

19           Q. Did you see any bats that were used in -- in any  
20 way in these videos?

21           A. No.

22           Q. Any other large blunt objects?

23           A. No.

24           Q. What about rocks?

25           A. No.

1 Q. And does Mr. Bui indicate in his interview  
2 whether or not they even brought any of those items to  
3 the house?

4 A. No. Just the gas can.

5 Q. When they are inside the house -- and I say  
6 "they."

7 Mr. Bui admits to being inside the house,  
8 correct?

9 A. Yes.

10 Q. Does he say whether anybody else goes inside the  
11 house?

12 A. He says all three of them were in the house.

13 Q. So when they go in the house, is there any  
14 indication from the evidence or from statements that any  
15 vandalizing was done inside the house?

16 A. No. Other than the -- the fire, no other  
17 vandal -- vandalizing.

18 Q. Does Mr. Bui talk about whether or not they were  
19 trying to be quiet so as to not awaken any -- anybody  
20 that was in the house?

21 A. He does.

22 Q. Does Mr. Bui in his statement say that he makes  
23 any effort to confront anybody in the house?

24 A. He does not.

25 Q. You were asked by Mr. Juba a lot about the

1 various search warrants that you authored or in some way  
2 executed -- participated in, correct?

3 A. Yes.

4 Q. And is it fair to say there's probably dozens of  
5 those?

6 A. Fair to say, yes.

7 Q. And we talked earlier about how many of them  
8 were not fruitless -- or were not fruitful; some of them  
9 were.

10 In the beginning of this investigation, who was  
11 a suspect?

12 A. We didn't have any suspects.

13 Q. So were you following any possible leads you  
14 could?

15 A. Yes.

16 Q. Including the potential that perhaps someone in  
17 the house might have been involved?

18 A. We did -- yes, we pursued all avenues.

19 Q. And is that a typical thing to do in the course  
20 of a homicide investigation?

21 A. Yes.

22 Q. Would it have been a correct course of action to  
23 say, Well, because they live in the house, we -- we're  
24 not going to explore the potential that they might be  
25 involved?

1           A. No. We go -- search all avenues, including the  
2 homeowner and his family.

3           Q. You were asked by Mr. Earle about, essentially,  
4 remorse, whether or not Mr. Seymour or Mr. Bui expressed  
5 remorse about what had happened. And I just -- only want  
6 to focus on Mr. Bui --

7           A. Yes.

8           Q. -- his interview.

9                     You were asked about Mr. Bui and -- and him  
10 saying that he felt terrible that this had happened,  
11 and -- and you said, Yes, he did say something like that,  
12 correct?

13          A. Correct.

14          Q. Are you aware -- based on your review of all  
15 three of the suspects' social media accounts, are you  
16 aware of what activities they participated in after they  
17 committed this crime?

18          A. I am.

19          Q. Can you share that was the Court?

20          A. Yes. Right after this, I believe the following  
21 day, Mr. Bui and Mr. Gavin -- or Mr. Seymour traveled to  
22 the Grand Junction area, camping.

23          Q. And did they take photographs on that trip?

24          A. They did.

25          Q. Did they appear to be recreating in some way out

1           there?

2           A.   Yes.  It -- they appeared to be just taking lots  
3           of photographs.  They appeared to be having a good time.

4           Q.  Are you aware of other trips that these suspects  
5           took?

6           A.  Yes.  Mr. Seymour went with the Bui family to  
7           Mexico.

8           Q.  And do you recall about when that was?

9           A.  Yes.  It -- I wouldn't -- not exactly.  Maybe  
10          October, November.

11          Q.  And what type of photographs were taken on that  
12          trip?

13          A.  Your typical vacation photographs, boat -- on a  
14          boat, beach, things like that.

15          Q.  Are you aware whether any of the three  
16          defendants -- between August when this occurred to their  
17          apprehension in January whether any of the three of them  
18          tried to report this crime?

19          A.  They did not.

20          MS. JOHNSTON:  Thank you.  No further questions.

21          THE COURT:  Is there any recross on those points  
22          on behalf of Mr. Seymour?

23          MR. JUBA:  No, thank you.

24          THE COURT:  On behalf of Mr. Bui?

25          MR. EARLE:  May I have just a moment?

1           No, Your Honor. Thank you very much.

2           THE COURT: Detective Baker, thank you for  
3           testifying. You may step down.

4           Is the next witness available?

5           MR. MORALES: He is.

6           THE COURT: Let's go ahead and get started.  
7           We'll go up until noon.

8           MR. MORALES: Mark Sonnendecker.

9                       SPECIAL AGENT MARK SONNENDECKER,  
10           called as a witness on behalf of the People, having been  
11           first duly sworn, was examined and testified as follows:

12           THE COURT: Sir, you can remove your mask while  
13           you testify, but please speak into the microphone.

14           Counsel, please proceed.

15           MR. MORALES: Thank you.

16                               DIRECT EXAMINATION

17           BY MR. MORALES:

18           Q. Good morning, sir.

19           A. Good morning.

20           Q. Could you please introduce yourself to the  
21           court, spelling your first and last name for the court  
22           reporter, the Court, and counsel?

23           A. My name is Mark Sonnendecker, M-a-r-k,  
24           S-o-n-n-e-n-d-e-c-k-e-r.

25           Q. And, sir, how are you employed?

1           A. I'm a special agent with the Bureau of Alcohol,  
2 Tobacco, Firearms and Explosives, the ATF.

3           Q. And how long have you been with the ATF?

4           A. 18 years.

5           Q. And prior to that, did you have any law  
6 enforcement experience?

7           A. I did not.

8           Q. Can you tell us a little bit about your  
9 educational background?

10          A. I have a bachelor's degree in communication from  
11 Ohio University and I have a master's degree in criminal  
12 justice from Tiffin University.

13          Q. And, sir, have you received any specialized  
14 training in the area of data analysis?

15          A. I have.

16          Q. Can you briefly describe that for the Court?

17          A. I have received hundreds of hours of formalized  
18 training in digital forensics, cellular record and  
19 geospatial analysis from ATF, from other law enforcement,  
20 from third-party companies, and from cell phone carriers  
21 themselves.

22          Q. And have you received any certificates in the  
23 area of data analysis?

24          A. I do have several forensic certifications. I  
25 have -- I'm a certified computer examiner through the

1 International Society of Forensic Computer Examiners. I  
2 have an A+ certification, which is a computer-related  
3 certification through -- it's called CompTIA, the  
4 Computer [sic] Technology Industry Association. I have  
5 certifications from a company called Cellebrite, which is  
6 a forensic program, to utilize their software. I have a  
7 certification from a company called Magnet Forensics to  
8 utilize their AXIOM software.

9 Q. Have you -- how many formal forensic  
10 examinations have you done of digital evidence?

11 A. In regards to digital forensics, I've done well  
12 over 1,000 forensic examinations.

13 Q. And when you talk about digital evidence, are  
14 you talking about cell phone data?

15 A. In -- in regards to digital forensics, I'm  
16 talking about actual devices themselves.

17 Q. Okay. How about cell phone data or data that's  
18 received through social media search warrants?

19 A. Yes, sir. I've analyzed well over 2,000  
20 datasets from cell phone -- records from cell phone  
21 companies or social media companies.

22 Q. Okay. And have you ever been qualified as an  
23 expert in the area of digital evidence and cell phone  
24 analysis?

25 A. Yes, I have.



1 Q. Approximately how many times?

2 A. On approximately 12 occasions.

3 Q. Okay. Sir, when did you get involved in the  
4 homicides that occurred at 5312 North Truckee Street on  
5 August 5th, 2020?

6 A. I received a phone call at approximately  
7 6:15 a.m. on the 5th requesting my assistance.

8 Q. And why was your assistance requested? Did you  
9 know?

10 A. Initially, I was requested to come out to help  
11 with some forensic examinations of routers, of routers  
12 that provide internet access in homes in the surrounding  
13 area around 5312 Truckee.

14 Q. And what kind of analysis would you be able to  
15 do with a router in the early stages?

16 A. What we were attempting to see is if any of the  
17 suspects who committed the crime, if their cell phones  
18 were on their person and may have connected to the wifi  
19 networks around the house.

20 Q. And how do you do that?

21 A. You log into the actual router itself to see if  
22 there are logs of devices that were connected.

23 Q. Okay. And was that fruitful at that point in  
24 time?

25 A. It was not.

1 Q. Did you continue on to assist in the  
2 investigation?

3 A. I did.

4 Q. Tell the Court, generally, what you were doing  
5 in the beginning.

6 A. Initially, it -- I was -- I was conducting a  
7 canvass of the area, looking for surveillance camera  
8 footage. And then as the days got -- went out, I started  
9 to help with tower dumps.

10 Q. Okay. What is a tower dump?

11 A. A tower dump is when we -- we obtain a search  
12 warrant and send it to the phone companies and ask them  
13 to provide us with all of the cell phones that connected  
14 to cell towers in a given area.

15 Q. Okay. And did you pick a specific time?

16 A. Yes, sir.

17 Q. So did you -- so you take a specific date?

18 A. Yes, sir.

19 Q. And was that August 5th, 2020?

20 A. It was.

21 Q. And did you have a specific time period?

22 A. Yes, sir.

23 Q. Do you recall what that was?

24 A. It was 2:00 a.m. to 2:40 a.m.

25 Q. And why did you pick that specific time period

1 on that specific date?

2 A. Based on the evidence that we had at the time,  
3 that is what we could tell -- we knew the time of the  
4 fire and we knew, based on information that we had  
5 developed, when the suspect vehicle had left, so we felt  
6 that the 2:00 a.m. to 2:40 a.m. time frame would be  
7 relevant to try to help identify a suspect phone.

8 Q. And when you do serve these search warrants and  
9 get the information back, what are you looking to get  
10 from a tower dump?

11 A. Ultimately, we're trying to identify a device  
12 that was present during -- during the time of interest  
13 and ultimately attribute that back to a suspect.

14 Q. Okay. And how would you be able to know whether  
15 or not there was a device that would talk with that tower  
16 during that time period on that date?

17 A. That's the challenging part. The tower dump  
18 itself -- we will receive thousands of records of devices  
19 that connected to cell towers in a given area. So  
20 it's -- it's a very labor-intensive analysis for sure.

21 Q. Do I have to be using my phone for my device to  
22 be on that tower dump?

23 A. It depends on the type of data that's provided  
24 from the cell phone company.

25 In this instance, we asked for two types of

1 data. We asked for a traditional tower dump, which would  
2 tell us any phones that made or received phone calls  
3 during this time frame. And then we also asked for  
4 what's called a specialized location data dump, which  
5 would provide us with, essentially, passive  
6 registrations, devices that were in the area and were  
7 communicating with the network in that time frame.

8 Q. Okay. And did this -- you eventually get this  
9 data and asked -- were you asked to analyze it?

10 A. Yes, sir.

11 Q. Now, when you get this data from one of the cell  
12 phone carriers, what -- how does it come to you and how  
13 do you start to look at it?

14 A. It's emailed to me from the phone company, or  
15 there are law enforcement portals for the phone companies  
16 where I'll log into and download it directly from there.  
17 Basically, these are all Excel documents, essentially.

18 Q. Okay. And what do you do with that information  
19 that you receive?

20 A. I will use several different programs to try to  
21 aid in the visualization of the data as well as the  
22 analytics trying to figure out what devices were there  
23 during what time frame and information of that sort.

24 Q. And did you also have a specialized -- or a  
25 specific location that you were asking them to provide

1 you information on?

2 A. Correct. Yes, sir.

3 Q. And what area was that?

4 A. In the area surrounding 5312 Truckee.

5 Q. Okay. And who did you serve those tower dumps  
6 to both for general information as well as specialized  
7 location data?

8 A. I served them to Verizon Wireless, T-Mobile,  
9 Sprint, and AT&T.

10 Q. And did these four carriers eventually respond  
11 to those warrants?

12 A. They did.

13 Q. And did they produce data as to the cell phone  
14 activity as well as the location data?

15 A. Yes, sir.

16 Q. I want to focus on T-Mobile. Did the T-Mobile  
17 warrant come back with particular devices?

18 A. Yes, sir, it did.

19 Q. And how many devices did it come back with?

20 A. In the specialized location data -- or the  
21 timing advance is what T-Mobile calls it -- there were  
22 1,471, if I recall correct -- or if I recall the correct  
23 number, unique devices that were captured within a 1-mile  
24 radius of 5312 Truckee during the 2:00 a.m. to 2:40 a.m.  
25 time frame.

1 Q. Did that amount of unique devices surprise you  
2 in a residential neighborhood like the Truckee  
3 neighborhood?

4 A. It did not.

5 Q. Okay. Now, how easy would it be for you to go  
6 through 1,471 devices and be able to figure out whether  
7 they are -- have any relevance whatsoever, anything  
8 whatsoever to do with the investigation?

9 A. It's quite challenging.

10 Q. Okay.

11 A. It's quite challenging to look through all that  
12 information and then identify what is or is not relevant.

13 Q. Okay. And you also got back similar material  
14 from Verizon; is that right?

15 A. Yes, sir.

16 Q. And how many different unique devices did you  
17 get there?

18 A. In their specialized location data, they --  
19 there was 4,595 devices in that time frame.

20 Q. So five times, almost, as difficult as the one  
21 from T-Mobile?

22 A. Correct.

23 Q. Understanding the nature of the case and the  
24 desire to investigate this, did you come up with a way to  
25 try and maybe reduce that number?

1           A. I did.

2           Q. And what was it -- what was the next search  
3 warrants that you sought to try and reduce those numbers  
4 down to something that was possibly more manageable?

5           A. We authored a warrant that allowed us to use a  
6 tool called a cell-site simulator.

7           Q. Okay. And what is cell-site simulator?

8           A. It's essentially a radio that is in the back of  
9 a vehicle. And that radio essentially acts like a cell  
10 tower. It communicates in on the frequencies of the cell  
11 phone carrier. So it will communicate on the T-Mobile  
12 frequency, it will communicate on the Verizon Wireless  
13 channels, and the same thing with Sprint and T-Mobile.

14          Q. And what kind of data do you get from those  
15 search warrants?

16          A. All that is -- all that we are receiving from  
17 that is what's call and IMSI, an international mobile  
18 subscriber identifier, which is a unique number -- or a  
19 unique identifier that identifies a subscriber on a  
20 particular cellular network.

21          Q. Okay. And did you do that for the T-Mobile  
22 network?

23          A. Yes, sir.

24          Q. And were you able -- how do you do this? Do you  
25 drive around at the same time in the same location with

1 this device in the back of your car?

2 A. Yes, sir. So we went out at 2:00 a.m. on the --  
3 I believe it was August 20th. We drove around in the  
4 immediate neighborhood of 5312 Truckee, utilizing that  
5 tool in order to identify T-Mobile devices that were in  
6 the area on that date.

7 Q. Okay. And were you able to then get a number of  
8 how many unique devices were on August 20th when you did  
9 this?

10 A. Yes, sir.

11 Q. And what was the number at that point in time?

12 A. I believe it was 723 unique IMSIs were -- were  
13 found during that evening.

14 Q. Did you then take those 723 that you got through  
15 that cell-site simulator and compare it with the original  
16 dumps from T-Mobile?

17 A. I did.

18 Q. And were you able to throw out some of the  
19 numbers?

20 A. Yes. So if there were -- of the 723, if they  
21 were also present on the initial dump provided by  
22 T-Mobile, then we excluded them, meaning it was a device  
23 that was there on both dates so it was probably someone  
24 that lived in that neighborhood. And so we excluded  
25 those and then concentrated on probably 100 to 200 that



1 were still left.

2 Q. Okay. And did you eventually narrow that down  
3 even further?

4 A. I did.

5 Q. And how did you do that?

6 A. By analyzing the -- phone by phone, the  
7 location-based data that was provided by T-Mobile and  
8 deciphering whether it was or was not relevant based on  
9 the facts that I knew at that time of the case.

10 Q. Okay. And what number did you eventually get  
11 down from that 1,471 that you started off with?

12 A. Down to 33.

13 Q. All right. Did you then issue search warrants  
14 for those 33 cell phones to try and figure out who those  
15 belonged to and to see whether or not you could find some  
16 lead to give to the investigators?

17 A. Yes, sir. We requested subscriber information  
18 from T-Mobile for those 33 devices.

19 Q. And from that information did anything jump out  
20 and say, We've got our guy or gal or anything?

21 A. At that time, no, sir.

22 Q. Okay. And in that initial 33 that you came  
23 across, did you eventually find someone who was relevant  
24 to this investigation?

25 A. Eventually. Yes, sir.

1 Q. And did you eventually, from that 33, get to the  
2 subscriber of Tanya Bui for a cell phone number  
3 720-382-0015?

4 A. Yes, sir.

5 Q. At the time that you saw that information after  
6 narrowing it down to 33, did you know how Ms. Bui or that  
7 phone number would be relevant to the investigation?

8 A. Not at that time, sir.

9 Q. Now, did you eventually get involved, in  
10 November of 2020, with a Google keyword search?

11 A. Yes, sir.

12 Q. And what is a -- what was the purpose of the  
13 Google keyword search?

14 A. We submitted a warrant to Google requesting  
15 information on any Google users who had searched that  
16 address, 5312 Truckee, or some of the -- the derivatives  
17 of that name, 5312 Truckee Street, 5312 Truckee St., so  
18 on and so forth, variations of the address.

19 Q. Okay. Did you pick a particular time period  
20 from date one to the end date?

21 A. We did two weeks prior to the night of the  
22 arson.

23 Q. So July 22nd?

24 A. Yes, sir.

25 Q. To August 5th?

1 A. Yes, sir.

2 Q. Did you pick a particular time period between  
3 that time period -- those two dates?

4 A. I don't -- I believe it just encompassed that  
5 entire two-week time frame.

6 Q. And why did you pick that entire two-week time  
7 period?

8 A. We felt that based on our knowledge of the case  
9 at that point, that whoever did this likely had to do  
10 some form of research on the address. The neighborhood  
11 in -- the neighborhood is not set up like a grid. It's  
12 very confusing when you're in there. So we felt that  
13 whoever did this might have needed some assistance either  
14 through mapping or some other form of research to figure  
15 out exactly where this house was.

16 Q. And did Google eventually return data on that  
17 first search warrant?

18 A. Yes, sir.

19 Q. And did it narrow it down to five accounts?

20 A. Yes, sir.

21 Q. And what kind of accounts did they give you at  
22 first?

23 A. Well, at first they provide us with what are  
24 called anonymized results, meaning they will give us a  
25 number that identifies the particular account, but it

1 doesn't tell us who that account is actually subscribed  
2 to. Along with that, they'll provide us with information  
3 pursuant to the warrant. In this instance, who queried  
4 this address at what dates and times, IP addresses that  
5 were utilized to -- during the course of that particular  
6 search.

7 Q. And how does Google, if you know, retain that  
8 data? How does it know whether or not I, using my cell  
9 phone, have done a search for 5312 North Truckee?

10 A. Well, the Google is in the data collection  
11 business. So anything that's happening with their  
12 products, they've got a pretty good idea of what's  
13 occurring. But specifically, if you are logged into a  
14 Google account and are doing things with your Google  
15 products, they will be able to attribute whatever it is  
16 that you're doing back to your account.

17 Q. So if I do a Google Maps search, they're going  
18 to retain that?

19 A. Yes, sir.

20 Q. If I'm looking at my Google Gmail account, I'm  
21 going to get that?

22 A. Yes, sir.

23 Q. How about Snapchat?

24 A. Snapchat is a different company, so those --  
25 things that you're doing inside of Snapchat will not be

1 found at Google.

2 Q. How about Facebook?

3 A. Same concept. It's not at Google.

4 Q. But if I'm using -- if I've got a Google app  
5 open or using it, it's going to capture what I do within  
6 searching, right?

7 A. Yes, sir.

8 Q. You also indicated that Google can also tell you  
9 about IP addresses. What do you mean by that?

10 A. An IP address is essentially -- it's a value  
11 that is used to identify a device on a network. As far  
12 as investigations go, we can, in many instances, figure  
13 out where that IP address was utilized or -- or the  
14 subscriber of the account related to the usage of that IP  
15 address.

16 Q. If I have a Comcast account and I have -- will  
17 that give you an IP address?

18 A. Yes.

19 Q. How?

20 A. When you are looking to do something with a  
21 device and connect to the internet, connect to Facebook,  
22 Google, whatever it might be, if you're utilizing Comcast  
23 for your internet service, an IP address is needed.  
24 That's assigned by Comcast so it can help you route  
25 across the networks to get you to where you want to go.

1 Q. Could it be -- will that IP address be to a  
2 particular location?

3 A. In many instances, yes.

4 Q. An address?

5 A. Yes.

6 Q. A subscriber?

7 A. Yes.

8 MR. MORALES: Okay. Does the Court want to take  
9 a break now?

10 THE COURT: I think that would be appropriate,  
11 yes. Thank you, Counsel.

12 So, sir, we're going to recess until 1:30. All  
13 right? So plan to be back at 1:30. Likewise, we will  
14 see the parties and counsel at 1:30 as well. We'll  
15 reconvene at that point in time.

16 I would ask the sheriff to assist in the exit  
17 from the courtroom by the spectators once you have the  
18 defendants taken care of.

19 We'll recess until 1:30. Thank you.

20 (Recess taken, 12:01 p.m. to 1:31 p.m.)

21 THE COURT: All right. We're back on the record  
22 in 21CR20000 and 21CR20001. Parties and counsel are  
23 present. Detective -- Special Agent Sonnendecker is on  
24 the stand.

25 Counsel, please resume.

1 MR. MORALES: Thank you.

2 Q. (BY MR. MORALES) When we took a break, Special  
3 Agent Sonnendecker, we were talking about the key -- the  
4 Google keyword search and that they first returned the  
5 five anonymized accounts. Do you recall that?

6 A. Yes, sir.

7 Q. And when you get these five accounts, what do  
8 they look like? What -- can you describe that for the  
9 Court?

10 A. It is an Excel file with -- one column has an  
11 anonymized number which is specific to a given account.  
12 So we can tell, based on the number, that it is the same  
13 account if there were multiple instances. Then there's  
14 dates and times of occurrence. There are search terms,  
15 things that were searched. There's IP addresses that are  
16 attributed. And then there's some other kind of Google  
17 information about the type of device that was utilized  
18 for those searches.

19 Q. Okay. Did investigators then -- after they get  
20 these anonymized accounts, then do another round of  
21 search warrants to try and get subscriber information for  
22 those anonymized accounts?

23 A. Yes, sir.

24 Q. And you do those for the ones that you believe  
25 are relevant at that point in time?

1 A. Yes, sir.

2 Q. And you did that for five at this point in time?

3 A. Correct.

4 Q. Okay. And did you eventually get back  
5 information from those warrants for those five anonymized  
6 accounts as to people that they may be associated with?

7 A. Yes, sir.

8 Q. And did one of them come back to a Mami Diol?

9 A. Yes.

10 Q. And did one of them come back to a ds@gmail.com?

11 A. Yes, sir.

12 Q. And, again, you know D.S. to be a bigger name  
13 than that, but for the purpose of this hearing we're  
14 talk -- we're only using the term "D.S."? You understand  
15 that?

16 A. Yes, sir, I do.

17 Q. And did it come back with the cell phone number  
18 as well?

19 A. It did.

20 Q. And was that cell phone number 720-726-0719?

21 A. It was.

22 Q. Did it come back to an individual with the name  
23 of kevin14bui@gmail.com?

24 A. Yes, sir.

25 Q. And, again, for a cell phone number of



1 720-382-0015?

2 A. Yes, sir.

3 Q. Did it also come back as gavinseymour7@gmail.com  
4 with a cell phone number of 720-643-6688?

5 A. Yes, sir.

6 Q. And then finally for an Elizabeth -- or  
7 lizabeth006@gmail.com, 505-306-8584?

8 A. Yes, sir.

9 Q. So it came back to those five identifiable  
10 individuals; is that right?

11 A. Yes, sir.

12 Q. Now, as to the first one, for Mami Diol, did you  
13 kind of exclude that one out based on their Google  
14 searches for 5312 North Truckee Street?

15 A. Yes, sir.

16 Q. Why?

17 A. Looking at the name, we realized that that was a  
18 family member.

19 Q. And as to Ms. Martinez, did you and  
20 investigators look into Ms. Martinez as to why she may  
21 have been searching for 5312 North Truckee Street?

22 A. Yes, we did.

23 Q. What kind of things did you look at to see about  
24 her and why she may be looking at that address during  
25 that specific time period that you had designated?

1           A. There was a search warrant that was obtained for  
2 her Google account and information in it. So I searched  
3 all through that, looking for any reason or any  
4 information that related to the 5312 Truckee address or  
5 any of the other suspects in this case, and I found  
6 nothing.

7           I later -- when we had cell phone records for  
8 people of interest in the case, I queried her phone  
9 number every which way I possibly could relating to -- to  
10 see if it was in the call records of other suspects, and  
11 it was nowhere to be found.

12          Q. And so did you eventually exclude her as a  
13 possible suspect here?

14          A. She was. Yes, sir.

15          Q. And did you then focus on the three that you  
16 had: D.S., Kevin Bui, and Gavin Seymour?

17          A. Yes, sir.

18          Q. Now, did you do some traditional investigative  
19 work at this point in time trying to link them all  
20 together?

21          A. Yes.

22          Q. What kind of traditional investigative work did  
23 investigators do to kind of see if there was a connection  
24 between these three and the possible three that were  
25 outside North Truckee before the fire?

1           A. Once we received those names, then we started  
2 doing investigative research into each one of those  
3 persons, figuring out who they were, how old they were,  
4 weight, height, hair color, where they're at, things of  
5 that nature.

6           We noted that based on the physical descriptors,  
7 they generally matched what we were able to tell from  
8 the -- the video surveillance of the suspects based on  
9 height and weight, generally speaking. We figured out  
10 where they went to school, talked with school resource  
11 officers at those schools, and eventually figured out  
12 that they knew each other. And then we started, you  
13 know, continuing our investigation further into them.

14          Q. Okay. And when you saw the name Kevin Bui, did  
15 that take you back to the original tower dumps that you  
16 had done back in August of 2020 and the number that had  
17 come out of that 33 list for Tanya Bui?

18          A. Yes, sir.

19          Q. And did that further pique your interest in  
20 investigating Kevin Bui?

21          A. It did. It showed me that the cell phone that  
22 was attributed to Kevin and/or Tanya Bui was definitely  
23 in the area of the arson during the relevant time frame.

24          Q. Okay. And you indicated that you could get  
25 Comcast IP addresses as well; is that right?

1 A. Yes, sir.

2 Q. Were the -- on the Google returns did you have  
3 an IP address for a location on Youngfield?

4 A. Yes. So for the one -- at least one of the  
5 queries had an IP address that was attributed back to  
6 Comcast, meaning Comcast was the internet service  
7 provider when that search was conducted. The subscriber  
8 information, after we obtained a warrant and went to  
9 Comcast for the usage of that IP address at that time  
10 frame, was for 81 Youngfield Court.

11 Q. And did you know who had lived at that address  
12 back on August 4th, August 5th, or prior to that, of  
13 2020?

14 A. The Bui family.

15 Q. Okay. And that was, again, information that you  
16 had previously developed but now was coming into at least  
17 a clearer vision?

18 A. Yes, sir.

19 Q. Now, after you obtained the information on the  
20 account holders for Google, were additional search  
21 warrants then authored and served for other data?

22 A. Yes.

23 Q. Were search warrants issued for Google accounts?

24 A. Yes, sir.

25 Q. For Gmail accounts?

1 A. Yes, sir.

2 Q. For Snapchat?

3 A. Yes.

4 Q. For Facebook?

5 A. Yes, sir.

6 Q. Did you ever issue a search warrant or was a  
7 search warrant issued for cloud or Apple cloud storage?

8 A. Yes, sir.

9 Q. Why?

10 A. After doing an analysis of some of the records  
11 that we had received, I specifically -- the Gmail emails  
12 that were -- that we saw, I noted that all three of the  
13 persons of interest utilized iCloud services through  
14 Apple. I knew from my training and experience that we --  
15 with a search warrant, we may be able to obtain any of  
16 the backups that were in the Apple iCloud.

17 Q. Now, did all of this information come in at once  
18 or does it come in over time?

19 A. Over time, sir.

20 Q. And did you eventually summarize what you saw  
21 throughout all of the search warrants that you -- that  
22 were executed in this case?

23 A. Yes, sir.

24 Q. I want to talk about accounts attributed to  
25 Mr. Bui and searches. When did he first start searching

1 for North Truckee?

2 A. July 23rd, 2020.

3 Q. And did he look on that on Google search as well  
4 as Google images?

5 A. Yes, sir.

6 Q. And did he ever look at any real estate market  
7 video that would show what the house looks like or  
8 anything of that nature?

9 A. Yes, sir. If I recall correctly, it was Zillow  
10 or trulia.com.

11 Q. Okay. Did he then look at it again on  
12 July 28th, 2020?

13 A. Yes, sir.

14 Q. And how did he do that? Did he search it  
15 through Google?

16 A. Yes, sir.

17 Q. Now, there's been some discussion that he also  
18 did some searches on Google for Spirit Halloween.

19 Did he do that?

20 A. Yes, sir.

21 Q. And what date? Do you recall?

22 A. August 4th.

23 Q. Okay. And did he do that a couple of times with  
24 Google?

25 A. Yes, sir.

1 Q. And then after the fire on August 5th of 2020,  
2 at 10:00 a.m., did he do any searches relevant to this  
3 investigation?

4 A. Yes.

5 Q. What did he do?

6 A. He searched local news stories on the arson and  
7 the fire that occurred at that house.

8 Q. And that would have been on the morning of  
9 August 5th, 2020?

10 A. Yes, sir.

11 Q. Did you do a similar analysis of Gavin Seymour's  
12 accounts? Again, all of the accounts kind of generally.

13 A. I did.

14 Q. And did he ever search for 5312 North Truckee  
15 Street?

16 A. He did.

17 Q. When did he start?

18 A. July 28th.

19 Q. Specifically, did he ever ask -- or one of the  
20 searches attributed to him ever look for something more  
21 specified of that address?

22 A. Yes, sir.

23 Q. And what was that?

24 A. The interior of 5312 Truckee.

25 Q. And did he ever look July 28th on type of real

1 estate to see if he could get photographs of 5312 North  
2 Truckee Street?

3 A. Yes. It was -- again, it's either Zillow or  
4 Trulia. I can't recall which one.

5 Q. After the arson on the morning of August 5th,  
6 did Mr. Seymour do any searches on local news?

7 A. Yes, sir.

8 Q. And what did he look for on the local news?

9 A. Looking for news updates as it related to the  
10 arson at 5312 Truckee.

11 Q. Okay. Now, as far as some of the searches for  
12 5312 North Truckee, were they ever conducted between  
13 Mr. Bui and Mr. Seymour on the same days or around the  
14 same time?

15 A. Yes, sir. On the 28th of July, all three -- all  
16 three in this matter were searching that address and  
17 things related to it generally around the same time, in  
18 the 9:00 hour, essentially, on the 28th.

19 Q. Were they together? Could you tell?

20 A. I -- if I recall correctly, I don't believe they  
21 were. I believe they were in different places.

22 Q. Now, on the following day, August 6th, 2020,  
23 does Mr. Seymour continue to look on local news about the  
24 Truckee fire?

25 A. Yes, sir.



1 Q. On August 7th, does he ever query something  
2 about murder?

3 A. He does.

4 Q. What does he query?

5 A. Something to the effect of how many years for  
6 one count of murder.

7 Q. And on August 7th, does he also ask about,  
8 possibly, you?

9 A. Yes. There's a search query for: What is ATF?

10 Q. And at that point in time, was the local news  
11 media putting out the fact that the ATF was working with  
12 the Denver police on this investigation?

13 A. Yes, sir.

14 Q. Now, let's move to D.S.'s account and the  
15 relevance to this investigation. I think you indicated  
16 he also searched for North Truckee; is that right?

17 A. Yes.

18 Q. And on what date?

19 A. July 28th.

20 Q. And did he do numerous searches?

21 A. Yes, sir.

22 Q. And, again, were these searches near the time  
23 that Mr. Bui and Mr. Seymour also searched?

24 A. They were.

25 Q. On August 4th, 2020, does he look for directions

1 to any place?

2 A. Yes, sir. Party City.

3 Q. And where was he specifically looking? Do you  
4 recall the address?

5 A. It was a Party City, if I recall correctly, in  
6 Lakewood.

7 Q. In the Belmar shopping area?

8 A. Yes, sir.

9 Q. Now, during the course of the investigation, did  
10 you also receive photographs and other images to kind of  
11 tie the names to those accounts?

12 A. Yes.

13 Q. Did you also get images of photographs they may  
14 have taken while being together or associated together or  
15 with family or with friends?

16 A. Yes, sir.

17 Q. I'm going to show you Exhibit Number 18.

18 MR. MORALES: Can we publish that?

19 MS. JOHNSTON: It's on.

20 MR. MORALES: That's not my computer. Are you  
21 sure it's on the Prosecution table?

22 THE COURT: Positive.

23 MR. MORALES: We'll have to do this the  
24 traditional way. May I approach?

25 THE COURT: Yes.

1 Q. (BY MR. MORALES) Can you identify those  
2 photographs, Special Agent, Exhibits 18 and 19?

3 A. Yes. These are photos from the -- from the  
4 social media accounts that show the defendants in this  
5 matter in Exhibit 18. And in Exhibit 19, it shows two  
6 out of the three defendants.

7 Q. Okay. And then specifically as it relates to  
8 Exhibit Number 18, that shows Kevin Bui, Gavin Seymour,  
9 and D.S.; is that right?

10 A. Yes, sir.

11 Q. And then in the second one, it shows Kevin Bui  
12 and D.S.; is that right?

13 A. It does. Yes, sir.

14 Q. Although these are just two, were there lots of  
15 photographs of the individuals, the three suspects in  
16 this case, together?

17 A. There were.

18 Q. Were they in each other's contacts information?

19 A. Yes, they were.

20 Q. Did they have messages back and forth between  
21 each other?

22 A. Yes, sir.

23 Q. Did they communicate a lot together between the  
24 three of them?

25 A. They did.

1 Q. Okay. And were you ultimately able to pull up  
2 some text messages that were relevant to this case?

3 A. Yes, sir.

4 Q. Now, I want to specifically lead you to  
5 Exhibit 20. Are you familiar with Exhibit Number 20?

6 A. Yes, sir, I am.

7 Q. Is this a text message exchange that you found  
8 between Gavin -- Kevin Bui and Gavin Seymour?

9 A. Yes, sir.

10 Q. And was this recovered from the search warrants  
11 conducted on their data?

12 A. Yes, sir, it was.

13 Q. Specifically, does this show that on July 15th,  
14 2020, at 2107, Kevin Bui sent a message to Gavin Seymour  
15 that said, "I got robbed"?

16 A. Yes, sir.

17 Q. And then there's two other text messages. And  
18 then later, on July 16th, 2020, at 12:37, does he say:  
19 "im good bro like i been fine it is what it is i can't  
20 find this nigga everything i lost i can get bacc it just  
21 shoudlnt have happened like i deserved that shit cuz i  
22 knew it would happen and still went %2C they goin get  
23 theirs like mine"?

24 A. Yes, sir.

25 Q. And then does Gavin Seymour respond: "Yuh I got

1 you bro if you need anything lmk %2C idk why I would let  
2 you go alone I'm sorry for that %2C not like I could've  
3 done anything"?

4 A. Yes, sir.

5 Q. And then Kevin Bui, on July 16th, later on that  
6 day responds: "this shit just got me so sour like i cant  
7 even be mad cuz we used to do the same shit to random  
8 niggas"; is that right?

9 A. Yes, sir.

10 Q. Kevin Bui sends Gavin Seymour another message  
11 and says: "#possiblyruinourfuturesandburnhishousedown";  
12 is that right?

13 A. Yes, sir.

14 Q. Now, did you ever look into the social media or  
15 the cell phones or cell phones between Tanya Bui and  
16 Kevin -- Tanya Bui and Kevin Bui?

17 A. I did.

18 Q. And did you ever find a screenshot that Kevin  
19 Bui had sent Tanya Bui on July 17th, 2020, 10:37 a.m.?

20 A. I did.

21 Q. Okay. And what did that screenshot show,  
22 Exhibit Number 21?

23 A. It was a screenshot of the Find My iPhone app  
24 showing his cell phone at a location that Apple  
25 attributed to 5312 Truckee.

1 Q. And it shows at least where that phone could  
2 have been located; is that right?

3 A. It did.

4 Q. Can you explain to the Court how Apple would  
5 know -- or how does that application work?

6 A. The Find My iPhone is designed to obviously  
7 assist Apple users in locating their phone. Apple will  
8 utilize a whole series of -- of ways to figure out where  
9 your device is. It could be GPS. It could be proximity  
10 to known wifi access points. It could be done through  
11 triangulation within the cellular networks. So there's a  
12 variety of different ways that they can locate the  
13 device.

14 Q. Okay. And this image that's sent from Kevin  
15 Bui's phone to Tanya Bui's phone shows the approximate  
16 location of where this phone is; is that right?

17 A. It did, yes.

18 Q. And does it show the approximate location of  
19 5312 North Truckee Street?

20 A. Yes.

21 Q. Does it have any specificity as to exactly where  
22 it is at 5312 North Truckee Street?

23 A. No. There's a -- a dot, essentially. And that  
24 is where Apple is, I would say, best guessing where the  
25 device is located based on however they figured that out

1 at that point in time.

2 Q. Okay. Did you do any further dive into that  
3 information to try and say that this phone was either  
4 next door or in the yard or in a car that drove by or  
5 anything like that?

6 A. Unfortunately, with the information that's  
7 available, there's not much else that we can do because  
8 at that point in time, we don't know how Apple did that  
9 or how they obtained that information at that exact  
10 point.

11 Q. Could it have been that the phone wasn't there?

12 A. The phone was in that general area. That is for  
13 certain. It -- not necessarily at 5312 Truckee. It  
14 could have been -- there could have been an uncertainty  
15 factor to that location that was not given at that point  
16 in time when Find My iPhone was accessed.

17 Q. So in order to know that it really was at that  
18 location, you would have to do a further investigation or  
19 surveillance of that area?

20 A. Yes.

21 Q. Did Ms. Bui respond to that Find My iPhone  
22 message from Kevin Bui on July 17th?

23 A. Yes.

24 Q. And what did she say?

25 A. "So dumb."

1 Q. And did she get a response from Mr. Bui as to  
2 that comment "So dumb"?

3 A. Yes, sir.

4 Q. What did Mr. Bui say in response to "So dumb"?

5 A. "They goin get theirs like i got mine i swear."

6 Q. Okay. And on the evening of August 5th, 2020,  
7 at approximately 12:54 a.m., did you see messages from  
8 Tanya Bui's cell phone to Kevin Bui's cell phone?

9 A. I did.

10 Q. And did she ask a question?

11 A. She did.

12 Q. What did she ask?

13 A. Where -- the actual message said, "WYA," which  
14 is shorthand for "where you at" or "where are you?"

15 Q. Okay. And what did Kevin Bui respond to that  
16 inquiry from Tanya Bui?

17 A. He said: About to go that kid's house.

18 Q. Now, from the data that you received from  
19 Snapchat, from iCloud, from cell phones, from everything,  
20 can you develop direction as to where a phone is at any  
21 particular point in time?

22 A. Yes.

23 Q. And how do you do that?

24 A. From the cellular providers, there's a lot of  
25 information, some -- as far as geolocation or



1 location-based data. And from all of the response of  
2 warrants that we did, we obtained quite a bit of  
3 geolocation data from Snapchat.

4 Q. And what -- how are you able to say where a  
5 location is based on the Snapchat app?

6 A. Snapchat is a very location-heavy application,  
7 and they use -- just like the Apple iCloud, they use a  
8 variety of different mechanisms to figure out where a  
9 device is at a certain point in time. Again, it could be  
10 a GPS fix. It could be the proximity to known wifi  
11 access points. There's a series of other things that  
12 they'll do to try to get more precise data. Ultimately,  
13 they might fall back to utilizing a cellular network to  
14 figure out where that device is at a certain point in  
15 time.

16 Q. And were you able to look at all of the data  
17 from the three suspects' phones and try and determine  
18 whether their phones were at particular times during the  
19 course of the evening?

20 A. I did.

21 Q. Okay. Specifically, on August 4th, 2020, around  
22 5:54 p.m. to 6:17 p.m., could you identify where Kevin  
23 Bui and D.S.'s phones were based on the Snapchat data?

24 A. So just to clarify, from 4:30 p.m. until 6:17?

25 Q. 5:45 p.m. to 6:17 p.m. Sorry.

1           A. During that time frame, those devices were near  
2 a Party City at 7000 Alameda.

3           Q. Okay. And is that depicted in Exhibit Number 22  
4 that you created?

5           A. Yes, sir.

6           Q. Again, that shows approximately where both of  
7 those phones are at that point in time utilizing the  
8 Snapchat information?

9           A. It does.

10          Q. Now, later on that evening, are you able to  
11 track where Bui, Seymour, and D.S.'s phones are early in  
12 the evening?

13          A. Yes, sir.

14          Q. And approximately around 11:00, are they at a  
15 particular address that you're familiar with?

16          A. Yes, sir.

17          Q. Where were they at?

18          A. At the Bui residence.

19          Q. All three of them?

20          A. Yes, sir.

21          Q. Eventually, around 11:20, do two of those phones  
22 leave that residence?

23          A. They do.

24          Q. What two phones leave that residence?

25          A. The phones attributed to Gavin Seymour and Kevin

1 Bui.

2 Q. And what happens with D.S.'s phone?

3 A. It stayed stationary at the house.

4 Q. It didn't travel?

5 A. It did not.

6 Q. And where did they originally -- where did Kevin  
7 Bui and Gavin Seymour's phones travel to when they left  
8 the Bui house?

9 A. They bounced around a little bit and then  
10 settled in the general area of Gavin Seymour's house  
11 for -- for a short period of time.

12 Q. Okay. And did they eventually then leave that  
13 address as well?

14 A. Yes.

15 Q. And where did they travel?

16 A. Ultimately, there was some movement all over,  
17 but there was an approximate ten-minute window right  
18 after 1:00 a.m. where the devices were stationary. And  
19 when I kind of dug down into it, there was a gas station  
20 right in that general area.

21 Q. And what kind of gas station was in that general  
22 area?

23 A. I believe it was a Shell. It was -- 350 South  
24 Union was the address.

25 Q. And what you said is that it kind of stayed

1 still. What do you mean by that?

2 A. Meaning during -- as I was looking at that data  
3 for that ten-minute time frame, there were multiple  
4 Snapchat locations, but they were in the same -- the same  
5 area, the same location, over and over again. So as I  
6 was analyzing that data, I knew that that meant that  
7 those devices were likely stationary for that period of  
8 time, meaning they -- they stopped somewhere.

9 Q. Okay. And then you were able to determine the  
10 approximate location, and one of those locations was a  
11 gas station?

12 A. Yes, sir.

13 Q. And did that match up later with the interview  
14 with Mr. Bui done by Detective Baker?

15 A. It did.

16 Q. And, again, that was a gas station at 350 South  
17 Union Boulevard in Lakewood?

18 A. Yes, sir.

19 Q. And is that close to Kevin Bui's house or in his  
20 general area?

21 A. It was.

22 Q. And that's Exhibit Number 23 that you've -- was  
23 introduced as well?

24 A. Yes, sir.

25 Q. Finally, were you able to track the movements of

1 Mr. Bui's phone and Mr. Seymour's phone from the time  
2 that they started towards North Truckee?

3 A. I did.

4 Q. Please describe what you were able to identify  
5 through the cell phone data and all the social media data  
6 that you analyzed.

7 A. Well, I looked at all available location-based  
8 data from T-Mobile, which was the carrier of record for  
9 the phone for Mr. Bui, and from AT&T, which was the  
10 carrier of record for Gavin Seymour's phone. I looked at  
11 Snapchat data both the -- for Kevin Bui's and Gavin  
12 Seymour's accounts.

13 What I noted was that there was a clear pattern  
14 of movement from the area of where they were at, near the  
15 gas station in Lakewood, into the area of 5312 North  
16 Truckee Street. During that time frame, from  
17 approximately, I think, about 1:20 a.m. to 1:30 a.m. on  
18 the 5th of August, 2020, the -- the location data was in  
19 Lakewood. And you see the movement over -- so just  
20 before 2:00 a.m., the devices were showing geolocation  
21 data in the area of 5312 Truckee.

22 They stayed there for about 40 minutes accessing  
23 cell sites in that area that covered -- or accessing cell  
24 sites that provided coverage into the area of 5312 North  
25 Truckee. And then right around 2:40, those devices

1 started to move back west again into the area of --  
2 ultimately, to where Kevin Bui lived.

3 Q. Okay. So you were able to track both -- in  
4 Exhibits 24 and 25 that both Mr. Bui's and Mr. Seymour's  
5 phones traveled from Lakewood to Green Valley Ranch,  
6 stayed there for 40 minutes, and then after the arson,  
7 went back to the Bui residence?

8 A. Yes, sir.

9 Q. Both phones?

10 A. Yes, sir.

11 Q. Now, you had ultimately said that they arrived  
12 back at Mr. Bui's home; is that right?

13 A. Yes.

14 Q. What approximate time did they arrive back at  
15 Mr. Bui's home?

16 A. Approximately 3:15 in the morning.

17 Q. And then you can put Mr. Seymour's and Mr. Bui's  
18 phones at that location, Mr. Bui's house?

19 A. Based on the Snapchat data, yes, sir.

20 Q. Upon arriving home, what happens to D.S.'s  
21 phone?

22 A. Shortly after that arrival, there's an outgoing  
23 phone call, which to me indicated that it was a  
24 user-driven event. Somebody used that phone to make a  
25 phone call.

1 Q. And when you say "outgoing phone call," there  
2 was an outgoing phone call from D.S.'s phone?

3 A. Correct.

4 MR. MORALES: If I may just have a second, Your  
5 Honor.

6 I do want to correct the exhibits. It's  
7 actually 1 through 29. I misnumbered the phone -- what I  
8 sent yesterday was correct. So I'm actually -- we're  
9 moving to admit 1 through 29. I've renumbered the disks  
10 that we got today, just to be clear.

11 THE COURT: Okay. Thanks.

12 MR. MORALES: I have no further questions.

13 THE COURT: Okay. Cross-examination on behalf  
14 of Mr. Seymour?

15 CROSS-EXAMINATION

16 BY MR. JUBA:

17 Q. Good afternoon, sir.

18 A. Good afternoon.

19 Q. And do you have exhibits in front of you there?

20 A. I have 18 and 19 in front of me.

21 MR. MORALES: I put the rest of them up there.

22 MR. JUBA: If I could retrieve Exhibit 20.

23 Q. (BY MR. JUBA) And do you go by Special Agent  
24 Sonnacker -- Sonnendecker?

25 A. Sonnendecker, yes, sir.

1           Q. Sonnendecker. I want to start by talking about  
2 your interactions with Mr. Seymour.

3           A. Yes, sir.

4           Q. You met Mr. Seymour the day that he was  
5 arrested, right?

6           A. Yes, sir.

7           Q. And that was at the police station?

8           A. It was.

9           Q. You were one of the law enforcement officers who  
10 was attempting to interview Mr. Seymour?

11          A. I was.

12          Q. With his parents?

13          A. Yes.

14          Q. Initial questions that you asked, you asked him  
15 what his name was, right?

16          A. Yes.

17          Q. And this was in an interview room, prior to a  
18 Miranda advisement, correct?

19          A. We were definitely in an interview room. I  
20 don't recall if we asked him his name right off the bat  
21 or if we Mirandized first, but...

22          Q. You also asked him, prior to asking him any  
23 questions about the arson, what his phone number was,  
24 right?

25          A. I'm sorry. Can you ask that again?



1 Q. Prior to asking any questions about the arson,  
2 you asked him what his phone number was, right?

3 A. I believe so.

4 Q. And the carrier for his cell phone?

5 A. Yeah. Yes, sir.

6 Q. Why did you ask those questions?

7 A. Just as a form of verification.

8 Q. And what were you verifying?

9 A. I wanted to know if that's -- if he said that  
10 that was, in fact, his phone.

11 Q. So you were asking -- you were asking Gavin  
12 Seymour what his phone number was to verify information  
13 that you had previously obtained?

14 A. Well, we already knew that it was his, but I  
15 wanted -- we wanted to have him say that it was, in fact,  
16 his as well.

17 Q. Those questions were for an investigative  
18 purpose; is that fair?

19 A. They could have been.

20 Q. Were they?

21 A. In that instance, it really didn't matter if  
22 he -- what he did or did not say because we already knew  
23 that it was his.

24 Q. But you were asking him to confirm that  
25 information?

1           A. Sure.

2           Q. I want to talk about the scope of the  
3 information that you obtained during the search warrants.  
4 And correct me if I don't use the correct terminology.

5                   Is it fair to call a batch of data a cell phone  
6 record dump? Is that fair to say?

7                   Is that accurate to say, I should say?

8           A. So just to draw the difference between two -- so  
9 if the first things that we were -- the first warrant  
10 that we wrote as it related to cell phone records is a  
11 tower dump, which is the common term. And then  
12 eventually, once we had specific accounts for which we  
13 were obtaining search warrants, those are for call detail  
14 records or usage records of that given account.

15           Q. Okay. So I think I may be trying to use the  
16 phrase "call detail record."

17                   The cell phone tower dump, that doesn't give you  
18 a lot of information about what the user is doing on his  
19 or her cell phone, right?

20           A. A tower dump is a very small section of what's  
21 going on. It's a small area with a small -- generally, a  
22 small time frame. So it's more designed to see what  
23 devices were in a given area at a given time as opposed  
24 to, let's say, like a pattern of life on a known phone.

25           Q. And a cell phone tower dump, that's not going to

1 include text messages, pictures that people send or  
2 receive, any of those sorts of things, right?

3 A. No, sir, it would not.

4 Q. And then the call detail record, what is  
5 included in that type of information?

6 A. It is essentially transactional data, meaning  
7 the dates and times of a call or a text message that a  
8 person -- or the phone number that the target phone  
9 number, if you will, is in contact with. The times, and  
10 then in some instances we'll have cell towers and sectors  
11 that were accessed during a given phone call or text  
12 message or data event.

13 Q. And so that type of information, that would also  
14 not include pictures sent and received with the content  
15 of messages; is that correct?

16 A. Correct. No pictures, no message content; just  
17 the transactional data.

18 Q. Okay. And then a separate type of information,  
19 would you call that a cell phone dump?

20 A. Could you explain a little bit further what  
21 you're...

22 Q. So if you have a warrant for a specific number  
23 and, for instance, if you get a warrant to AT&T for all  
24 the records related to a specific phone number, what  
25 would you call that?

1           A. I would call that a search warrant for call  
2 detail records.

3           Q. That's the call detail record?

4           A. Yes, sir.

5           Q. What would you call the type of information that  
6 contains the specific content of data on a cell phone  
7 including pictures, messages, those sorts of things?

8           A. So the actual device itself would be a warrant  
9 for the forensic examination of a device.

10          Q. So I want to start kind of at the beginning  
11 here. The cell phone tower dump, how many unique devices  
12 did you get information on relating to -- or from the  
13 tower dumps?

14          A. There were -- altogether, there were thousands.

15          Q. The call detail records -- how many unique cell  
16 phones did you get information on from the call detail  
17 record warrants?

18          A. Just to make sure I'm understanding you  
19 correctly, how many individual warrants for known numbers  
20 did we obtain? Is that what you're asking?

21          Q. Correct.

22          A. I don't know the exact number off the top of my  
23 head, but I would say approximately ten.

24          Q. When you talked on direct examination about the  
25 33 cell phones that you got warrants for, what was the

1 specific information that you obtained on those 33 cell  
2 phones?

3 A. Those 33 devices, we -- the information that we  
4 obtained was only subscriber information from T-Mobile.

5 Q. And then the specific information related to --  
6 you said ten separate cell phones?

7 A. Approximately.

8 Q. And that was -- what was included in that type  
9 of information?

10 A. So for those ten -- approximately ten search  
11 warrants for call detail records, those were for  
12 individual accounts of interest. Those would obtain --  
13 or within those records were call detail records and cell  
14 site information specific to that account.

15 Q. But that -- would that include the content of  
16 messages?

17 A. It would not.

18 Q. Okay. The type of -- the other types of  
19 information that you obtained that you talked about were  
20 related to social media accounts, right?

21 A. Yes, sir.

22 Q. So in this case, as you testified, you got an  
23 inordinate amount of information from the cell phones and  
24 the social media related to Mr. Bui, Mr. Seymour, and  
25 D.S., right?

1 A. Yes, sir.

2 Q. And, just generally, how many thousands of pages  
3 would you quantify that as?

4 A. It's really hard to say because that information  
5 from the social media accounts is more digital as of --  
6 and files and pictures as opposed to actual pages of  
7 evidence. I don't know how to quantify that.

8 Q. If you put it all in PDF, it's over 10,000  
9 pages?

10 A. I would imagine.

11 Q. It includes thousands of messages that were  
12 exchanged on all the different platforms, right?

13 A. I don't know if it's that many, but there were a  
14 lot of messages, yes.

15 Q. There's messages that were exchanged just by  
16 ordinary text message, right?

17 A. Correct.

18 Q. Messages exchanged through Snapchat?

19 A. Yes.

20 Q. Facebook Messenger?

21 A. Yes.

22 Q. Were there other types of messages being  
23 exchanged?

24 A. The other -- the only other social media account  
25 that I can think of where there could have been was

1 Instagram. But there was very little within Facebook and  
2 Instagram, as I recall.

3 Q. Is it fair to say you found hundreds of  
4 exchanges between those three juveniles that I  
5 identified?

6 A. There was quite a few exchanges, yes, sir.

7 Q. And the scope of the information, this is every  
8 message that had ever been sent and saved on these types  
9 of platforms?

10 A. If the messages existed at that platform -- so  
11 let's use Snapchat, for example. If -- when Snapchat  
12 personnel pulled that data, whatever was there at that  
13 point in time, they provided.

14 Q. And that was true for all of the platforms that  
15 you got information for for the three juveniles?

16 A. Correct.

17 Q. And are you the one -- let me ask a different  
18 question. I'll rephrase it.

19 Have you searched through all of these messages  
20 on all of these platforms relating to all three of the  
21 juveniles?

22 A. I did.

23 Q. You were the agent assigned to do all of that?

24 A. Well, not necessarily assigned. But I looked  
25 through it, provided it in a format -- once the records

1 came in, they -- depending on the carrier, they can be a  
2 little challenging to deal with. So I used programs to  
3 make them easier to understand and easier to review and  
4 shared them with the other investigators as well.

5 Q. Okay. But it's fair to say that you have  
6 reviewed all of the written exchanges on any of these  
7 social media platforms or any other platform on the cell  
8 phone between the three juveniles, right?

9 A. I would say I've reviewed most of it. I'm not  
10 sure that I reviewed every single aspect of every single  
11 return, but I definitely searched through all of them.

12 MR. MORALES: And I'm going to reference  
13 Exhibit 20. If I could approach?

14 THE COURT: Why don't you put it on the screen  
15 so we can all see it.

16 MR. MORALES: Oh, sure.

17 THE COURT: Just put it on the document camera.  
18 No, just use the document camera. Just push the "live"  
19 button. You can position it so we can all see. There's  
20 a zoom function so you can zoom out. Great.

21 Q. (MR. MORALES) Okay. So I'm referencing  
22 Exhibit 20. These messages were exchanged on the  
23 Snapchat platform?

24 A. They were.

25 Q. And I think we're probably all familiar with how



1 text messages are exchanged. So on a cell phone, if  
2 someone texts someone, the text message would stay on  
3 their cell phone, right?

4 A. Yes, sir.

5 Q. Unless they deleted it, right?

6 A. Correct.

7 Q. And then if you pull a text message chain, you  
8 can look back and see all the messages that were  
9 exchanged, right?

10 A. Yes.

11 Q. There's kind of a different procedure for  
12 Snapchat messages?

13 A. So Snapchat is a different platform, obviously,  
14 and there is a messaging function within it. There are  
15 messages that can be sent and received. There might be  
16 some that are deleted by the user. There might be some  
17 that are not pulled or -- or, for whatever reason, stored  
18 at Snapchat.

19 Q. Let me ask this question: Are you familiar with  
20 how messages are sent and received on Snapchat?

21 A. Generally, yes.

22 Q. And are Snapchat messages automatically deleted  
23 unless they are saved?

24 A. I think it's how you send it within the  
25 application itself. So there are snaps, which is the --

1       you know, the term that Snapchat uses where there would  
2       be information that would be shared with all of your  
3       Snapchat users or some of them or however you decide to  
4       do it. That is the type of information that disappears  
5       from Snapchat. There's also the messaging function,  
6       which there's times where those messages that are sent  
7       privately between two people will still exist on the  
8       Snapchat servers.

9               Q. And I wasn't asking if it existed on the  
10       Snapchat server, but, rather, whether it was deleted on  
11       the individual user's Snapchat account that that person  
12       accesses. Do you know if that happens?

13              A. I'm not 100 percent sure.

14              Q. The exchange here in Exhibit 20 -- the first  
15       seven exchanges occur in a two-day period, right?

16              A. Yes, sir.

17              Q. And so in that two-day period, there's kind of a  
18       back and forth, right?

19              A. Yes.

20              Q. Kevin Bui is telling Gavin Seymour about being  
21       robbed?

22              A. Right.

23              Q. And Gavin Seymour is responding to that  
24       conversation?

25              A. Yes.

1 Q. And then there's -- what is it -- a two-week  
2 break?

3 A. Yes.

4 Q. From July 16th to August 1st, right?

5 A. Correct.

6 Q. So the conversation that they were having about  
7 being robbed stops on July 16th, right?

8 A. It does.

9 Q. And the last message relating to that  
10 conversation is from Kevin Bui, right?

11 A. Yes.

12 Q. And then the next message after that is two  
13 weeks later, again from Kevin Bui, right?

14 A. Yes, sir.

15 Q. And that's the message that you testified to on  
16 direct examination, the hashtag message?

17 A. Correct.

18 Q. And there's no response from Gavin Seymour to  
19 that message?

20 A. Right.

21 Q. Is there any indication he received or read that  
22 message that you can see from the Snapchat records?

23 A. No, sir.

24 Q. Now, the other information that you were talking  
25 about related to the search -- the Google search of the

1 Truckee Street address?

2 A. Yes, sir.

3 Q. And you obtained information that it was  
4 searched by all three of the juveniles, right?

5 A. Correct.

6 Q. Mr. Bui searched that term or something like  
7 that term multiple times on multiple different days,  
8 right?

9 A. Yes, sir.

10 Q. D.S. also searched that term multiple times on  
11 multiple different days, right?

12 A. I believe it was just on the 28th of July.

13 Q. On August 4th, he also searched that address?

14 A. Yes, sir.

15 Q. Okay.

16 A. Thank you.

17 Q. So he searched it also on multiple days,  
18 multiple times, right?

19 A. Correct.

20 Q. And Gavin Seymour searched the address only on  
21 that single day, July 28th, right?

22 A. Correct.

23 Q. Now, of the hundreds, at a minimum, of message  
24 exchanges that you reviewed between these three  
25 juveniles, did you come across any conversation

1           indicating extensive planning about this event?

2           A. No.

3           Q. Were there messages exchanged about who was  
4 going to have certain roles for this?

5           A. No, sir.

6           Q. Or who was going to pick up items or anything  
7 like that?

8           A. No, sir.

9           Q. Now, you talked about the message in Exhibit 20  
10 sent by Mr. Bui. Were there any messages at all sent by  
11 Mr. Seymour talking about fire or burning someone's house  
12 down or anything like that?

13          A. No, sir.

14          Q. Were any messages sent by Mr. Seymour at all  
15 talking about a plan that he had in this incident?

16          A. No, sir.

17           MR. JUBA: Just one moment, Your Honor.

18           Thank you. No further questions.

19           THE COURT: Thank you.

20           Cross-examination on behalf of Mr. Bui?

21           MS. LANZEN: Thank you.

22                                   CROSS-EXAMINATION

23           BY MS. LANZEN:

24           Q. Good afternoon, Agent Sonnendecker.

25           A. Good afternoon.

1           Q. I want to ask you a couple of questions about  
2 your relationship with the Denver Police Department.  
3 Okay?

4           A. Sure.

5           Q. Do you consider you work for them? Work with  
6 them?

7           A. I work with them.

8           Q. Do you have your own office with the ATF?

9           A. I do.

10          Q. And how do you document reports that you may  
11 write as part of working with the ATF?

12          A. Within the internal ATF case management system.

13          Q. And is that something that the Denver Police  
14 Department has access to?

15          A. No.

16          Q. It is something that you specifically have to  
17 share with the Denver Police Department for them to be  
18 able to review any investigation that you have done and  
19 reported on in your database?

20          A. Yes.

21          Q. And is that -- those are also reports and items  
22 that you would share with the district attorney's office?

23          A. Yes.

24          Q. Do they have access to them without you sharing  
25 them?

1 A. No.

2 Q. And are you aware of the district attorney's  
3 office not having a significant number of reports that  
4 you had in your ATF database?

5 A. I later learned.

6 Q. But those were ultimately shared with us about a  
7 week or a little bit ago, and it's my understanding there  
8 was a total of 27 reports that you had in your database  
9 that you shared with the district attorney's office.

10 A. Yes.

11 Q. Are you able to confirm that that is the  
12 entirety of reports that you have with the ATF database?

13 A. I am.

14 Q. Now, do you review reports written by the Denver  
15 Police Department?

16 A. Sometimes.

17 Q. In this particular case, have you reviewed a  
18 number of police reports written by the Denver Police  
19 Department?

20 A. I -- I have not.

21 Q. Now, you're considered and qualified in a number  
22 of different cases as an expert in digital evidence,  
23 correct?

24 A. Yes, ma'am.

25 Q. Which includes digital forensics and analysis of

1 cellular records?

2 A. Yes.

3 Q. And in order to form expert opinions, you have  
4 to review a significant number of documents?

5 A. Depending on the case. Yes, ma'am.

6 Q. Did you assist the Denver Police Department with  
7 a number of search warrants in this case?

8 A. Assist in what manner?

9 Q. Drafting the search warrants.

10 A. Initially, I drafted a few, but as the -- as we  
11 started progressing along, I did not draft as many.

12 Q. The ones that you were initially drafting, they  
13 were kind of used as a stock search warrant for future  
14 search warrants?

15 A. I would say it would depend on what type of  
16 search warrant it was that was being obtained going  
17 forward.

18 Q. But you do want to be careful when you draft  
19 search warrants that they're not overbroad and  
20 overinclusive?

21 A. Sure.

22 Q. I very briefly want to talk a little bit about  
23 the 27 reports that we just very recently received from  
24 your office. Okay?

25 A. Okay.



1           Q. The first two reports were written by Agent  
2 Bryan Kempa. Did you have a chance to review those  
3 reports or did you review those as part of your  
4 investigation?

5           A. I did see them, yes.

6           Q. Okay. And as far as -- from Report Number 1 in  
7 Bryan Kempa's report, he actually participated in the  
8 fire scene examination at 5312 Truckee Street?

9           A. He did.

10          Q. And his initial classification when he was  
11 investigating the case, according to Report Number 1, is  
12 that it was undetermined what happened or what started  
13 the fire?

14          A. That sounds about right. Yes, ma'am.

15          Q. And then in Report Number 2, Agent Bryan Kempa  
16 assisted with looking for nearby purchase of a gas can,  
17 which, according to Report Number 2, there was not one  
18 located relevant to the case in the nearby area?

19          A. Yes, ma'am.

20          Q. But there was an extensive search to try to  
21 locate a gas can purchase or gas purchased for a gas can?

22          A. In the day and the -- in the immediate days  
23 after the fire. Yes, ma'am.

24          Q. Now, Report Numbers 3 and 4 were by Agent Scott  
25 Renter. Are you familiar with Agent Scott Renter?

1 A. I am.

2 Q. And are you familiar with those two reports?

3 A. Generally speaking. Yes, ma'am.

4 Q. And his Report Number 3 spoke about how they had  
5 to bring an accelerant-detection canine to the 5312 North  
6 Truckee Street address to try to determine if there was  
7 accelerants used or present -- not necessarily used -- at  
8 the scene of this fire?

9 A. Yes, ma'am.

10 Q. And Agent Scott Renter, in Report Number 4, also  
11 attempted to find a gas purchase, and he also failed --

12 A. Yes, ma'am.

13 Q. -- relevant to this case?

14 A. Correct.

15 Q. And then we get into some of your reports after  
16 that, correct?

17 A. Yes.

18 Q. Before I start going into some of the details of  
19 the reports, I'm going to ask you to just explain some of  
20 the language briefly -- in general, not necessarily as it  
21 applies to this case -- so I know I'm using the right  
22 terminology. Okay?

23 A. Yes, ma'am.

24 Q. When you talk about a tower dump for location  
25 data in a search warrant, what are you referring to as

1 the tower dump?

2 A. What we're -- in a tower dump, what we're asking  
3 for is any transactional data, meaning phone calls or  
4 text messages, that were sent or received in accessed  
5 cell towers that were outlined in the search warrant for  
6 the specific time frame in the very specific area that  
7 the search warrant allows us to look.

8 Q. And that specific -- so is it a specific tower  
9 that you're searching?

10 A. The wording in the warrant is usually --  
11 depending on how they're done, you'll give an address and  
12 a time frame, and then the phone companies will determine  
13 what cell tower or cell towers would cover that area, and  
14 they would provide responsive data based on that. In  
15 other instances, we might actually say a specific cell  
16 tower.

17 Q. Okay. And in this particular case, were you  
18 talking about an area with a number of different towers?

19 A. Correct.

20 Q. You spoke about in your reports that you would  
21 review data in Cellebrite's Physical Analyzer program?

22 A. Yes, ma'am.

23 Q. Briefly, what is Cellebrite's Physical Analyzer  
24 program?

25 A. It is a forensic software tool that allows us to

1 look at a variety of different types of data. In this  
2 instance, social media returns, when they come back from,  
3 say, Snapchat or Apple or whoever, I will process them in  
4 that program to help it -- to help us as investigators  
5 understand better what is going on with that data.

6 Q. Okay. And in your experience, when you're  
7 involved -- your cases involve teenagers, there can be  
8 massive, massive amounts of data?

9 A. Yes, ma'am.

10 Q. So when you put -- or, I guess, use this  
11 program, what information are you supposed to get back  
12 when you have Cellebrite's Physical Analyzer program  
13 review the data? What do you get back?

14 A. Well, whatever is in the responsive data from,  
15 let's say, Snapchat, for example, if -- in the data that  
16 comes from them, if there are, you know, text messages or  
17 location data or pictures or videos, the software program  
18 will help kind of make it easier for me to review while  
19 I'm looking at it. It will help me to, you know, change  
20 time zones as a lot of these records don't come in  
21 Mountain Time, help me adjust that appropriately, help me  
22 to better look at how some of these images relate back to  
23 certain text message streams and things of that nature.

24 Q. Okay. So it is sort of a -- you can do a search  
25 of tens of thousands of text messages and -- well, you

1 were using Snapchat as an example.

2 A. Yes.

3 Q. So tens of thousands of messages and Snapchats,  
4 hundreds of videos, and thousands of pictures.

5 Does Cellebrite's Physical Analyzer program  
6 provide a more focused or a smaller group of items for  
7 you to look at?

8 A. Well, it takes everything into account. And  
9 then it's up to me, while I'm looking at it, to figure  
10 out how to look at it all, whether I'm doing keyword  
11 searches or focusing in on certain dates and times of  
12 relevance. It just sort of the depends.

13 But to get back to your question, it takes all  
14 of the data that's there and -- and helps me to see it in  
15 a much more understandable way.

16 Q. And then you are the person or you are making  
17 the decision which items to tag in that massive amount of  
18 data that might have evidentiary value?

19 A. Yes, ma'am.

20 Q. And so you always include language that says:  
21 It should be noted that this review and tagging of items  
22 should not be considered all-inclusive of potentially  
23 relevant information within the responsive data from  
24 Google?

25 A. So that -- that is something I do document

1 because, like you just said, there's an extraordinary  
2 amount of information, and I do my best to look through  
3 everything and find everything of relevance. Could there  
4 have been something else in there? Maybe, so...

5 Q. Okay. So you can miss items of evidentiary  
6 value?

7 A. I am human, ma'am. That is possible.

8 Q. And some of those items can be exculpatory?

9 A. It could be.

10 Q. And then you've also used the language  
11 throughout some of your reports that you take snips,  
12 snips of conversations, snip of a location. What do you  
13 mean by that?

14 A. So in order to -- if there's something that I  
15 found of investigative interest and I want to incorporate  
16 that into a report, I'll use a snipping tool, which is  
17 something imbedded in Windows, to snip out what I want to  
18 show for that particular point so that it can be included  
19 in a report.

20 Q. Okay. So, for example, there may be hundreds  
21 and hundreds of text messages, and you snip one that says  
22 something about -- just, for example, in this case,  
23 something about burning a house, but you don't get the  
24 ones before or after if you don't think that they're  
25 associated with that snip or with the case and the

1 investigation?

2 A. Correct.

3 Q. So you could be taking something completely out  
4 of context and putting it in as your snip?

5 A. I don't agree with that.

6 Q. It's possible?

7 A. It certainly is possible. But as I'm reviewing  
8 and understanding the context of what I'm seeing,  
9 obviously I do my best to include all of what's relevant.

10 Q. And I'll go back and talk about that in more  
11 detail. But the gist of the snip is you taking what you  
12 think is relevant or important and not including stuff  
13 that may be all around it if you don't think it's  
14 important?

15 A. Correct.

16 Q. Thank you.

17 And I think you described this, but you often  
18 talk about adjusting times from UTC to MDT.

19 A. Yes, ma'am.

20 Q. What do you mean by that?

21 A. UTC is Universal Coordinated Time. It's a time  
22 standard.

23 A lot of records and companies keep all -- a lot  
24 of companies keep all of their records in UTC. So  
25 Facebook, for example, Snapchat, Instagram, and a lot of

1 times the memory of phones and computers are kept in UTC.  
2 It's easier than having however many time zones exist in  
3 the world and having crazy times for all of these things.

4 So I know that when I have these records, that  
5 they are in -- they're not localized to Denver time,  
6 whether it's MDT, Mountain Daylight Time or Mountain  
7 Savings Time.

8 Q. Okay. So you would, in fact, when you receive  
9 these records, adjust it to -- in this case, it was MDT,  
10 so Mountain Daytime -- or Mountain Denver --

11 A. Mountain Daylight. Yes, ma'am.

12 Q. Okay. Thank you.

13 There was another phrase that I would often read  
14 where it talks about how data sessions are often created  
15 without any action by the cell phone user.

16 A. Yes, ma'am.

17 Q. What do you mean by that terminology?

18 A. That is specific wording relating to records  
19 coming from the actual cell phone companies themselves.  
20 So AT&T, T-Mobile, Verizon, or Sprint. And some of the  
21 responsive records that we get from the phone companies  
22 are, in fact, what we call data sessions, which are when  
23 a communication between the device and network is  
24 established. A lot of -- and that is usually what's  
25 called a data session. That event is not something that



1 a user necessarily has to do.

2 So you could be streaming music, for example,  
3 and you have to have a data connection to the network,  
4 and a data session would be open to help you do that.  
5 But if you stopped streaming music, that data session  
6 still may be open. Or another one might have been  
7 created to help if there are other things that might  
8 happen on your phone in the future where you might need  
9 to look at Facebook or get on the internet.

10 So a lot of those at the data events occur  
11 between the phone and the network without the user even  
12 knowing that those things are happening.

13 Q. Okay. You also mentioned that data sessions can  
14 access multiple cell sites and can access cell sites  
15 further away than expected?

16 A. Yes, ma'am.

17 Q. Does that mean that when there is one of these  
18 at the sessions that may be created without an action by  
19 the cell phone user, that may not been indicative of  
20 exactly where that data session started or is being used  
21 because it can use cell sites further away than where the  
22 phone is located?

23 A. Right. So what I'm saying there is that just  
24 looking at data sessions alone is not the best way to  
25 figure out the general area of where a handset might have

1       been at a certain point in time because of how the data  
2       sessions work on a network.

3             Q.   Okay.   So the data sessions may not allow you to  
4       identify the general location of where the handset is or  
5       where the phone is?

6             A.   It will allow for the general idea of where it  
7       is, but I can't -- using that information, we're not  
8       going to be able to specifically say it's at the corner  
9       of A and B Street, for example.

10            Q.   Okay.   Now, you were using Snapchat location  
11       data.   Does that mean that you're able to get somewhat of  
12       a location of where a person's at when they're using  
13       Snapchat?   Do they have to be using Snapchat?

14            A.   Generally, the app is open.   They could be using  
15       it or the app could just be open, and the app is  
16       communicating and capturing location-based data about  
17       where the user's phone is located.

18            Q.   Okay.   So if you're not using Snapchat but you  
19       have the app open on your phone, there's location data  
20       that says you're here?

21            A.   In many instances.

22            Q.   But not all?

23            A.   Correct.

24            Q.   What is the GeoTime software?

25            A.   It's a tool that I use to help with analysis and

1 visualization of, you know, anything location based.

2 Q. Okay. And so that's -- it brings out maps or  
3 it...

4 A. Correct. It's essentially a mapping tool that  
5 helps me to better understand the relationship of the  
6 geolocation data that's available versus the facts of the  
7 case, you know, dates and times and locations.

8 Q. So is this something where you input data that  
9 you have from the investigation and GeoTime software kind  
10 of puts it together to do timelines and location?

11 A. Yes.

12 Q. What about Nighthawk LEOVision?

13 A. It's very similar to what GeoTime is. It's an  
14 analytical tool that helps me take these large datasets  
15 that come back from, you know, the social media places  
16 and analyze them.

17 Whether I'm looking for analytics of, you know,  
18 how many contacts did Person A have with Person B or  
19 whether it's a location-based piece of information, that  
20 program, just like GeoTime, helps me to visualize. I use  
21 both of them depending on what it is that, you know, I'm  
22 trying to look at in a given situation.

23 Q. I just have a few more background questions.

24 A. Sure.

25 Q. This is -- a lot of this information that we

1 were talking about where you are able to collect data  
2 from these search warrants on cell phone companies, you  
3 don't even need the cell phone to get that data, right?

4 A. No, ma'am, you do not.

5 Q. So, in fact, when you're writing these search  
6 warrants, you're doing search warrants oftentimes of a  
7 phone number, but you don't have the phone at the  
8 beginning here?

9 A. Correct.

10 Q. You were provided five phones, correct, five  
11 cell phones?

12 A. Correct, after arrests were made. Yes, ma'am.

13 Q. And it said that there was a forensic software  
14 program called GrayKey that can conduct data acquisitions  
15 from those devices?

16 A. Yes, ma'am.

17 Q. Is that different from doing the searches  
18 with -- from the warrants from the cell phone companies?

19 A. Yes. So what we're talking about in that  
20 instance is an -- is an actual forensic examination of  
21 the device itself. So what is the -- to pull the data  
22 off of an actual phone, that's what we're referencing in  
23 that instance.

24 Q. And this is massive? Terabytes?

25 A. Yes.

1 Q. And then do you use the same Physical Analyzer  
2 by Cellebrite to try to extract something that may be  
3 relevant to the case or the investigation?

4 A. Yes. I'll use that program to -- once the data  
5 is extracted, to then look at it and figure out what may  
6 or may not be of investigative interest.

7 Q. And in this particular case, the -- one of your  
8 very last reports talked about having those cell phones  
9 and getting that data acquisition.

10 Have you written any follow-up reports based on  
11 your findings, your review of data that was obtained from  
12 those devices?

13 A. No, ma'am.

14 Q. Have you reviewed it?

15 A. I looked at some of them, but I don't know that  
16 I did the in-depth analysis of the devices.

17 Q. Okay. Is that something that you would still be  
18 following up on, we just don't have it yet?

19 A. I have not looked at them recently, ma'am.

20 Q. Okay. So then I want to move on to just some  
21 of -- some questions about the reports, in general. I'll  
22 describe the number of the report and then a little bit  
23 about what's in it, in case you don't associate the  
24 record to the contents.

25 A. Sure.

1           Q. In Report Number 5, you wrote about an  
2 investigation or a search warrant where you tried to  
3 obtain information about Derrick Joshua Gonzalez?

4           A. Yes.

5           Q. And is this an example of trying to investigate  
6 digital evidence kind of gone wrong, where it's a person  
7 that's completely unrelated?

8           A. I would not say -- I would -- not gone wrong. I  
9 would say that it's pretty good police work on our part  
10 to -- when we saw information that was a possible -- in  
11 a -- especially in a crime like this, which is --  
12 initially, it was a "who done it" crime, right?

13          Q. Uh-huh.

14          A. When we found information that was potentially  
15 relevant, we dug deeper to either include or exclude that  
16 person as someone of investigative interest. And  
17 based on --

18          Q. So by --

19          A. -- what we did, we were able to exclude that  
20 person.

21          Q. So by digging deeper, you mean you got search  
22 warrants to look at this electronic digital evidence of a  
23 person that turns out to be not related to the case?

24          A. Well, just to be clear, what we're talking about  
25 are call detail records with cell site information. So

1 no content about what this person said or sent messages  
2 or social media. This is only cell tower information for  
3 a very limited time frame.

4 Q. And Mr. Gonzalez was, in fact, considered to be  
5 in the area and suspicious because he had a car similar  
6 to the vehicle that was seen?

7 A. Correct.

8 Q. And he had a criminal record?

9 A. Yes.

10 Q. And then there was another individual, Pablo  
11 Aceveda, where you tried to get a search warrant to see  
12 if there was any connection to Pablo Aceveda?

13 A. Yes, ma'am.

14 Q. And that was not fruitful?

15 A. Correct. That person was deemed to be  
16 uninvolved.

17 Q. There was -- in Report Number 6 you spoke about  
18 how they -- you did the tower dump search warrant on  
19 AT&T, Verizon, Sprint, and T-Mobile. Was there a  
20 particular reason you chose those different four agencies  
21 or four providers?

22 A. Those are the four cellular providers that  
23 provide cell phone access in this area.

24 Q. You mentioned in that report that during this  
25 investigation, you had information or you believed that

1 the suspects did not live in the area of the fire. Why  
2 was that?

3 A. Looking at the information that we had  
4 initially -- so we've got, obviously, the fire. But when  
5 we looked at all the surveillance footage that was -- we  
6 were able to piece together, we could tell that whoever  
7 was in that car seemed to be lost in the neighborhood.  
8 So we sort of believed -- and then they -- based on what  
9 we could tell from the surveillance footage, we lost them  
10 out near Green Valley Ranch and Peña Boulevard. So we  
11 figured, based on all of that, that that person or  
12 persons likely did not live in that area.

13 Q. You did do a Google search where you were trying  
14 to determine -- or you did a search warrant with Google  
15 to search to see who had tried to look up this address on  
16 Truckee Street?

17 A. Yes, ma'am.

18 Q. And you had narrowed it down to five different  
19 people that seemed to fit the sort of search aspects that  
20 you had in mind?

21 A. So just to clear that up, the -- what was  
22 provided by Google were five accounts.

23 Q. And the first one, Mami Diol, you realized was  
24 associated with the address and family members?

25 A. Yes, ma'am.



1 Q. Did you do any further investigation about why  
2 that individual was searching the address on Truckee  
3 Street?

4 A. I personally did not.

5 Q. So that one was set aside because of the --  
6 being associated with the family?

7 A. Correct.

8 Q. And then there was Kevin Bui, Gavin Seymour,  
9 D.S., and Elizabeth Martinez?

10 A. Yes, ma'am.

11 Q. So one of the things you did was have Google  
12 search that address. Once you had these five names, did  
13 you do any sort of investigation as to what other Google  
14 searches these individuals may have done in the time  
15 frame leading up to the fire?

16 A. Yes, ma'am.

17 Q. And just -- I'm going to be kind of inclusive.  
18 I know in Report Number 7 you were mostly just talking  
19 about D.S.'s Google search return, correct?

20 A. It sounds familiar. Yes, ma'am.

21 Q. And then the other reports talk about other  
22 individual returns on their Google searches?

23 A. Yes.

24 Q. You were able to determine that there was not  
25 Google searches by D.S., Kevin Bui, or Gavin Seymour

1 about setting fires?

2 A. Correct.

3 Q. About accelerants?

4 A. Correct.

5 Q. About arson?

6 A. Correct.

7 Q. About smoke inhalation?

8 A. No, ma'am.

9 Q. There wasn't any searches prior to the fire  
10 about killing people?

11 A. Correct.

12 Q. Gasoline, the effects on fires that that may  
13 have?

14 A. Correct.

15 Q. Prior to the fire, there was no searches by --  
16 in Google by any of those three individuals to indicate  
17 there was some sort of plan or they wanted information  
18 about setting a fire?

19 A. No.

20 Q. Or killing anybody?

21 A. No, ma'am.

22 Q. And, of course, if there had been, that would  
23 have been included in your reports?

24 A. It would have.

25 Q. So it just -- it does not exist?

1 A. To the best of my knowledge, it doesn't.

2 Q. All right. And that also encompasses Report  
3 Number 8, which is Gavin Seymour's Google search return?

4 A. Yes, ma'am.

5 Q. And Report Number 9, which is Kevin Bui's Google  
6 search return?

7 A. Yes, ma'am.

8 Q. Report Number 10 is the Verizon Wireless return  
9 for D.S. Do you recall that?

10 A. I believe -- I don't remember all of what's in  
11 that exact report, but I recall, generally speaking, that  
12 report. Yes, ma'am.

13 Q. So I have two questions about this particular  
14 report. You put: The purpose is to document information  
15 from the Google search because it was previously  
16 anonymous. What did you mean by that phrase?

17 A. I believe what we're say -- what I'm saying  
18 right there is that first search warrant that we got back  
19 from Google that had the first -- the search terms,  
20 the -- it was anonymized. Also, whoever the users were  
21 were anonymized, so we did not know who was attributed to  
22 these searches at that point in time.

23 Q. Okay.

24 A. So the number -- there's a unique number that  
25 Google associated to each account, and it was anonymous.

1 Q. And when you got the return on the search of the  
2 address on Google for D.S., it attributed the -- or it  
3 indicated that D.S. had searched, on July 28th, that  
4 address and, on August 4th, that address?

5 A. Yes, ma'am.

6 Q. But then on the return on the Verizon Wireless  
7 for D.S., you put in your report that Google attributed  
8 the 7/28/2020 query to D.S.'s Google account but did not  
9 associate the 8/4/2020 query to his Google account. What  
10 does that mean?

11 A. I think if I'm understanding what you're -- what  
12 we're talking about here, is that in one of the -- in the  
13 responsive data for the keyword searches, there were a  
14 few of the keyword searches, some -- there were a few of  
15 the searches that didn't have an anonymized number  
16 attributed to it.

17 What we were able to determine is that someone  
18 was using a Google product to search that address but was  
19 not logged into a Google account at that point in time.  
20 So when that address was queried, Google obviously knew  
21 that that address was queried, but they could not  
22 attribute it back to a Google user because it -- whoever  
23 it was at that point was not logged in.

24 Q. So does that mean, according to the return on  
25 the Verizon Wireless search warrant for D.S., that Google

1 can only attribute the July 28th query of that address  
2 for D.S. to D.S.'s Google account?

3 A. I'm sorry. Can you ask me that again?

4 Q. Sorry. Google is saying that the July 28th  
5 query about D.S.'s search for that address can be  
6 attributed to his account but not the 8/4 one?

7 A. Correct. However, there was enough information  
8 that they provided based on IP addresses that I was able  
9 to track that back and relate that search, based on IP  
10 usage, back to D.S.

11 Q. Now, just to summarize some of the rest of the  
12 reports, you would break it down as a summary of what  
13 you -- information you obtained from the returns on these  
14 search warrants. Report Number 11 was in regards to  
15 T-Mobile for Kevin Bui?

16 A. Yes, ma'am.

17 Q. Report Number 12 was a Facebook and Instagram  
18 search warrant return for Gavin Seymour?

19 A. Yes, ma'am.

20 Q. And then Report Number 14 was the Facebook and  
21 Instagram and Snapchat for D.S.?

22 A. Yes, ma'am.

23 Q. And we spoke before about how these returns can  
24 be massive, have so much information. And so when you  
25 reviewed D.S.'s return, you were the person that was

1 charged with tagging items that may be of investigative  
2 interest?

3 A. Yes, ma'am.

4 Q. Report Number 15 was the Snapchat search for  
5 Oscar Orona, Jr.?

6 A. Yes.

7 Q. And that was due to some phone calls from Kevin  
8 Bui's number?

9 A. That was a person that we -- based on the things  
10 that we had found, we wanted to know a little bit more on  
11 and how he may or may not have fit into this overall  
12 investigation.

13 Q. So you got the return on the search warrant for  
14 Snapchat for Oscar Orona, Jr. And just in regard  
15 specifically to this fire, there doesn't appear to be a  
16 connection?

17 A. Correct.

18 Q. And then Report Number 16 was the return for the  
19 Snapchat for Gavin Seymour?

20 A. Yes, ma'am.

21 Q. And I think you -- it's safe to say that there  
22 is a lot of personal conversation between these three  
23 juveniles, these three teenagers?

24 A. Yes.

25 Q. And I know you noted in the Snapchat return for

1 Gavin Seymour that -- particularly with Kevin Bui, that  
2 they're good friends?

3 A. Yes.

4 Q. And there's constant communication?

5 A. Yes, ma'am.

6 Q. And so this is an area where you would take a  
7 snip, right? Because, otherwise, if you were trying to  
8 include everything that they texted back and forth, it's  
9 just massive?

10 A. It would be too much to understand unless it  
11 related to something of relevance for the case.

12 Q. There was also a lot of Snapchat between Gavin  
13 Seymour and Tanya Bui, Mr. Bui's sister?

14 A. Yes.

15 Q. Then Report Number 17 was the Snapchat return on  
16 the search warrant for Kevin Bui?

17 A. Yes, ma'am.

18 Q. And then on Report Number 18, there was the  
19 Snapchat search warrant return for Tanya Bui?

20 A. Yes, ma'am.

21 Q. And through some of her messages, she's  
22 communicating with her brother?

23 A. Yes.

24 Q. And there's times where Tanya Bui is kind of  
25 trying to give her brother advice what to do, instruction

1 to him?

2 A. Yes, ma'am.

3 Q. Then Report Number 19 was an Apple iCloud search  
4 warrant return for Gavin Seymour?

5 A. Yes, ma'am.

6 Q. Now, that's different than the Google search and  
7 the media sites -- the social media sites, correct?

8 A. Correct.

9 Q. How is that different?

10 A. This data came specifically from Apple, and it  
11 was the iCloud backups, meaning whatever information was  
12 on his cell phone at the time that backed up into the  
13 Apple iCloud, the search warrant was specific to that  
14 data.

15 Q. And in Report Number 19, you again tried to pull  
16 out what might be relevant to the investigation and you  
17 tried to pull out snips?

18 A. Yes, ma'am.

19 Q. One of the things that seemed relevant to you  
20 when you reviewed some of the communications between  
21 Tanya Bui and Gavin Seymour is that they did discuss the  
22 fact that Kevin Bui had been robbed?

23 A. Yes, ma'am.

24 Q. And one of the reactions that -- or one of the  
25 responses that Tanya Bui was suggesting to Gavin Seymour



1 was: Let's set up the robbery suspect the way he set up  
2 my brother, set up Kevin Bui, correct?

3 A. Yes, ma'am.

4 Q. There wasn't a discussion about killing anybody?

5 A. No, ma'am.

6 Q. There wasn't a discussion above and beyond  
7 trying to set them up the same way they set Kevin Bui up  
8 in these text messages, right? That was it?

9 A. Correct.

10 Q. And there wasn't a plan being developed to set  
11 fire to anything?

12 A. No, ma'am.

13 Q. And that suggestion to set up the robbery  
14 suspect was made by Tanya Bui?

15 A. It was.

16 Q. Report Number 20 was an Apple iCloud search  
17 warrant return for D.S.?

18 A. Yes, ma'am.

19 Q. And, again, you described that's a little bit  
20 different than the other search warrants, correct?

21 A. Yes, ma'am.

22 Q. And then Report Number 21 was an Apple iCloud  
23 search warrant return for Kevin Bui, correct?

24 A. Yes.

25 Q. Now, one of the things that you noted in that

1 report was that it was July 17th of 2020 at 10:37 a.m.  
2 There was a screenshot of Find My iPhone showing that it  
3 was located at 5312 North Truckee Street in Denver at  
4 approximately 12:43 a.m., the day before?

5 A. Yes, ma'am.

6 Q. So the screenshot was from July 17th of 2020,  
7 but it was showing the search was done the day before at  
8 12:43 a.m.?

9 A. Correct.

10 Q. Now, did you do anything to determine how many  
11 times Kevin Bui had used that Find My iPhone to try to  
12 locate his phone in those days leading up to this fire?

13 A. That information was not provided by Apple.

14 Q. So the -- and was there a specific search  
15 warrant trying to get the information to find out how  
16 many times he tried to Find My iPhone?

17 A. I'm sorry. Are you asking did we write a  
18 specific warrant to see how many times he did that?

19 Q. Well, would you have expected that information  
20 to be provided by a search warrant return on Apple  
21 iCloud?

22 A. No.

23 Q. Can there be a specific search to determine how  
24 many times he tried to Find My iPhone?

25 A. I actually don't know that.

1 Q. What you do know is that because of the  
2 screenshot, you knew he did a search at least once at  
3 12:43 a.m. on July 16th, the day before?

4 A. Yes, ma'am.

5 Q. But what you don't know is that he may have been  
6 searching for it every day or every hour and it could  
7 have been coming back to that same address, correct?

8 A. It could have.

9 Q. And you don't know if there's a way to determine  
10 that?

11 A. I don't.

12 Q. Report Number 22 refers to a Google account  
13 return search for Elizabeth Martinez, correct?

14 A. Yes, ma'am.

15 Q. She had queried the 5312 Truckee Street address  
16 in a Google search, correct?

17 A. Yes.

18 Q. And you used that this Cellebrite reader report  
19 to try to parse out information on the Google return to  
20 see if you could determine some sort of connection when  
21 you specifically did a search warrant on her Google  
22 account?

23 A. Yes.

24 Q. So it's no longer an anonymous search warrant,  
25 it's a specific person?

1 A. Yes, ma'am.

2 Q. And you developed her phone number and you  
3 queried it every which way you could?

4 A. I did.

5 Q. Now, you said you've excluded her. Do you know  
6 why she queried 5312 Truckee Street in that time period  
7 right before the fire?

8 A. I do not know.

9 Q. Do you even know who she is?

10 A. I personally do not.

11 Q. Now, Report Number 23 summarizes the  
12 methodologies you used. And so I did spend a little time  
13 at the beginning asking about, you know, cell-site  
14 mappings analysis.

15 So you did write in that report that you had  
16 this conclusion that you could draw that -- and this is  
17 just summarizing it -- that on 8/4 of 2020, Kevin Bui and  
18 D.S. showed a pattern of movement together from about  
19 4:30 p.m. to 11:24 p.m. on August 4th?

20 A. Yes, ma'am.

21 Q. Okay. And then you also summarized that around  
22 8:30 p.m., Gavin Seymour was also with them in their  
23 pattern of movements?

24 A. Yes, ma'am.

25 Q. And in the early morning hours of August 5th of

1 2020, they did travel to that Truckee Street address?

2 A. Into that general area. Yes, ma'am.

3 Q. Now, did you do a search to see if D.S. ever  
4 seemed to have gone to that area or that address prior to  
5 August 5th?

6 A. I did.

7 Q. There's nothing, right?

8 A. No, ma'am.

9 Q. Did you do a search to see if Gavin Seymour had  
10 gone to the area of this Truckee Street address prior to  
11 August 5th?

12 A. I did.

13 Q. There's nothing, is there?

14 A. No, ma'am.

15 Q. Did you also do a search to see if Kevin Bui had  
16 been in the area of this Truckee Street address?

17 A. Yes, ma'am.

18 Q. Now, there were two occasions where it appeared  
19 like he drove to the airport?

20 A. Correct.

21 Q. And that's in the vicinity of this area?

22 A. Generally speaking, yes.

23 Q. You can use the words "generally speaking"  
24 because that -- that's like the closest he ever came to  
25 that prior to August 5th?

1           A. Yes, ma'am.

2           Q. So in your search there's no indication that  
3 Kevin Bui had been going to this address on Truckee  
4 Street to sort of scout it out?

5           A. No, there was none.

6           Q. And so based on your search of this data and  
7 location data, you can't -- you can't testify that it  
8 appeared that any one of these three juveniles/teenagers  
9 scouted out this address?

10          A. No, ma'am.

11          Q. Or checked it out?

12          A. No.

13          Q. Or staked it out?

14          A. No.

15          Q. Or got familiar with the area?

16          A. No, ma'am.

17          Q. From your investigation there's no indication  
18 that any of these teenagers went to the scene as part of  
19 a plan prior to August 5th?

20          A. Not prior to. No, ma'am.

21          Q. I want to next just jump to Report Number 24,  
22 and this one is written by Agent Bryan Kempa, who you're  
23 familiar with, correct?

24          A. I am.

25          Q. Did you have a chance to review that report?

1           A. I did.

2           Q. And it indicates that you, as an investigative  
3 agency, received the documents from Shelter Insurance  
4 after an arson immunity letter had been provided to the  
5 insurance company?

6           A. It -- that's familiar, yes, ma'am.

7           Q. What's an arson immunity letter?

8           A. I'm not 100 percent sure what they were doing in  
9 that instance. I -- I don't know.

10          Q. Okay. So that -- that's not your realm of  
11 expertise?

12          A. Correct. I wasn't involved in that aspect of  
13 dealing with the insurance companies.

14          Q. Okay. But you do have information that that's  
15 how they got the insurance documents, is they provided an  
16 arson immunity letter first?

17          A. I -- I would imagine.

18          Q. And then your Report Number 25 indicates that  
19 you did do the forensic examination of five Apple phones.  
20 And that would be one that was found in Kevin's bedroom?

21          A. Yes.

22          Q. One that was associated with Kevin Bui?

23          A. Yes.

24          Q. One that was associated with Tanya Bui?

25          A. Yes.

1 Q. One that was associated with D.S.?

2 A. Correct.

3 Q. And one associated with Gavin Seymour?

4 A. Yes, ma'am.

5 Q. But those are the forensic examinations that you  
6 have indicated that you haven't written any reports on or  
7 delved into the analysis of those dumps, I guess you call  
8 them?

9 A. Correct.

10 Q. And then there is a Report Number 26 -- again,  
11 Bryan Kempa -- and that one has to do with an arson  
12 investigation through the insurance company, right?

13 A. Yes, ma'am.

14 Q. And then there's a Report Number 27 where it  
15 talks about items that were related mostly due to  
16 Bluetooth -- or mostly Bluetooth connections?

17 A. That report relates specifically to a forensic  
18 examination that was done of the Infotainment system in  
19 the Toyota Camry that belonged to the defendant.

20 Q. Okay. And what information did you get from  
21 that Infotainment system?

22 A. It was very little data of -- of significant  
23 interest.

24 Q. And those 27 reports encompass everything that  
25 you're aware of that was written through ATF that had not



1 previously been provided to the district attorney or  
2 defense counsel?

3 A. Correct.

4 Q. I have a couple of questions from direct  
5 examination. I hope it doesn't seem like I'm jumping  
6 around.

7 The district attorney had asked you a question  
8 about the examination of routers, and you talked about  
9 how cell phones can connect to houses, potentially,  
10 correct?

11 A. To the routers within a house. It's -- yes,  
12 ma'am.

13 Q. And your answer was that that was not fruitful,  
14 but there wasn't a follow-up question to explain why your  
15 examination of routers was not fruitful. Can you explain  
16 that, please?

17 A. Sure. So in -- and I can't recall the exact  
18 addresses, but if you're looking at -- if you're standing  
19 in front of 5312 Truckee, the house directly to the left  
20 and the house directly to the right, I met with the folks  
21 that live in each house and asked them for permission to  
22 look inside -- if you will, inside of the router system  
23 that they have at their house to see if there were logs  
24 that were kept by their particular routers that may have  
25 captured any devices that connected to their network.

1           And so both of those houses, there -- it was not  
2           fruitful in that there were no logs that were kept by  
3           their particular routers.

4           I also went to houses on -- around the corner  
5           and sort of behind 5312 and talked to the neighbors in  
6           the houses right back behind it. It was the same -- the  
7           same thing there, is that -- where I was able to make  
8           contact with people and they gave me permission to look.  
9           There was no logs within the routers that they had.

10          Q. Okay. That's why it wasn't fruitful, is they  
11          didn't have logs available?

12          A. Correct.

13          Q. Okay. I asked you briefly about -- or on direct  
14          examination there was a couple of questions about how  
15          Find My iPhone works.

16          A. Yes, ma'am.

17          Q. And you explained that the way it's supposed to  
18          work is that when you do a search for your iPhone, you're  
19          supposed to get a general location of where it's at?

20          A. Yes, ma'am.

21          Q. And the information in this case is that on a  
22          Find My iPhone search, it came back to 5312 North Truckee  
23          or that vicinity, right?

24          A. Yes, ma'am.

25          Q. Was there any further search to determine where

1 this -- this iPhone may have been?

2 A. Meaning?

3 Q. The iPhone that showed a location at 5312 North  
4 Truckee.

5 A. Just to clarify what you're asking, are you  
6 asking did we look at any of the other people in that  
7 neighborhood?

8 Q. I guess, were you able to do anything to  
9 determine why Find My iPhone showed the device at the  
10 5312 North Truckee Street address?

11 A. I was not able to figure that out.

12 Q. And we already spoke about how you have no way  
13 of knowing how many times he searched for his iPhone?

14 A. Correct.

15 Q. This is just sort of a follow-up question from  
16 direct. You had testified about how Snapchat  
17 demonstrates a pattern of movement?

18 A. Based on the location data that we had received,  
19 I was able to analyze that and see a pattern of movement  
20 specifically on the -- on August 4th and 5th.

21 Q. But you -- there did not have to be messages or  
22 Snapchat did not have to be in use during that time  
23 period specifically to get that location data?

24 A. Correct.

25 Q. And that's reflected in Exhibits 24 and 25, I

1 think it was?

2 A. It sounds -- sounds familiar. Yes, ma'am.

3 Q. One of the things that you were able to  
4 determine that the location data said that the -- was  
5 that these phones were in the area around the Truckee  
6 Street address for about 40 minutes?

7 A. Yes, ma'am.

8 Q. Were you able to determine whether that was  
9 inside a house? Outside a house? Driving around the  
10 block? Parked? Can you make that kind of determination?

11 A. From the data that we have during that time  
12 frame, I cannot say specifically where the devices were  
13 or, like you said, were they driving or parked. I don't  
14 know that. I can tell you that there were accessed cell  
15 sites in that area during that time frame.

16 Q. So they could have been in the vicinity, not  
17 even parked in front of the house, and still shown up by  
18 the location data to be close, right?

19 A. Yes, ma'am.

20 Q. You can't pinpoint where they were?

21 A. No, I cannot.

22 Q. And then I have a few specific questions about  
23 some of the information that you received.

24 THE COURT: Excuse me, Counsel. Before you go  
25 there, how much longer are you going to be? I'm getting

1 ready to call a break.

2 MS. LANZEN: Maybe a half hour.

3 THE COURT: Goodness gracious. We'll call the  
4 break then. We'll be in recess for 15 minutes or so. So  
5 plan to reconvene at -- actually, plan to reconvene back  
6 in the courtroom at 3:30.

7 I'd like the sheriffs to once again -- well, I  
8 guess we're not doing too badly with respect to  
9 spectators. We'll just orchestrate the exits as  
10 necessary.

11 We'll be in recess until 3:30. Thank you.

12 MS. LANZEN: Thank you.

13 (Recess taken, 3:12 p.m. to 3:31 p.m.)

14 THE COURT: All right. We're back in open court  
15 with all parties and counsel present.

16 Counsel, please conclude your examination.

17 MS. LANZEN: Thank you.

18 Q. (BY MS. LANZEN) I have just a few more  
19 questions and most of these deal with a Snapchat  
20 conversation between Kevin Bui and Gavin Seymour. It's  
21 reflected in your Number 17 report -- investigative  
22 report where you are reviewing some of the Snapchats  
23 between Kevin Bui and Gavin Seymour. Okay?

24 A. Yes, ma'am.

25 Q. You have a group of messages back and forth that

1 start as early as July 1st of 2020, correct?

2 A. Yes, ma'am.

3 Q. And there's a lot?

4 A. Yes, ma'am.

5 Q. When you look at the Snapchat messages on the  
6 attached PDF that you had, a lot of them come up sort of  
7 blank or say they have empty data. What does that mean?

8 A. Without seeing it, I -- I don't know exactly.

9 MS. LANZEN: And, Your Honor, may I just  
10 approach just to give him an example of what I'm asking  
11 about?

12 THE COURT: Sure.

13 Q. (BY MS. LANZEN) It says "Empty File."

14 A. My best guess is that there was an attachment,  
15 some sort of picture or video or something, that's no  
16 longer there.

17 Q. So in dealing with Snapchat and getting all this  
18 data from Snapchat, if it's a picture that has gone away,  
19 it will show up that there was a picture, but it now says  
20 "Empty File"?

21 A. I believe that's what it means right there.

22 Q. Or a video or something along those lines?

23 A. Some sort of file. Yes, ma'am.

24 Q. Now, in your report you spoke about how you  
25 found it relevant that on July 15th of 2020, there was a

1       Snapchat between Mr. Seymour and Mr. Bui about the  
2       robbery that had occurred?

3             A.   Yes, ma'am.

4             Q.   And Mr. Bui kind of informed Mr. Seymour that he  
5       had been robbed?

6             A.   Correct.

7             Q.   And then you took what I think you refer to as a  
8       snip.   So from August 1st of 2020 you took a snip where  
9       there was a message from Mr. Bui to Mr. Seymour that said  
10      #possiblyruinourfuturesandburnhishousedown?

11            A.   Yes, ma'am.

12            Q.   But there was nothing before that snip that  
13      indicated what he was talking about on August 1st of  
14      2020?

15            A.   Correct.

16            Q.   And there was nothing right after that snip that  
17      said what he was referring to when there was that message  
18      on August 1st of 2020?

19            A.   Right.   There was no other data.

20            Q.   And in those messages that were back and forth  
21      on Snapchat where there's discussion about the robbery,  
22      there was never any references between Mr. Bui and  
23      Mr. Seymour about hurting somebody or killing anybody?

24            A.   There weren't.

25            Q.   Okay.   And you can't determine just from the

1 snip whether or not this reference -- this hashtag from  
2 August 1st of 2020 even referenced this case in any way,  
3 right? You don't know that?

4 A. I feel like there's enough to show that it  
5 relates directly to the case.

6 Q. Well, if you look, right after that snip that  
7 you took, which was written, you know, in the early  
8 morning hours of August 1st -- I think it was 4:23 a.m.,  
9 so I'm going to pull it up real quick -- there were a lot  
10 of messages before that, correct, that you did not  
11 include in your snip?

12 A. I'm sorry. On which day?

13 Q. The message that was sent that said  
14 #possiblyruinourfuturesandburnhishousedown. That was  
15 written on August 2nd of 2020 at 4:23 a.m.

16 A. That might be a time conversion that's missing  
17 from whatever you're looking at.

18 Q. Okay. Well, if I look to the next message that  
19 was written at 4:50 a.m. on August 2nd -- so within 20 or  
20 30 minutes of that previous message -- there is a message  
21 that says: I mean Dillon and them.

22 So that's the -- the very next message that you  
23 have in the Snapchat communication after the  
24 #possiblyruinourfuturesandburnhishousedown. It then  
25 says: I mean Dillon and them.



1           A. We don't know what the context of the  
2 conversation is.

3           Q. Right. Like you don't know what the context of  
4 the conversation is when it said #possiblyruinourfutures?

5           A. I'm going to disagree with you on that. I mean,  
6 I -- I understand what you're saying.

7           Q. Uh-huh.

8           A. I completely understand what you're trying to  
9 say, but I respectfully disagree.

10          Q. So let's talk about the messages that you  
11 reviewed prior to August 2nd at 4:23 a.m. when it said  
12 #possiblyruinourfutures.

13          A. Right.

14          Q. There's no discussion of burning anybody's house  
15 down?

16          A. Correct.

17          Q. And there's no research or communications about  
18 trying to set a fire somewhere?

19          A. No.

20          Q. And that was at 4:23 a.m. It was -- 27 minutes  
21 later, the very next message says, "I mean Dillon and  
22 them." And you're saying you don't know what context  
23 that context was in?

24          A. Correct.

25          Q. But that's the next message that was sent after

1 the #possiblyruinourfutures?

2 A. I -- I understand.

3 Q. And then at 4:50 a.m., there was another text  
4 from Mr. Bui to Mr. Seymour where it says "Suarez"?

5 A. I'm sorry.

6 Q. It says "Suarez." That's the only thing it  
7 says, is "Suarez," S-u-a-r-e-z?

8 A. Yes, ma'am.

9 Q. And did you do any investigation that that's a  
10 friend of theirs?

11 A. I don't know what that meant.

12 Q. You -- you have no idea what that meant.

13 Okay. But that was within the time frame that  
14 that #ruinourfutures was written, correct?

15 A. It was.

16 Q. But you didn't include the "Suarez" or "I mean  
17 Dillon and them" in your snip? You just took out that  
18 one snip?

19 A. That is correct.

20 Q. And then there's another one at 4:51 a.m., one  
21 minute later, that just says "The girls," right?

22 A. It -- it may.

23 Q. Okay.

24 A. I'll take your word.

25 Q. And, again, you don't know what that phrase was

1 for -- what it was meant for?

2 A. Correct.

3 Q. And that was, like, in this very close time  
4 frame to the #ruinourfutures?

5 A. Right.

6 Q. And then there were other messages where it must  
7 have been pictures that could have put something into  
8 context, but they come up as empty files within that time  
9 frame?

10 A. Yes, ma'am.

11 Q. And these are all Gavin to Mr. Seymour, correct?

12 A. Yes.

13 Q. And there wasn't a discussion back about, What  
14 fire, or, How are we going to ruin our lives, or what  
15 Suarez is doing or what the girls are doing, right?

16 A. Correct.

17 Q. But you didn't include in your review when you  
18 put in that snip from August 1st in the early morning  
19 hours what messages had been before or after it?

20 A. Correct.

21 Q. And after it, there's no discussion about  
22 setting somebody's place on fire or killing anybody or  
23 hurting anybody or causing injury to anybody?

24 A. There were not.

25 MS. LANZEN: I don't have any other questions.

1 Thank you.

2 THE COURT: Thank you.

3 Is there redirect, Mr. Morales?

4 MR. MORALES: Briefly.

5 REDIRECT EXAMINATION

6 BY MR. MORALES:

7 Q. Detective [sic] Sonnendecker, did you watch the  
8 confession of Defendant Bui?

9 A. I did.

10 Q. On February 3rd of 2021?

11 A. Yes, ma'am -- yes, sir.

12 Q. That's all right.

13 Did Mr. Bui in his confession confirm everything  
14 you had found out prior to him giving that confession?

15 A. Yes.

16 Q. Did his confession confirm that he was with  
17 D.S., and when they went to Party City --

18 MS. LANZEN: And, Your Honor, I'm going to  
19 object to the nature of this questioning. The Court has  
20 access to the recorded interview and can determine what  
21 is confirmed and what is not confirmed in that  
22 confession. I don't think it's appropriate for him to be  
23 drawing his opinions on that.

24 THE COURT: It's not an opinion. He's just  
25 stating what's on the video. Overruled.

1           Go ahead, Mr. Morales.

2           MS. LANZEN: Not unless, Your Honor, he's  
3 referring to a certain phrase and not the whole video --  
4 or not the video as a whole because there are portions of  
5 it that contradict the general statement that the  
6 district attorney has made.

7           THE COURT: The objection is overruled.

8           Go ahead, Mr. Morales.

9           Q. (BY MR. MORALES) Did Defendant Bui in his  
10 confession confirm that he went with D.S. to Party City  
11 to buy masks so that they could later go and set a fire?

12          A. Yes.

13          Q. Did Defendant Bui later confirm that he was with  
14 D.S. and Gavin Seymour on August 4th when they were  
15 getting ready to go out and do this?

16          A. Yes.

17          Q. Did he confirm that they decided to dress very  
18 similarly and get into black outfits and wear these masks  
19 when they went out to 5312 North Truckee Street?

20          A. Yes.

21          Q. Did he confirm that he drove them up there and  
22 stopped and got gas before they went to 5312 North  
23 Truckee Street?

24          A. Yes.

25          Q. Did he confirm your analysis that they then

1       drove into that neighborhood of 5312 North Truckee,  
2       stayed there for about 40 minutes, and set that fire?

3             A.   Yes.

4             Q.   Did he confirm that after they set that fire,  
5       they fled?

6             MS. LANZEN:  Your Honor, I'm going to object.  I  
7       didn't ask any questions of this witness about the  
8       interview between Mr. Bui and the detective.  So it's  
9       beyond the scope of my -- my recross.  And they didn't  
10      ask about it specifically in their direct.  They utilized  
11      the other detective to ask about the interview.

12            THE COURT:  Overruled.

13            Q.   (BY MR. MORALES)  Did he then later confirm your  
14      analysis, which you have testified to both on direct and  
15      cross-examination, that they then fled that area and went  
16      back to his house after they set that place on fire?

17            A.   Yes.

18            Q.   Did he later confirm that they looked up the  
19      information the following morning when they knew that  
20      this house had burned down and five innocent people  
21      unassociated with his robbery were killed?

22            A.   Yes.

23            Q.   He confirmed everything that you had  
24      investigated prior to February 3rd, 2021; is that right?

25            A.   Yes.

1 Q. And prior to his interview, do you know if  
2 Detective Baker shared with him thousands and thousands  
3 and thousands of pages of data and information that you  
4 had analyzed?

5 A. No.

6 Q. This all came from him living that experience?

7 A. Correct.

8 MR. MORALES: Nothing further.

9 THE COURT: Is there recross on those points on  
10 behalf of Mr. Seymour?

11 MR. JUBA: No, thank you.

12 THE COURT: On behalf of Mr. Bui?

13 MS. LANZEN: Yes.

14 RECCROSS-EXAMINATION

15 BY MS. LANZEN:

16 Q. He was talking about what he confirmed in that  
17 interview. Did he also confirm in that interview he  
18 never intended for anybody to die?

19 A. I believe so.

20 Q. And that he wasn't -- he never intended to hurt  
21 anybody?

22 A. Correct.

23 MS. LANZEN: Thank you.

24 THE COURT: Okay. So, Agent, thank you for  
25 testifying this afternoon. You can step on down and you

1 can be excused.

2 Is there further evidence on behalf of the  
3 Prosecution?

4 MR. MORALES: No, Your Honor. The People rest.

5 THE COURT: Is there any evidence that  
6 Mr. Seymour wishes to present with respect to these  
7 issues?

8 MR. JUBA: No, thank you.

9 THE COURT: Is there evidence that Mr. Bui  
10 wishes to present with respect to these issues?

11 MR. EARLE: No, Your Honor. Thank you.

12 THE COURT: Okay. All right. So the evidence  
13 is concluded. And so the Prosecution's argument with  
14 respect to -- I guess there's two issues, probable cause  
15 and there's a bond issue.

16 MS. JOHNSTON: Your Honor, the People would like  
17 to reserve for rebuttal.

18 THE COURT: All right. Argument on behalf of  
19 Mr. Seymour, please.

20 MR. JUBA: Your Honor, I'm going to go  
21 numerically through the counts that I'm going to focus on  
22 for the -- arguing for the probable cause. To start --  
23 I'm going to conclude with the proof evident, presumption  
24 great and the bond issues at the end.

25 Your Honor, I'm asking the Court to dismiss



1 Counts 1 through 5. In the Information, Counts 1 through  
2 5 charge five separate counts of murder in the first  
3 degree alleging Gavin Seymour unlawfully, feloniously,  
4 and after deliberation and with the intent to cause the  
5 death of another person caused the death of five people.

6 We would submit to the Court that there was not  
7 sufficient information for the Court to find probable  
8 cause that there was deliberation here and that there was  
9 intent here to cause the death of another person,  
10 specifically those five people charged in Counts 1  
11 through 5.

12 The information submitted to the Court  
13 established that Mr. Bui had a plan in place to  
14 potentially get revenge on people unknown to him that he  
15 thought lived in that house, that there was no clear  
16 indication that there was anyone actually in the house  
17 itself. They didn't have any direct knowledge that there  
18 were people in the house, and, certainly, there wasn't  
19 deliberation and intent to cause the death of those five  
20 people charged in Counts 1 through 5.

21 Relating to Counts 16 and 18 alleging attempt to  
22 commit murder in the first degree, a Class 2 felony,  
23 against Amadou Sow and Hawa Ka, I would make the same  
24 argument as it relates to those separate -- I'm sorry.  
25 Counts 16 through 18, I would make the same argument as

1 it relates those counts. Those are also attempted murder  
2 counts alleging that Gavin Seymour attempted to cause the  
3 murder of those three parties after deliberation and with  
4 intent. The same analysis applies to those attempted  
5 murder counts in Counts 16 to 18.

6 Counts 22 and 23, I would ask -- I would also  
7 ask the Court not to bind over. Those are alleging  
8 assault in the first degree. They both allege that Gavin  
9 Seymour intended to cause serious bodily injury to  
10 another person and did cause serious bodily injury to  
11 Amadou Sow and Hawa Ka by means of a deadly weapon,  
12 namely a fire.

13 The information presented to the Court states  
14 that there was a fire, two parties -- or three parties  
15 jumped out of the window itself, that there was no injury  
16 caused by a fire to either Amadou Sow or Hawa Ka. There  
17 was certainly not serious bodily injury caused against  
18 them by means of a deadly weapon, a fire. So I would ask  
19 the Court not to bind over Counts 22 and 23.

20 As it relates to Counts 26 and 27 also alleging  
21 assault -- not also, but in addition alleging assault in  
22 the second degree under a similar theory that there was  
23 bodily injury caused by a deadly weapon, namely a fire, I  
24 would submit the same analysis applies. There was no  
25 injury to Amadou Sow or Hawa Ka caused by fire.

1           Counts 31 and 32 reference arson against  
2 Ms. Yepez, Y-e-p-e-z, and Mr. Reza, two neighboring  
3 homes. I would submit that there was not sufficient  
4 evidence established that their dwellings were set fire  
5 to, burned, or caused to be to be burned.

6           The final counts I would ask the Court to look  
7 at are Counts 41 through 46 alleging conspiracy to commit  
8 murder, conspiracy to commit burglary, and conspiracy to  
9 commit arson. There were, as Special Agent Sonnendecker  
10 testified, hundreds, at a minimum -- possibly  
11 thousands -- of messages exchanged between the parties  
12 throughout their entire relationship.

13           There was no plan by Gavin Seymour, no  
14 conspiracy by Gavin Seymour as alleged in Counts 41 to  
15 46. The statements made by Mr. Bui in his statement to  
16 the police were that they didn't have a plan.  
17 Specifically, Gavin Seymour was going in blind and it was  
18 spur of the moment. So as it relates to Gavin Seymour, I  
19 would ask the Court to also dismiss Counts 41 through 46  
20 relating to the conspiracy.

21           Overall, Your Honor, we are asking the Court to  
22 issue a bond in this case for Mr. Seymour. We're asking  
23 the Court to issue a \$50,000 bond. Overall, as it  
24 relates to the first-degree murder charges, we would ask  
25 the Court to deny the Prosecution's request for the

1 finding that proof is evident and the presumption is  
2 great. We would ask the Court to issue a bond. Thank  
3 you.

4 THE COURT: Thank you, Counsel.

5 Argument, please, on behalf of Mr. Bui.

6 MR. EARLE: Thank you very much, Your Honor. I  
7 grouped these as Mr. Juba has. I will try not to be too  
8 duplicitous.

9 We are also asking the Court to dismiss Counts  
10 1 through 5, first-degree murder after deliberation. As  
11 it relates to those five charges, I think it's hard to  
12 not agree that there's some level of deliberation going  
13 on between the parties involved. But what was the  
14 deliberation really about?

15 It occurs appears to me that based on the  
16 evidence in the light most favorable to the People, what  
17 we've heard a lot about was that there was this robbery.  
18 There was maybe this plan for revenge that the three of  
19 these individuals were trying to embark on, but that the  
20 plan, at a minimum, was to -- or at a maximum, was to  
21 maybe break in and try to find a cell phone and/or  
22 vandalize the house.

23 Certainly, throughout the course of the  
24 testimony in this case, throughout all of the messages  
25 that Detective -- or Special Agent Sonnendecker reviewed

1 between all of the parties involved, not once was he able  
2 to articulate that there was a firm plan between any of  
3 the individuals; that there was ever a plan to kill  
4 anyone, let alone hurt them.

5 There was no evidence of a conscious object --  
6 or a conscious objective to cause a specific result,  
7 namely causing the death of anybody else. There was  
8 language about trying to get back at people. But insofar  
9 as -- even when Tanya Bui was involved and planning was  
10 involved, it was really all about setting up another  
11 similar type of robbery, not an arson that would  
12 unfortunately result in the death of multiple people.

13 Again, that same argument, I believe, works --  
14 or it's the same -- the similar argument to Counts 16,  
15 17, and 18, the attempted first-degree murder charges  
16 with the intent after deliberation. Again, just kind of  
17 buttressing that same argument, it was not their  
18 conscious objective to cause that specific result to  
19 cause the death of another person. There was no evidence  
20 of that even in the light most favorable to the People.

21 I am going to argue that the Court should also  
22 dismiss Counts 6 through 10, first-degree murder, extreme  
23 indifference, and, likewise, Counts 19 through 21,  
24 attempted first-degree murder through extreme  
25 indifference.

1           You know, as it relates to these five charges,  
2           again, I believe that we run into a culpable mental state  
3           problem. Was setting a fire -- even if we were to  
4           presume that the Court believes that the fire was set by  
5           these three individuals based on the light most favorable  
6           to the People, was the setting of a fire engaging in  
7           criminal mischief really a killing act? Did they  
8           actually know that anybody was there?

9           There were many questions about whether or not  
10          any of these individuals actually knew anybody was home  
11          at the time and all of the evidence presented suggested  
12          that they just -- that they did not know. Certainly, it  
13          was possible, but they did not know.

14          Did they know that the fire would rage out of  
15          control as quickly as it did? The evidence presented in  
16          this case was that at 2:38 a.m., three parties are seen  
17          running away from the house. By 2:40, an officer is on  
18          scene, basically calling for back up because the house  
19          has already been engulfed in flames. It happened in,  
20          like, less than two minutes. In talking with detective  
21          in this case, even he indicated on the stand that, you  
22          know, he would not have known that a fire would have  
23          raged out of control that quickly. It's hard, then, to  
24          presume a number of teenagers would have known the same.

25          So an attitude of universal malice is akin, in

1 my opinion, you know, to the situations where people walk  
2 into nightclubs with automatic weapons and just start  
3 shooting people at random. I do not believe that  
4 knowingly setting a fire to the portion of the inside of  
5 a house presumes the knowledge that they will -- the fire  
6 will spread rapidly and out of control. It was certainly  
7 a negligent act, to say the least, but not something that  
8 I believe rises to the level of universal malice,  
9 manifesting an extreme indifference to human life  
10 generally.

11 As I said, I believe it to be certainly a  
12 negligent act, but not one that indicated a depraved mind  
13 indifferent to human life in general. I do not believe  
14 it demonstrates the depravity of the human heart  
15 determined to take life indiscriminately as we have used  
16 to describe universal malice in the past through case  
17 law. So I'm asking the Court to dismiss Counts 6 through  
18 10 and, similarly, Counts 19 through 21 involving extreme  
19 indifference, culpable mental state.

20 As it relates to the charges of first-degree  
21 assault, I believe those are Counts 22 through 24 in our  
22 indictment. Again, there was no intent to cause serious  
23 bodily injury. And buttressing the arguments of  
24 Mr. Juba, I don't believe that any bodily injury that  
25 was -- that occurred was a result of the fire itself.

1 But, again, I say that there was no intent to physically  
2 hurt anyone based on the evidence in the light most  
3 favorable to the People. Again, these were negligent  
4 acts but did not rise to the level of intent.

5 As it relates to Counts 25 through 26,  
6 first-degree assault, extreme indifference, again, I will  
7 just use that same argument that I raised as it  
8 results to -- or as it related to Counts 6 to 10 and --  
9 I'm sorry -- 19 through 21.

10 As it relates to the second-degree assault  
11 charges, assault with a -- or injury with a deadly  
12 weapon, again, having this be a specific intent crime,  
13 again, I believe that there's no evidence of the specific  
14 intent. Though there was negligent acts, there's  
15 certainly other charges that could be bound over under a  
16 negligent culpable mental state. Also, I do not believe  
17 that the fire caused any injury to the individuals  
18 themselves.

19 Count 28, first-degree burglary, and Count 29,  
20 second-degree burglary, I just simply will argue that the  
21 evidence was insufficient to bind over these charges.

22 As it relates to the first-degree arson charge,  
23 I will say that the evidence is confusing insofar as who  
24 may have started the fire. As it relates to the adjacent  
25 structures, I don't believe that there's any evidence



1 that if the fire was started by these individuals, that  
2 they knowingly did so with the intent to -- well,  
3 knowingly did so and knew that that would extend to the  
4 neighboring houses. Similar arguments as to the  
5 fourth-degree arson charge.

6 As it relates to the conspiracy to commit  
7 first-degree murder, intent after deliberation, again,  
8 we'll just go back to the same argument that there was no  
9 evidence of intent to -- after deliberation, to murder  
10 anybody or to kill anybody. The same with the -- same  
11 arguments on conspiracy to commit first-degree murder,  
12 extreme indifference. Setting fire to a rug is not  
13 evidence of a manifestation of extreme indifference to  
14 human life in general.

15 I will essentially rest on the record as it  
16 relates to the remaining charges, Charges 11 through 15,  
17 and the conspiracy charges that don't involve the  
18 assault-type charges.

19 We are similarly asking the Court to not find  
20 that the proof is evidence and the presumption is great.  
21 Even if the Court is willing to bind some of these  
22 charges over, we do believe that during the course of  
23 this lengthy hearing, there's been sufficient evidence to  
24 suggest that a reasonable jury would acquit these  
25 individuals of the most serious charges and that they

1 should be afforded a bond in this case. We would ask  
2 respectfully that the bond be set at something reasonable  
3 for a 17-year-old and his family to post to the tune of  
4 50- to \$100,000. Thank you.

5 THE COURT: Thank you, Counsel.

6 Ms. Johnston?

7 MS. JOHNSTON: Thank you, Your Honor.

8 Regret does not negate intent. Kevin Bui and  
9 Gavin Seymour likely regret their actions from  
10 August 4th, as they should and we hope they do, but that  
11 does not negate the intent that they had when they set  
12 everything in motion that caused the deaths of five  
13 people.

14 Your Honor, crimes, especially crimes of murder,  
15 typically don't get handed to us on a silver platter,  
16 packaged with a bow, with full a confession as to intent  
17 and as to every element of the crime. And while there is  
18 a confession here by Mr. Bui, of course, he doesn't  
19 confess in his statement to every single element. Intent  
20 is something that usually has to be intuitive by a court  
21 of law. Here what we have are many indicators of what  
22 their intent was that night and what their intent was not  
23 that night.

24 We know that their intent was to do this under  
25 the cover of darkness, which they did in the middle of

1 the night. We know that their intent was to enter  
2 quietly, which they did in the cover of night. We know  
3 that their intent was to do this at a time of day --  
4 night when people would most likely be home. If this was  
5 intended to be done when people were not going to be  
6 home, they would not be doing it at 2:45 in the morning  
7 when people are generally asleep.

8 We know that they intended to bring gasoline  
9 into the house, which they did. We know that they  
10 intended to set this house on fire inside the house  
11 during the nighttime when people are asleep and be -- and  
12 that they would be less likely to escape. We know that  
13 because days before, they say possibly ruin -- Mr. Bui  
14 says #possiblyruinourfuturesandburnhishousedown. We know  
15 this because they brought a gas can and only a gas can  
16 full of gasoline to do this. We know that that gas can  
17 was so full that it spilled on the street as they exited  
18 their vehicle and made their way to the house.

19 We know that they took time to look at the house  
20 and to figure out where best to execute their plan. See,  
21 they did not count on that surveillance video and they  
22 did not count that even with their masks on and their  
23 black hoodies so that they would not be caught -- we know  
24 that they did not count on all of us being able to see  
25 exactly how they executed that plan.

1           We know that they pointed to the back of the  
2 house. And why would they do that? If they're really  
3 there to try to create criminal mischief and to vandalize  
4 the property, why are they trying to do it in an area  
5 where they are least likely to be perceived by others?  
6 Why wouldn't they want to create great damage to all  
7 structures of the house? No, they want to go in the back  
8 because they want to be sneaky.

9           We see them pointing. They enter the back.  
10 What they did was -- they didn't just enter the house and  
11 they didn't just douse it a little bit with gasoline.  
12 Your Honor, the People submit to the Court that they had  
13 an entire full can of gasoline that was so full, that  
14 they splashed it all over the side of the interior wall.  
15 This wasn't just on the floor.

16           That's how this fire erupted so quickly and  
17 that's how this fire completely engulfed the house in  
18 flames within two minutes. It's because it does not take  
19 an expert in arson investigations to know that the more  
20 accelerant you use, the more gasoline you use, the  
21 quicker the fire goes up in flames. And that's exactly  
22 what happened here.

23           Your Honor, regret that they may have does not  
24 also equal remorse. That is a different question for a  
25 different day. But even if they are remorseful, that

1 also doesn't negate intent. They intended to cause the  
2 harm that they did and they intended to cause the deaths  
3 of the person that had wronged Kevin Bui.

4 Through the theory of transferred intent, Your  
5 Honor, that intent transfers to the five unfortunate  
6 innocent lives that were lost that night. What they did  
7 was create a death trap that no one was intended to  
8 survive, and that's exactly what happened. Thankfully,  
9 three people did survive, and that was really a miracle.  
10 But they survived with injuries and with psychological  
11 scars that will last a lifetime.

12 What Kevin Bui and Gavin Seymour did not arrive  
13 with that night was -- were items that could be used to  
14 vandalize property. They did not arrive with spray  
15 paint. They did not arrive with bats. They did not  
16 arrive with rocks. They arrived with the one thing that  
17 they intended to do that night, a gas can. They arrived  
18 with the gas can and a willingness to ruin their futures  
19 and burn his house down. That is exactly why, Your  
20 Honor, this Court should bind over all counts as charged.

21 We are asking the Court to find that -- in the  
22 light most favorable to the People, that there's probable  
23 cause for all counts. Your Honor, this crime was the  
24 stuff of nightmares and we have demonstrated to the Court  
25 that this crime was committed by these defendants, that

1 the proof is evident and the -- the proof is evident and  
2 the presumption is great that this crime was committed by  
3 Mr. Bui and Mr. Seymour. Thank you.

4 THE COURT: Okay. Thank you.

5 I guess the starting point here is to make clear  
6 what this hearing is not, and this hearing is not a mini  
7 trial. It goes without saying that the purpose of a  
8 preliminary hearing is simply to screen out cases in  
9 which a prosecution is unwarranted by allowing -- and  
10 judicial authority to determine where there's probable  
11 cause to believe that a crime is committed and committed  
12 by the defendant.

13 The standard for finding probable cause  
14 requires only that the Prosecution presents evidence  
15 sufficient to induce a person of ordinary prudence and  
16 caution to entertain a reasonable belief that the  
17 defendant committed the crime. It is not necessary for  
18 the Prosecution to show beyond a reasonable doubt the  
19 commitment of the crime or even the probability of the  
20 defendant's conviction.

21 With respect to a preliminary hearing, the  
22 Prosecution is afforded latitude to establish probable  
23 cause in the manner that they choose to do so, and the  
24 Court is not obligated at the preliminary hearing to view  
25 the evidence presented -- I'm sorry -- the Court is

1 obligated to view the evidence in the light most  
2 favorable to the Prosecution. It is not for the trial  
3 judge at the time of the preliminary hearing to accept  
4 the Defense's version of the facts or the -- lead to  
5 inferences that could be drawn from the Prosecution's  
6 evidence.

7 I'm citing from the cases of *People versus*  
8 *District Court* at 803 P.2d 193, Colorado Supreme Court,  
9 1990; as well as *People versus Juvenile Court*, 813 P.2d  
10 326, Colorado, 1991; and *People versus District Court of*  
11 *Adams*, 926 P.2d 567, Colorado, 1996. And so that's the  
12 standard the Court is obliged to apply with respect to --  
13 in a preliminary hearing.

14 With respect to, I guess, the facts and the  
15 factual findings, in large respect, the actus reus of  
16 these offenses is not in dispute. What's really in  
17 dispute, for the most part, is the mens rea aspects of  
18 the crimes. I guess the starting point, kind of working  
19 backwards, the Court had the opportunity to review the  
20 interview between the police and Mr. Bui.

21 Mr. Bui, during the course of that almost  
22 two-hour interview, acknowledged his participation in  
23 this act, acknowledged the fact that he -- or at least  
24 asserted that he had been wronged by people in advance of  
25 this act, claimed he was robbed, acknowledged that he

1 essentially had desired or formulated a -- I'm reluctant  
2 to use the word "plan," but it's clear that he told the  
3 detectives that on the night of this fire, he was acting  
4 in concert with two others to take action with respect to  
5 that alleged robbery.

6 I guess, going -- kind of jumping backwards, I  
7 would certainly find that on August 5th, 2020, in the  
8 early morning hours, about 2:40 or so -- maybe 2:38 to  
9 2:40 -- Denver police officers observed smoke and  
10 responded to an address of 5312 North Truckee Street.  
11 That's in Denver, Colorado. As he arrived on that scene,  
12 he found that the house was essentially engulfed in  
13 flames.

14 To the extent that although the garage door was  
15 open, the officer was unable to enter through the garage.  
16 He went around to the front, found someone trying to  
17 enter a code to get in through the front door. The  
18 officer had to essentially kick out -- kick down the  
19 front door. He was able to get partially inside and saw  
20 the body of a young child. It was obviously deceased.  
21 The officer was not able to get any further into the  
22 house.

23 Fire officials responded to the scene. In their  
24 entry into the home, they found the very tragic scene of  
25 five individuals, including two children, inside the



1 house. They appeared to have been badly burned. Upon  
2 the postmortem examination, it was determined that they  
3 all died of smoke inhalation and carbon monoxide  
4 complications.

5 In addition to those five victims, there were --  
6 actually, there was two families, essentially, living in  
7 the home. These unfortunate victims that died as a  
8 result of this, they were roommates of the homeowner who  
9 was living with his wife and child. The homeowner was  
10 alerted to the danger by way of hearing a fire alarm. He  
11 was able to get up, get his wife and child outside by way  
12 of basically jumping from the second-floor window in the  
13 back. They jumped out the window, sparing their lives.  
14 But in the course of jumping, the husband fractured his  
15 left foot. His wife fracture two vertebrae, which, by  
16 definition, those breaks constitute serious bodily  
17 injury.

18 Again, the home was fully enveloped in flames  
19 very quickly. And to the extent that the fire  
20 essentially, from what I could discern from the  
21 photographs, gutted the interior of the home and also was  
22 so intense as to cause damage to the adjacent homes,  
23 the -- here again, caused damage to the sides of those  
24 adjacent homes.

25 Jumping, I guess, forward, again, as I

1 indicated, Mr. Bui was interviewed and he acknowledged  
2 that he was present and present with the codefendant  
3 Seymour, and another juvenile, D.S. He acknowledged that  
4 he -- the three of them had driven to the location and  
5 had, prior to going to the location, obtained gas. They  
6 arrived at the location with the gas can and brought the  
7 gas can with them and entered the home and set the fire.

8 As the Prosecution has indicated -- that's the  
9 operative facts. Each of those circumstances were --  
10 through a very, it sounds like, detailed, subsequent  
11 investigation, those facts were corroborated, some of  
12 which was depicted on the video, the video depicting the  
13 three individuals on scene pointing towards the back,  
14 dressed in dark hoodies with masks.

15 Subsequent investigation essentially tracked  
16 these -- the defendant and -- both defendants in this  
17 case from their location to the gas station and then to  
18 this neighborhood. It tracked them arriving at the  
19 neighborhood around 2:00 or so and basically driving  
20 around the neighborhood for 40 minutes or so before going  
21 to the location.

22 Again, the statements of Mr. Bui to police were  
23 corroborated in terms of internet searches with respect  
24 to both Mr. Seymour and Mr. Bui doing specific research  
25 as to the house, the address of 5312 North Truckee

1 Street. There's research with respect to obtaining  
2 masks. That was done by Mr. Bui and D.S. There was  
3 subsequent research by both Mr. Seymour and Mr. Bui after  
4 the fire with respect to the circumstances of the fire,  
5 the aftermath of the fire and potential consequences at  
6 least with respect to Mr. Seymour's searches.

7 Again, there was a wealth of evidence presented  
8 today with respect to forensic and digital evidence which  
9 substantiates the fact that these three juveniles went to  
10 the home, started the fire, and caused the aftermath,  
11 including the very tragic death of this family.

12 So in terms of the probable cause with respect  
13 to the identity of the perpetrators, there's certainly  
14 probable cause that -- as to identity. There's certainly  
15 probable cause as to the acts. And, really, the primary  
16 issue, as argued by defense counsel, has to do with  
17 whether there's probable cause with respect to the  
18 specific charges being asserted by the Prosecution.

19 The primary argument which I've identified from  
20 the Defense, which I certainly was interested in in  
21 listening to the testimony, has to do with the charges  
22 that charge a specific intent to either cause death or  
23 some sort of injury, and that would pertain specifically  
24 to Counts 1 through 5, the murder in the first degree  
25 after deliberation and with intent.

1           That would likewise include the attempted  
2 first-degree murder after deliberation counts, 16 through  
3 18, as well as Counts 22 and 23 and with respect to the  
4 intent to cause serious bodily injury on the first-degree  
5 assault charge and the intent to cause bodily injury as  
6 to the second-degree assault charges, Counts 26 and 27.

7           So that's the -- what I discern to be the  
8 primary issue here is whether there's probable cause of  
9 that -- of those elements of either after deliberation  
10 and with intent to cause death or specific intent to  
11 cause either serious bodily injury or bodily injury.

12           In terms of that issue, again, it's important to  
13 keep in mind what the standard here is. The standard  
14 here isn't proof beyond a reasonable doubt. The standard  
15 here isn't whether the evidence is sufficient to  
16 withstand a judgment of acquittal. The standard here is  
17 whether there's probable cause to lead a reasonable  
18 person to reasonably believe that that element or those  
19 elements exist. And so the standard is decidedly less  
20 rigorous than the beyond a reasonable doubt standard  
21 which would be applicable at trial.

22           Certainly, the issue of intent, I guess, in some  
23 instances can be discerned by direct statements made by  
24 the accused which can sometimes establish what the  
25 accused's state of mind is. More from than not, though,

1 specific intent, or intent in any aspect, is -- is  
2 discernible by way of inference from actions.

3 In this case, there's both. There's statements  
4 made by Mr. Bui directly to the -- to the police that  
5 suggest that there was no intent to cause any specific  
6 harm to an individual, that the intent instead was to  
7 damage property. And so there's that evidence that the  
8 Court has considered. There's also other evidence with  
9 respect to actions which the Court can also rely upon.

10 And so with respect to the issue of specific  
11 intent and, here again, the intent -- I'll start with the  
12 intent to cause death. There were a variety of factors  
13 or a variety of things the Court considers. First of  
14 all, the Court can -- here again, the Court is required  
15 to view all of this evidence in the light most favorable  
16 to the Prosecution and draw all reasonable inferences in  
17 favor of the Prosecution. Again, the inference is to be  
18 reasonable. Again, the Court is not obliged to either  
19 judge credibility or favor one inference over another if  
20 there's a reasonable inference that could be drawn in  
21 favor of the Prosecution.

22 So with respect to the very circumstances that  
23 bear upon specific intent, they are these: There is  
24 evidence before the Court with respect animus or ill will  
25 on the part of Mr. Bui with respect to individuals who he

1 believes, I guess, harmed him and who he apparently  
2 believed lived in this specific address, albeit that  
3 belief was incorrect. There's evidence as to his animus  
4 and his belief that the individual or individuals who  
5 harmed him were living at this address that was  
6 ultimately burned.

7           It was before the Court that this animus was  
8 shared to Mr. Seymour with respect to what Mr. Bui was  
9 asserting. There's evidence before the Court of that  
10 animus manifesting in desires to get even, to -- that,  
11 We're going to get them, we're going to retaliate in some  
12 fashion. That's discernible from the texts that were  
13 sent and presented to the Court. So there's an animus  
14 with respect to at least the address.

15           In terms of other factors, the Court  
16 considers -- there's evidence with respect to the  
17 location that this occurred. This occurred in a  
18 residential neighborhood. The Court can discern from the  
19 photographs and the maps that this was -- appears to have  
20 been a dense residential neighborhood -- in other words,  
21 lots of houses -- congregated and close to each other.

22           The Court considers the fact that prior to the  
23 actual burning of the house, the three individuals were  
24 in that neighborhood for at least -- well, around 45  
25 minutes or so. So I consider where this took place in

1 terms of the residential neighborhood. I take into  
2 account the fact that the actual target was a  
3 residence -- in other words, it was a home -- a home  
4 that, by every indication, was occupied or -- here again,  
5 I'm talking about the specific place, not in a place  
6 where construction was taking place or anything like  
7 that. There appears to be -- it appears to the Court  
8 that this took place in a place where people were living.

9 The Court considers the time that this took  
10 place. Again, this took place in the early morning  
11 hours. This didn't take place during the daytime when  
12 occupants of a home are likely to be someplace other than  
13 living at home. This took place early in the morning at  
14 a time when it's likely that individuals living in the  
15 home would be at home and would likely be asleep in the  
16 home.

17 And so it's -- and so, again, I'm drawing  
18 reasonable inferences from the facts here and, certainly,  
19 reasonable inferences that at this time, the early  
20 morning, they would be home. They would be asleep. They  
21 would be vulnerable. They would not be able to  
22 necessarily react quickly. So I take the timing into  
23 account.

24 There's evidence before the Court -- I heard the  
25 evidence that Mr. Bui had some awareness that the family

1 of the -- either the individual who wronged him or his or  
2 her family would likely be present in the home. There's  
3 evidence that there's not only research with respect to  
4 the particular area involved, but also there's specific  
5 research by Mr. Seymour with respect to the interior of  
6 the home.

7 The Court considers the fact that in going to  
8 the area and going to the home, that all three  
9 perpetrators, including both defendants, wore masks; that  
10 those masks were researched in advance; that those masks  
11 were purchased in advance by Mr. Bui and D.S. And, here  
12 again, there's any number of inferences that can be drawn  
13 from the fact that one is wearing a mask when one enters  
14 a home or when one approaches the home.

15 One inference certainly could be that they're  
16 trying to hide their identity from anyone that might see  
17 them enter. Another reasonable inference can certainly  
18 be that one is looking to shield one's identity should  
19 they encounter someone inside the home as they enter it.  
20 So a reasonable inference can be drawn from the fact that  
21 they're wearing masks. So I consider that.

22 The Court considers the instrumentality that was  
23 used to start the fire. This wasn't an instance where  
24 simply something inside the house was lit on fire, a  
25 piece of paper, a couch, or something like that. The



1 Court considers the fact that there was an  
2 instrumentality that was used to cause the fire, i.e.,  
3 gasoline.

4 The gasoline was brought to the scene and  
5 brought from a car to the interior of the home. It  
6 appears that the gas can was sufficiently full such as to  
7 cause some degree of spillage before it got to the home.  
8 It appears to the -- from the evidence that the gas was  
9 indeed used as an instrumentality as an accelerant to  
10 cause the fire, and there's evidence before the Court  
11 that there was indications of accelerant found on one of  
12 the walls.

13 Here again, the house was engulfed very quickly,  
14 and I think a reasonable inference that the Court draws  
15 from that is that it is certainly likely that the gas was  
16 used in areas besides just the wall of the home. I draw  
17 that inference from the fact that the gas can apparently  
18 was full and by the fact that the house was enveloped in  
19 flames so quickly. I think a reasonable inference is  
20 that there was accelerant was used in other parts of the  
21 home that caused the home to become fully enveloped in  
22 basically two minutes or so.

23 There again, bringing the gas can, using the gas  
24 in that fashion, bringing in some device to ignite the  
25 fire, I certainly consider that. And, I guess, as was

1 argued, I don't think there's -- I think the reasonable  
2 inference is that reasonable people, even teenagers,  
3 understand that fire causes -- can cause injury, can  
4 cause death, that it causes smoke which can cause injury  
5 and can cause death, and also that fire can spread. I  
6 think a reasonable inference is that people understand  
7 that fire can spread more rapidly when an accelerant is  
8 used.

9 Here again, based upon all of those various  
10 circumstances, when the standard is, with those  
11 circumstances, cause a reasonable prudent person to  
12 believe that the individuals entered that home and  
13 intended to cause bodily injury to occupants who were  
14 there -- likely there -- cause serious bodily injury to  
15 occupants that are there or likely there, caused death to  
16 individuals that are there or likely there, I think there  
17 certainly is probable cause to make that -- to draw that  
18 inference at least at the probable cause stage, which  
19 would be -- which the Court would find sufficient to  
20 establish the elements of murder in the first degree with  
21 intent and after deliberation.

22 And, here again, whether a jury would disagree  
23 with that, whether the evidence is sufficient to  
24 establish a judgment of acquittal with respect to that,  
25 that issue is not before the Court, but there --

1 understand that probable cause -- there certainly is  
2 probable cause to make that inference.

3 With respect to the argument as to Counts -- I  
4 guess it's 6 -- 6 through 10, extreme indifference, here  
5 again, I think that given all the circumstances I've  
6 articulated, I think there's certainly probable cause to  
7 believe that the defendants, acting in concert, evidenced  
8 an attitude of universal malice, manifesting severe  
9 indifference to the value of human generally and engaged  
10 in -- and knowingly engaged in conducted which created a  
11 greater risk of death to a person other than himself.

12 I think when you go in and you spread gasoline  
13 in someone's home in the middle of the night when they're  
14 sleeping, light it on fire, to the extent that the house  
15 is fully enveloped in two minutes or less, I think  
16 there's certainly probable cause to meet that standard of  
17 proof.

18 My findings with respect to the specific intent  
19 that I've just made, as I've indicated, extend to the  
20 specific intent to cause serious bodily injury as to  
21 Counts 22 and 23, the first-degree assault counts. And  
22 my findings with respect to extreme indifference apply to  
23 Counts 24 and 25, assault in the first degree, extreme  
24 indifference, and likewise applies to Counts 16 through  
25 18 as to attempted murder in the first degree after

1 deliberation.

2 As to the additional arguments that -- as to the  
3 assault charges that the injury was not caused by the  
4 fire, there again, causation -- and a jury may disagree  
5 with this, the Court might disagree at the time of motion  
6 for judgment of acquittal. But in terms of the cause of  
7 the injuries, I don't know that the cause of the injury  
8 necessarily has to be being burned. But, certainly,  
9 there's probable cause to believe that because of the  
10 fire that was set, causing these individuals to flee the  
11 fire from the second-story window and thereby breaking  
12 bones, I think that's certainly probable cause to believe  
13 that the injury was caused by a deadly weapon, i.e., the  
14 fire.

15 Again, as to the -- I think I have addressed  
16 this, but as to the argument that there's no probable  
17 cause as to the adjacent homes, there's probable cause to  
18 believe that this fire that was set was of such intensity  
19 as to not only damage almost entirely the interior of the  
20 5312 address but also the adjacent addresses of 5302 and  
21 5318. There's certainly probable cause that the fire was  
22 a cause of damage to those structures as well that was  
23 knowingly caused by the defendants.

24 As to the conspiracy counts, again, conspiracy  
25 can be established through actual statements that

1 are attributable to the participants. I understand that  
2 there's no -- and there's this wealth of digital evidence  
3 with respect to the digital communications of the  
4 various -- of the defendants, which don't necessarily  
5 establish any plan or agreement or anything else of such  
6 a sort. But, again, the actions that night certainly  
7 establish probable cause that two or more of them  
8 conspired to commit these acts, i.e., murder, burglary,  
9 and arson, as charged in the Information.

10 So in light of those findings and those  
11 conclusions, I find that there is, indeed, probable cause  
12 to establish that the defendants engaged in the conduct  
13 which constitutes Counts 1 through 41 -- strike that --  
14 1 through 46. Counts 47 through 60 have to do with  
15 criminal violence sentence enhancers which aren't before  
16 the Court. So I find there's probable cause to bind over  
17 both defendants as to those counts as charged.

18 Furthermore, given the quantity and the nature  
19 of the evidence presented, the Court finds -- well,  
20 particularly with respect to Counts 6 through 15, I'm  
21 talking about the extreme indifference murder  
22 first-degree counts as well as the felony murder counts.  
23 The Court finds that the proof is evident and the  
24 presumption is great that both defendants committed those  
25 acts of murder in the first degree, Class 1 felonies. In

1 light of that finding, the Court denies bond to both  
2 defendants.

3 So we have further proceedings set with respect  
4 to both Mr. Bui and Mr. Seymour as to whether this Court  
5 will retain jurisdiction or return jurisdiction to the --  
6 or send -- transfer jurisdiction to the juvenile courts.  
7 So we have that date established.

8 Is there anything else we need to do this  
9 afternoon?

10 MR. MORALES: Nothing from the People, Your  
11 Honor.

12 MR. JUBA: Not for Mr. Seymour. Thank you.

13 MR. EARLE: No, Your Honor. Thank you.

14 THE COURT: All right. And do we have hard  
15 copies of the exhibits for reporter?

16 MR. MORALES: I have -- Your Honor, I will send  
17 an updated exhibit list to the reporter as well as file  
18 it with the Court.

19 THE COURT: All right. Thank you.

20 The Court will stand in recess.

21 (WHEREUPON the matter was herein concluded at  
22 the hour of 4:36 p.m. on November 12th, 2021.)  
23  
24  
25

1 DISTRICT COURT  
2 COUNTY OF DENVER  
3 STATE OF COLORADO

Case Nos. 21CR20000 and  
21CR20001

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4 **REPORTER'S CERTIFICATE**

---

5  
6 I, Wendy Evangelista, Registered Professional  
7 Reporter and Official Court Reporter of the District  
8 Court, County of Denver, State of Colorado, do hereby  
9 certify that I reported the foregoing proceedings in  
10 stenographic shorthand at the time and place  
11 aforementioned; that thereafter I reduced said shorthand  
12 notes to transcription form, and that the foregoing  
13 transcript is an accurate transcription of said shorthand  
14 notes and the proceedings had to the best of my knowledge  
15 and belief.

16 Dated at Denver, Colorado, this 17th day of  
17 December, 2021.

18  
19  
20 /s/ *Wendy Evangelista*

---

21 Wendy Evangelista, RPR  
22 Denver District Court  
23 Lindsey-Flanigan Courthouse  
24 520 West Colfax Avenue, Room 2G  
25 Denver, Colorado 80204-2609

# Exhibit 10

Reporter's Transcript 8/19/2022



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.

GAVIN SEYMOUR,

Defendant.

^COURT USE ONLY^

Case No. 21CR20001  
Courtroom No. 5A

REPORTER'S TRANSCRIPT

This matter came on for MOTIONS HEARING on  
August 19, 2022, before the HONORABLE MARTIN EGELHOFF,  
Judge of the District Court.

A P P E A R A N C E S

FOR THE PEOPLE:

COURTNEY LEIGH JOHNSTON  
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JOSEPH M. MORALES  
Reg. No. 24706

KATHERINE HANSEN  
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FOR THE DEFENDANT:

JENIFER E. STINSON  
Reg. No. 35993

MICHAEL S. JUBA  
Reg. No. 39542

MICHAEL PRICE  
Reg. No. 34249

Also present: Andrew Pak, Google Counsel

**Claudia Booton, RPR**

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

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18  
19  
20  
21  
22  
23  
24  
25

**INDEX**

**PAGE**

**WITNESSES:**

**For the Defendant:**

**NIKKI ADELI**

Direct Examination By Mr. Price..... 24

**ERNEST SANDOVAL**

Direct Examination By Mr. Price..... 67

Direct Examination By Mr. Morales..... 89

Cross-Examination By Ms. Stinson..... 122

**EXHIBITS:**

**IN EVIDENCE**

**For the People:**

1 Disc of Interview of Seymour..... 91

Reporter's Certificate..... 164

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
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MORNING SESSION - August 19, 2022

\* \* \* \* \*

(The following proceedings commenced in open court at the hour of 9:00 a.m. with all parties present, the defendant appearing in custody:)

\* \* \* \* \*

THE COURT: Calling 21CR20001, People versus Gavin Seymour. Appearances, please.

MR. MORALES: Good morning, Your Honor. Joe Morales, Courtney Johnston, and Katherine Hansen on behalf of the People.

MR. JUBA: Michael Juba, Jenifer Stinson, and Michael Price on behalf of Gavin Seymour. He appears in custody at counsel table.

THE COURT: Thank you.

We're set for hearing on a variety of motions, so we'll just begin, the first one involving testimony, correct?

MR. JUBA: Correct.

THE COURT: And presumably whatever testimony I'm going to be hearing is not information that's already in the record in some other fashion, yes?

MR. JUBA: Correct.

THE COURT: So the motion is entitled Motion to Suppress Evidence from a Keyword Warrant and Request

1 for a Veracity Hearing.

2 Counsel, you can proceed.

3 MR. JUBA: Few preliminary matters to address.  
4 We would ask the Court to enter a sequestration order.  
5 I believe the prosecution is asking for Special Agent  
6 Sonnendecker to remain as an advisory witness. We don't  
7 have any objection to that. We're also asking for our  
8 witness, Mr. Chris Wells, to remain as an advisory  
9 witness.

10 THE COURT: Any problems with that, Mr.  
11 Morales or Ms. Johnston?

12 MR. MORALES: No, Your Honor.

13 THE COURT: All right. So the Court will  
14 order a sequestration of witnesses. So any witness  
15 other than those advisory witnesses identified need to  
16 absent themselves from the courtroom. They may not be  
17 logged in on Webex and they may not discuss their  
18 testimony with any other witness.

19 What else?

20 MR. JUBA: We're asking the Court to allow Mr.  
21 Seymour to have his handcuffs either taken off or  
22 loosened so he can write and take notes during this  
23 hearing.

24 THE COURT: That's a question of security for  
25 the sheriff.

1 THE SHERIFF: No problem with that.

2 MR. JUBA: The last preliminary matter is we  
3 did file a motion to admit exhibits. Your Honor, we did  
4 attach several exhibits to the actual motions to  
5 suppress. There's a stipulation to the admission of the  
6 search warrant -- search warrants themselves and the  
7 search warrant affidavits, so we would ask the Court to  
8 admit those exhibits now per stipulation.

9 THE COURT: Are they marked in some fashion as  
10 exhibits?

11 MR. JUBA: Your Honor, we have paper copies  
12 for the Court and we are going to file the digital  
13 copies after the hearing itself.

14 THE COURT: As long as they are identified as  
15 exhibits so that we can keep track of them and make a  
16 record of them, and as long as there's no -- as long as  
17 there's no objection to receiving them, that's fine. So  
18 why don't you make a record of what the exhibits are so  
19 we can have a record.

20 Is there an exhibit list or anything like  
21 that?

22 MR. JUBA: Your Honor, we -- the search  
23 warrants and the search warrant affidavits are already  
24 in the record attached to the motions themselves. We  
25 can file additional attachments, but we would ask the

1 Court to just rely on those attachments that are already  
2 in the record.

3 THE COURT: I can certainly rely upon the  
4 contents of the file with respect to what everyone's  
5 filed if that's what you're asking me to do. Is that  
6 what you're asking me to do?

7 MR. JUBA: That is as it relates to the search  
8 warrants and the affidavits, yes.

9 THE COURT: Okay.

10 MR. JUBA: There are nine additional exhibits  
11 that we're asking the Court to also admit. Prior to the  
12 hearing, we did give this -- these exhibits to  
13 prosecution ahead of time. These exhibits are relating  
14 to the keyword search warrant. They include police  
15 reports, additional affidavits, additional reports  
16 outside of the search warrants and affidavits  
17 themselves, and including the search warrant returns  
18 themselves.

19 THE COURT: Okay.

20 MR. JUBA: So we're asking the Court to admit  
21 those exhibits prior to the start of the hearing.

22 THE COURT: All right. And so they are marked  
23 and identified as exhibits, yes?

24 MR. JUBA: Correct.

25 THE COURT: So why don't you make a record of

1 what exhibits they are, what numbers or letters they  
2 are.

3 And there's no objection, Mr. Morales?

4 MR. MORALES: There is an objection, Your  
5 Honor.

6 THE COURT: Oh.

7 MR. MORALES: And so I want to address a few  
8 of the issues. As far as the defense pleadings, they  
9 have attached numerous attachments. We do not oppose  
10 the attachments that include the search warrants or  
11 search warrant affidavits.

12 As far as some of the other attachments in the  
13 defense motions, we do object to because we believe  
14 they're outside of what the scope of this hearing is  
15 about and what the Court is to do.

16 As the Court knows, this Court, when reviewing  
17 a search warrant, is bound by the four corners of the  
18 search warrant and only the four corners of the search  
19 warrant. That is established law that this Court  
20 recently saw really follows completely.

21 As such, all the information of the exhibits  
22 they're attempting to introduce in regards to stuff  
23 outside of those search warrants are extraneous and,  
24 therefore, irrelevant.

25 We don't believe that the Court should accept

1 and we'll be objecting throughout the course of the  
2 hearing, not only as to their admission, but the calling  
3 of witnesses.

4 I anticipate the first witness to be called  
5 this morning is the custodial agent from Google. The  
6 attorney for Google, Mr. Pak, is present here today and  
7 would like to address the Court before she takes the  
8 stand. But the People are objecting to her testimony.

9 Again, the purpose of this hearing, as the  
10 Court knows, is to review the four corners of the search  
11 warrant to determine whether or not there is -- the  
12 three things, particularity, particularity, and probable  
13 cause. Everything else is irrelevant.

14 That box is contained where the Court needs to  
15 stay, and all of this stuff that the defense wants to  
16 bring in except for purposes of veracity or maybe  
17 whether or not there's good cause are irrelevant. And  
18 we don't think that evidence should be accepted on this.

19 I understand the Court, ultimately, gets to  
20 make that decision, but we're objecting to the  
21 testimony. And for those reasons, a lot of what record  
22 is being made here could be circumvented if the Court  
23 were to decide that this evidence is irrelevant. And  
24 perhaps that could be done with an offer of proof as to  
25 how her testimony and the evidence would somehow help or



1 aid the Court in its proper determination of the four  
2 corners of these warrants. And that's the People's  
3 record.

4 THE COURT: Mr. Juba.

5 MR. JUBA: Your Honor, as it relates to  
6 specifically the relevance of this information of the  
7 keyword search warrant, I would just ask the Court to  
8 hear from Mr. Price. That's his issue that he's going  
9 to be addressing.

10 THE COURT: Okay.

11 MR. PRICE: Good morning, Your Honor. Michael  
12 Price for Gavin Seymour. The issue here, this keyword  
13 warrant, is a novel issue. It is the first time it is  
14 being litigated in any court that I'm aware of, the  
15 first hearing about it. There are many questions, I  
16 believe, about how this search warrant worked, how it  
17 was executed, what sort of representations were made to  
18 the Court that were perhaps misleading, all of which  
19 Ms. Adeli's testimony can clarify for the Court.

20 She was the person at Google who had  
21 familiarity with these warrants, personal knowledge of  
22 how the searches were executed. And that is something  
23 that we are challenging here.

24 So with respect to the scope of the search and  
25 the scope of the seizure, the warrant itself is not

1 clear about how the search is to be conducted. It's not  
2 clear from the warrant that Google would be required to  
3 search billions of people. It is not clear from the  
4 warrant which pieces of data were supposed to be  
5 returned to the government.

6           There are -- in the search warrant returns.  
7 There are lines of data that show just how broad the  
8 search actually was. There is a factual dispute, for  
9 example, about whether the search was limited to the  
10 entire state of Colorado.

11           The search warrant returns clarify that was  
12 not the case. They also clarify that some of the data  
13 seized and returned did not match the search terms in  
14 the warrant.

15           So both as to the scope of the search and the  
16 scope of the seizure, we believe this testimony and the  
17 warrant returns are extremely relevant. They are the  
18 best evidence of the scope of the actual search that  
19 took place.

20           The four corners rule is designed for the  
21 government to limit consideration of probable cause that  
22 is not contained inside of the four corners of the  
23 warrant. It prevents the government from making a  
24 probable cause argument based on extraneous evidence.  
25 That's not what we are doing here.

1           We are challenging the scope of that search,  
2           the scope of the seizure, and also the veracity of that  
3           warrant with respect to the representations to the Court  
4           about the scope of the search and seizure.

5           THE COURT: Let's go from reverse order. Why  
6           don't you tell me what either misstatements of fact or  
7           misrepresentations of fact you're alleging were included  
8           in the search -- in the affidavits that somehow either  
9           needs to be excised as to the Court's probable cause  
10          determination or somehow under the affidavit false or  
11          misleading.

12          MR. PRICE: The affidavit is misleading here  
13          by omission largely. There is no mention of the fact  
14          that the search was going to cover everybody who ran a  
15          Google search over the course of 15 days. That's  
16          billions of people. We believe that had that  
17          information been in the warrant affidavit, it would have  
18          given Judge Zobel a little bit more pause, perhaps.

19          THE COURT: So why can't I just take that  
20          offer of proof as that's what you're saying is not  
21          included, and then we go from there? Why do I need  
22          testimony about that?

23          MR. PRICE: I think it is complicated in this  
24          case. This is not a typical search of a house or search  
25          of a car. It's not clear from the warrant how the

1 search was to be conducted. It is not -- and there was  
2 some significant back-and-forth between Google and law  
3 enforcement over how they were going to do this search.  
4 It is not contained in the warrant itself or the  
5 application. There are notes of that back-and-forth in  
6 the investigatory report that we're asking to admit.

7           But from a veracity point of view, we believe  
8 it is complex enough to require that clarification from  
9 Google. The government to this point has been  
10 representing, for example, that the search was limited  
11 to the entire state of Colorado.

12           That is something that Google can clarify for  
13 us. That is something that can be seen directly from  
14 those warrant returns, and it is the best evidence of  
15 that.

16           In addition to the scope of that search, there  
17 are questions about the scope of the seizure, what files  
18 were returned to the government and did they match up  
19 with the requirements of the warrant.

20           Here it appears that only five of the 61  
21 different searches that were returned to the government  
22 actually matched what was in the warrant affidavit.

23           That is not contained in the four corners of  
24 the warrant. It's contained in the warrant returns and  
25 as explained by Google that produced them.

1 THE COURT: So now finish your response to my  
2 question. I was asking what facts you're alleging that  
3 were either false or misleading. So the first thing was  
4 mentioned. Is there anything else?

5 MR. PRICE: So the scope of the search, the  
6 billions of people being searched here.

7 THE COURT: You mentioned that.

8 MR. PRICE: The idea that Google was going to  
9 expand the scope of the search terms beyond what was in  
10 the warrant to include additional search terms that  
11 happened to be searched along with an address. So that  
12 goes to both the scope of the search and the scope of  
13 the seizure, and -- I'll leave it at that for a moment.

14 And the particularity aspect of this is also  
15 at play, the -- in terms of what the government had  
16 authority to get, so both particularity and overbreadth  
17 as well as veracity.

18 THE COURT: Clarify for me, Counsel -- so  
19 what's the legal basis of this motion? You're seeking  
20 to suppress -- what are you seeking to suppress?

21 MR. PRICE: We're seeking to suppress the  
22 keyword search and the returns from that keyword search  
23 as well as all the fruits that derived from it.

24 THE COURT: And the legal basis is what? As I  
25 understand it, the search warrant was overbroad, not

1 sufficiently particular.

2 MR. PRICE: We are making a Fourth Amendment  
3 challenge to the warrant, arguing it was, yes,  
4 overbroad, lacking particularity, and that it was not  
5 made in good faith. There's a veracity problem here.

6 THE COURT: Well, and veracity arguably can  
7 raise extrinsic issues, but I don't quite understand how  
8 if you're saying -- if the search warrant is overbroad,  
9 how I look at other things to say, Oh, gee, we can look  
10 at other things, yeah, it was overbroad as opposed to  
11 looking at the warrant itself. I don't understand that  
12 part of it.

13 MR. PRICE: The warrant itself is not clear.

14 THE COURT: Well, if it's not clear, then it's  
15 not clear. But you can't clarify a search warrant by  
16 extrinsic evidence, can you?

17 MR. PRICE: We're trying to clarify what it  
18 meant and whether -- and the People that can explain  
19 what it meant are Google and Detective Sandoval.

20 THE COURT: Can I do that? Can I look at a  
21 search warrant and say, Hmm, whatever that means? Let's  
22 ask someone extrinsic to the warrant to tell me what  
23 that means. Can I do that? Is that legal?

24 MR. PRICE: If you are making -- are you  
25 making the initial determination about probable cause in

1 the warrant? I mean, yes, you're certainly free to ask  
2 the government additional questions at that point.

3 Here, we are saying that the warrant left  
4 things out, left very important things out about the way  
5 that the search works and the way it was conducted. And  
6 so we are challenging both the warrant and the execution  
7 of that warrant, so not just whether there was probable  
8 cause to do a search, but whether there was probable  
9 cause to seize all of the data that the government  
10 actually obtained. And there's --

11 THE COURT: I don't mean -- go ahead.

12 MR. PRICE: There are factual questions,  
13 disputes, between Mr. Seymour and the government about  
14 the nature of that search, how it worked, how broad it  
15 was, and whether there was cause to seize everything  
16 that they hit.

17 THE COURT: Okay. I'm just trying to  
18 understand is all, Counsel, about what I'm entitled to  
19 consider in terms of reviewing the search warrant. And  
20 I presume the affidavit is in support of it. And when  
21 you say you want to bring in witnesses to explain what  
22 something means, I mean, that seems pretty novel to me.

23 I mean, if I read the words on the page and  
24 someone comes in and says, Here's what this means --  
25 I've never encountered that before.

1           MR. PRICE: We're saying, first of all, the  
2 warrant was misleading. And so we need to have Google  
3 there explaining what they actually did as opposed to  
4 what's in the warrant.

5           THE COURT: Okay. I get that. So what  
6 else --

7           MR. PRICE: If your question is, can you  
8 consider this testimony now at this point in the  
9 proceedings when we're arguing a motion to suppress, the  
10 answer is, yes. The rules of evidence do not apply in  
11 the same way.

12           THE COURT: It's not an evidentiary issue.  
13 It's how the Court can make a determination about  
14 sufficiency or the legality of a warrant. And I can't  
15 go outside of the warrant. I think that's pretty clear.  
16 And so if you're talking about other things, that's  
17 fine. If you're talking about discussing here's what we  
18 think the warrant means by calling someone else to  
19 explain what the warrant means, that strikes me as being  
20 beyond what I'm entitled to do. That's what I  
21 understand Mr. Morales is saying. So what am I missing?

22           MR. PRICE: In terms of explanation, the  
23 warrant has a whole bunch of technical terms that are  
24 specific to Google in some cases that may not be  
25 apparent to somebody reading it for the first time.



1 THE COURT: Okay.

2 MR. PRICE: Beyond that, we are challenging  
3 the execution of the search, so not just the initial  
4 probable cause determination, but the execution of that  
5 search, and that certainly requires looking at the  
6 information that was seized and returned to the  
7 government.

8 What did they take? That's a fundamental  
9 question when it comes to a challenge for an overbroad  
10 seizure, and that information sort of by definition is  
11 not contained in the warrant.

12 THE COURT: Okay. Thanks.

13 Mr. Morales, what I'm hearing is that they  
14 want to tell me what certain technical things mean, and  
15 they want a witness to explain what certain technical  
16 things mean, which is certainly understandable because  
17 it's all Greek to me. I don't understand hardly  
18 anything about computers. Erroneous stuff.

19 And then in terms of the -- not necessarily  
20 the sufficiency of the warrant, but the actual execution  
21 of the warrant is what they want to talk about. So  
22 what's your response to that just as to try and define  
23 the scope of this particular hearing?

24 MR. MORALES: Right. Number one, the  
25 defendant filed motions to suppress the search warrants

1 underneath the Fourth Amendment. And they said in their  
2 motions they were challenging it for overbroad and lack  
3 of particularity. They never said anything about, hey,  
4 what we got down the road was too much or too little.  
5 They just said in a lot of blank statements, this what  
6 we're challenging. But it never got to this point.

7           So the problem with what counsel is arguing is  
8 he's talking about an overbroad seizure, but, yet, we  
9 responded that the seizure of what was given was what  
10 was Google was told to produce.

11           I quite honestly think the Court is not giving  
12 itself enough credit for what it can read through the  
13 four corners of the search warrant. It's not that  
14 complicated as to what Google was requested to do.

15           And, quite honestly, I think counsel is making  
16 far more out of this than it really is. If the inquiry  
17 is going to be of Google, What did Google actually do,  
18 which we believe will be we searched the database based  
19 on numbers and letters and received back deidentified,  
20 anonymized information that would later have to be  
21 revealed through another search warrant, then that would  
22 aid the Court, we believe, because we believe this idea  
23 of a billion users, which, of course, Mr. Seymour only  
24 has standing for himself and not a billion users, is  
25 overblown by the defense.

1           But, quite honestly, having her testify as to  
2 anything beyond how they did the search and what they  
3 produced, again, I want to go back to what -- and I hate  
4 to repeat myself. But what this Court is to do is to  
5 look at the search warrant itself and the affidavit and  
6 determine particularity, was the right place searched.  
7 Google databases?

8           Was the right item -- were the right files  
9 searched? Who did the search of this address, and was  
10 there probable cause within that to believe that a  
11 reasonable probability that if we searched Google's  
12 databases, we could find the people or person who  
13 searched for that database?

14           That is the box that this Court must function  
15 in. All of this other stuff as to how Google did the  
16 search, what Google, ultimately, produced, what those  
17 mean, that's not for this Court on this motion filed by  
18 this defense. If they wanted that, they should have  
19 filed an additional motion with those facts. That's not  
20 what they filed in this case.

21           And so I, again, *Cox* and *Hebert*, the cases  
22 cited by the People, stand for the proposition that you  
23 are not to go outside the four corners of the warrant.  
24 I know the Court doesn't like to be bound by that. The  
25 Court wants to make good decisions based on all the

1 information, but that's what our law says.

2 THE COURT: I don't want to have to go beyond  
3 what I have to do. I'm just trying to figure out what  
4 I'm supposed to do.

5 MR. MORALES: Right. And so, again, I  
6 understand they want to call a bunch of witnesses,  
7 including all of these statements and stuff of that  
8 nature. And we are simply standing up here as officers  
9 of the court and lawyers in the state of Colorado saying  
10 you can't do that. That's not permissible. No matter  
11 how much you really want to do it or how big you want to  
12 sit here and say a billion over a hundred times, you  
13 can't do that. That's all we're arguing, Judge.

14 THE COURT: Okay.

15 It's really hard to try and sort this out kind  
16 of in this vacuum. And so what we're going to do is  
17 this, you can call a witness, and I'll start to hear  
18 what the witness has to say. If it's going beyond what  
19 I think I'm entitled to do and what I should be doing,  
20 the prosecution can make a motion and I'll rule on it.

21 Was there something someone from Google wanted  
22 to say about all this?

23 MR. PAK: Yes, Your Honor. Can I be heard on  
24 this issue briefly?

25 THE COURT: I guess.

1 MR. PAK: I apologize. Thank you, Your Honor.  
2 I just note that I have a pending pro hac vice motion  
3 and I have a number for that motion. Andrew Pak on  
4 behalf of Google, LLC.

5 THE COURT: And I wasn't quite clear what you  
6 were asking to do. I mean, I'm not going to allow you  
7 to participate in the hearing as you're not a party, so  
8 I wasn't quite sure what you wanted to do.

9 MR. PAK: I just wanted to address in the  
10 first instance, Your Honor, this Court's question  
11 regarding standing on our motion, because I do believe  
12 that we do have standing for our motion and requested  
13 remedy to quash the subpoena for live testimony in this  
14 case.

15 THE COURT: I already ruled on that issue.

16 MR. PAK: Understood, Your Honor. And I also  
17 wanted to clarify some issues with respect to what  
18 Mr. Price had mentioned with respect to what he is  
19 seeking in terms of testimony.

20 And we have some sensitivities here, Your  
21 Honor, quite frankly, because we've been down this path  
22 before with Mr. Price on a different matter where I  
23 believe he took over 400 pages worth of testimony in a  
24 similar circumstance, and we want to avoid a fishing  
25 expedition here, Your Honor.

1           And our only point here is that all of the  
2 factual disputes that Mr. Price claims exists are all  
3 resolved on the record with the search warrant itself,  
4 the return, and even the declaration filed by Ms. Adeli.  
5 So we would renew our motion to quash the subpoena for  
6 her live testimony, Your Honor.

7           THE COURT: Okay. And I appreciate that,  
8 Counsel. Thank you.

9           I just don't know what in the world you folks  
10 are looking to do. And certainly we're not going to  
11 take 400 pages of testimony about these kinds of issues.  
12 And certainly we're not going to be fishing through what  
13 Google is doing here because there's a discreet  
14 constitutional issue that's raised by the motion, i.e.,  
15 whether it complies with the Fourth Amendment or not.

16           And so, I guess, I'm skeptical about what  
17 Defense proposes to be doing here. I guess I'm willing  
18 to let them tip their toe in water to see where they're  
19 going here because I don't want to just cut things off  
20 without really understanding it, but I'm quite  
21 skeptical. And so I appreciate what you're saying. And  
22 I guess what are you asking me to do besides quash the  
23 warrant --

24           MR. PAK: Besides that, Your Honor, and I  
25 understand -- we would like to, as a non-party, be able

1 to object as to issues that might go into  
2 attorney-client privilege as well as anything having to  
3 do with confidential sensitive information from Google  
4 that presents a security risk.

5 As a non-party, Your Honor, I would like to be  
6 able to levy that objection if counsel goes into that  
7 with respect to the witness, and I wanted permission to  
8 do that.

9 THE COURT: I think it probably would be  
10 helpful if those kinds of issues are being raised,  
11 someone that can recognize those issues be allowed to  
12 bring those to my attention. So, yeah, I'll permit  
13 that.

14 MR. PAK: Thank you, Your Honor.

15 THE COURT: All right. So like I say, I've  
16 got some healthy skepticism about how far this is going  
17 to be going. I have no doubt that if the prosecution  
18 thinks we're going in the wrong direction, they're going  
19 to raise objections, then we'll figure this out and this  
20 may get cut out at some point in time if I find this is  
21 something that is outside -- so, Counsel, proceed.

22 MR. PRICE: Thank you, Your Honor. And just  
23 to clarify, we do not intend to take 400 pages of  
24 testimony here or inquire about anything privileged.

25 THE COURT: Well, we'll find out.

1 MR. PRICE: Your Honor, Mr. Seymour would like  
2 to call Ms. Nikki Adeli to the stand.

3 NIKKI ADELI,  
4 called as a witness on behalf of the Defendant, having  
5 been first duly sworn, testified as follows:

6 THE COURT: I'm going to have you speak right  
7 into the microphone so we can all hear you, including  
8 the reporter here.

9 Counsel, please proceed.

10 DIRECT EXAMINATION

11 BY MR. PRICE:

12 Q. Good morning.

13 A. Good morning.

14 Q. Thank you for being here. Could you please  
15 state and spell your name for the record.

16 A. My name is Nikki Adeli. First name,  
17 N-i-k-k-i. Last name, A-d-e-l-i.

18 Q. Thank you. Ms. Adeli, who do you work for?

19 A. Google.

20 Q. What is your role at Google?

21 A. I'm a policy specialist on the legal  
22 investigations team.

23 Q. And how long have you been in that role?

24 A. September 2019.

25 Q. So what does that role entail? Can you just



1 explain a little bit for us?

2 A. Sure. Part of the role is responding to  
3 domestic legal requests from U.S. law enforcement, and  
4 then the other part of that is just the procedures with  
5 regards to compliance.

6 Q. You're also a custodian of records for Google?

7 A. Correct.

8 Q. And part of your job, as a specialist, is to  
9 assert objections to law enforcement requests when  
10 appropriate, right?

11 A. In consultation with counsel.

12 Q. And so this case involves what's been called a  
13 keyword search warrant -- actually three of them. Could  
14 you tell us just briefly in your words what a keyword  
15 search warrant is?

16 A. Sure. My understanding of what a reverse  
17 search history warrant is is a request that sets forth  
18 particular search parameters that are relevant to law  
19 enforcement's investigation, at which point they would  
20 be relevant to a Google service. In this case, it would  
21 be Google Search.

22 Q. Google Maps as well?

23 A. Search is a part of Maps as well.

24 Q. So you have personal knowledge of the keyword  
25 search warrants in this case?

1           A.       I was not a part of the actual compliance, but  
2 in preparation for this declaration, I'm aware of them.

3           Q.       So you were not one of the people actually  
4 responsible for responding directly?

5           A.       No.

6           Q.       And you did write a declaration in this case;  
7 is that correct?

8           A.       I did.

9           MR. PRICE: And, Your Honor, I believe we have  
10 a copy of that in the record already as Exhibit 1.

11          THE COURT: It's an attachment to one of the  
12 motions?

13          MR. PRICE: To the motion to suppress.

14          THE COURT: Okay.

15          Q.       (By Mr. Price) All right. I want to start  
16 with just a few basics. Your declaration draws a  
17 distinction between users who are authenticated and  
18 users who are not authenticated. Could you tell us what  
19 it means to be an authenticated Google user?

20          A.       I think, simply put, authenticated user is  
21 someone who has signed in and a non-authenticated user  
22 is someone who has not signed in.

23          Q.       All right. If an authenticated user, someone  
24 who has signed into their account, if they run a Google  
25 Search, that search is then saved to their account?

1 A. It would be a part of their search history.

2 Q. And search history is considered a part of  
3 their account contents, right?

4 A. Yes.

5 Q. So, like, just like emails or photos or  
6 documents?

7 A. Search history is content.

8 Q. Contents. And Google associates the search  
9 history from a logged-in authenticated user -- it  
10 associates it with something called a GAIA ID; is that  
11 right?

12 A. That's correct.

13 Q. What is -- GAIA is an acronym, G-A-I-A. What  
14 does that stand for; do you know?

15 A. Unfortunately, off the top of my head, I  
16 don't. But it is, as you correctly described,  
17 associated with a Google account.

18 Q. If I said it was the Google accounts and ID  
19 administration number, would that be correct?

20 A. Again, I don't know the acronym, but --

21 Q. But if you logged in and you do a search and  
22 it's saved to your account and associated with this GAIA  
23 ID?

24 A. I think the one caveat to that I would specify  
25 is that it's up to the user if they've kept the searches

1 saved subject to any sort of settings with regards to  
2 their account.

3 Q. You're getting ahead of me. So authenticated  
4 users have the ability to delete their search history?

5 A. Sign-in users do have the ability to delete  
6 their searches.

7 Q. Manually or automatically, right?

8 A. Yeah, any sort of settings that would -- at  
9 the user's discretion.

10 Q. So now what happens if somebody is not logged  
11 in?

12 MR. MORALES: Objection, relevance.

13 MR. PRICE: We're trying to clarify how  
14 searches get saved and recorded. There is a distinction  
15 that Google is drawing between authenticated and  
16 not-authenticated users that is critical to  
17 understanding Ms. Adeli's declaration and a lot of the  
18 arguments we're making in this case.

19 MR. MORALES: Again, I'll repeat. We're  
20 talking about the four corners of the warrant. We're  
21 not talking about the terms. I object. This is not  
22 relevant, and it does not go to the Court's evaluation  
23 as to whether or not this Court -- these search warrants  
24 are constitutionally proper underneath the standard of  
25 four corners and the three conditions. We object to

1 this testimony.

2 THE COURT: I'm going to give you a little  
3 latitude just to see where you're going with this  
4 because I'm trying to make sure this is a fair hearing.  
5 And we'll just -- for now, the objection is overruled.

6 Go ahead, Counsel.

7 MR. PRICE: Thank you, Your Honor.

8 Q. (By Mr. Price) If somebody is not logged into  
9 their account, if they are not authenticated and they  
10 run a Google Search, is that search saved in any way?

11 A. Could you repeat the question one more time?

12 Q. If somebody is not authenticated and runs a  
13 Google Search, Google still keeps a record of that  
14 search, correct?

15 A. Based on what I know with compliance of  
16 reverse search history warrants, I know that in the  
17 results that are presented to me, there will be a  
18 non-signed-in user and there are particular types of  
19 data presented in that file.

20 Q. So those searches, instead of being associated  
21 with this Google accounts ID, are associated with  
22 something that you call a Google browser cookie ID; is  
23 that correct?

24 A. A browser cookie ID.

25 Q. Can you, please, tell us what a cookie is?

1 A. I don't think I would be able to do so.

2 Q. What about a browser cookie ID?

3 A. My knowledge of what a browser cookie ID is is  
4 that it's associated with a non-signed-in user who  
5 conducted a search that would be presented in the  
6 results that I would be evaluating.

7 Q. So it's a unique number that gets attached to  
8 that non-signed-in user search?

9 A. That non-signed-in result, yeah.

10 Q. Okay. Thank you. And if somebody is not  
11 signed in, they can't then go back and delete records  
12 with their search, right?

13 A. I'm not privy to the search decision-making  
14 associated with non-signed-in users or not, so I don't  
15 think I could accurately answer your question.

16 Q. There's no mechanism -- I can't log into my  
17 account because I wasn't signed in, right?

18 A. I'm sorry.

19 Q. I can't delete it from my account because I  
20 wasn't signed in, correct?

21 A. Again, I don't know what the decision -- the  
22 pathways of decision-making is for a non-signed-in user.

23 Q. Thank you. Generally speaking, Google  
24 requires a warrant to search account contents?

25 A. For content-level data, a search warrant is

1 required.

2 Q. And we already said that search history is  
3 considered content, right?

4 A. Correct.

5 Q. So without a warrant, Google doesn't allow  
6 other people to get this information, right?

7 A. Do you mind defining what other people is.

8 Q. Like members of the public can't access it?

9 A. No.

10 Q. And Google holds it in trust for their users,  
11 correct, promise to keep it private, account contents?

12 A. I understand that the account contents are  
13 visible to the user who creates that content and that  
14 Google does store user content.

15 Q. And Google also tells you that they will keep  
16 their information private -- I mean, obviously, if  
17 there's a warrant, it's a different situation -- but  
18 from members of the public, from other people who just  
19 want to look at your account, it's considered private,  
20 right?

21 A. That's my understanding.

22 Q. Okay. Thanks. So I want to talk a little bit  
23 about how the keyword warrant process works generally.  
24 I'm not sure that we're all familiar with it.

25 Google has a portal that law enforcement can

1 use to submit requests, submit warrants?

2 A. That's correct.

3 Q. That's the LERS portal, LERS?

4 A. Correct.

5 Q. And then someone from your team receives that  
6 warrant request through the portal and reviews it,  
7 right?

8 A. That's correct.

9 Q. And Google has its own requirements for  
10 keyword warrants?

11 A. Could you specify what you mean?

12 Q. You have certain requirements that the  
13 warrants have to meet; they have to satisfy basic  
14 parameters, be narrow?

15 A. There are policies and procedures that occupy  
16 the space with regards to compliance to keyword  
17 warrants.

18 Q. And for a keyword warrant, you require law  
19 enforcement to follow what you call a staged process,  
20 right?

21 A. We implement a staged process, correct.

22 Q. And, generally speaking, that first stage,  
23 Google searches for anyone who searched for the keyword  
24 terms specified in the warrant?

25 A. The way the first step initiates is based on



1 the search parameters that are in the warrant. A query  
2 is developed to understand whether or not there are  
3 responsive results.

4 Q. Okay. And then you run that search?

5 A. I conduct that query, correct.

6 Q. And provide to law enforcement what you call a  
7 deidentified list, right?

8 A. That's correct.

9 Q. Second stage, if allowed by the warrant,  
10 police can get personally identifiable information from  
11 users that were deemed relevant from that initial  
12 search, correct?

13 A. If law enforcement returns, they return with  
14 particular results that were relevant to their  
15 investigation, at which point, as I set forth in my  
16 declaration, GAIA IDs are de-anonymized in order to  
17 satisfy that.

18 Q. And so that's Stage 2. Can we unpack a little  
19 bit what happens at Stage 1? When someone like you  
20 reviews the warrant, you're looking to see if it  
21 complies with Google's policies, right?

22 A. In consultation with counsel, I would review  
23 the warrant.

24 Q. And if it doesn't comply, if there's a problem  
25 with it, then Google will object, correct?

1           A.       I think that's a question that's reserved for  
2 the security counsel team that I would work with, but --

3           Q.       I'm sorry. You nodded, but was that a yes?

4           A.       Sorry. I thought I answered your question.

5           Q.       If there's a problem with the warrant from  
6 Google's perspective, you will object to executing that  
7 warrant and seek revisions, for example?

8                   MR. PAK: Your Honor, I believe the witness  
9 already testified that the answer would call for  
10 discussions with security counsel, and I believe  
11 Mr. Price is asking the same question again.

12                   MR. PRICE: Your Honor --

13           Q.       (By Mr. Price) I believe your declaration, if  
14 I'm not mistaken, said that part of your job was to  
15 assert objections when appropriate? That's all I'm  
16 asking about.

17           A.       In consultation with counsel.

18           Q.       Okay. Yes. I'm not asking anything further  
19 about your discussions with counsel.

20                   And you said Google will sometimes work with  
21 police to revise those warrants?

22           A.       Could you point to where in the declaration I  
23 use that language?

24           Q.       In this case, there were three keyword  
25 warrants, correct?

1           A.       I believe there were four in all  
2 but -- correct me if I'm wrong, but you're referring to  
3 the first three that led to Step 1?

4           Q.       Correct.

5           A.       There were three that were submitted in order  
6 for Step 1 production.

7           Q.       And Google didn't comply with those first two?

8           A.       We did not comply with them because the legal  
9 processes were withdrawn.

10          Q.       And did Google discuss with law enforcement  
11 how to revise those warrants so they would be proper, in  
12 your view?

13          A.       Again, I was not privy to that compliance as a  
14 whole at the time. I'm only looking at it from two  
15 years later for this instance, so I would not be able to  
16 tell you one way or the other.

17          Q.       Okay. Thank you. Let's assume that Google  
18 does comply with the warrant. The first step is for  
19 someone like you to create what you call a text-based  
20 query. Can you explain what that means?

21          A.       Sure. What a text-based query entails is the  
22 search parameters that are set forth in the legal  
23 process in order to surface any results that match law  
24 enforcement search parameters in their search warrant.

25          Q.       You have that text-based query, and you run

1 it over a database, right?

2 A. That's correct.

3 Q. The database is what?

4 MR. PAK: Objection, Your Honor, calls for  
5 confidential information. So the issue that we had  
6 noted before with respect to the names of database --

7 MR. PRICE: Withdrawn.

8 MR. PAK: -- there's no need for the name  
9 itself in terms of the argument Defense is making and,  
10 otherwise, it does create a security concern.

11 THE COURT: I don't think I need to know that.

12 MR. PRICE: Withdrawn.

13 THE COURT: Why don't you rephrase your  
14 question.

15 Q. (By Mr. Price) So Google is going to run this  
16 text-based query over some database that includes  
17 everybody's search history and searches that are done  
18 through Google Maps, correct?

19 A. I would like to unpack your question a little  
20 bit. I understand the database to hold search data.  
21 Beyond that, I don't understand the build, the  
22 structure, and the storage associated with that  
23 database.

24 Q. Okay. In your declaration, though, you said  
25 that the search covered all search history as well as

1 searches that were done through Google Maps; is that  
2 still true?

3 A. Do you mind if I could have a copy of the  
4 declaration to --

5 Q. Sure.

6 MR. PRICE: May I approach?

7 THE COURT: Sure.

8 Q. (By Mr. Price) Okay. So when you run this  
9 query over the database, the database has information  
10 about search history just done through Google Search as  
11 well as searches conducted through Google Maps, correct?

12 A. That's correct.

13 Q. Okay. And that includes everybody who ran a  
14 search from an authenticated Google account?

15 A. An authenticated user.

16 Q. Authenticated user, correct?

17 A. My results, if there are any, responsive to my  
18 query would entail authorized users and unauthorized  
19 users -- sorry, my apologies. Unauthenticated users and  
20 authenticated users.

21 Q. Great. Thank you. And you or whoever is  
22 running the search doesn't know ahead of time who  
23 searched for what, right?

24 A. That's correct.

25 MR. PAK: Objection, Your Honor. To the

1 extent that Mr. Price is cross-examining the witness  
2 that he called here at hearing, I think that's  
3 inappropriate with respect to leading the witness.

4 THE COURT: You know what, to the extent  
5 you're trying to educate the fact finder about what  
6 you're talking about, I don't mind that so much, so I'm  
7 going to overrule that. And I don't mean this to sound  
8 disrespectful, I don't think I'm as smart, but I think  
9 I've heard some of this before in sources like your  
10 pleadings. So go ahead.

11 MR. PRICE: Thank you, Your Honor.

12 Q. (By Mr. Price) Because you don't know what's  
13 going to be responsive first, Google has to search  
14 everyone in that database, right, everything in that  
15 database?

16 A. I understand.

17 MR. MORALES: Objection. The form of the  
18 question indicates *everyone*. I think she's testified  
19 they search a database. I don't think that --

20 MR. PRICE: I misspoke. I meant everything in  
21 the database, but --

22 MR. MORALES: You said *everyone*.

23 MR. PRICE: I corrected myself to say  
24 everything.

25 THE COURT: Please restate your question.

1 Q. (By Mr. Price) Google is searching everything  
2 in that database, correct?

3 A. Again, because I don't know the entire  
4 structure and format of the database itself, I only know  
5 to be true that I run the query against that database.

6 Q. When you run that query, do you limit it by  
7 scope geographically?

8 A. Let me ask you a question. Are you asking  
9 about in the query itself?

10 Q. Correct.

11 A. No.

12 Q. So you don't limit the query by geography?

13 A. No.

14 Q. Okay. So you're not limiting it, say, to  
15 everybody just in the state of Colorado when you're  
16 running that query?

17 A. Is this more a general question, or is this  
18 specific to this search warrant in particular?

19 Q. It's relevant to the search warrant in  
20 particular, but just take Colorado as an example. When  
21 you run a query, is there a way to geographically limit  
22 that query to just the state of Colorado?

23 A. The parameters that are set forth in the legal  
24 process are the ones that I'm utilizing in order to  
25 formulate that query.

1 Q. And when you run that query, is there a place  
2 for you to geographically limit the scope?

3 A. There is a time zone specificity, but beyond  
4 that, no.

5 Q. Okay. I want to talk about how big that  
6 search is when it happens. Google Search has more than  
7 1 billion average monthly users; is that correct?

8 A. I believe the statistic we put forth in my  
9 declaration mentions that there are 1 billion monthly  
10 active users.

11 Q. Other statistics that you provided was that  
12 Google Maps, like Google Search, also has more than a  
13 billion monthly active users?

14 A. A billion monthly active users, and then the  
15 other statistic was queries associated for the day.

16 Q. And each day Google Search receives billions  
17 of searches?

18 A. From the statistic I provided, I think.

19 Q. And that's including from users who are not  
20 authenticated, right, authenticated and  
21 non-authenticated?

22 A. I don't know what the specificity of  
23 authenticated or non-authenticated is in that statistic,  
24 so I don't know if I can accurately answer your  
25 question.



1           Q.       Okay.  I guess here's where I'm going.  Every  
2 month there's a million active Google Search users and a  
3 million active Google Maps users, and then some number  
4 of unauthenticated users?

5           MR. MORALES:  Objection.  How is this relevant  
6 to what the Court has to review in the search warrant?

7           MR. PRICE:  Your Honor, we're trying to  
8 determine the denominator, I guess, of this search, how  
9 big it really was.  And this -- we're talking about at  
10 least 2 billion and trying to figure out if it's a  
11 little bit more than that here.  We do believe that is  
12 highly relevant to our argument about this being a  
13 prohibited general warrant that failed to specify any  
14 particular account, but search billions instead.

15          MR. MORALES:  The witness has testified that  
16 they put together a query of numbers and letters.  They  
17 submit it to a database, and the database kicks back the  
18 identified numbers.  We're not talking about billions of  
19 people's accounts.

20                Yes, there are billions of Google users.  Yes,  
21 people use Google daily.  That's not what the witness  
22 has testified to.  The witness has been very clear, she  
23 put in a query -- or someone did put in a query to  
24 Google's database, and the database kicks out the  
25 identified anonymous numbers either of authenticated or

1 un-authenticated users.

2 THE COURT: And that's a big database.

3 MR. MORALES: And that's a big database.

4 MR. PRICE: Mr. Morales just said something I  
5 was asking Ms. Adeli about, which is whether the search  
6 includes billions of authenticated and non-authenticated  
7 users.

8 MR. MORALES: But, again --

9 THE COURT: I mean, I can't take it for  
10 granted. It's a big database. We're talking about  
11 Google.

12 MR. MORALES: Yeah. So what is the purpose of  
13 this hearing -- testimony? Why is it relevant to what  
14 the Court has to review?

15 MR. PRICE: Your Honor, it is extremely  
16 relevant that Google was required to search billions of  
17 users at the government's direction in this case. There  
18 was no specificity with respect to any particular user.  
19 It was a dragnet search, and dragnet searches like this  
20 one are unconstitutional.

21 THE COURT: Counsel, all due respect, that's  
22 an argument you're making. I don't know that there's a  
23 factual issue that you need to establish. I mean,  
24 it's -- I think it's pretty darn clear that Google is a  
25 big place, a big database, that whatever is in the

1 database includes a lot of information.

2 I don't entirely understand what facts beyond  
3 that you're trying to establish.

4 MR. PRICE: The question is simply when Google  
5 runs a keyword search warrant, it's fair to say that  
6 includes search of billions of people.

7 MR. MORALES: And it's fair to say that the  
8 reviewing magistrate with the same common knowledge that  
9 the Court has of what Google does would have that same  
10 information when they reviewed the warrant and approved  
11 it and was issued to Google. What is the point of this  
12 testimony?

13 THE COURT: I don't think I need any further  
14 testimony on that particular issue. Let's move on,  
15 please.

16 MR. PRICE: Okay.

17 Q. (By Mr. Price) When Google executes a keyword  
18 warrant, you said in your declaration it can limit the  
19 results to queries that contain only the search terms  
20 listed in the warrant and no other words, correct?

21 A. I believe so, yeah.

22 Q. So to put it another way, it's possible for  
23 Google to run a search in such a way that there are only  
24 exact matches coming back?

25 A. Correct.

1 Q. But another way to do it is to, in your words,  
2 include the specified search terms as part of a query  
3 that contains other words?

4 A. Do you mind if I can take a look at the  
5 declaration?

6 Q. Sure. So the other way to do it besides exact  
7 matches is to include specified search terms as a part  
8 of a query that contains other words?

9 A. Correct.

10 Q. So just to put that into English, that means  
11 it's going to return things that are not exact matches  
12 that have additional words?

13 A. That's correct.

14 Q. And to use your example, a keyword warrant for  
15 the phrase 1600 Amphitheatre Parkway could include  
16 searches that had additional terms, correct?

17 A. Such as the city and the state associated with  
18 that address.

19 Q. Like Mountain View, California, or Google  
20 headquarters?

21 A. If that was a part of the query.

22 Q. I think you gave Google headquarters as a  
23 example of something extra that would be included?

24 A. It's dependent on how the user conducted the  
25 search itself.

1 Q. And if somebody just searched for 1600  
2 Amphitheatre Parkway, Google headquarters, and the  
3 warrant said anyone who searched for 1600 Amphitheatre  
4 Parkway, it would include that search for the address  
5 plus the phrase *Google headquarters*?

6 A. I think the method in which your inquiry is  
7 related to is with regards to the query and how, as a  
8 policy specialist, I would run it. That would come at  
9 the direction of counsel.

10 Q. You did say the more common way to do it is to  
11 allow results that have those extra terms, correct?

12 A. Could you clarify what you mean?

13 Q. Sure. You said or more commonly, the result  
14 may extend to queries that include the specified search  
15 term as part of the query that contains other means.

16 A. I did say that.

17 Q. That's the more common way to do it?

18 A. It would have to be reliant on what the legal  
19 process itself is specifying.

20 Q. If the warrant doesn't specify one way or the  
21 other?

22 A. That would be an escalation to counsel.

23 Q. So after someone from Google runs the query,  
24 results come back to someone like you in the form of a  
25 CSV file?

1 A. Correct.

2 Q. Please explain what a CSV file is.

3 A. It's commonly known as something that's  
4 present in Google Microsoft Excel.

5 Q. So CSV, it's like a type of spreadsheet --

6 A. Exactly.

7 Q. -- that you can open up in Excel?

8 A. CSV file can be opened up in Excel.

9 Q. And then Google will create what you call a  
10 production version of that file, correct, to give back  
11 to law enforcement?

12 A. When the results are presented to me in order  
13 for a Step 1 production to be provided, a Step 1  
14 production would be an anonymized version of the  
15 results.

16 Q. And that's referred to as the production  
17 version, or you refer to it as the production version?

18 A. I believe I referred to it as production copy.

19 Q. Production copy. Okay.

20 A. Because if there's a situation where there  
21 would be a Stage 2, Step 1 would be a copy of the  
22 initial results.

23 Q. And the distinction between that copy that  
24 you're providing to law enforcement and the one that you  
25 get as a result of your query is that you are

1 deidentifying those results?

2 A. I deidentify the results.

3 Q. And that production version typically, at  
4 least you said, includes eight different categories of  
5 information; is that --

6 A. I believe that to be true, yeah.

7 Q. So that's the date and time of the search?

8 A. Correct.

9 Q. That's the course location information  
10 inferred from the IP address, right?

11 A. That's correct.

12 Q. Can we pause there and explain what that  
13 means? Maybe could you explain what IP address is  
14 first?

15 A. Sure. I know an IP address to just be a  
16 numeric address associated with a device on a network.

17 Q. And that allows you to -- that's information  
18 that Google collects, correct? When somebody runs a  
19 search, you log their IP address?

20 A. I understand that to be true based on the  
21 results that are presented to me.

22 Q. And the course location information derived  
23 from the IP address, what is that?

24 A. I understand the course location information  
25 to be inferred from the IP address associated with the

1 result.

2 Q. So it would be like a general location, like a  
3 state or a large area?

4 A. In the results, it's presented as the state.

5 Q. Okay. And then in addition, you're providing  
6 the query entered by the user, so that's the search term  
7 that somebody typed in?

8 A. Correct.

9 Q. The result that's generated from Google? And  
10 if I quite understand this correctly, that is not the  
11 actual URL that would show you the search results. It's  
12 just Google's way of sort of routing it?

13 A. Sorry. Which column are you speaking to?

14 Q. The result.

15 A. There is the query. Then there is the result  
16 category which is what is provided to the user in  
17 response to the query. I think what you might be  
18 mentioning is the request column.

19 Q. You said the request column and the host  
20 pretty much go together, right? The host is like  
21 Google.com.

22 A. It would be the domain that was utilized by  
23 the user.

24 Q. And then the result would be all the rest of  
25 that web address that comes after it, after you hit go



1 on search?

2 A. That's my understanding. It's the back -- it  
3 distinguishes more of the background request made.

4 Q. Those are different than the result?

5 A. I don't know enough to say how they would be  
6 similar to one another. I just know it to be the result  
7 category and the request category.

8 Q. Okay. And the two other things you're  
9 providing are something called a truncated identifier.  
10 So if a search is done by an authenticated user, you  
11 have a GAIA ID and you shorten it; you truncate it,  
12 right? That's the idea?

13 A. We truncate the GAIA ID.

14 Q. And if you have a user who is not  
15 authenticated, you have a browser cookie ID which you  
16 shorten or truncate, right?

17 A. For unauthorized user, the browser cookie ID  
18 is truncated.

19 Q. Okay. And that's the method of deidentifying  
20 the results for the production version?

21 A. That's what is being truncated.

22 Q. And then the last thing you're providing in  
23 that production copy is something called the user agent  
24 string. Can you please explain what that is because I  
25 actually don't know what it is?

1           A.       My technical expertise is, I think, a little  
2 bit limited. But my understanding is that it's a  
3 software element associated with the result, and it  
4 distinguishes the operating system that was taken in  
5 order for the result to be conducted.

6           Q.       Okay. So it's some assessment of, like, what  
7 kind of device was running that search?

8           A.       I don't know about device. I know it to be an  
9 operating system, but --

10          Q.       And that's --

11                 MR. MORALES: I object again, Your Honor. I  
12 don't understand how any of this is relevant.

13                 THE COURT: I don't either.

14                 MR. PRICE: Your Honor, we do plan to take a  
15 look at this file. But this is for the Court's benefit,  
16 so you can understand what is in these data returns. It  
17 is not plain to see. If you look at them, the course  
18 location ID, for example, is very relevant here, because  
19 as we're going to see, it's returning results outside of  
20 Colorado, from Illinois, for example, from places where  
21 there is no state mentioned. But I want the Court to  
22 understand what this information is and how then it's  
23 relevant.

24                 THE COURT: The objection is sustained. It's  
25 not helpful.

1 MR. PRICE: Okay.

2 Q. (By Mr. Price) So that's the end of Stage 1,  
3 correct? At that point, you send the spreadsheet back  
4 to law enforcement through the portal?

5 A. That's correct.

6 Q. Okay. And Stage 2 is where law enforcement  
7 looks at that production copy and determines if any  
8 results are relevant to their investigation?

9 MR. MORALES: Objection, relevance. We're  
10 talking about the keyword search. The return is  
11 irrelevant to what happens next. That's for another  
12 motion to suppress the Google search warrants we get,  
13 but irrelevant for this hearing.

14 MR. PRICE: Your Honor, Stage 2 is the point  
15 at which information is supposed to be deidentified. In  
16 this case, Google produced and law enforcement received  
17 IP addresses that were full IP addresses in addition to  
18 those truncated identifiers.

19 So I'm trying to establish the general  
20 procedure and contrast it with what happened actually in  
21 this case.

22 So Mr. Morales has been talking about how all  
23 this information is anonymized or deidentified and, yet,  
24 the warrant and the results in this case contained  
25 identifying IP address information. Laying the

1 foundation for that.

2 MR. PAK: Your Honor, just to respond to that,  
3 so far all the testimony taken today has been in line  
4 with the declaration that's already submitted on paper,  
5 and I believe the points he's trying to make -- that  
6 Mr. Price are referring to are also set forth in that  
7 declaration.

8 THE COURT: I've heard all this before. I  
9 mean, I'm not that smart, so I've heard this someplace  
10 before. It's something I read in all the stuff I've  
11 been reading for the last week. And so to just repeat  
12 it by way of testimony is unhelpful.

13 So if there's things I've not read that are  
14 somehow relevant, you can go into those. But this is  
15 not a good use of my time or all of our time to repeat  
16 what's been previously discussed. This relates back to  
17 the motion to quash which I gave -- I denied because I  
18 presumed there were things that were not in the record  
19 in some fashion that you might be entitled to bring out.  
20 But this is -- I've heard this all before.

21 You can endeavor to address areas that are not  
22 included; otherwise, please move on.

23 MR. PRICE: Thank you, Your Honor.

24 Q. (By Mr. Price) Let's talk about the three  
25 warrants in this case. The information requested in the

1 first keyword warrant included any and all Google users  
2 that searched for these nine variations of Truckee  
3 Street?

4 MR. MORALES: Objection, relevance. That  
5 search warrant withdrawn by law enforcement is not  
6 relevant for the purpose of this hearing. It has been  
7 stated in their pleadings. It's repetitive. It's in  
8 her declaration. It's unnecessary.

9 THE COURT: Right. As I understand it, there  
10 was several -- for lack of a better description -- draft  
11 warrants or warrants that were sent to Google, and  
12 Google said, No, we can't do this. They were sent back  
13 and they were revised and they were sent back again and  
14 were revised and sent back, and they did it, all of  
15 which I don't understand quite how that bears upon  
16 anything.

17 What's relevant is what the judge reviewed,  
18 the affidavit looked at, to determine whether or not  
19 there's probable cause and whether the warrant is  
20 sufficient. And if your argument is, Shucks, the judge  
21 should have advised on these on these other warrants,  
22 okay, I can consider that, but she doesn't need to  
23 testify about it.

24 MR. PRICE: I think it's more, Your Honor,  
25 that the judge wasn't advised about them. It's that the

1 third warrant suffers from many of the same deficiencies  
2 as the first two, so --

3 THE COURT: Well -- and the issue isn't  
4 whether Google thinks the warrant was sufficient. The  
5 issue is whether or not the reviewing magistrate  
6 reviewed the affidavit and issued an appropriate  
7 warrant. That's the issue, not whether Google thought  
8 it's good or bad.

9 So to the extent you're trying to establish  
10 that Google wasn't satisfied, that's not relevant.  
11 That's not the issue before the Court. The objection is  
12 sustained.

13 Q. (By Mr. Price) So the third keyword warrant  
14 here, you created a query to search this database based  
15 off of the nine terms that were contained in the search  
16 warrant, correct?

17 A. There was a query created to satisfy that  
18 search warrant.

19 Q. Those were the nine variations of the Truckee  
20 Street address?

21 A. Because I did not formulate the query myself,  
22 I'm not privy to the entire query process that the  
23 policy specialist here did, but I know that there was a  
24 query taken, and it was looking to satisfy the search  
25 parameters set forth in the search warrant.

1 Q. So it was over that 15-day time period in  
2 July?

3 A. I believe so, correct.

4 Q. And, again, there were no, to your knowledge,  
5 geographic boundaries applied to the search?

6 A. Again, I only reviewed this request. Two  
7 years later, in reviewing it, I don't know of any  
8 additional action, if there were any taken, because I  
9 was not the person who initiated the query.

10 Q. In your review of this case, was there any  
11 indication that the search was somehow geographically  
12 limited to the state of Colorado?

13 A. In reviewing my notes, no.

14 Q. And so when the search was conducted, it  
15 searched everybody who had conducted a Google Search  
16 over the course of those 15 days?

17 MR. PAK: Your Honor --

18 THE COURT: I think we've been here before.  
19 They search this great big huge database of whoever put  
20 information in it, right? Let's move on.

21 MR. PRICE: Without geographic boundaries.

22 THE COURT: I understand. I know what a  
23 database is.

24 Q. (By Mr. Price) I want to take a look at the  
25 actual warrant return in this case, if that's all right

1 with you. There were actually two CSV files produced;  
2 is that correct?

3 MR. MORALES: Objection, relevance.

4 MR. PRICE: The warrant returns for the third  
5 warrant, Your Honor.

6 THE COURT: Let me ask you this: And this may  
7 be a question of what motion was filed -- let me see if  
8 I can clarify this so I can -- and I'll use a simple  
9 example.

10 So if a search warrant says I'm looking for a  
11 gun and a mask and the police go in and they find  
12 something besides a gun and a mask, okay, then there can  
13 be a challenge to seize things that weren't described in  
14 the warrant, right, which I guess could be a basis to  
15 suppress things or seize that were authorized by the  
16 warrant.

17 Is what we're doing now saying, Okay, the  
18 warrant said you can take X and you took Z, and that  
19 wasn't authorized. Is that where we're going?

20 MR. PRICE: Yes, Your Honor. I would like to  
21 show the Court what was produced in this case that was  
22 outside of the warrant.

23 THE COURT: And is your objection,  
24 Mr. Morales, that that wasn't a basis of -- or grounds  
25 for suppression in the pleadings? It strikes me that if



1 there's -- go ahead.

2 MR. MORALES: I'll let the Court ask it  
3 strikes you as to what, because, Number 1, again, the  
4 pleading was filed by the defense was that the search  
5 warrant was unconstitutional because it was overbroad  
6 and didn't have particularity.

7 They never said that what was produced was  
8 beyond the scope of what was requested in the keyword  
9 search warrant. They've never said that. They -- and  
10 quite honestly, even if the returns do come back, the  
11 evidence, I think, will be why I'm somewhat hesitant not  
12 to allow it, is that it did come back as to what we  
13 requested. It wasn't we asked for X, we got X, we  
14 didn't get Y.

15 So, again, the pleadings were, as the Court  
16 ordered us, was to make pleadings so the opposing party  
17 would know how to respond. We believe we responded to  
18 what their pleading said. We never understood that they  
19 were going to say, well, you got back things you should  
20 have never gotten back and/or you -- because you're  
21 right. It's not like the conventional search where a  
22 law enforcement officer goes into a house and is  
23 authorized to search for a gun and a mask and then finds  
24 cocaine and decides to take that and then charge the  
25 person with drugs and then because that's not part of

1 the original search warrant it gets excised out.

2 That would happen in -- obviously, law  
3 enforcement would not leave the cocaine there. They  
4 would take the cocaine, but it would be suppressed  
5 because the search warrant did not allow for it to be  
6 seized.

7 THE COURT: Right.

8 MR. MORALES: Counsel has never made this  
9 argument in any of its pleadings or hasn't been part of  
10 the search warrant issued in this case exceeded the  
11 scope of what was requested from Google and what Google  
12 responded to.

13 THE COURT: Okay.

14 MR. MORALES: That's my objection as to the  
15 returns. I think counsel will want to get into the  
16 interpretation of those 61 searches and what they mean,  
17 either authenticated or unauthenticated. That can be  
18 done with the Court's pleadings and arguments, not with  
19 this witness.

20 Again, the purpose of me objecting is because  
21 this is adding extraneous information outside of the  
22 search warrants and not helping this Court in one way at  
23 all in determining probable cause. I'm trying to save  
24 time with what I believe is irrelevant information.

25 MR. PRICE: Your Honor, we have challenged the

1 overbreadth of this warrant both as to the scope of the  
2 search and the scope of the seizure. That is -- it was  
3 a major part of our motion to suppress. It is also  
4 relevant to Agent Sandoval's veracity and the good-faith  
5 issue.

6           So we absolutely argued in our motion to  
7 suppress the seizure as well as the search was  
8 overbroad. The government did not have probable cause  
9 to search billions of people and did not have probable  
10 cause to seize 61 different searches and however many  
11 people that may be.

12           So we are challenging both. And also the fact  
13 that this information was not conveyed to the Court at  
14 the time the warrant was being issued.

15           Had the Court been aware that Google was going  
16 to be required to search outside of the search terms  
17 provided, I think that would have raised some serious  
18 questions for the issuing judge.

19           THE COURT: So make me an offer of proof.  
20 What facts can this witness offer that is not somehow  
21 otherwise included in what's been submitted previously?

22           MR. PRICE: I believe this witness can look at  
23 the warrant return, can look at the course location data  
24 provided there, establish that it reached well outside  
25 of Colorado.

1           THE COURT: Why can't you do that in your  
2 pleadings, or did you do that in your pleadings? Why is  
3 that something that requires testimony about -- why  
4 can't you just say -- why can't you just identify here's  
5 what was seized that was outside the scope of the  
6 warrant? Why do we need testimony about this?

7           MR. PRICE: Well, Your Honor, we didn't feel  
8 like it was completely clear from the warrant return  
9 itself --

10          THE COURT: That's your job to make it clear.

11          MR. PRICE: That's exactly what we're trying  
12 to do.

13          THE COURT: You don't make it clear in an  
14 evidentiary hearing. That's not what we do here. I  
15 mean, this is not helpful to the Court in making the  
16 decisions you're asking the Court to make. You're  
17 making arguments, which you are well entitled to make.

18                 You can point out in your arguments this kind  
19 of thing. I don't understand what facts this witness is  
20 offering that somehow is relevant to the issues you're  
21 raising.

22          MR. PRICE: Your Honor, at the preliminary  
23 hearing, the government had a witness testify that the  
24 search was limited to the state of Colorado. This  
25 witness, by looking at the warrant return in this case,

1 can directly rebut that testimony.

2 MR. PAK: Your Honor, the declaration  
3 identifies a description based on the witness'  
4 understanding of what's in the return. There is a  
5 section of the declaration that talks about Google's  
6 processes generally. There's a section that talks about  
7 this warrant return.

8 Again, Mr. Price has not departed from the  
9 declaration and has not created any factual disputes  
10 with respect to that declaration. This has all been  
11 covered in that declaration, including the issue of what  
12 is in that return.

13 So asking Ms. Adeli to walk through the return  
14 is unhelpful, especially knowing she wasn't personally  
15 responsible for the return as well.

16 THE COURT: I totally agree, Counsel. This is  
17 stuff I've seen. This is stuff I can read about. This  
18 is stuff that she doesn't have personal knowledge about.  
19 Some of this is not -- these are not issues that require  
20 factual testimony and factual findings by the Court.

21 And so I think we need to move on, please.

22 MR. PRICE: Yes, Your Honor.

23 Q. (By Mr. Price) The warrant return in this case  
24 included more than simply the truncated cookie ID and  
25 GAIA ID, correct?

1           A.        Could you repeat the first half of your  
2 question.

3           Q.        The warrant return in this case --

4                   MR. PAK: Your Honor, I can point directly to  
5 the paragraph in the declaration that describes the  
6 warrant return and answers the question that Mr. Price  
7 is asking right now.

8                   MR. PRICE: Your Honor, I'm not asking about  
9 privileged information or confidential information, and  
10 the declaration does not mention Colorado or IP  
11 addresses.

12                   MR. MORALES: I think the objection is, this  
13 adds nothing to what the Court has already reviewed.  
14 That is what we're objecting to and why we started off  
15 this hearing with this testimony was completely  
16 unnecessary because nothing is being added to the  
17 record.

18                   THE COURT: I agree. I've read this. I've  
19 seen this. You can argue this. You can point this out  
20 in your arguments or your subsequent briefs, whatever  
21 you want to do. But I don't need testimony about this.  
22 The objection is sustained.

23                   MR. MORALES: Your Honor, further, Mr. Price  
24 has clearly shown to this Court that he has no intention  
25 of offering anything new relevant for this Court to do,

1 and I'm asking the Court at this point in time -- you  
2 gave him a great big deal of leeway. We've been doing  
3 this for more than 45 minutes and we have gotten  
4 nowhere.

5 I'm asking the Court to now grant the motion  
6 to quash and have this witness removed from the stand.  
7 This is going nowhere.

8 THE COURT: Well, I'm going to go back to what  
9 I said initially. Here again, I'm trying to give you  
10 folks latitude to litigate your issues. I indicated as  
11 a preliminary matter that I was going to let you stick  
12 your toe in the water and see what information that's  
13 new that's not included in the record that you want to  
14 develop.

15 Thus far, there's been none. If there's a  
16 matter that's not otherwise included in the record that  
17 somehow is relevant to the issues before the Court, you  
18 can proceed. Otherwise, let's do, I think, what would  
19 be helpful, which would be to hear your folks' legal  
20 arguments about all this stuff because I have a bunch of  
21 questions about that.

22 I don't think this is a question of resolving  
23 factual issues, quite honestly, Counsel.

24 So with that, if there's something that's not  
25 included in the record that somehow is relevant to the

1 issues, you can proceed. Otherwise, let's go to an area  
2 that is helpful. Okay?

3 MR. PRICE: Just a few more questions then,  
4 Your Honor.

5 THE COURT: Okay.

6 Q. (By Mr. Price) Without a keyword warrant  
7 would Google ever go looking for somebody who searched a  
8 particular address?

9 THE COURT: Sounds like an argument that you  
10 can make. I can answer the question for her. No.

11 MR. PRICE: I do believe the answer is no. It  
12 goes to this idea that Mr. Morales was advancing that  
13 this is all just zeros.

14 THE COURT: Well, I've got over -- I've got  
15 this basic question of whether or not there's even a  
16 requirement for a warrant on this kind of thing. I can  
17 talk about that as we go along here.

18 MR. PRICE: Absolutely.

19 THE COURT: But that's issues of law which we  
20 lawyers can talk about. I don't know that this woman  
21 necessarily helps us advance the ball, not  
22 disrespecting.

23 MR. PRICE: May I offer, Your Honor, it is  
24 relevant, this line of questioning, especially to this  
25 idea of an expectation of privacy, whether these are



1 considered Google business records, whether other people  
2 would have had access to them. So I believe it does go  
3 to Your Honor's point.

4 THE COURT: Well, whether Google thinks  
5 there's an expectation of privacy, really, isn't  
6 terribly relevant. It's whether under the law there is  
7 some legally recognized expectation of privacy with  
8 respect to all this stuff. So I don't think it's  
9 helpful. So anything else?

10 Q. (By Mr. Price) Is search history considered a  
11 Google business record?

12 MR. PAK: I think that calls for a legal  
13 conclusion as to whether something is a business record  
14 or not. I would at least request that Mr. Price clarify  
15 what he means by *business record* in the context of that  
16 question should the Court allow it. Again, we think  
17 this is not what the purpose of this hearing is for,  
18 especially given that Ms. Adeli was called as a  
19 custodian of records witness for this hearing, Your  
20 Honor.

21 THE COURT: I think you're asking for her to  
22 make some sort of a legal conclusion about an issue.  
23 Objection is sustained.

24 MR. PRICE: No further questions. Thank you  
25 very much.

1 THE COURT: Okay.

2 Mr. Morales, your extensive cross-examination,  
3 please.

4 MR. MORALES: None.

5 THE COURT: Okay.

6 Ma'am, thanks for coming down and testifying.  
7 You can step on down. You can be excused.

8 I don't see any other witnesses listed from  
9 the defense with respect to this particular motion. Is  
10 that accurate, Mr. Price?

11 MR. PRICE: No, Your Honor. The defense would  
12 like to call Detective Ernest Sandoval.

13 THE COURT: Okay.

14 And, Counsel, thank you for your presence this  
15 morning.

16 MR. PAK: Thank you, Your Honor.

17 MR. MORALES: We placed Detective Sandoval on  
18 call. We didn't know he would be needed. I apologize,  
19 Your Honor.

20 THE COURT: Let's take about a ten-minute  
21 recess. You can get him here. We can proceed. We do  
22 need to stop at 11 because I've got a lawyer coming in  
23 on another motion. It shouldn't take very much time  
24 this morning. I need to take care of him, and we'll  
25 resume when we have the afternoon to address other

1 things. Let's take a ten-minute recess so you can get  
2 the witness.

3 (Recess from 10:25 a.m. to 10:41 a.m.)

4 THE COURT: We are back on the record in  
5 21CR20001. Parties and counsel present.

6 We have a witness, yes?

7 MR. MORALES: Yes.

8 THE COURT: The witness can approach the  
9 witness stand, please.

10 **ERNEST SANDOVAL**,  
11 called as a witness on behalf of the Defendant, having  
12 been first duly sworn, testified as follows:

13 THE COURT: Do your best to speak in the  
14 microphone so we all can hear you.

15 Counsel, please proceed.

16 **DIRECT EXAMINATION**

17 BY MR. PRICE:

18 Q. Good afternoon, Detective.

19 A. Good afternoon.

20 Q. Would you please state and spell your name for  
21 the record?

22 A. Detective Ernest Sandoval, S-a-n-d-o-v-a-l.

23 Q. And who do you work for?

24 A. Denver Police Department.

25 Q. And in terms of experience, you've

1 investigated a lot of firearms cases; is that correct?

2 A. Firearms cases, aggravated assaults.

3 Q. And you've been on the police force for about  
4 14, 15 years now?

5 A. 15 years.

6 Q. You've been a detective for about six years?

7 A. About five.

8 Q. And you investigated, you said, several  
9 hundred firearms cases?

10 A. Yes, at least.

11 Q. Including cases where there were several  
12 shootings over a time span at different locations,  
13 right?

14 A. Correct.

15 Q. But you never used a keyword warrant in any of  
16 those cases, did you?

17 A. I had never used one, sir.

18 Q. Never used a keyword warrant before this case,  
19 correct?

20 A. No, sir.

21 Q. Let's talk about your training a little bit.  
22 When you prepared the first keyword warrant dated  
23 October 1st, 2020, the Denver Police Department didn't  
24 have any policies for keyword warrants in particular,  
25 correct?

1           A.     Correct.

2           Q.     So there was no written policy for how to  
3 properly secure a keyword warrant?

4           A.     Correct.

5           Q.     No internal memo for how to do it?

6           A.     No.

7           Q.     Then no established technique that had been  
8 vetted by the DPD or the DA's office, correct?

9           A.     No.

10          Q.     Is that still the case today, two years later?

11          A.     I'm not sure about that.

12          Q.     You're a deputy ATF agent, correct?

13          A.     I was, sir.

14          Q.     At the time of this case you were?

15          A.     I was, correct.

16          Q.     But you're not aware of any ATF policies or  
17 procedures for getting a keyword warrant, are you?

18          A.     No.

19          Q.     And prior to authoring this warrant, you  
20 hadn't received any official training from the DPD on  
21 keyword warrants, correct?

22          A.     No.

23          Q.     And no official training from ATF?

24          A.     No.

25          Q.     So it was important for you to solve this

1 case, right?

2 A. Yes.

3 Q. You issued a bunch of general warrants in this  
4 case?

5 A. Yes.

6 Q. Including these three keyword search warrants,  
7 right?

8 A. Correct.

9 Q. And the first one, you said, was on  
10 October 1st?

11 A. Yes.

12 Q. That was before Judge Faragher?

13 A. It was.

14 Q. And Google didn't comply with that warrant,  
15 did they?

16 A. They did not.

17 Q. They told you that it needed to be revised,  
18 right?

19 A. Correct.

20 MR. MORALES: Objection. I'm going to object  
21 to the leading nature of the questions, especially if  
22 counsel is going to put in terms like *general warrants*.

23 THE COURT: Sustained.

24 MR. MORALES: I'd ask that question and answer  
25 be stricken because that was a leading question that

1 went to a general warrant, which counsel knows is at  
2 issue in this case and should not be using that specific  
3 language.

4 MR. PRICE: That was the language used during  
5 the preliminary hearing.

6 THE COURT: It's a legal determination the  
7 Court makes, so please proceed.

8 MR. PRICE: May I proceed with leading  
9 questions, Your Honor?

10 THE COURT: No.

11 Q. (By Mr. Price) Detective Sandoval, you  
12 investigated Mr. Seymour in this case?

13 A. Yes.

14 Q. And you are here under subpoena from the  
15 government?

16 A. From both the government and Defense.

17 Q. And us.

18 MR. PRICE: Your Honor, under Rule 611, I  
19 would request permission to ask leading questions of the  
20 detective.

21 THE COURT: Denied. You can make arguments,  
22 Counsel, but he can testify, and his testimony is coming  
23 from him, not from you, so that's the basis of my  
24 ruling. Please proceed.

25 Q. (By Mr. Price) How did Google contact you and

1 what did they tell you about the first warrant?

2 A. The first warrant was in their Google law  
3 enforcement portal. It just said that the warrant was  
4 overbroad or -- I don't know the exact term. But they  
5 said that they did not like the wording in our document;  
6 that we had to revise it.

7 Q. And do you remember exactly what about that  
8 wording they didn't like?

9 A. I believe we had pieced or put together  
10 wording for a geofence which skipped a couple of steps.  
11 This warrant was supposed to be a three-step warrant.  
12 We were trying to obtain all the information in one  
13 warrant. And they said we could not do that.

14 Q. Would it help to take a look at that first  
15 warrant to -- I think you might be confusing the first  
16 and the second one.

17 A. Yes, please.

18 Q. Can you tell us what information that first  
19 warrant asked for?

20 A. It asked for them to identify all people with  
21 providing names, date of births, IP addresses for those  
22 Google accounts that would have conducted that search.

23 Q. So you said that was identifying information,  
24 full name, address --

25 A. Correct.



1 Q. Account info, too?

2 A. It says *subject account*. So I believe that we  
3 would be asking for account information.

4 Q. And to your recollection, was Google's problem  
5 with that part of it?

6 A. Correct. They stated that, again, we're  
7 skipping a step where everything has to come anonymized  
8 first, and then we would look through that and determine  
9 if anything was relevant to our investigation.

10 If it was, then we would have to follow up  
11 with a separate search warrant seeking probable cause  
12 for that next step, which, again, they didn't like the  
13 wording in the first one because we were not anonymizing  
14 anybody.

15 Q. Okay. So they didn't like it because it was  
16 not really anonymized?

17 A. The first one, correct.

18 Q. So the second keyword warrant that was  
19 October 20, 2020, I think it's Exhibit 2, if you want to  
20 take a quick look.

21 Do you remember which judge that was in front  
22 of?

23 A. I do not. That was through Judge Faragher as  
24 well.

25 Q. And did Google comply with this warrant?

1           A.       Again, they did not.

2           Q.       So what happened?

3           A.       Again, they did not like the language.  Again,  
4 even though we asked for an anonymized list, they stated  
5 they first -- we asked for the anonymized list.  Once we  
6 got that, to provide other information for us.  Again,  
7 they did not like how it was worded.  They said it kind  
8 of came along the lines of a geofence, and that's not  
9 what this was.  So we had to, again, adjust that.

10          Q.       Okay.  And so you had some conversations with  
11 Google.  Can you tell us about those?

12          A.       It was with their counsel, Haley Berlin.  And  
13 basically she just told me that the information that we  
14 were seeking had to be revised in the warrant as the way  
15 we were asking for it.  I'm not tech savvy so I asked  
16 her to speak with DA Hansen who knows a lot of that  
17 information and to just let her understand what we  
18 needed to do so she could then assist us.

19          Q.       And what did she tell you about what you  
20 needed to do?

21          A.       She said she would speak with DA Hansen over  
22 the phone.  And then we attempted to make several  
23 appointments that they could sit down and talk.  We  
24 finally made one, I believe, sometime in early November.

25          Q.       Do you remember what specifically had to be

1 revised?

2 A. Again, we were utilizing geofence language and  
3 as well as that, we were asking for information and  
4 skipping a step, basically, is what she was saying. We  
5 had to -- it was supposed to be a three-step,  
6 three-stage process, and we were trying to get Stage 1  
7 and 2 in the same warrant on the second warrant that we  
8 wrote.

9 Q. Are you referring to the geofence part of it?

10 A. No, sir. I'm sorry. In the -- so she was  
11 saying there's three stages, right? The first one is we  
12 want any anonymized information. Second one was we'll  
13 write for those accounts to determine if any of those  
14 names have been in our investigation or relevant to our  
15 case.

16 The third step warrant could possibly be even  
17 more information from those accounts if we can determine  
18 those accounts are relevant to our investigation.

19 Q. Okay. So it was a staged process?

20 A. More or less, yes.

21 Q. And I just want to clarify, the thing that was  
22 objectionable in the first two was the skipping steps  
23 with identifying information?

24 A. More or less.

25 Q. Did Google provide you with actual language to

1 use?

2 A. Not to my knowledge, they did not. We had  
3 phone conversations, but I don't recall them actually  
4 giving us any language.

5 Q. Okay. So then you authored this third keyword  
6 warrant which is the Exhibit 3 in your binder. And that  
7 was on November 19?

8 A. Yes.

9 Q. And can you tell us which judge that was  
10 before?

11 A. Judge Zobel.

12 Q. And the affidavit that you submitted for the  
13 third keyword search warrant, did it mention the first  
14 keyword search warrant?

15 A. Did not.

16 Q. Did it mention the second one?

17 A. Did not.

18 Q. Did it mention why you were seeking a third  
19 one?

20 A. No.

21 Q. And your affidavit didn't mention the revision  
22 process that you had gone through with Google, correct?

23 A. No.

24 Q. I want to take a closer look at that third  
25 warrant application. The materials that you presented

1 to Judge Zobel are in that warrant affidavit in front of  
2 you, correct?

3 A. Yes.

4 Q. And when you presented Judge Zobel with this  
5 application, was that the last time you interacted with  
6 him over this particular warrant?

7 A. As far as what do you mean?

8 Q. Well, did he call you up and have questions?  
9 Did you talk with him afterwards about what it meant?

10 A. He called me up to swear me in for the  
11 warrant, and then said he would get it back to me  
12 signed.

13 Q. Did he have any questions for you about it?

14 A. He did not.

15 Q. And you didn't provide that -- did you provide  
16 any other information to him at that time --

17 A. No.

18 Q. -- or afterwards?

19 A. No.

20 Q. So in that affidavit that you presented to  
21 Judge Zobel, did you ever explain to him that executing  
22 a keyword warrant like this requires Google to search  
23 billions of people?

24 A. I don't know what it took for Google to  
25 conduct the search.

1 Q. You didn't know what was involved?

2 A. As far as their parameters and how they did  
3 it, I do not.

4 Q. Can you explain a little bit more about that.

5 A. I don't know what Google does when they  
6 conduct these searches. I don't know how they input it.  
7 I don't know how they look for it. I guess, that's more  
8 their company policy and how they do things and doesn't  
9 come back to what I'm asking them to do.

10 Q. So did you explain that to Judge Zobel; that  
11 you didn't really understand how the warrant was going  
12 to work?

13 A. No.

14 Q. And, I guess, is that normal practice for you?

15 A. For me to what?

16 Q. Well, to submit a warrant you don't really  
17 understand.

18 MR. MORALES: Objection --

19 THE COURT: Sustained. It's not what he said.

20 MR. PRICE: Sorry.

21 Q. (By Mr. Price) Do you -- I'll move on.

22 Did you tell Judge Zobel that the warrant  
23 would require Google searching everywhere in the world?

24 A. Again, I don't know how they conduct that  
25 search to get the information we request.

1 Q. Your colleague, Detective Baker, testified at  
2 the preliminary hearing in this case. And he said that  
3 he thought the search was limited to Colorado. Was that  
4 your belief as well?

5 A. My belief was we would look at accounts that  
6 may have come back to Colorado. Again, I didn't know if  
7 there was any sort of parameter they can place on that.  
8 Again, I don't work for Google, so I don't know that.  
9 Again, we would look for things because in our  
10 investigation, that's what we believed.

11 Q. So you were interested in reviewing the stuff  
12 that came back to Colorado. But in terms of that scope  
13 of the search, were you aware of how broad it would be?

14 A. Again, I don't know how broad they do their  
15 searches for us.

16 Q. The warrant didn't say it would search  
17 everybody in Colorado, right?

18 A. The warrant didn't say what? I'm sorry.

19 Q. It would search everyone in Colorado.

20 MR. MORALES: Objection, warrant speaks for  
21 itself.

22 THE COURT: Sustained.

23 Q. (By Mr. Price) The affidavit describes  
24 surveillance video from a neighboring house. I think  
25 that was in your affidavit, right? Can you tell us what

1 that surveillance video showed?

2 A. Three individuals, possibly males, walking up  
3 to a residence, appeared maybe to have been discussing  
4 something. At one point they go off the camera towards  
5 the backyard. Several minutes later you see those same  
6 individuals -- obviously they're covered in masks --  
7 sprinting away from this residence. Sometime after that  
8 you can then see the fire.

9 Q. At any point in the surveillance video, does  
10 it show any of the suspects holding a cell phone?

11 A. No.

12 Q. Does it show any of them using a cell phone?

13 A. Not that I can tell, no.

14 Q. Or searching Google for anything?

15 A. No.

16 Q. And in your warrant, did you say that any of  
17 the suspects were seen with a phone?

18 A. I don't believe that was relevant as location  
19 information can be utilized as passive data when you're  
20 not even utilizing your cell phone as long as it's on  
21 you. And most people in the world now continually carry  
22 a cell phone.

23 Q. But this warrant wasn't seeking location  
24 information; it was seeking keyword search results?

25 A. Correct.



1 Q. And there was nothing in the affidavit about  
2 those suspects in the video searching Google on a phone,  
3 for example?

4 A. We did state that based on the nature of our  
5 investigation and how personal this seemed to be, that  
6 it was relevant that they may have searched this address  
7 in this densely populated area to figure out where this  
8 house was.

9 Q. But you didn't know what you were looking for  
10 at this point, right?

11 A. Correct.

12 Q. How many other warrants did you issue before  
13 this keyword warrant?

14 A. An exact number, I'm not positive, but upwards  
15 of probably 20 or 30.

16 Q. Would you say they were fairly broad warrants?

17 A. I wouldn't say broad. Maybe some of them, but  
18 not all of them.

19 Q. Like what about the tower depths?

20 A. That potentially could be.

21 Q. And the geofence warrants?

22 A. Again, potentially could be, but that's  
23 another process that you still have to follow up with  
24 other warrants. You don't just automatically get  
25 information.

1 Q. But I guess where I'm going with this is at  
2 the time you got this keyword warrant, you didn't know  
3 who you were looking for in particular, right?

4 A. Correct.

5 Q. And I believe Detective Baker testified at the  
6 preliminary hearing you initially thought it could have  
7 been somebody living in the home?

8 A. We had no idea.

9 Q. Did you maybe think it could have been someone  
10 with a personal vendetta against the family?

11 A. We thought of everything under the sun this  
12 could have happened or why this could have happened.

13 Q. Including maybe it being a random person?

14 A. Correct.

15 Q. Would you say you didn't know whether or why  
16 somebody might have searched for the address?

17 A. Again, like I said, we knew based on the  
18 personal nature that this appeared to be because of a  
19 fire being set because of this house being in a fairly  
20 newly built location that it wasn't going to be  
21 something that someone would have known exactly where to  
22 go.

23 This wasn't a King Soopers grocery store that  
24 had been there for years. This wasn't a high school  
25 that had been there for years. It was something that we

1 believed could have possibly been searched.

2 Q. So it was a hunch?

3 A. Correct.

4 Q. You didn't know who Gavin Seymour was before  
5 the keyword search warrant, correct?

6 A. No.

7 Q. Was he a suspect in the case at that point?

8 A. No.

9 Q. And it wasn't until after the keyword warrant  
10 that you ended up getting a separate warrant for his  
11 Google account, right?

12 A. Yes.

13 Q. Because before then -- well, as you said, you  
14 didn't know who he was?

15 A. Correct.

16 Q. And would you say you had cause to search him  
17 prior to the keyword search warrant?

18 A. I don't believe so.

19 Q. Would you say you had cause, by which I mean  
20 probable cause, to search his Google account prior to  
21 the keyword search warrant?

22 A. I don't believe so, and we did not do that.

23 Q. Are you familiar with the Stored  
24 Communications Act?

25 A. Vaguely, I guess, more or less.

1 Q. If you look at the keyword warrants, I believe  
2 they rely on it like the first line as legal grounds for  
3 support. You're citing 18 USC, Section 2703.

4 A. Uh-huh.

5 Q. And that's part of the Stored Communications  
6 Act?

7 A. Yes.

8 Q. And the Stored Communications Act -- well, can  
9 you tell us what Section 2703(c) of the Stored  
10 Communications Act says?

11 A. Not without it in front of me.

12 MR. PRICE: Your Honor, may I read what  
13 Section 2703 says?

14 THE COURT: Okay.

15 Q. (By Mr. Price) Section 2703(c) says, A  
16 governmental entity may require a provider of electronic  
17 communication service or remote computing service to  
18 disclose a record or other information pertaining to a  
19 subscriber or to a customer of such service.

20 Would you agree it says *a subscriber* there?

21 A. Yes.

22 Q. It doesn't say *all subscribers*?

23 A. No.

24 Q. So when you were writing up that third keyword  
25 warrant affidavit, did you inform Judge Zobel that the

1 SCA, Stored Communications Act, limits police to getting  
2 records for a subscriber?

3 A. I did not.

4 Q. Did you inform Judge Zobel the Stored  
5 Communications Act does not permit bulk searches?

6 A. I did not.

7 THE COURT: Counsel, I don't mean to limit  
8 you, but how much longer do you have because I have a  
9 second hearing I need to take care of?

10 MR. PRICE: Two minutes.

11 THE COURT: Okay. Go ahead.

12 Q. (By Mr. Price) That third keyword warrant,  
13 you said earlier that you had to revise it so it would  
14 be part of the staged process and Google was going to  
15 produce that truncated information to you; is that  
16 right?

17 A. Yes.

18 Q. What was the purpose of that truncated data;  
19 do you know?

20 A. I'm not exactly sure.

21 Q. Google said something about needing to  
22 deidentify?

23 A. Yes.

24 Q. This warrant, though, asked for more than the  
25 truncated IDs, though, didn't it?

1 A. The third warrant?

2 Q. Uh-huh.

3 A. We asked for anonymized information and an IP  
4 address as associated to that.

5 Q. And IP address as associated with it?

6 A. Yes.

7 Q. The IP addresses, can you just briefly tell us  
8 why that was important to include?

9 A. Again, for looking at where we would like to  
10 start our searching of who could have conducted this, it  
11 may not be relevant that somebody in Europe -- with an  
12 IP address in Europe would be someone we would further  
13 look at.

14 So, again, it would assist us in getting rid  
15 of some of these accounts knowing these IP addresses  
16 didn't resolve to either the United States or somewhere  
17 nearby.

18 Q. So what -- if you have an IP address, what can  
19 you do with that information?

20 A. Write a search warrant to whatever company and  
21 get that information.

22 Q. Like the service provider?

23 A. Correct.

24 Q. That assigns the IP address?

25 A. Correct.

1 Q. You actually determined in this case that at  
2 least three of those IP addresses were associated with  
3 Comcast; is that right?

4 A. I believe so. I know two for sure.

5 Q. If you flip to what's tabbed as 5 there, you  
6 will see the warrant to Comcast.

7 A. 5 is the returns of IP addresses.

8 Q. My apologies. 7. That's the warrant to  
9 Comcast?

10 A. No. This is a warrant to Google.

11 Q. I'm sorry. Tab 8.

12 A. Yes. That's the Comcast warrant.

13 Q. So those three IP addresses that are in the  
14 Comcast warrant, those came out of the keyword warrant  
15 return?

16 A. Yes.

17 Q. And you're asking Comcast to provide what  
18 information about them?

19 A. The physical location of those addresses where  
20 the IP address were at, subscriber information, service  
21 information as far as how long they've had service with  
22 Comcast.

23 Q. And Comcast complied with this warrant?

24 A. They did.

25 Q. And do you remember what Comcast stated as far

1 as return goes?

2 A. We received two returns. One that showed an  
3 account in Lakewood to Tonya Bui, and the second was an  
4 account, I believe, in Lakewood as well to Stephanie  
5 Johnson.

6 Q. Do you know who Stephanie Johnson is?

7 A. I do now, but at the time I did not.

8 Q. Did you attempt to figure out who Stephanie  
9 Johnson was?

10 A. Yes.

11 Q. Who is she?

12 A. She's Gavin Seymour's mother.

13 Q. The address is the same as Mr. Seymour's  
14 address?

15 A. It is.

16 Q. In your affidavit for the third keyword  
17 warrant, did you tell Judge Zobel that IP addresses  
18 could be used to identify Google users?

19 A. No.

20 MR. PRICE: No further questions. Thank you.

21 THE COURT: Thank you.

22 Is there going to be cross-examination?

23 MR. MORALES: I don't believe there will be,  
24 Your Honor, because I think I can make legal arguments  
25 on that. But I would like to do a brief direct



1 examination if the Court would allow.

2 THE COURT: Define brief because I have Mr.  
3 Tatem here in court who is chomping at the bit to do his  
4 hearing.

5 MR. MORALES: It's simply to get the statement  
6 in of Gavin Seymour on video so the Court can review  
7 that in relation to the motion to suppress his  
8 statement. I think I can do it in 4 or 5 questions.

9 THE COURT: Okay. I will be counting. I'm  
10 being facetious. Go ahead.

11 DIRECT EXAMINATION

12 BY MR. MORALES:

13 Q. Detective Sandoval, did you review an  
14 interview you conducted with Gavin Seymour and his  
15 parents on January 27th of 2021?

16 A. I did.

17 Q. Is that here contained in what -- and it's  
18 somewhat difficult because I don't know what the exhibit  
19 numbers are that counsel is using. They refer to Tab 1,  
20 2, and 3 and 4, so I'm going to just admit this as an  
21 unidentified disc at this point in time until we can see  
22 what counsel is going to do with the exhibits they've  
23 been using, because they're using letters which are  
24 reserved -- or numbers which are reserved for the  
25 People. They should be using letters. But it doesn't

1 appear they've done that in the exhibits they've been  
2 using.

3 So this record that they're making is somewhat  
4 messy. But that's what I'm going to do.

5 THE COURT: So you've got that marked as  
6 something, right?

7 MR. MORALES: I do. But because they keep  
8 referring to numbers and tabs --

9 THE COURT: Well, I guess, I'll take ownership  
10 of this. I basically said that I can look at the file  
11 and refer to the attachments. And so thus far, I've not  
12 admitted any exhibits.

13 MR. MORALES: So I'm going to mark this as  
14 Exhibit 1. And then we can let the defense figure out.  
15 And they can denote in their exhibit list what they  
16 referred to during the course of the testimony.

17 THE COURT: Or they can make clear in their  
18 argument what specific document they're referring to and  
19 how they wish to proceed.

20 MR. MORALES: That will work.

21 THE COURT: So you're offering 1.

22 MR. MORALES: I am.

23 THE COURT: Any objection to 1 for this  
24 hearing?

25 MS. STINSON: No objection.

1 THE COURT: 1 is received.

2 (Exhibit(s) 1 received into evidence.)

3 Q. (By Mr. Morales) Fair to say, Detective  
4 Sandoval, that contains the entire interview you did  
5 with Gavin Seymour and his parents?

6 A. Yes.

7 Q. Prior to that interview, did you do any, like,  
8 introductory stuff, just talk about what you were doing,  
9 that you would talk to them later about what was going  
10 on?

11 A. We did.

12 MR. MORALES: Nothing further.

13 THE COURT: Okay. Any cross on any -- I guess  
14 redirect on that?

15 MS. STINSON: Your Honor, I do have  
16 cross-examination for this witness related to that  
17 interview, not related to the foundation. But it would  
18 certainly take more than 30 seconds.

19 THE COURT: As it pertains to this motion or a  
20 different motion?

21 MS. STINSON: This disc is as to the motion to  
22 suppress statements. So I do have cross-examination as  
23 to that which is the subject of this interview. So I  
24 don't know if the Court wants to take that up a little  
25 bit later.

1 THE COURT: Different motion. Let's stay on  
2 task. Okay? So we'll have Detective Sandoval come back  
3 for that motion, yes?

4 MS. STINSON: Yes, presumably. Thank you.

5 THE COURT: Okay.

6 So as to this motion, you can step on down.  
7 Okay. Thanks.

8 Folks, I'm sorry. This is a little bit  
9 herky-jerky, but I do have other matters I'm responsible  
10 for, including one that is scheduled for 11 o'clock. I  
11 have counsel here on that motion. So let's say we take,  
12 Mr. Seymour, you back.

13 I don't know how long this will take. It  
14 shouldn't take too long, but let's recess this hearing  
15 so I can talk to Mr. Tatem and Mr. Nathaniel.

16 (Recess from 11:10 a.m. to 11:57 a.m.)

17 THE COURT: Let's go back on the record for  
18 21CR20001. The record reflects parties and counsel are  
19 present. Folks, I apologize. I know this is shocking  
20 to you, but I was wrong with respect to my estimate of  
21 this other hearing's duration. They wanted to talk in  
22 circles for 45 minutes, so I apologize for that delay.

23 Here's what I think we need to do. I think we  
24 need to take our lunch recess. I have two more matters  
25 I need to resolve, both of which will be in custody on

1 the Webex. The sheriff will take those first.  
2 Hopefully we can get those resolved by 2 o'clock. You  
3 folks can come back at 2 and you folks have from 2 to 5  
4 to continue to work on these motions. So I do apologize  
5 for the delays in the case.

6 I wish we had the luxury of only handling one  
7 case at a time, but we don't. So that's what we're  
8 doing. So see you folks back at 2. Thank you.

9 (Recess from 11:58 a.m. to 2:01 p.m.)

10 THE COURT: Back on the record in 21CR20001,  
11 People versus Seymour. Defendant is present, counsel is  
12 present. Let's proceed.

13 So is there any more testimony or evidence  
14 with respect to this first motion we're talking about  
15 from Defense?

16 MR. PRICE: No, Your Honor.

17 THE COURT: How about from the prosecution?

18 MR. MORALES: On the first motion?

19 THE COURT: Yes.

20 MR. MORALES: No, Your Honor.

21 THE COURT: All right. Then let's hear your  
22 arguments.

23 Mr. Price, you can go first.

24 MR. PRICE: Good afternoon, Your Honor. I  
25 believe Mr. Seymour had filed a motion with the Court

1 requesting a post-hearing briefing in lieu of argument;  
2 however, if the Court has questions, I'm more than happy  
3 to answer them today.

4 THE COURT: Well, how does the prosecution  
5 feel about filing post-argument -- post-evidentiary  
6 arguments?

7 MR. MORALES: We object. We don't believe  
8 it's necessary. We prefer to go to arguing today.

9 THE COURT: Counsel, what more do you need to  
10 do? I mean --

11 MR. PRICE: Your Honor, I believe this is a  
12 complicated issue. We want to ensure that we have a  
13 record that is accurate and reflects those complexities  
14 before the Court. But if --

15 THE COURT: I'm just asking, what would you  
16 like to do?

17 MR. PRICE: We would prefer to have  
18 post-hearing briefing on this issue in lieu of argument.

19 THE COURT: Mr. Morales, do you have any other  
20 authorities you would be submitting other than the  
21 response that you filed that you can think of? I mean,  
22 all these issues are simply arguments, similar in a lot  
23 of respects. And so I kind of anticipate similar  
24 arguments in a lot of this stuff. I'm not trying to  
25 preclude anything at all. I'm just trying to figure out

1 what else we need.

2 MR. MORALES: I certainly have additional  
3 arguments to some of the things that may be argued, but  
4 as far as the bulk of what we responded to is what we  
5 responded to. So particularly -- I could give examples,  
6 but we're prepared to argue the motions and the  
7 responses. I just --

8 THE COURT: Sure.

9 MR. MORALES: Let me -- I'm sorry to interrupt  
10 the Court. If the testimony today had garnered anything  
11 that would need additional evidence short of some very  
12 sparse ones, then maybe briefing would make sense. But  
13 the testimony of the first witness and even the second  
14 witness is really either supplemented by the filings and  
15 everything else. So there's really nothing additional  
16 based on the evidentiary part of this. So I'm not  
17 really sure why we would need a post briefing.

18 And, again, as I started off, the four corners  
19 analysis and the decisions by this Court are really  
20 contained within the exhibits themselves and the case  
21 law that's been cited by both parties.

22 So I'm just unsure of how regurgitating those  
23 arguments for the Court and having the Court having to  
24 read those again is going to aid the Court in any way.  
25 I just don't understand it.

1           THE COURT: Okay. Here's what I'm going to  
2 do, Counsel. I will give you a full chance to litigate  
3 your issues. I have kind of a rudimentary question I  
4 want to pose to you-all. You can maybe respond to that.  
5 You can make any other arguments you want.

6           I don't want to -- I didn't plan to rule from  
7 the bench this afternoon. So I don't have any problem  
8 if you want more time to file additional authorities or  
9 arguments after this. And if either party wants to  
10 respond to anything that's filed, that's fine, because I  
11 honestly didn't have -- I need to study this, obviously.

12           And so I don't really have a problem with what  
13 you're suggesting, Counsel. You can decide what you  
14 think is appropriate.

15           Let me throw this out because I'm curious what  
16 the various responses are, and I could just be totally  
17 oversimplifying all this. And if I am, you folks will  
18 certainly set me straight.

19           The thought that keeps going through my brain  
20 is this: I mean, we go through life, and we leave  
21 pieces of this behind all the time. We walk through  
22 life and we leave our fingerprints. We walk through  
23 life and leave our skin cells. We walk through life and  
24 sometimes we leave drops of our blood or whatever. We  
25 leave all kinds of things behind.



1           And there's been times when we didn't know  
2           that we left those things behind. There are times when  
3           we didn't know what we could do with those kinds of  
4           things, right? And technology comes along and we find a  
5           way to make use of that in all kinds of ways, including  
6           forensics and investigation.

7           And it strikes me that what we're talking  
8           about here is a different -- another way to leave a  
9           piece of ourselves behind, learning we know now that in  
10          this digital age and stuff, we leave all kinds of pieces  
11          of ourselves out there, right?

12          And so I guess my question is this: How does  
13          the use in a case like this, where there's no  
14          specific -- we're using information to develop a suspect  
15          as opposed to implicate a suspect. Why is this, for  
16          example, different from you find a fingerprint on a  
17          scene and you put the fingerprint through the FBI  
18          database and they come back with information? And you  
19          leave a drop of your blood and you put it in CODIS and  
20          come back with this massive -- why is this any  
21          different?

22          MR. PRICE: Thank you, Your Honor.

23          I think Your Honor is right to raise that  
24          question because the same question that the U.S. Supreme  
25          Court has been grappling with now for about a decade, do

1 the same rules that govern searches in the physical  
2 world apply to searches of data and evidence in the  
3 digital world?

4 At each turn along that path, the Court has  
5 made the determination that, for lack of a better word,  
6 digital is different. That even though Mr. Jones in the  
7 GPS tracking case could be seen driving down the street  
8 by anyone who happened to be there, that it was  
9 different somehow when you had a GPS tracker on his car  
10 that was monitoring him for 27 days straight.

11 The Supreme Court in *Riley, California v.*  
12 *Riley*, which dealt with the search incident to arrest of  
13 a cell phone, once again, the Supreme Court said digital  
14 is different. It is something quite different to search  
15 somebody's cell phone which may have information that is  
16 more private than anything they might keep in their  
17 house as opposed to an empty cigarette pack in their  
18 pocket and, therefore, the rule is different. A warrant  
19 is required there.

20 And then in *Carpenter* from 2018, the Court was  
21 looking at that digital trail of breadcrumbs that we  
22 leave behind as a result of cell site location  
23 information that is held by a third-party company. And  
24 the Court looked at the third-party doctrine which for a  
25 long time had said, if it goes through a third party,

1 you don't have a privacy interest in it. But the Court  
2 said, well, it's different here. You don't really have  
3 a choice but to use a cell phone.

4 And the amalgamation of this data,  
5 centralization of it, the ability for law enforcement to  
6 search it with ease without extending the physical  
7 resources that they would have had to track somebody  
8 otherwise makes it a different analysis. It provides  
9 the government a way of looking back in time.

10 It's a new investigative technique that the  
11 Court found shifts the balance away from the framers'  
12 intent when it came to the Fourth Amendment. And so the  
13 Court is saying it's important to look at the privacy of  
14 the data that we're talking about in each particular  
15 case, GPS, cell phone data, cell site location data.

16 And here we're talking about keyword search  
17 data. It's Mr. Seymour's position that that is some of  
18 the most private data that exists. It's not just dots  
19 on a map where you can infer where somebody might have  
20 gone. It is an intimate archive of personal expression,  
21 of hopes, fears, problems, questions all in one place,  
22 things that you might not even ask a family member or  
23 clergy or tell your wife, people are somehow willing to  
24 type into that search box.

25 And as a result, you have not only something

1 with tremendous privacy implications but First Amendment  
2 implications on top of that. And when you have those  
3 two combined, the Fourth Amendment argument -- the  
4 Supreme Court has said repeatedly the Fourth Amendment  
5 has to be followed with scrupulous exactitude; that it  
6 is even more important in these cases to have proper  
7 probable cause and particularization of the warrant,  
8 simply because the alternative is a massive centralized  
9 database that allows police a one-stop shop to hit the  
10 easy button and try and gen up suspects in a case.

11           It's the opposite of the way that warrants  
12 usually work. It's why Ms. Adeli was referring to them  
13 as reverse warrants. It flips the process on its head.  
14 And in this case -- and I'm sorry, I'm getting away from  
15 your privacy question. But there was no probable cause  
16 to search Mr. Seymour at that point. Detective Sandoval  
17 made that clear. We would say there was no probable  
18 cause to search any of the other billions of people  
19 either. And the fact that the search took place in this  
20 way in this reverse fashion, makes it into an  
21 unconstitutional general warrant, something that our  
22 Fourth Amendment forbids.

23           So in this case, yes, we believe there is a  
24 privacy interest in this data, and we also believe that  
25 the government did not follow the Fourth Amendment

1 requirements in order to search and seize it.

2 THE COURT: Let me just follow up with a  
3 couple of things, Counsel. And I certainly understand  
4 there would be a different analysis between finding out  
5 whether or not X number of people enter a certain query  
6 without knowing who those people are. There's a  
7 difference between that and saying, I'm going to look at  
8 Mr. Jones' Facebook records for whatever. I think  
9 there's -- those are different analysis and different  
10 implications.

11 But, I mean, we all have -- most of us have  
12 driver's licenses. And when we do that, we take our  
13 fingerprints and they're in a big database. I bet you  
14 those are searched all the time. And among those  
15 searches, I bet you my fingerprints and yours are there  
16 too, and they're searched. We're going through -- those  
17 are records and trying to find something that matches.

18 How -- I'm not hurt by that. You're not hurt  
19 by that. How is -- you asked who put in this query  
20 without knowing who did it. How does that hurt anyone?

21 MR. PRICE: So I think that the -- maybe the  
22 better analogy, if you want to carry your fingerprint  
23 analogy forward, would be to say, imagine a company that  
24 not just has a record of everyone's fingerprints, but  
25 keeps track of every place you ever left your

1 fingerprints and has that data available to law  
2 enforcement.

3           That's a different type of scenario than the  
4 one you're envisioning. If there's a crime, of course,  
5 police can go in and they can dust for fingerprints as  
6 usual, but they don't have the ability to dust the  
7 entire world for fingerprints and search backwards.

8           And so I think that's where the analogy breaks  
9 down a little bit. The Supreme Court has warned against  
10 analogizing to the physical world for this reason. The  
11 analogies can be somewhat helpful but also a little bit  
12 misleading.

13           And I think with the fingerprints, it would be  
14 more accurate to say a record of everywhere you have  
15 left your fingerprints and giving the police the power  
16 to figure out where you were and what you were doing  
17 retroactively without ever having to go and dust for  
18 prints at anyplace.

19           THE COURT: Let me ask you one more question  
20 and then I'll let you make whatever argument you want to  
21 make.

22           In terms of process, which has been described  
23 in detail in the pleadings and described in some  
24 generality in testimony, I mean, with respect to the  
25 process that, I guess, Google makes people go through,

1 it strikes me to be a difference between fingerprints  
2 and blood and digital stuff is who owns the database. I  
3 mean, here again, the police or law enforcement that  
4 owns CODIS or some agency -- the FBI owns their database  
5 and fingerprints.

6 Here we're talking about a private company  
7 that owns all this information, so there's -- the police  
8 just can't really go there. They need to get some  
9 authorization. And Google has its process, which  
10 strikes to me -- I mean, tell me why -- there seems to  
11 be a lot of protections built into it, i.e., you can't  
12 just go to Google and say, Here's a search term, tell me  
13 everyone that's entered the search term.

14 No, they say, No, you need to do it  
15 anonymously. And then you have to have another warrant  
16 saying, Once we find there's been some sort of a  
17 response to this query, then there has to be probable  
18 cause or some judicial finding that, well, it's relevant  
19 to this particular thing, and here's the probable cause  
20 for it.

21 That seems to be a lot of protections built  
22 in, even if there is some sort of global concern about,  
23 Gee, people are finding out who's doing queries, even  
24 though we don't know who they are. Can you respond to  
25 that?

1           MR. PRICE: Yes, Your Honor. I'll take the  
2 first thing you said about who owns this data. I  
3 believe Ms. Adeli was clear that the search history is  
4 considered part of the user's account data. So the user  
5 owns that search history in the same way that the user  
6 owns their Gmail, owns their photos stored on Google's  
7 cloud, owns their documents stored on Google's cloud.  
8 But there's no distinction. That is the user's data.

9           Google is holding it in trust for users.  
10 There are protections built in. In that respect, they  
11 have a privacy policy. They say that they're not going  
12 to hand it over to anybody who cares to look at it; that  
13 they're only going to respond to legal process.

14           And all of that plus the fact that, frankly,  
15 people who are logged in can delete their data means  
16 it's their data. No company is going to allow you to  
17 delete their own business records. This is something  
18 that users have control over and is their property,  
19 their data. It belongs to them.

20           And I think that alone is grounds to find a  
21 privacy interest in this search history data. If you  
22 look at the Supreme Court's decision again in *Carpenter*,  
23 there's about half of the Court there saying that it is  
24 absolutely critical to look at property interests in  
25 data, who owns that data, is Google a bailor or bailee



1 of your data, and analyze it in that way, because if the  
2 answer is, yes, then it is your data. And any  
3 infringement on your property, even if it's small, is  
4 still a trespass. And a trespass has long been the test  
5 to determine whether there was a Fourth Amendment  
6 search.

7           And so I think on either front, expectations  
8 of privacy or on the property trespass theory, this  
9 Court can find a Fourth Amendment interest in that data.  
10 And it is important to, I think, consider both.

11           With respect to Your Honor's question about  
12 the safeguards that Google has in place, they are, as we  
13 are seeing in this case, applied very unevenly. Their  
14 policies frequently change. Something they rejected in  
15 the first warrant they accepted in the third. And I  
16 think there is a temptation to view this as anonymous  
17 data, but it is not, especially when you consider the  
18 full IP addresses that were demanded in Step 1 by the  
19 warrant and produced by Google. Those are identifiable.

20           The government can and did go to the service  
21 provider and tell us who had that IP address, what's  
22 their name or address. So the idea that Google is  
23 handing back anonymized data in this case, I think, just  
24 doesn't fit with the facts.

25           That was certainly what was presented to Judge

1 Zobel, but I think without the additional explanation  
2 that would have been necessary to explain the  
3 significance of asking for those IP addresses in the  
4 same breath as asking for anonymized data.

5 Google, as a matter of policy, does not  
6 provide IP addresses anymore, I guess, in Step 1 because  
7 of this concern, because of this recognition that at the  
8 end of the day, they're not anonymous.

9 And so I think there is a tendency to be  
10 lulled into Google's representations or the warrant's  
11 representations about this being anonymized and there  
12 being all these protections. But, in fact, there was  
13 really just one step here.

14 They ran a search over everybody, and they got  
15 back all the results with identifying information. They  
16 didn't have the Google -- the full Google ID number, but  
17 that would not have mattered.

18 THE COURT: And just correct me if I'm wrong  
19 on this, Counsel, once they -- once the law enforcement  
20 got that information, didn't they then have to go back  
21 to a judicial officer to then get another warrant to get  
22 the specific information they were looking for?

23 MR. PRICE: Yes, Your Honor. So on  
24 December 4th, the government got two warrants. One was  
25 the Comcast warrant to identify the IP addresses. And

1 the second was another Google warrant to get the account  
2 contents of the identified accounts. So that would  
3 include, obviously, the name, subscriber information as  
4 well as the full account contents.

5 So there were two warrants that were issued on  
6 the same day. And the Comcast one was designed to  
7 identify the individuals who had used that IP address,  
8 so --

9 THE COURT: Going through a judicial process  
10 to get this -- I mean, is that not constitutional  
11 protection for, I guess, unchecked governmental conduct?  
12 I mean, it strikes me that seems to be a good thing.  
13 You get this information. And then after that, you need  
14 to go back to a judge and say, Okay, now, here's why you  
15 want to hone in. I mean --

16 MR. PRICE: Respectfully, I believe that the  
17 first warrant should have been for a specific account,  
18 not the second one after you've already searched  
19 everybody.

20 THE COURT: It's kind of like the chicken and  
21 the egg kind of thing. We don't know what we're looking  
22 for, so we need to find out what we're looking for.

23 MR. PRICE: And then we'll tell what you what  
24 we're looking for.

25 THE COURT: Counsel, I'm done. If you want to

1 make other arguments or such, you're more than welcome  
2 to do so.

3 MR. PRICE: Thank you, Your Honor. I believe  
4 we will reserve the rest of arguments for briefing if  
5 that's okay.

6 THE COURT: All right.

7 The prosecution can make your arguments. I'm  
8 also curious what you think.

9 MR. MORALES: I think the first question the  
10 Court asked of counsel was do we have an expectation of  
11 privacy when we decide to live in this digital age to do  
12 what we want to do and do what they want, and the People  
13 would submit no.

14 I think that there is the ability to argue  
15 that there is a waiver that we choose to give up a lot  
16 of our expectation of privacy in what we do when we  
17 choose to engage in this, when we choose to engage in  
18 certain activities. And when we do give up that and we  
19 give up that expectation of privacy, we then also  
20 subject ourselves to the possibility that a judicial  
21 officer will review a search warrant and say with this  
22 statement of probable cause, you have now foregone your  
23 private information.

24 And I think that that links into what the  
25 Court did in this last question of counsel which is what

1 we did in this case -- what the government did in this  
2 case, is not what the defense wants you to follow.

3           Every step, every procedure the government  
4 followed in obtaining this information and obtaining who  
5 targeted that house on August 5th of 2020 was done with  
6 judicial review, was done with judges and magistrates  
7 reviewing probable cause statements and determining  
8 whether or not the person's expectation of privacy could  
9 be overcome by a valid warrant. That's what we expect,  
10 and that's what we did in this case.

11           We weren't barging into people's houses and  
12 rummaging through their stuff just because we wanted to.  
13 We particularized why we were going in there. But to  
14 answer the Court's first question, we do believe that  
15 there is a lack of expectation of privacy in your group  
16 searches. There is a third party that you're choosing  
17 to give your information to.

18           And in this case, the information was given to  
19 a huge database by a private company called Google. Mr.  
20 Seymour decided to do that. He decided to enter into  
21 that database and say, I'm going to tell you that I  
22 looked for this.

23           Now, counsel used flowery words and expressive  
24 content and this had to deal with the deepest, darkest  
25 intimate personal issues of Mr. Seymour, and that is

1 very flowery and very headline-making, but that's not  
2 the issue in this case.

3           The Court not only has to look at the  
4 expectation of privacy that Mr. Seymour chose to give up  
5 but also what was the intrusion of that privacy. And  
6 the Court asked about that in its questioning. What did  
7 we really give up? What was really intruded on Mr.  
8 Seymour by the keyword search by anyone? How was his  
9 privacy and privileges violated by that keyword search?  
10 And the answer was, it wasn't. There was nothing there.

11           In the reality, when we look at a search and  
12 we say was it a reasonable search, you look at the  
13 expectation of privacy and you -- then you look at what  
14 was searched. And what was searched here was a database  
15 of defined anonymized information that would then come  
16 back to the law enforcement and then we would decide  
17 whether or not we would look at it.

18           There was no -- he didn't even know -- no one  
19 in this room knew their privacy rights were violated  
20 when we got this keyword search because no personal  
21 information was given.

22           Counsel likes to talk about these IP  
23 addresses. The reality is, any law enforcement officer  
24 that would go simply on what Google provides and IP  
25 addresses and then not do an independent search warrant

1 to verify that would be doing the wrong thing.

2 IP addresses could be bouncing off satellites.  
3 They could be bouncing off other servers. You need to  
4 then narrow them down. And the only way you do that is  
5 by going to the providers. And that's what happened in  
6 this case, as the Court is well aware.

7 So, again, when we talk about the  
8 reasonableness of it, what was the intrusion here?  
9 Counsel puts in there it was rummaging through people's  
10 personal data. Wrong, just flat out wrong. No files  
11 were looked at by Google. No files were looked at by  
12 anybody until the subsequent search warrants.

13 All that was obtained in this search was who  
14 searched for this address, who targeted this house  
15 between these 15 days before five people were burned to  
16 death and three others escaped with their lives. It  
17 wasn't expressive.

18 As I said in my motion to strike the amicus  
19 brief, this wasn't about a medical clinic, a house of  
20 worship. It wasn't about religion. It wasn't about  
21 politics. It was about a house that everybody knew had  
22 been burned down.

23 How expressive could somebody be looking for  
24 that house? You would say -- you know, expressive is  
25 I'm looking for a place to go get a medical procedure

1 done and it's private to me or I want to talk about  
2 where I go to do political activities or volunteering to  
3 a church. Those might be expressive and First  
4 Amendment, but the search of an address simply is not.

5 I also want to say that when counsel talks  
6 about what this search -- they're talking about things  
7 that could happen in the future and not about the facts  
8 of this case. And I always want to bring us back to the  
9 facts of this case and not what could be if the Court  
10 grants or denies this motion.

11 So, again, there's a minimal amount of  
12 information that we asked for in this. There was a  
13 minimal amount of information given. None of it was  
14 private. None of it was privileged, and none of it  
15 could be considered in any way expressive.

16 So the next question the Court asked of is,  
17 again, this database, and you talked about fingerprints  
18 and talked about CODIS and you talked about all this  
19 information. And, again, our supreme courts, both the  
20 state and the federal, have never said that these  
21 searches are not permissible. There's no foregone  
22 conclusion that we can't do these. We just have to do  
23 them underneath the process and procedure.

24 Even the cases cited by counsel, *Riley*,  
25 *Carpenter*, *Jones* and our state *Tafoya*, have specific



1 facts as to what they're saying was wrong about those  
2 warrants.

3 For instance, in *Carpenter*, they were saying  
4 the historical data for 137 days of tracking  
5 Mr. Carpenter was too much. You cannot do that. And  
6 that makes sense, but they didn't say, Hey, you can't do  
7 it ever. It's just 137 days is way too long.

8 *Jones* talked about 28 days of tracking  
9 somebody on a GPS monitor. And, again, they didn't say  
10 you can't do it. They're just saying you can't do it  
11 without a warrant for that length of period.

12 *Riley*, that talks about a whole cell phone.  
13 That talks about dumping down a whole cell phone that  
14 lacks the issue in particularity you need as to why  
15 you're doing that, the same thing our Supreme Court  
16 decided in *Coke* when it said it can't just download  
17 *Coke's* phone without identifying the victim, identifying  
18 who that was part of.

19 So, again, counsel cites cases and says  
20 they've decided these issues and say digital is  
21 different. But, yet, bringing it back to what was done  
22 in this case, what was requested, what was done in this  
23 case, and what was requested was tell us who searched  
24 for this address that was burned to the ground between  
25 this time period and give it to us in a deidentified,

1 anonymized fashion with IP addresses that we'll do  
2 subsequent search warrants for. We'll resolve them --  
3 the warrant speaks for itself. We will resolve it to  
4 Colorado. We'll only look at those in Colorado. So any  
5 concern they were out of state was going to be monitored  
6 by us. And then we'll see where we go from there.

7           We heard counsel talk about how you didn't see  
8 anybody in the surveillance come with a cell phone or  
9 anything like that. Remember the search warrant that  
10 we've asked for was before the arson. We wanted to know  
11 who searched before. So the surveillance video in  
12 question by counsel belies the very fact of the warrant  
13 he's objecting to.

14           Further, it talks about the searches being  
15 conducted by July 22 and August 5 before the fire. It's  
16 not going to be caught on surveillance. It can be done  
17 with a laptop. It can be done with a cell phone,  
18 desktop if you've got that.

19           So again, these arguments that you don't see  
20 on a cell phone, it really is -- it doesn't deal with  
21 the facts of this case.

22           So the last thing the Court asked of is a  
23 process in particularity. And again, I'm only  
24 responding of the Court because I think that's what you  
25 want me to do.

1           THE COURT: Plus any other argument you want  
2 to make.

3           MR. MORALES: Okay. And, again, dealing with  
4 the process, I think that's a great question by the  
5 Court, because it goes to twofold issues that we have in  
6 this case. Number one, Google does have a process that  
7 it follows, a process that, obviously, works in this  
8 case and works to any possible argument that Detective  
9 Sandoval did not believe in the accuracy and good faith  
10 of the warrant he was asking for.

11           They make this argument that you should have  
12 told the magistrate that there was two other previous  
13 warrants that were withdrawn because Google said you  
14 have to do better.

15           Well, Google and Detective Sandoval and  
16 Ms. Hansen worked together to make it better, to make  
17 the process work, so we followed each stage as Google  
18 required it to do. That legal process is exactly what  
19 Your Honor and our courts expect us to do. That's what  
20 we did in this case.

21           That should give faith and that we did what  
22 needed to be done but also good faith exception as to  
23 why Detective Sandoval truly believed this was a good  
24 warrant.

25           Going back to some of the other ones. It is

1 irrelevant whether or not two other search warrants were  
2 not accepted by Google and withdrawn. It doesn't go to  
3 falsehood. It's not a misleading statement, and it  
4 wouldn't change the ultimate outcome of the magistrate  
5 in determining there was probable cause to believe that  
6 there was a fair probability that we would locate the  
7 person who targeted that address that night.

8 Counsel says, Well, Detective Sandoval didn't  
9 tell them there was going to be billions of people that  
10 were going to be searched. Well, Number one, we submit  
11 that's not accurate. But, number two, Detective  
12 Sandoval testified he didn't know how Google was going  
13 to do this search, what they were going to do or how  
14 they were going to do it. That belies there was no good  
15 faith exception in here.

16 So for all of those reasons, when you look at  
17 the legal process, the legal process is actually  
18 protective of Mr. Seymour.

19 And we want to reiterate, Mr. Seymour only has  
20 his standing for his rights. The billion of other  
21 people that are allegedly involved in this are not for  
22 him. He has no standing to them.

23 And for those reasons, he needs to articulate  
24 how this was so intrusive on his privacy rights, and  
25 they have failed to do so.

1           If I may just have one second.

2           THE COURT:   Sure.

3           MR. MORALES:  I don't know if the Court wants  
4 me to, but I do want to talk about how our responses  
5 should be looked at not just as the response for one,  
6 but maybe combined.  I know they're repetitive in a lot  
7 of ways as to the responses for each motion, but the  
8 Court knows its review of the four corners.  It knows  
9 its review of what probable cause is particularly both  
10 as to who was going to be searched, what was going to be  
11 searched for, and whether or not there was probable  
12 cause.

13           And I just want to articulate, did we identify  
14 the right entity to search?  Absolutely.  Counsel, by  
15 calling the witness, brought in the person who did the  
16 search.

17           Did we particularize as to what we wanted to  
18 have searched?  Yes.  The search warrant said, We want  
19 Google to look through its vast database for people who  
20 did these searches between July 22 and August 5 from  
21 this time period using these terms or any combination of  
22 these terms.

23           Counsel likes to talk about how there was one  
24 that says *interior*.  Remember, the search warrant says  
25 any of these terms, not these terms exactly or no terms

1 outside of that, any of these terms. So the fact that  
2 Google determined, yeah, the address is there and it has  
3 interior is not violative of the scope of the search  
4 warrant, it's actually following the scope of the search  
5 warrant.

6           And, finally, then the Court needs to  
7 determine was there reasonable probability -- not that  
8 we can identify an actual person. Is there a reasonable  
9 probability if we searched this database that we are  
10 going to find evidence of who committed this crime. We  
11 don't have to have an identified person. We don't have  
12 to say we know this person did it. We are saying, like  
13 we do with CODIS or a fingerprint, we want to see who  
14 searched for this address.

15           And if we can identify who searched for this  
16 address during these 15 days -- and there's clearly  
17 probable cause as to this, we have a horrific fire at an  
18 address in a densely populated neighborhood for a house  
19 that is not unique in any way. It's not on a corner.  
20 It's nothing that is bright and shiny about it that  
21 would make it stick out in any way, nothing about it.

22           An interview and investigation is conducted  
23 and there is nothing about the victims that is  
24 indicative they would be targeted for any other reason.  
25 There's nothing to indicate it whatsoever.

1           Three masked men -- or three masked people are  
2 outside that house acting in concert, looking,  
3 surveying, entering the backyard, fire, fleeing.  
4 They've clearly put on the same type of uniform.  
5 They've got the same mask. This is a conspiracy. This  
6 is something that's been put together on a house that is  
7 completely -- why?

8           And so when you take those facts and you think  
9 there had to have been planning, there had to have been  
10 somebody to search for this house because it makes no  
11 other sense, there is probable cause to do this. More  
12 than probable cause, that there's a fair and real  
13 probability that if we ask Google for this minimal  
14 intrusion, for this minimal information, we can possibly  
15 find a number of devices, which absolutely comes down to  
16 five that looked for this address.

17           And when you look at that and you look at the  
18 expectation of privacy and the actual intrusion and what  
19 was done in this case, this is what any victim of any  
20 homicide family would want. It did not violate billions  
21 of people's confidential and private information. It  
22 looked for an address and who searched for it.

23           And for those reasons, we believe that this  
24 search warrant stands up to constitutional challenges,  
25 is particularized on all aspects. There is more than

1 enough probable cause, and we'd ask the Court to deny  
2 the motion for suppression.

3           If the Court is disinclined to do that based  
4 on that, we believe that the good faith exception is  
5 quite there. There is nothing -- none of the four  
6 requirements for finding that there was any lying to the  
7 magistrate, the magistrate gave us his judicial role or  
8 her judicial role, that they were misled with any  
9 falsehoods or that they were so lacking in probable  
10 cause that nobody could ever approve this warrant is  
11 even met.

12           We don't want to hang our hat on that, but we  
13 know that's where the Court could hang its hat as it did  
14 in Counts' (phonetic) case and Mr. Charter's case. We  
15 don't think you need to go there for this intrusion, for  
16 this non-violation of his expectation of privacy, and  
17 for those reasons, I'd ask the Court to deny the motion  
18 to suppress. We'll supplement with anything that we see  
19 in response.

20           THE COURT: Okay. Thanks.

21           We'll talk about the timing aspects of any  
22 supplemental pleading you want to file a little later.  
23 We'll see how far we get with the motions because I --  
24 we'll just see if we need further hearings on this.

25           So the next one on the agenda apparently is



1 motion to suppress statements, yes?

2 MS. STINSON: Yes.

3 THE COURT: And just as I understand it, I  
4 haven't seen any videos or anything like this, I  
5 understand just reading the pleadings Mr. Seymour  
6 didn't -- he invoked his right to counsel, and the issue  
7 has to do with whether certain questions with respect to  
8 his name and phone number and such are subject to  
9 suppression. Is that the issue?

10 MS. STINSON: That's correct. The video of  
11 the interview was already admitted by Detective Sandoval  
12 at the end of his testimony.

13 THE COURT: Okay. So, Ms. Stinson, you can  
14 proceed on that issue however you wish to do so.

15 MS. STINSON: I would like to recall Detective  
16 Sandoval for cross-examination.

17 THE COURT: Well, for examination. He's not  
18 adverse yet.

19 MS. STINSON: What I'm saying is that the  
20 district attorney asked him direct questions to identify  
21 the interview, so I have cross-examination as to --

22 THE COURT: It's fine.

23 Detective Sandoval, why don't you have a seat.  
24 I swore you in earlier this morning. You're still bound  
25 by that oath. You understand that, sir?

1 THE WITNESS: Yes, sir.

2 THE COURT: Great. Thanks.

3 CROSS-EXAMINATION

4 BY MS. STINSON:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. The date of the interview, I guess attempted  
8 interview that we're talking about, is January 27, 2021?

9 A. Correct.

10 Q. All right. Now, that day prior to your  
11 contact with Mr. Seymour, he had already been arrested  
12 at that point?

13 A. Yes.

14 Q. Okay. And so, really, kind of the chain of  
15 events as to how he came to be in custody is that there,  
16 ultimately, was an arrest warrant issued for Mr.  
17 Seymour?

18 A. Correct.

19 Q. All right. And, in fact, DPD, specifically  
20 the SWAT team, had executed the arrest warrant that  
21 morning?

22 A. Yes.

23 Q. Okay. And so when you came into contact with  
24 Gavin Seymour, that was actually at DPD headquarters,  
25 right?

1           A.       The first interaction was at his house, where  
2 we just explained he was going to headquarters and we  
3 would talk with him there.

4           Q.       Okay.  And so specifically the interview that  
5 was admitted on that, that's a recording of the  
6 interaction that happened at police headquarters?

7           A.       Correct.

8           Q.       Okay.  And in that interview -- I want to talk  
9 about who is present during that.

10          A.       Okay.

11          Q.       So you said this is at DPD headquarters.  Is  
12 this in an interview room or somewhere else?

13          A.       Interview room.

14          Q.       In that interview room, it's yourself and  
15 Special Agent Sonnendecker?

16          A.       Correct.

17          Q.       And then Gavin Seymour was a 16-year-old  
18 juvenile at that time, right?

19          A.       Correct.

20          Q.       So present was also his mother and father?

21          A.       Correct.

22          Q.       Okay.  And so when you sat down to talk with  
23 him, he's still in custody, right?

24          A.       Yes.

25          Q.       And he is, obviously, not free to leave at

1 this point?

2 A. Correct.

3 Q. Now, before you read Gavin Seymour his legal  
4 rights or his *Miranda* rights, there were some  
5 preliminary questions that were asked of him, correct?

6 A. I don't believe I asked him any questions.

7 Q. Okay. So you don't recall that you asked him  
8 for his telephone number?

9 A. I believe I read his telephone number off to  
10 him.

11 Q. Okay. And you asked him to confirm that that  
12 was his phone number?

13 A. Correct.

14 Q. And you also asked him what his cell phone  
15 carrier was?

16 A. I did, yes.

17 Q. Okay. Those were questions that were asked  
18 prior to actually Mirandizing him?

19 A. Correct.

20 Q. And he, in fact, did answer those questions?

21 A. His mother answered the cellular provider. I  
22 believe he nodded his head or may have answered for the  
23 cell phone.

24 Q. So you, in any event, received a response from  
25 him in response to your question?

1 A. Yes.

2 Q. Okay. And then afterwards, that's when you  
3 Mirandized Gavin?

4 A. Correct.

5 Q. And as soon as you did read Gavin Seymour his  
6 rights, he immediately invoked his right to remain  
7 silent, right?

8 A. Yes.

9 Q. And him and his mother specifically said they  
10 wanted to have an attorney present?

11 A. Correct.

12 Q. All right. Now, Detective Sandoval, I have a  
13 couple of questions for you about the booking process.

14 A. Okay.

15 Q. Can you explain, what does *booking* mean?

16 A. Basically, when you are taken over to our  
17 detention facility for juveniles, it's our juvenile  
18 intake unit where they process them all first prior to  
19 moving them over to a juvenile detention facility, more  
20 than likely the Gilliam, but it could be elsewhere.

21 Q. Okay. And when somebody is booked in, DPD  
22 generates something called a booking slip, right?

23 A. Yes.

24 Q. Can you tell the Court what the purpose of  
25 that slip is?

1           A.       Basically it's a slip filled out by the  
2       arresting officers with information on the arrestee  
3       that's provided to our juvenile intake.

4           MS. STINSON: Your Honor, if I may approach  
5       the witness.

6           THE COURT: Sure.

7           Q.       (By Ms. Stinson) Detective Sandoval, I have  
8       just handed you what appears to be the DPD booking slip  
9       for Gavin Seymour. Does that appear to be what that  
10      item is?

11          A.       It does.

12          Q.       Okay. And when you were explaining the  
13      booking process and the booking slip, does that look  
14      like what you would typically see after somebody gets  
15      booked in?

16          A.       Yes.

17          Q.       Okay. Now, it looks like that one single  
18      sheet of paper includes, essentially, basic biographical  
19      information. Would you agree?

20          A.       Yes.

21          Q.       For example, the person's name and date of  
22      birth?

23          A.       Yes.

24          Q.       It includes height, weight, race, those types  
25      of things?

1 A. Yes.

2 Q. Now, on that booking slip there actually is a  
3 box for phone number; is that correct?

4 A. Correct.

5 Q. Now, this booking slip actually does not  
6 contain a phone number, right?

7 A. That is correct.

8 Q. And there is no designation on this form for  
9 cell phone carrier, right?

10 A. No.

11 Q. And would you agree that somebody's cell phone  
12 carrier is not a biographical characteristic of that  
13 person?

14 A. Yeah.

15 Q. And somebody can be booked in even if they  
16 don't have a phone number, right?

17 A. That is correct.

18 Q. So it's not the case that DPD only books  
19 people who have phone numbers or cell phone carriers?

20 A. They do ask; they can refuse.

21 Q. Okay. But it's not necessary to the booking  
22 process that somebody provide a phone number?

23 A. Correct.

24 MS. STINSON: If I may have just one moment.

25 THE COURT: Sure.

1 MS. STINSON: Detective, I don't have any  
2 further questions. Thank you.

3 Your Honor, if I may approach the witness just  
4 to the grab that sheet.

5 THE COURT: Okay.

6 Cross-examination.

7 MR. MORALES: No, Your Honor.

8 THE COURT: Okay.

9 Then, sir, thanks again for testifying. Is he  
10 needed for anything else in terms of testimony?

11 MS. STINSON: Not from the defense.

12 THE COURT: You can step on down and be  
13 excused if you wish. Thanks.

14 Is there additional evidence you wish to offer  
15 with respect to this motion, Ms. Stinson?

16 MS. STINSON: No, just argument.

17 THE COURT: Go right ahead then, please.

18 MS. STINSON: Thank you.

19 Your Honor, we filed the suppression motion  
20 and my argument is a little more limited because in the  
21 People's response, they conceded that any observations  
22 that were made of Mr. Seymour after he invoked his  
23 rights they would not be seeking to admit. So, really,  
24 the only dispute in this case is whether or not the  
25 police can use Gavin Seymour's cell phone number and his



1 cell phone carrier as part of this motion.

2 The district attorney has asserted in their  
3 response that if something is just a standard booking  
4 question that *Miranda* somehow doesn't count. And  
5 specifically the case that they rely on out of Colorado  
6 is the *Campos* case which is a 2021 case from the  
7 Colorado Supreme Court.

8 That court does provide a booking exception,  
9 but the issue in that case was whether or not a person  
10 providing their name is something that is subject to  
11 *Miranda*.

12 And *Campos* held that somebody's actual name  
13 because it's a basic piece of identifying information  
14 isn't subject to *Miranda*.

15 However, *Campos* and the Supreme Court case  
16 that it relies on, *Nunez*, they specifically talk about  
17 the fact that somebody's name coming in isn't  
18 necessarily subject to *Miranda*. That's not a blanket  
19 statement that says, Oh, as long as you characterize  
20 something as a routine question it somehow isn't subject  
21 to *Miranda*.

22 In fact, *Nunez* specifically says that  
23 testimonial evidence that's within the scope of *Miranda*  
24 encompasses all responses to questions that if they were  
25 asked during trial that would place the defendant in a

1 position of self-accusation, perjury, or contempt.

2 This happens whenever a suspect is asked for a  
3 response requiring him to commit to an expressed or  
4 implied assertion of fact or belief. In this case,  
5 because the vast majority of the evidence in this case  
6 is actually digital evidence that relates to a cell  
7 phone, asking him to confirm his cell phone number and  
8 his carrier, that is not basic biographical information.  
9 That is just the fact of his name or the date of birth.

10 Attaching him to a particular account is  
11 really the crux of the evidence that they have in this  
12 case. So to call that a basic booking question does not  
13 mean that it doesn't violate *Miranda*. And in this case  
14 there's a direct nexus between that statement and the  
15 actual evidence in the case.

16 The booking slip itself doesn't even have a  
17 space for cell phone carrier, much less is it a  
18 requirement of somebody being booked in. And so for  
19 those reasons, based on the very clear task and the case  
20 cited by *Campos*, this should be excluded as a violation  
21 of Gavin Seymour's *Miranda* rights.

22 THE COURT: Are you agreeing, Counsel, that  
23 the response made by the mother certainly is not subject  
24 to *Miranda* and would not be subject to be suppressed?

25 MS. STINSON: Well, certainly a statement made

1 by Mother is not necessarily directly attributable to  
2 Mr. Seymour; however, the fact that the parents are  
3 there, in Colorado we have the extra layer of protection  
4 that police cannot question a juvenile without their  
5 parents present.

6 So the parents were present, not as  
7 independent witnesses, but they were there to  
8 essentially assist their son in either asserting or  
9 waiving his rights. Both Gavin and his parents, as you  
10 can clearly see from the interview, they are both in  
11 concert asserting his rights.

12 So because the parents were there on behalf of  
13 their son and to either waive or assert his rights, I  
14 would say that the statement made by his mother is  
15 attributable to him because she's not being interviewed  
16 as an independent witness but only in the context of  
17 speaking on behalf of her son's legal interest.

18 THE COURT: Is there authority to support that  
19 suggestion, that argument?

20 MS. STINSON: Your Honor, I would point the  
21 Court to the authority that is cited in our motion about  
22 the purpose of that additional constitutional protection  
23 in Colorado, the parents being present to protect the  
24 rights of their children. It's not directly on point in  
25 terms of the facts of the case, but the additional

1 protection that Colorado affords to juveniles is very  
2 much relevant to that issue and is cited in the motion.

3 THE COURT: What application, if any, is there  
4 to the discovery doctrine with respect to this  
5 information?

6 MS. STINSON: Well, if the district attorney  
7 or law enforcement has some independent source of  
8 getting that, then that's what they need to do. It  
9 can't be on the basis of his statement.

10 THE COURT: Like a bazillion search warrants  
11 with a request for information. I mean, isn't his phone  
12 number something that would be discovered given all  
13 that's gone on here?

14 MS. STINSON: Well, if that is the case, then  
15 they can certainly introduce it in that manner. But  
16 what we don't want to have happen is we go to trial and  
17 it comes up, Well, Gavin, himself, confirmed that that's  
18 his phone number and that's his cell phone carrier. So  
19 that is the privilege against self-incrimination that we  
20 are concerned about, is basically presenting to the jury  
21 that he agrees that this belongs to him.

22 It is on them to prove that. If they have  
23 another way to prove that, they certainly can do that.  
24 But that doesn't mean the statement from Gavin can be  
25 used.

1 THE COURT: Seems like a pretty  
2 inconsequential issue to me.

3 Mr. Morales, your response, please.

4 MR. MORALES: Yes, Your Honor. We already  
5 knew his cell phone at that time we asked this question.  
6 I simply -- there's two reasons why I did not concede.  
7 Number one, I do think it's routine questions so I don't  
8 want to ever concede that part. Second, you picked up  
9 on the other issue. His mom did respond to the carrier,  
10 not Mr. Seymour.

11 Mr. Seymour was wearing, as you will see, a  
12 mask. I don't even think his head nods. We certainly  
13 can endorse Mom and have her come in and testify about  
14 her carrier, and we'll do so.

15 But the fact that he confirmed it also would  
16 go to a voluntariness argument should the Court find  
17 that there was a violation of *Miranda* and then a  
18 subsequent violation of his *Miranda* invocation as well  
19 as an attorney. The Court could then independently  
20 review the video and say, Yeah, but it was voluntary,  
21 there was no promises, no pressure, no threats.

22 So even if his response was in violation of  
23 *Miranda*, which is a judicially created protection to  
24 prevent from police interrogations without advisement of  
25 the rights, the Court could still say his response is

1 voluntary. It's not like anybody was forcing him to  
2 confirm his cell phone or to confirm his carrier, and,  
3 therefore, if he was to take the stand and say that  
4 wasn't my cell phone and that wasn't my carrier, then it  
5 would be admissible for voluntariness. And for those  
6 reasons, that's why the People did not concede the  
7 entirety of the motion.

8 I agree it's inconsequential based on the  
9 volumes of information we have about his cell phone.

10 THE COURT: Thanks.

11 MS. STINSON: Your Honor, just briefly with  
12 respect to voluntariness, the timing of this interview  
13 is really, really marked. Gavin Seymour goes into the  
14 room with his parents, and two minutes in, as soon as  
15 he's Mirandized, he immediately asserts his rights  
16 asking for both an attorney and asserting his right to  
17 remain silent. This isn't something where he's engaged  
18 in a conversation or he restarts the conversation.

19 He's there under arrest. He's been picked up  
20 at his house by the SWAT team. He's in an interview  
21 room. There's absolutely nothing about this that would  
22 make 16-year-old Gavin be supplying this information.

23 THE COURT: That's not the issue. The issue  
24 is voluntariness, is whether some untoward police  
25 behaviors that would prompt a statement that otherwise

1 wouldn't have been made, so -- okay. Thanks.

2 MS. STINSON: Thank you.

3 THE COURT: Moving on, motion to suppress  
4 evidence unlawfully obtained, geofence, Mac identifier  
5 data and cell tower data, I believe, is the next issue  
6 on the agenda, yes?

7 MR. JUBA: It is, Your Honor. And I will also  
8 reference the joint notice we filed. And I'll try to  
9 streamline my comments and tell the Court how I intend  
10 to proceed. Numbers 4, 5, 6, 7, 8, and 9, these are six  
11 separate motions to suppress relating to six separate  
12 warrants.

13 I'm asking just to address all six in my  
14 comments here. There aren't any additional witnesses  
15 that we're going to call. There was, obviously,  
16 extensive briefing on all six of these, so I will -- I'm  
17 asking to address all six, and I'll be fairly brief in  
18 my comments.

19 THE COURT: Makes sense.

20 MR. JUBA: Your Honor, on what's identified in  
21 the joint notice as the third motion and the eighth  
22 motion, the motion to suppress evidence unlawfully  
23 obtained relating to the geofence warrant and the motion  
24 to suppress on evidence unlawfully obtained, I believe,  
25 of the home, we didn't have any additional argument or

1 comments aside from what's in the written pleadings.

2 I did want to add some additional comments to  
3 the other four warrants. There was a warrant that was  
4 essentially a cell phone dump of Gavin's cell phone when  
5 he was arrested. They got the contents of the cell  
6 phone.

7 There was a cell phone data record warrant  
8 getting the data records of the actual cell phone  
9 carrier information. There was a warrant relating to  
10 what we referred to as accounts, so his Google accounts,  
11 his Apple accounts, and his what we referred to as  
12 social media, so his Instagram account and Facebook and  
13 Snapchat accounts.

14 I wanted to focus on two separate issues here.  
15 The first issue is nexus. The second issue is  
16 particularity. I'll start with the warrant relating to  
17 the cell phone itself. This warrant, I think, really  
18 lacks that nexus. What we have here, the Court has  
19 already heard and is aware of the extensive amount of  
20 information. But what I want the Court to look at and  
21 think about is what was known at the time that this  
22 particular warrant was issued and what information they  
23 were seeking.

24 They had information -- at that point, they  
25 had information from the keyword search warrant that at



1 some point this address was entered in on a Google  
2 search bar, and they had identifying information from  
3 that warrant itself.

4 The lack of the nexus here, though, is how  
5 that ties in to Gavin Seymour's cell phone. It gets  
6 back to some of the information about the lack of cell  
7 phone being used during the actual commission of the  
8 crime itself, the lack of a cell phone being used,  
9 really, at any step or any stage of this crime or that  
10 had come up during the investigation at all.

11 What we have here is we have a crime being  
12 committed and a suspect being identified and the  
13 allegation that the suspect had a cell phone. That is  
14 not sufficient when we're talking about a nexus here.

15 I want to jump a little bit and talk also  
16 about the social media accounts here. The social media  
17 accounts have the same problem and the same issue here.  
18 We can even forget about anything related to a Google  
19 account where someone is actually typing information  
20 into a search bar.

21 But the warrant relating to the social media  
22 is talking about an Instagram account, a Facebook  
23 account and a Snapchat account. And you look again to  
24 the nexus here, and you look at what information did  
25 they have when this warrant was issued and how it

1 relates at all to what information Gavin Seymour had on  
2 his Snapchat account or his Facebook account or his  
3 Instagram account, and there's none.

4           If you add up all these warrants and you look  
5 at all the warrants that were issued at the same time or  
6 in the same time frame, what we have here is we have a  
7 fishing expedition. At that point, they've identified a  
8 suspect and they're trying to get every single piece of  
9 information relating to his entire digital world, his  
10 entire digital information, regardless of whether  
11 there's any connection to this crime or this  
12 investigation at all.

13           The Court can also look at the warrant  
14 relating to the Apple account. That's in the accounts'  
15 motion that we filed. That motion -- or that warrant  
16 detailed information requested from a Google account,  
17 and it also detailed information requested from Gavin  
18 Seymour's Apple account, his iCloud account. And it's  
19 the same lack of nexus here.

20           What law enforcement did here is after they  
21 identified Gavin Seymour as a suspect, they just listed  
22 off every single piece of information that they could  
23 possibly find and that they could possibly search into  
24 and then asked to search for every single thing in each  
25 one.

1           So the first thing I want the Court to note  
2 was really the lack of nexus here when we're talking  
3 about the information sought and the information that  
4 law enforcement had at the time that the warrants were  
5 issued.

6           The second thing that I wanted to focus on and  
7 talk about was the lack of particularity as well. And,  
8 again, the Court is hearing lots of information about  
9 just the volumes of digital data that was produced in  
10 this case and that was seized through these warrants.

11           Our position is that the warrants themselves  
12 also lacked particularity in the types of information  
13 that they were requesting.

14           I'll start again with -- not again, but I'll  
15 start with call detail records. The call detail records  
16 warrant was requesting information over a 60-day period.  
17 This is talking about substantially before and  
18 substantially after the date of this offense. If the  
19 Court looks to the social media and the account  
20 information, I think the lack of particularity becomes  
21 even more in focus.

22           When you look at social media, for instance,  
23 they're looking at his Apple iCloud account -- I'm  
24 sorry -- the social media, they're looking, for  
25 instance, at his Instagram account. They're asking in

1 each of these instances for Instagram, Facebook,  
2 Snapchat, his Apple account and everything else, they're  
3 asking for every single piece of information here: ALL  
4 records, all communication, all emails sent and  
5 received, all forms of expressive communication,  
6 basically anything that exists in these accounts, which  
7 there is no connection of these accounts in the first  
8 place, but they're still asking for every piece of  
9 information that exists in these accounts.

10 So our position that I wanted to focus on was  
11 the lack of nexus and also really the grave lack of  
12 particularity as it relates to the type and the scope of  
13 information that was requested in each of these  
14 warrants. And I can answer any other questions if the  
15 Court has any.

16 THE COURT: I'm good for now. Thank you,  
17 Counsel. And I'm going to guide the prosecution a  
18 little bit.

19 And you can make, obviously, other arguments  
20 you're prepared to make. Here's the question that I  
21 have, and it sort of ties into what Mr. Juba was just  
22 arguing. And I tend to look at things too  
23 simplistically, but let's say that there's a crime and  
24 the police say, Gee, I betcha that there's evidence of  
25 the crime in the defendant's house. We don't know what,

1 but I betcha there's something in the house that would  
2 link him to the crime.

3 I think we can agree that wouldn't be  
4 sufficient, that that kind of -- if that went before a  
5 judge, the judge would say, No, you need to tell me what  
6 you think is in the house.

7 What I discern from the arguments and kind of  
8 what I'm curious about is, what's the difference between  
9 that and saying he's got a cell phone, there might be  
10 something in the cell phone that might relate to this  
11 crime? I don't know what it is, but we want to look at  
12 it all and see. That's kind of what I'm curious about.

13 MR. MORALES: Totally understand where the  
14 Court is going, and I'll do the best to answer it  
15 directly.

16 So I think that the probable cause statements  
17 in all of the search warrants for the Google accounts  
18 for the defendant as well as Apple account, Instagram,  
19 Snapchat, the lay out with sufficient statement as to  
20 why we believe, if we looked inside this massive amount  
21 of data, that we can find evidence of what happened on  
22 there because of the connections and links that we put  
23 together with the three suspects in this matter.

24 Again, we know from the first keyword search  
25 we come back to five identifiable people that used and

1 searched for that are in the time period we expressed.  
2 We then go from there. We say -- we start identifying  
3 who they are. We then do just basic police work, and we  
4 find all three suspects live in Lakewood. All three  
5 suspects are known associates. All three suspects are  
6 on social media accounts. All three suspects are  
7 friending each other, posting pictures of themselves.  
8 And all of this is happening at the point in time --  
9 this is in a public domain.

10           Again Mr. Seymour, Mr. Bui and ■ have all  
11 decided they're going to put all this out there, and  
12 everybody is going to be able to find if -- whether they  
13 have a warrant or not.

14           So we know that they play football together.  
15 They have brothers. They have associates. They're  
16 associated with Tonya Bui. So we have all this  
17 information.

18           From there, we put that in the search  
19 warrants. And because counsel lumps them all together,  
20 it's kind of hard to pick which part of each affidavit  
21 is in, but we try to do the best we can, but the Court  
22 will review it.

23           So then the Court says, Well, how do you then  
24 discern and say, Well, how do you get to search for  
25 evidence of the August 5th arson homicide from all of

1 that? And it goes back to Mr. Price's comments that  
2 digital evidence is different. This is just different.

3           When you go into a search warrant of a cell  
4 phone, it's different. You're saying with fair  
5 probability and particularity that if I search this cell  
6 phone data there will be evidence of communications and  
7 there's going to be the likelihood or probability that  
8 there will be communications about what happened on  
9 August 5th, either before or after.

10           Counsel says, Well, the search warrants are  
11 broad and they ask for everything all the time. That's  
12 untrue. We ask from July 1st of 2020 until December of  
13 2020. We don't ask for anything past that. We ask for  
14 after for other reasons.

15           So again, there is a nexus to we've identified  
16 they're known associates. We have three suspects  
17 outside the victim's home. Three young men appear to be  
18 of the same size and stature of these three young men  
19 which we articulate in the search warrants. We know  
20 they're known associates. We know they hang out a lot  
21 and are good friends.

22           Using common sense is what we can use in  
23 probable cause. Because when we do probable cause, we  
24 don't always use just historical facts stated in the  
25 affidavit, but we use generic references or inferences

1 we can make.

2 We make inferences that we can draw from  
3 historical data that's put in there as the facts. We  
4 can use common sense. Actually, the Court can use  
5 common sense when it decides whether or not there is a  
6 nexus. And, further, the Court can use the detective's  
7 training and experience.

8 So combining all of that, it's reasonable when  
9 the detective says, Based on my training and experience  
10 and doing these cases in the past, associates that  
11 engage in this kind of criminal behavior will  
12 communicate with each other on the thing we all carry in  
13 our pocket or leave on our desk, and so there is that  
14 nexus.

15 Now, going back to the Court's analysis in  
16 saying, I think there's something illegal in that house  
17 and I want to go look inside that house and find it,  
18 well, that's not what we have here. Because what we  
19 have here, we actually have information that indicates  
20 these individuals were talking, are friends, are  
21 associates, and the cell phone data does produce them.  
22 So for those reasons, we believe that there is a nexus  
23 for these search warrants to be conducted.

24 Counsel then says, Well, they're too broad or  
25 they encompass too much. Each one of these search



1 warrants said, Yes, we're going to ask for this data,  
2 but we're going to tell you, whoever provides it to us  
3 and we're telling the Court that we're going to bring it  
4 back to Denver police headquarters, and we're only going  
5 to look for any evidence that's related to the arson  
6 homicide investigation of August 5th.

7           Each one of these warrants says that in  
8 particularity after what they asked for what they're  
9 getting. So we do that.

10           And the reason we do that is because Google is  
11 not going to go through and do the searches for us.  
12 They're not going to go through and pick out everything.  
13 It's one of those things that we have to rely on. We  
14 have to rely on it.

15           And, quite honestly, if the Court then said,  
16 well, you charged Mr. Seymour with possession of drugs  
17 on this particular day because he took photographs of  
18 it, but that's not what we were investigating of the  
19 arson homicide, then the Court would exclude it just  
20 like it excludes the cocaine from a search for a house  
21 with the guns and a mask. And that's what we do in this  
22 case.

23           Google is not going to do it for us. We have  
24 to do it, and then the Court and counsel have to come in  
25 and say, Judge, we need to exclude this piece of

1 evidence because it wasn't particularly related to the  
2 arson homicide investigation and, therefore, it goes  
3 beyond the scope of the warrant. Counsel hasn't done  
4 that.

5           They're just saying you can't use anything.  
6 But that's also not true. Because what we searched for  
7 in these accounts is not only whether or not there's  
8 photographs, emails, texts, videos, things related to  
9 the particular crime, but we also look at things that  
10 will -- can we identify this as something that actually  
11 Gavin Seymour used. These are the attributions that we  
12 have to have in this warrant, to identify that he is the  
13 actual person on it, because anybody can say, I didn't  
14 do that search or I didn't have that phone.

15           But if you start layering that this is what  
16 Gavin Seymour does, if he talks to his girlfriend, if he  
17 calls his mom, that he talks to his dad. If he does all  
18 those things, then we build up the attribution that we  
19 can then authenticate that it was Gavin Seymour to do  
20 it. So we use the information to find evidence of the  
21 crime directly.

22           We then use it to identify to the person who  
23 is using it and the attributions that he was using it  
24 around the time the search was going on. If he's having  
25 communications with Kevin Bui during that time, even if

1 it's unrelated to the thing, it connects them together  
2 in the conspiracy to commit this arson homicide.

3 And for all those reasons it's not overbroad,  
4 and there is a nexus for determinant. We don't have to  
5 find all evidence of criminal activity in a search.

6 Certain things in a search will be non-criminal at all.

7 You search a house, and you're there to look  
8 at a -- for guns and a mask, you're also going to have  
9 the warrant, we want to know who lives in that house, so  
10 we're going to get mail. We're going to get bills.  
11 We're going to get diaries. We're going to get certain  
12 information.

13 We might not look at the diary or we might not  
14 look at the information, but we're going to attribute it  
15 to somebody else. That's exactly what we do with a cell  
16 phone search warrant or a Google account or any of this  
17 information. We're doing it to develop who belongs to  
18 this phone, because these phones can be passed around.  
19 They can be used by somebody else. But we can identify  
20 it to Gavin Seymour.

21 I hope that answers the Court's questions as  
22 best as I can at this point. But that's kind of why we  
23 don't believe that these warrants are overbroad; that  
24 there is no nexus, and why we believe that they should  
25 stand up to judicial scrutiny as to probable cause

1 underneath particularity.

2           And, again, I don't mean to be disrespectful  
3 to counsel, but I don't think they understand  
4 particularity as the way I think it's defined by our  
5 law. Particularity is, was the right carrier -- was the  
6 right house searched? Yes. Was it particularized as to  
7 what evidence we wanted from it? Yes.

8           We wanted evidence that would identify either  
9 the defendant or identify evidence from this crime. And  
10 then the Court has to decide whether or not there's  
11 probable cause or reasonable probability that we would  
12 find the items located in that search.

13           If the Court was to then find that some of the  
14 search exceeded that because Google gave us too much,  
15 the Court can certainly sever that. But it's not proper  
16 to just throw it all out. It's not throwing the baby  
17 out with the bath water as we're taught by our evidence  
18 instructors.

19           You can actually sever parts and parcels of it  
20 that are there that are identified by the defendant that  
21 go beyond the scope. Again, none of that has been done  
22 in this instance. If I may just have a second.

23           THE COURT: Uh-huh.

24           MR. MORALES: I have nothing further, Your  
25 Honor.

1           THE COURT: Mr. Juba, anything else you want  
2 to talk about or rebut or --

3           MR. JUBA: Just briefly, Your Honor. I think  
4 that the particularity requirement is crucial in this  
5 analysis, and it's not just you identify the right  
6 house. That's not what that is about.

7           Particularity requirement is to prevent the  
8 use of general warrants authorizing wide-ranging  
9 rummaging searches in violation of the constitution's  
10 prohibition against unreasonable searches and seizures,  
11 and that's exactly what happened here.

12           And what the prosecution is saying is, Well,  
13 in order to identify whose account this iCloud account  
14 is or whose Snapchat account this is, we're going to  
15 have to have every single message ever sent from that  
16 account, regardless of whether it's in that time period  
17 or not, every single email, every single Snap, every  
18 single message to and from regardless of who the parties  
19 are. And then we're going to have to read through those  
20 and then somehow make a determination on who owns that  
21 account. That's preposterous.

22           That's exactly what the particularity  
23 requirement is talking about. A general rummaging,  
24 getting all the records, regardless of what they're  
25 looking for here. If they're looking -- if I understand

1 the argument, they need to get every email and every  
2 message that's been sent on this account just to be able  
3 to identify who owns the account. That's not  
4 particular.

5 And I think it's an argument that they're  
6 making after the fact because of the broadness of the  
7 warrant in the first place. So I would just stand by my  
8 previous comments. Thank you.

9 THE COURT: All right.

10 So what else do we need to do today, if  
11 anything, other than set deadlines and schedules and  
12 such?

13 MR. JUBA: Your Honor, I'll make the following  
14 additional requests. The EFF did file an amicus brief  
15 in this case that did file a motion -- permission to  
16 file that brief as well. The defense did also file a  
17 motion to allow them to file that brief.

18 We are asking the Court to accept that and  
19 consider that in its consideration of the keyword search  
20 warrant.

21 THE COURT: Okay.

22 Mr. Morales, I think you filed an objection,  
23 didn't you?

24 MR. MORALES: I did, Your Honor. And, again,  
25 I stand by my objection that -- and I would reinforce

1 again how I started today's hearing. This Court is to  
2 avoid any extraneous issues when determining a four  
3 corners review of the warrant and whether or not there's  
4 particularity -- particularity and probable cause.

5 And, therefore, the brief that was filed talks  
6 about policy issues, talks about how the impact of this  
7 decision could have on everything else. And, quite  
8 honestly, that's what I think we even today, as we sit  
9 here, know that our judiciary is not supposed to do.  
10 We've seen this across our country, we see that  
11 sometimes it feels like we're getting courts that are  
12 politicalized by policy issues.

13 Policy issues are best decided by -- maybe not  
14 best, but should be decided by legislatures in the  
15 executive branch and not by judicial officers who are  
16 sworn to follow precedent and the law.

17 I would suggest that if the Court was inclined  
18 to accept something from EFF as persuasive and take it  
19 into consideration, the People probably could find a  
20 victim's right act group that could say, We really think  
21 that the Fourth Amendment should be allowed to be  
22 violated when our loved ones have been murdered and we  
23 can uncover who did it by doing a very small intrinsic  
24 search of everybody's Google search.

25 I'm assuming the defense would object to that

1 kind of policy and argument as well, and I have nothing  
2 further.

3 THE COURT: It strikes me there's two discreet  
4 issues, A, whether the Court will allow these folks to  
5 file the brief; and, B, how the Court, if at all,  
6 considers or uses information contained in the brief.  
7 Both seem to be discreet things. And you folks will  
8 most certainly be able to discern what I do and don't  
9 rely upon and whether that's proper or improper, so I  
10 will accept the brief, and how I consider it, if at all,  
11 is a wholly different matter.

12 What else?

13 MR. JUBA: Your Honor, the only other issue  
14 was we did file also yesterday the motions that briefing  
15 schedule and motion to vacate jury trial. Your Honor,  
16 we would request until September 16th to file written  
17 briefing regarding the keyword search warrant issue.

18 We would request a return date for the Court's  
19 ruling on that issue. We are, as a part of that  
20 request, also asking to vacate the jury trial with the  
21 waiver of speedy trial and a tolling of speedy trial  
22 until the return date for the Court's order.

23 THE COURT: Mr. Morales.

24 MR. MORALES: I'm sorry. Ms. Hansen was in my  
25 ear at the point in time, so I just want to make sure



1 I'm clear as to what I'm answering to.

2 THE COURT: There's been a motion filed to  
3 continue the trial to allow additional briefing to be  
4 had and to move the trial date to some date in the  
5 future. That's my shorthand for what's being requested  
6 here.

7 MR. MORALES: I believe counsel asked for an  
8 opportunity to be able to supplement or do a  
9 supplementary briefing by September 16th; is that  
10 correct?

11 THE COURT: That's what he said, yes.

12 MR. MORALES: And I think the Court is already  
13 inclined to say that, but I also think counsel said they  
14 wanted to limit it to the keyword Google search. I  
15 would ask we be allowed to respond to any additional  
16 arguments. The Court did ask me some particular  
17 questions about nexus and so --

18 THE COURT: You can always respond, sure.

19 MR. MORALES: So we don't have a problem with  
20 the September 16th date if the Court is inclined to  
21 grant the motion to continue the jury trial. Obviously,  
22 this issue is going to impact how we proceed because if  
23 the Court grants the motion to suppress, then we have  
24 certain issues as to that. If it doesn't grant it,  
25 we're in a posture of trying to get ready for trial in

1 less than a month and a half.

2 So we don't have an objection to vacating the  
3 jury trial and continuing with a waiver and a tolling, I  
4 believe, until we can get all of these issues resolved  
5 if the Court is inclined to do that.

6 THE COURT: Do you see my face contorting  
7 uncontrollably about moving the jury trial?

8 MR. MORALES: I didn't see anything about  
9 contorting or anything else, Your Honor. I'm trying to  
10 divert my eyes away from how the Court is looking at  
11 this point in time.

12 I understand that setting a trial with the  
13 jury start of October 21st or 28 going into two weeks  
14 messes with the Court's schedule. But, clearly, this  
15 issue is the one that's going to be determinative of  
16 what the trial looks like. But, again, we leave it to  
17 the discretion.

18 As far as briefing response, we would like to  
19 be able to then respond to any responses by the defense  
20 the following Friday, September 23rd. We don't -- any  
21 type of -- or September 30th to respond to the defense  
22 motions so that we can then respond to their arguments  
23 like we would in open court.

24 So I guess that kind of puts it in your court  
25 whether or not you're willing to agree to what Defense

1 is requesting.

2 THE COURT: Well, my issue is I'm leaving in  
3 January. I'm trying to get these cases done before I  
4 leave. We set Mr. Bui's trial for December.

5 This case has kind of been on the fast track.  
6 I was kind of surprised, actually, when Mr.  
7 Seymour -- that there was more timing built in before  
8 speedy trial began to run to take care of some of these  
9 things or at least afford time to do these. So in any  
10 event, we've been on the fast track on all this.

11 And I guess I kind of figured if I -- I  
12 probably shouldn't say much more, although, the thought  
13 runs through my brain much of what I do is -- I kind of  
14 feel inconsequential; if I suppress evidence, you folks  
15 will take it up to the Supreme Court and they'll say  
16 those are issues. And if I don't, you will appeal, and,  
17 ultimately, the Court of Appeals and Supreme Court will  
18 decide *de novo* anyway.

19 Having said that -- I guess, the other thing I  
20 should add by way of full disclosure is I endeavor to  
21 read all this -- it's pretty -- some of this is -- a lot  
22 of it is repetitive, but I have not read the  
23 attachments. I haven't dived into the search warrants  
24 or the affidavits or any of that, which I've got to do,  
25 obviously, which I'm certainly committed to do in

1 advance of trial. And if trial is October 31st and you  
2 need rulings of these kinds of things, certainly I would  
3 get that done. However, we need to get done. There's  
4 always the benefit of having us under the gun so we  
5 actually get things done more timely.

6 Hypothetically, if I were to reset the jury  
7 trial, when would we be doing that, do you think? Let's  
8 say we have a supplemental briefing on September 16th  
9 and then a response a couple of weeks after that and  
10 then you get a ruling, when would we realistically be  
11 able to do this trial, would you think? Any thoughts  
12 about that?

13 MR. JUBA: Your Honor, if the Court is setting  
14 a return date for the ruling in October, speedy trial is  
15 tolled and waived until then, I would imagine it would  
16 be after the first of the year.

17 THE COURT: Uh-huh. Like, how close to the  
18 first of year, do you think? Do you think we could do  
19 it -- do you think we could do it -- am I hearing  
20 correctly that both sides think it's a good idea to get  
21 the jury trial reset?

22 MR. JUBA: That's our request, Your Honor.

23 THE COURT: Is that what I'm hearing from you  
24 as well, Mr. Morales?

25 MR. MORALES: I don't think it's a good idea.

1 I think it's an idea that may be necessary for the Court  
2 to make a ruling on this and allowing supplemental  
3 briefing. We want Your Honor to hear this. This is,  
4 obviously, a case the Court has heard both the probable  
5 cause and reverse transfer hearing on, is now the  
6 motions -- is going to resolve the motions. So it's  
7 ideally we do this before Your Honor chooses to retire.  
8 I think --

9 THE COURT: I'm not retiring. I'm just going  
10 to civil. Maybe it's the same thing. Who knows.

11 MR. MORALES: I didn't understand what was  
12 happening in January.

13 THE COURT: I'm being transferred pursuant to  
14 normal periodic rotations back to a civil division.  
15 You're still stuck with me for a while.

16 MR. MORALES: Not to be so bold as I've had  
17 other judicial officers who got transferred to civil  
18 that stayed on cases of this magnitude, but I'm not  
19 asking Your Honor to do that.

20 THE COURT: Okay.

21 MR. MORALES: Again, I think this is a  
22 decision the Court needs to make, whether or not it can  
23 adequately rule in time for us to be prepared to go to  
24 trial October 28th.

25 THE COURT: Okay.

1           MR. MORALES: And I know Mr. Bui's case was  
2 set for December 9th start.

3           THE COURT: Something like that. Okay. All  
4 right. I hear what you're saying, Mr. Morales.

5           I hear what you're saying, Mr. Juba.

6           Let me just -- I'll just tell you what we've  
7 got. I mean, and I -- if there's people saying we've  
8 got to go to trial, I strenuously object to this, this  
9 is terrible, I would maybe think differently. Just so  
10 everyone knows, I mean, not next week but the week after  
11 we start a two-week first-degree murder trial. Then  
12 there's the judicial conference, and then there's a  
13 week-long sex assault on a child trial followed the next  
14 week by another two-week first-degree murder trial,  
15 which then brings us up to October 17th. And there's,  
16 of course, multiple sex assault trials after that.

17           So certainly to the extent that there's things  
18 you folks want me to look at, I'm willing to do so. I  
19 think it probably makes some sense. And I certainly can  
20 look at whether or not we can get this case set in  
21 January in the fashion where I'm still here, although I  
22 winced that I saw I've got a first-degree murder trial  
23 January 9th which is about a million years old, which  
24 will probably take at least a week, but we can look into  
25 that.

1           That being said, Mr. Seymour, do you  
2 understand if you ask for a continuance, that would  
3 involve two things: It would involve a waiver of your  
4 right to a speedy trial, which would afford the State  
5 six months from the date of the waiver upon which to  
6 resolve your case and would also probably involve a  
7 tolling, in other words, there would be certain times  
8 that would be excluded from that calculation. So speedy  
9 trial probably wouldn't start until X date, a month or  
10 whatever down the road. Do you understand all that,  
11 sir?

12           THE DEFENDANT: Yes, Your Honor.

13           THE COURT: Are you willing to do that?

14           THE DEFENDANT: Yes, Your Honor.

15           THE COURT: Are you doing that voluntarily?

16           THE DEFENDANT: Yes, Your Honor.

17           THE COURT: All right. With the waiver of  
18 speedy trial, I'm going to vacate the -- Mr. Seymour's  
19 trial set for October 31st. That would be a heck of a  
20 good week then to -- as a deadline to get all the stuff  
21 resolved, i.e., we could come back on that date. And if  
22 I haven't issued written orders, I would be able to do  
23 oral orders on some of this.

24           How do you feel about that? Then we can get  
25 the trial reset January, February, something like that.

1 Thoughts?

2 MR. JUBA: Which that would work, yes.

3 THE COURT: Mr. Morales, what do you think  
4 about that?

5 MR. MORALES: Yes, that works.

6 THE COURT: Okay. So then we'll see any  
7 supplemental briefing with respect to this keyword  
8 search will be filed on or before September 16th, yes?

9 MR. JUBA: That's our request, Your Honor.  
10 We're asking for a concurrent briefing. We're asking  
11 for a single deadline for the defense and the  
12 prosecution to file any supplemental argument on  
13 September 16th.

14 THE COURT: Okay. And then if there is  
15 responses, two weeks after that?

16 MR. MORALES: That's fine.

17 MR. JUBA: Yes.

18 THE COURT: All right. And then let's do  
19 this. Why don't we plan to then reassemble on  
20 October 31st for a ruling on all this if you don't have  
21 a written order before then so there's a time certain  
22 where you actually have a ruling if it's not in writing.  
23 How do you feel about that?

24 MR. JUBA: We can accept that, Your Honor.

25 THE COURT: Since you were going to be here



1     anyway?

2             MR. JUBA:   Correct.

3             THE COURT:   How do you feel about that, Mr.  
4     Morales?

5             MR. MORALES:   Feel great about it.

6             THE COURT:   And then I'll make inquiries to  
7     see whether or not there's a potential we can  
8     either -- so what you folks should probably plan on  
9     doing is looking at your schedules for January 17th,  
10    January 23rd, January 30th, see what that looks like and  
11    see if we can, perhaps, be in a position to get the  
12    trial reset then.  That would be a relatively, in the  
13    grand scheme of things, short delay in this case, at  
14    least in terms of getting the trial down, and we can --  
15    how do you feel about that?

16            MR. MORALES:   We'll make sure we keep those  
17    dates open.

18            THE COURT:   Okay.  They're open for me  
19    already, and I can inquire with respect to the civil  
20    matters whether there's a potential to hang onto this,  
21    and might be a good reason to do so.  We good?

22            MR. MORALES:   Yes, Your Honor.

23            MS. STINSON:   What time on the 31st?

24            THE COURT:   8:30.

25            MR. MORALES:   Last thing I'm going to ask

1 request of the defense is that they file an exhibit list  
2 with the exhibits that were identified by each one of  
3 the witnesses. As we saw, there was certain tabs that  
4 were -- it may take a day to get a preliminary  
5 transcript from the court reporter and then file the  
6 actual exhibits so that we know what the record is  
7 reflective of just in case we -- this becomes a issue on  
8 a Rule 21 or an appellate issue down the road, we need  
9 to have a clear record of that.

10 The People introduced one exhibit which I gave  
11 to the court reporter, but we really need to have a  
12 clear record as to what exhibits were shown to witnesses  
13 and at what point in time.

14 Perhaps they could confer with us before they  
15 file those so that our notes also correspond with what  
16 happened in this courtroom today.

17 THE COURT: That might be helpful for me to  
18 figure all this out in terms of linking things up.

19 MR. JUBA: Your Honor, we're fine doing that.  
20 Everything is in the record as prior attachments. I  
21 think what would make sense is we can file -- we can  
22 confer with counsel and file a notice regarding exactly  
23 what was referred to in the testimony and in the  
24 argument and where it is in the record or we can just  
25 file additional attachments which would be the same

1 things that are already in the record, whichever the  
2 Court would prefer, but we can certainly confer and  
3 clarify that.

4 THE COURT: Terrific. Great. Anything else?

5 MR. JUBA: No, thank you.

6 MR. MORALES: Nothing.

7 THE COURT: Great.

8 Thanks, folks. This is interesting, and I  
9 think we all have our marching orders. Just so we're  
10 clear, we've got a speedy trial and that's tolled until  
11 October 31st, yes?

12 MR. JUBA: Correct.

13 THE COURT: Great. Thank you.

14 (Proceedings concluded at 3:35 p.m.)

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DISTRICT COURT  
COUNTY OF DENVER  
STATE OF COLORADO

Case No. 21CR20001

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REPORTER'S CERTIFICATE

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I, Claudia Booton, 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 29th of August, 2022, in Denver County, Colorado.

*s/Claudia Booton*  
Claudia Booton  
Registered Professional Reporter

# Exhibit 11

Google's Privacy Policy

When you use our services, you're trusting us with your information. We understand this is a big responsibility and work hard to protect your information and put you in control.

DATE FILED: June 30, 2020 12:03 PM  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 200CR20002

This Privacy Policy is meant to help you understand what information we collect, why we collect it, and how you can update, manage, export, and delete your information.

Effective July 1, 2020

[Archived versions](#)

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We build a range of services that help millions of people daily to explore and interact with the world in new ways. Our services include:

- Google apps, sites, and devices, like Search, YouTube, and Google Home
- Platforms like the Chrome browser and Android operating system
- Products that are integrated into third-party apps and sites, like ads and embedded Google Maps

You can use our services in a variety of ways to manage your privacy. For example, you can sign up for a Google Account if you want to create and manage content like emails and photos, or see more relevant search results. And you can use many Google services when you're signed out or without creating an account at all, like searching on Google or watching YouTube videos. You can also choose to browse the web privately using Chrome in Incognito mode. And across our services, you can adjust your privacy settings to control what we collect and how your information is used.

To help explain things as clearly as possible, we've added examples, explanatory videos, and definitions for [key terms](#). And if you have any questions about this Privacy Policy, you can [contact us](#).

# We want you to understand the types of information we collect as you use our services

We collect information to provide better services to all our users — from figuring out basic stuff like which language you speak, to more complex things like which [ads you'll find most useful](#), [the people who matter most to you online](#), or which YouTube videos you might like. The information Google collects, and how that information is used, depends on how you use our services and how you manage your privacy controls.

When you're not signed in to a Google Account, we store the information we collect with [unique identifiers](#) tied to the browser, application, or [device](#) you're using. This helps us do things like maintain your language preferences across browsing sessions.

When you're signed in, we also collect information that we store with your Google Account, which we treat as [personal information](#).

## Things you create or provide to us

When you create a Google Account, you provide us with [personal information](#) that includes your name and a password. You can also choose to add a [phone number](#) or [payment information](#) to your account. Even if you aren't signed in to a Google Account, you might choose to provide us with information — like an email address to receive updates about our services.

We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos.

## Information we collect as you use our services

### Your apps, browsers & devices

We collect information about the apps, browsers, and [devices](#) you use to access Google services, which helps us provide features like automatic product updates and dimming your screen if your battery runs low.

The information we collect includes [unique identifiers](#), browser type and settings, device type and settings, operating system, mobile network information including carrier name and phone number, and application version number. We also collect information about the interaction of your apps, browsers, and devices with our services, including [IP address](#), crash reports, system activity, and the date, time, and [referrer URL](#) of your request.

We collect this information when a Google service on your device contacts our servers – for example, when you install an app from the Play Store or when a service checks for automatic updates. If you're using an [Android device with Google apps](#), your device periodically contacts Google servers to provide information about your device and connection to our services. This information includes things like your device type, carrier name, crash reports, and which apps you've installed.

## Your activity

We collect information about your activity in our services, which we use to do things like recommend a YouTube video you might like. The activity information we collect may include:

- Terms you search for
- Videos you watch
- [Views and interactions with content and ads](#)
- Voice and audio information when you use audio features
- Purchase activity
- People with whom you communicate or share content
- Activity on third-party sites and apps that use our services
- Chrome browsing history you've [synced with your Google Account](#)

If you use our [services to make and receive calls or send and receive messages](#), we may collect telephony log information like your phone number, calling-party number, receiving-party number, forwarding numbers, time and date of calls and messages, duration of calls, routing information, and types of calls.

You can visit your Google Account to find and manage activity information that's saved in your account.





[Go to Google Account](#)

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## Your location information

We collect information about your location when you use our services, which helps us offer features like driving directions for your weekend getaway or showtimes for movies playing near you.

Your location can be determined with varying degrees of accuracy by:

- [GPS](#)
- [IP address](#)
- [Sensor data from your device](#)
- [Information about things near your device](#), such as Wi-Fi access points, cell towers, and Bluetooth-enabled devices

The types of location data we collect depend in part on your device and account settings. For example, you can [turn your Android device's location on or off](#) using the device's settings app. You can also turn on [Location History](#) if you want to create a private map of where you go with your signed-in devices.

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In some circumstances, Google also collects information about you from [publicly accessible sources](#). For example, if your name appears in your local newspaper, Google's Search engine may index that article and display it to other people if they search for your name. We may also collect information about you from trusted partners, including marketing partners who provide us with information about potential customers of our business services, and security partners who provide us with information to [protect against abuse](#). We also receive information from advertisers to provide [advertising and research services on their behalf](#).

We use various technologies to collect and store information, including [cookies](#), [pixel tags](#), local storage, such as [browser web storage](#) or [application data caches](#), databases, and [server logs](#).

# We use data to build better services

We use the information we collect from all our services for the following purposes:

## Provide our services

We use your information to [deliver our services](#), like processing the terms you search for in order to return results or helping you [share content](#) by suggesting recipients from your contacts.

## Maintain & improve our services

We also use your information to [ensure our services are working as intended](#), such as tracking outages or troubleshooting issues that you report to us. And we use your information to [make improvements](#) to our services – for example, understanding which search terms are most frequently misspelled helps us improve spell-check features used across our services.

## Develop new services

We use the information we collect in existing services to help us develop new ones. For example, understanding how people organized their photos in Picasa, Google's first photos app, helped us design and launch Google Photos.

## Provide personalized services, including content and ads

We use the information we collect to customize our services for you, including providing recommendations, personalized content, and [customized search results](#). For example, [Security Checkup](#) provides security tips adapted to how you use Google products. And Google Play uses information like apps you've already installed and videos you've watched on YouTube to suggest new apps you might like.

Depending on your settings, we may also show you [personalized ads](#) based on your interests. For example, if you search for "mountain bikes," you may see an ad for sports equipment when you're browsing a site that shows ads served by Google. You can control what information we use to show you ads by visiting your ad settings.

- We don't show you personalized ads based on sensitive categories, such as race, religion, sexual orientation, or health.
- We don't share information that personally identifies you with advertisers, such as your name or email, unless you ask us to. For example, if you see an ad for a nearby flower shop and select the "tap to call" button, we'll connect your call and may share your phone number with the flower shop.



[Go to Ad Settings](#)

---

## Measure performance

We use data for analytics and measurement to understand how our services are used. For example, we analyze data about your visits to our sites to do things like optimize product design. And we also use data about the ads you interact with to help advertisers understand the performance of their ad campaigns. We use a variety of tools to do this, including Google Analytics. When you visit sites that use Google Analytics, Google and a Google Analytics customer may link information about your activity from that site with activity from other sites that use our ad services.

## Communicate with you

We use information we collect, like your email address, to interact with you directly. For example, we may send you a notification if we detect suspicious activity, like an attempt to sign in to your Google Account from an unusual location. Or we may let you know about upcoming changes or improvements to our services. And if you contact Google, we'll keep a record of your request in order to help solve any issues you might be facing.

## Protect Google, our users, and the public

We use information to help improve the safety and reliability of our services. This includes detecting, preventing, and responding to fraud, abuse, security risks, and technical issues that could harm Google, our users, or the public.

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We use different technologies to process your information for these purposes. We use automated systems that analyze your content to provide you with things like customized search results, personalized ads, or other features tailored to how you use our services. And we analyze your content to help us [detect abuse](#) such as spam, malware, and illegal content. We also use [algorithms](#) to recognize patterns in data. For example, Google Translate helps people communicate across languages by detecting common language patterns in phrases you ask it to translate.

We may [combine the information we collect](#) among our services and across your devices for the purposes described above. For example, if you watch videos of guitar players on YouTube, you might see an ad for guitar lessons on a site that uses our ad products. Depending on your account settings, [your activity on other sites and apps](#) may be associated with your personal information in order to improve Google's services and the ads delivered by Google.

If other users already have your email address or other information that identifies you, we may show them your publicly visible Google Account information, such as your name and photo. This helps people identify an email coming from you, for example.

We'll ask for your consent before using your information for a purpose that isn't covered in this Privacy Policy.

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## YOUR PRIVACY CONTROLS

# You have choices regarding the information we collect and how it's used

This section describes key controls for managing your privacy across our services. You can also visit the [Privacy Checkup](#), which provides an opportunity to review and adjust important privacy settings. In addition to these tools, we also offer specific privacy settings in our products – you can learn more in our [Product Privacy Guide](#).



[Go to Privacy Checkup](#)

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## Managing, reviewing, and updating your information

When you're signed in, you can always review and update information by visiting the services you use. For example, Photos and Drive are both designed to help you manage specific types of content you've saved with Google.

We also built a place for you to review and control information saved in your Google Account. Your [Google Account](#) includes:

## Privacy controls



### Activity Controls

Decide what types of activity you'd like saved in your account. For example, you can turn on Location History if you want traffic predictions for your daily commute, or you can save your YouTube Watch History to get better video suggestions.

[Go to Activity Controls](#)

---



### Ad settings

Manage your preferences about the ads shown to you on Google and on sites and apps that [partner with Google](#) to show ads. You can modify your interests, choose whether your personal information is used to make ads more relevant to you, and turn on or off certain advertising services.

[Go to Ad Settings](#)

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### About you

Control what others see about you across Google services.

[Go to About You](#)

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### Shared endorsements

Choose whether your name and photo appear next to your activity, like reviews and recommendations, that appear in ads.

[Go to Shared Endorsements](#)

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## Information you share



If you're a G Suite user, control whom you share information with through your account on Google+.

[Go to Information You Share](#)

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## Ways to review & update your information



### **My Activity**

My Activity allows you to review and control data that's created when you use Google services, like searches you've done or your visits to Google Play. You can browse by date and by topic, and delete part or all of your activity.

[Go to My Activity](#)

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### **Google Dashboard**

Google Dashboard allows you to manage information associated with specific products.

[Go to Dashboard](#)

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### **Your personal information**

Manage your contact information, such as your name, email, and phone number.

[Go to Personal Info](#)

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When you're signed out, you can manage information associated with your browser or device, including:

- Signed-out search personalization: [Choose](#) whether your search activity is used to offer you more relevant results and recommendations.
- YouTube settings: Pause and delete your [YouTube Search History](#) and your [YouTube Watch History](#).
- Ad Settings: [Manage](#) your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads.

# Exporting, removing & deleting your information

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.



[Export your data](#)

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You can also [request to remove content](#) from specific Google services based on applicable law.

To delete your information, you can:

- Delete your content from [specific Google services](#)
- Search for and then delete specific items from your account using [My Activity](#)
- [Delete specific Google products](#), including your information associated with those products
- [Delete your entire Google Account](#)



[Delete your information](#)

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And finally, [Inactive Account Manager](#) allows you to give someone else access to parts of your Google Account in case you're unexpectedly unable to use your account.

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There are other ways to control the information Google collects whether or not you're signed in to a Google Account, including:

- **Browser settings:** For example, you can configure your browser to indicate when Google has set a [cookie](#) in your browser. You can also configure your browser to block all cookies from a specific domain or all domains. But remember that our services [rely on cookies to function properly](#), for things like remembering your language preferences.

- Device-level settings: Your device may have controls that determine what information we collect. For example, you can [modify location settings](#) on your Android device.
- 

## SHARING YOUR INFORMATION

### When you share your information

Many of our services let you share information with other people, and you have control over how you share. For example, you can share videos on YouTube publicly or you can decide to keep your videos private. Remember, when you share information publicly, your content may become accessible through search engines, including Google Search.

When you're signed in and interact with some Google services, like leaving comments on a YouTube video or reviewing an app in Play, your name and photo appear next to your activity. We may also display this information in [ads depending on your Shared endorsements setting](#).

### When Google shares your information

We do not share your personal information with companies, organizations, or individuals outside of Google except in the following cases:

#### With your consent

We'll share personal information outside of Google when we have your consent. For example, if you [use Google Home to make a reservation](#) through a booking service, we'll get your permission before sharing your name or phone number with the restaurant. We'll ask for your explicit consent to share any [sensitive personal information](#).

#### With domain administrators

If you're a student or work for an organization that uses Google services (like G Suite), your [domain administrator](#) and resellers who manage your account will have access to your Google Account. They may be able to:

- Access and retain information stored in your account, like your email



- View statistics regarding your account, like how many apps you install
- Change your account password
- Suspend or terminate your account access
- Receive your account information in order to satisfy applicable law, regulation, legal process, or enforceable governmental request
- Restrict your ability to delete or edit your information or your privacy settings

## For external processing

We provide personal information to our [affiliates](#) and other trusted businesses or persons to process it for us, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures. For example, we use service providers to help us with customer support.

## For legal reasons

We will share personal information outside of Google if we have a good-faith belief that access, use, preservation, or disclosure of the information is reasonably necessary to:

- Meet any applicable law, regulation, [legal process, or enforceable governmental request](#). We share information about the number and type of requests we receive from governments in our [Transparency Report](#).
- Enforce applicable Terms of Service, including investigation of potential violations.
- Detect, prevent, or otherwise address fraud, security, or technical issues.
- Protect against harm to the rights, property or safety of Google, our users, or the public as required or permitted by law.

We may share [non-personally identifiable information](#) publicly and with our partners – like publishers, advertisers, developers, or rights holders. For example, we share information publicly to [show trends](#) about the general use of our services. We also allow [specific partners](#) to collect information from your browser or device for advertising and measurement purposes using their own cookies or similar technologies.

If Google is involved in a merger, acquisition, or sale of assets, we'll continue to ensure the confidentiality of your personal information and give affected users notice before personal information is transferred or becomes subject to a different privacy policy.

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## KEEPING YOUR INFORMATION SECURE

### We build security into our services to protect your information

All Google products are built with strong security features that continuously protect your information. The insights we gain from maintaining our services help us detect and automatically block security threats from ever reaching you. And if we do detect something risky that we think you should know about, we'll notify you and help guide you through steps to stay better protected.

We work hard to protect you and Google from unauthorized access, alteration, disclosure, or destruction of information we hold, including:

- We use encryption to keep your data private while in transit
- We offer a range of security features, like [Safe Browsing](#), Security Checkup, and [2 Step Verification](#) to help you protect your account
- We review our information collection, storage, and processing practices, including physical security measures, to prevent unauthorized access to our systems
- We restrict access to personal information to Google employees, contractors, and agents who need that information in order to process it. Anyone with this access is subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.

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## EXPORTING & DELETING YOUR INFORMATION

### You can export a copy of your information or delete it from your Google Account at any time

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.



## Export your data

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To delete your information, you can:

- Delete your content from [specific Google services](#)
- Search for and then delete specific items from your account using [My Activity](#)
- [Delete specific Google products](#), including your information associated with those products
- [Delete your entire Google Account](#)



## Delete your information

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### RETAINING YOUR INFORMATION

We retain the data we collect for different periods of time depending on what it is, how we use it, and how you configure your settings:

- Some data you can delete whenever you like, such as the content you create or upload. You can also delete [activity information](#) saved in your account, or [choose to have it deleted automatically](#) after a set period of time.
- Other data is deleted or anonymized automatically after a set period of time, such as [advertising data](#) in server logs.
- We keep some data until you delete your Google Account, such as information about how often you use our services.
- And some data we retain for longer periods of time when necessary for legitimate business or legal purposes, such as security, fraud and abuse prevention, or financial record-keeping.

When you delete data, we follow a deletion process to make sure that your data is safely and completely removed from our servers or retained only in anonymized form. We try to ensure that our services protect information from accidental or malicious deletion. Because of this, there may be delays between when you delete something and when copies are deleted from our active and backup systems.

You can read more about Google's [data retention periods](#), including how long it takes us to delete your information.

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## COMPLIANCE & COOPERATION WITH REGULATORS

We regularly review this Privacy Policy and make sure that we process your information in ways that comply with it.

## Data transfers

We maintain [servers around the world](#) and your information may be processed on servers located outside of the country where you live. Data protection laws vary among countries, with some providing more protection than others. Regardless of where your information is processed, we apply the same protections described in this policy. We also comply with certain [legal frameworks](#) relating to the transfer of data, such as the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks.

When we receive formal written complaints, we respond by contacting the person who made the complaint. We work with the appropriate regulatory authorities, including local data protection authorities, to resolve any complaints regarding the transfer of your data that we cannot resolve with you directly.

## California requirements

The California Consumer Privacy Act (CCPA) requires specific disclosures for California residents.

This Privacy Policy is designed to help you understand how Google handles your information:

- We explain the categories of information Google collects and the sources of that information in [Information Google collects](#).
- We explain how Google uses information in [Why Google collects data](#).
- We explain when Google may share information in [Sharing your information](#). Google does not sell your personal information.

The CCPA also provides the right to request information about how Google collects, uses, and discloses your personal information. And it gives you the right to access your information and request that Google delete that information. Finally, the CCPA provides the right to not be discriminated against for exercising your privacy rights.

We describe the choices you have to manage your privacy and data across Google's services in [Your privacy controls](#). You can exercise your rights by using these controls, which allow you to access, review, update and delete your information, as well as [export and download](#) a copy of it. When you use them, we'll validate your request by verifying that you're signed in to your Google Account. If you have questions or requests related to your rights under the CCPA, you (or your authorized agent) can also [contact Google](#).

The CCPA requires a description of data practices using specific categories. This table uses these categories to organize the information in this Privacy Policy.

## Categories of personal information we collect

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**Identifiers** such as your [name](#), [phone number](#), and address, as well as [unique identifiers](#) tied to the browser, application, or device you're using.

**Demographic information**, such as your [age](#), [gender](#) and [language](#).

**Commercial information** such as your [payment information](#) and a history of [purchases](#) you make on Google's services.

**Biometric information** if you choose to provide it, such as fingerprints in Google's product development studies.

**Internet, network, and other activity information** such as your search terms; views and interactions with content and ads; Chrome browsing history you've synced with your Google Account; information about the interaction of your apps, browsers, and devices with our services (like IP address, crash reports, and system activity); and activity on third-party sites and apps that use our services. You can review and control activity data stored in your Google Account in [My Activity](#).

**Geolocation data**, such as may be determined by GPS, IP address, and other data from sensors on or around your device, depending in part on your device and account settings. Learn more about [Google's use of location information](#).

**Audio, electronic, visual and similar information**, such as [voice and audio information](#) when you use audio features.

**Professional, employment, and education information**, such as information [you provide](#) or that is maintained through a G Suite account by an organization at which you study or work.

**Other information you create or provide**, such as the content you create, upload, or receive (like photos and videos or emails, docs and spreadsheets). [Google Dashboard](#) allows you to manage information associated with specific products.

**Inferences** drawn from the above, like your [ads interest categories](#).

## Business purposes for which information may be used or disclosed

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**Protecting against security threats, abuse, and illegal activity:** Google uses and may disclose information to detect, prevent and respond to security incidents, and for protecting against other malicious, deceptive, fraudulent, or illegal activity. For example, to protect our services, Google may receive or disclose information about IP addresses that malicious actors have compromised.

**Auditing and measurement:** Google uses information for analytics and measurement to understand how our services are used, as well as to fulfill obligations to our partners like publishers, advertisers, developers, or rights holders. We may disclose non-personally identifiable information publicly and with these partners, including for auditing purposes.

**Maintaining our services:** Google uses information to ensure our services are working as intended, such as tracking outages or troubleshooting bugs and other issues that you report to us.

**Research and development:** Google uses information to improve our services and to develop new products, features and technologies that benefit our users and the public. For example, we use publicly available information to help train Google's language models and build features like Google Translate.

**Use of service providers:** Google shares information with service providers to perform services on our behalf, in compliance with our Privacy Policy and other appropriate confidentiality and security measures. For example, we may rely on service providers to help provide customer support.

**Advertising:** Google processes information, including online identifiers and information about your

interactions with advertisements, to provide advertising. This keeps Google's services and many of the websites and services you use free of charge. You can control what information we use to show you ads by visiting your [ad settings](#).

**Legal reasons:** Google also uses information to satisfy applicable laws or regulations, and discloses information in response to legal process or enforceable government requests, including to law enforcement. We provide information about the number and type of requests we receive from governments in our [Transparency Report](#).

## Parties with whom information may be shared

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**Other people with whom you choose to share your information**, like docs or photos, and videos or comments on YouTube.

**Third parties to whom you consent to sharing your information**, such as services that integrate with Google's services. You can [review and manage third party apps and sites](#) with access to data in your Google Account.

**Service providers**, trusted businesses or persons that process information on Google's behalf, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures.

**Domain administrators**, if you work or study at an organization that uses Google services like G Suite.

**Law enforcement or other third parties**, for the legal reasons described in [Sharing your information](#).

---

### ABOUT THIS POLICY

## When this policy applies

This Privacy Policy applies to all of the services offered by Google LLC and its [affiliates](#), including YouTube, Android, and services offered on third-party sites, such as advertising services. This Privacy Policy doesn't apply to services that have separate privacy policies that do not incorporate this Privacy Policy.

This Privacy Policy doesn't apply to:

- The information practices of other companies and organizations that advertise our services
- Services offered by other companies or individuals, including products or sites that may include Google services, be displayed to you in search results, or be linked from our services

## Changes to this policy

We change this Privacy Policy from time to time. We will not reduce your rights under this Privacy Policy without your explicit consent. We always indicate the date the last changes were published and we offer access to [archived versions](#) for your review. If changes are significant, we'll provide a more prominent notice (including, for certain services, email notification of Privacy Policy changes).

---

### RELATED PRIVACY PRACTICES

## Specific Google services

The following privacy notices provide additional information about some Google services:

- [Chrome & the Chrome Operating System](#)
- [Play Books](#)
- [Payments](#)
- [Fiber](#)
- [Google Fi](#)
- [G Suite for Education](#)
- [YouTube Kids](#)
- [Google Accounts Managed with Family Link, for Children under 13 \(or applicable age in your country\)](#)
- [Voice and Audio Collection from Children's Features on the Google Assistant](#)



## Other useful resources

The following links highlight useful resources for you to learn more about our practices and privacy settings.

- [Your Google Account](#) is home to many of the settings you can use to manage your account
  - [Privacy Checkup](#) guides you through key privacy settings for your Google Account
  - [Google's safety center](#) helps you learn more about our built-in security, privacy controls, and tools to help set digital ground rules for your family online
  - [Privacy & Terms](#) provides more context regarding this Privacy Policy and our Terms of Service
  - [Technologies](#) includes more information about:
    - [How Google uses cookies](#)
    - Technologies used for [Advertising](#)
    - [How Google uses pattern recognition](#) to recognize things like faces in photos
    - [How Google uses information from sites or apps that use our services](#)
- 

## Key terms

### Affiliates

An affiliate is an entity that belongs to the Google group of companies, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, Google Payment Corp, and Google Dialer Inc. Learn more about the [companies providing business services in the EU](#).

### Algorithm

A process or set of rules followed by a computer in performing problem-solving operations.

## Application data cache

An application data cache is a data repository on a device. It can, for example, enable a web application to run without an internet connection and improve the performance of the application by enabling faster loading of content.

## Browser web storage

Browser web storage enables websites to store data in a browser on a device. When used in "local storage" mode, it enables data to be stored across sessions. This makes data retrievable even after a browser has been closed and reopened. One technology that facilitates web storage is HTML 5.

## Cookies

A cookie is a small file containing a string of characters that is sent to your computer when you visit a website. When you visit the site again, the cookie allows that site to recognize your browser. Cookies may store user preferences and other information. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. However, some website features or services may not function properly without cookies. Learn more about [how Google uses cookies](#) and how Google uses data, including cookies, [when you use our partners' sites or apps](#).

## Device

A device is a computer that can be used to access Google services. For example, desktop computers, tablets, smart speakers, and smartphones are all considered devices.

## Google Account

You may access some of our services by signing up for a [Google Account](#) and providing us with some personal information (typically your name, email address, and a password). This account information is used to authenticate you when you access Google services and protect your account from unauthorized access by others. You can edit or delete your account at any time through your Google Account settings.

## IP address

Every device connected to the Internet is assigned a number known as an Internet protocol (IP) address. These numbers are usually assigned in geographic blocks. An IP address can often be used to identify the location from which a device is connecting to the Internet.

## Non-personally identifiable information

This is information that is recorded about users so that it no longer reflects or references an individually-identifiable user.

## Personal information

This is information that you provide to us which personally identifies you, such as your name, email address, or billing information, or other data that can be reasonably linked to such information by Google, such as information we associate with your Google Account.

## Pixel tag

A pixel tag is a type of technology placed on a website or within the body of an email for the purpose of tracking certain activity, such as views of a website or when an email is opened. Pixel tags are often used in combination with cookies.

## Referrer URL

A Referrer URL (Uniform Resource Locator) is information transmitted to a destination webpage by a web browser, typically when you click a link to that page. The Referrer URL contains the URL of the last webpage the browser visited.

## Sensitive personal information

This is a particular category of personal information relating to topics such as confidential medical facts, racial or ethnic origins, political or religious beliefs, or sexuality.

## Server logs

Like most websites, our servers automatically record the page requests made when you visit our sites. These “server logs” typically include your web request, Internet Protocol address, browser type, browser language, the date and time of your request, and one or more cookies that may uniquely identify your browser.

A typical log entry for a search for “cars” looks like this:

```
123.45.67.89 - 25/Mar/2003 10:15:32 -  
http://www.google.com/search?q=cars -  
Firefox 1.0.7; Windows NT 5.1 -  
740674ce2123e969
```

- `123.45.67.89` is the Internet Protocol address assigned to the user by the user’s ISP. Depending on the user’s service, a different address may be assigned to the user by their service provider each time they connect to the Internet.
- `25/Mar/2003 10:15:32` is the date and time of the query.
- `http://www.google.com/search?q=cars` is the requested URL, including the search query.
- `Firefox 1.0.7; Windows NT 5.1` is the browser and operating system being used.
- `740674ce2123a969` is the unique cookie ID assigned to this particular computer the first time it visited Google. (Cookies can be deleted by users. If the user has deleted the cookie from the computer since the last time they’ve visited Google, then it will be the unique cookie ID assigned to their device the next time they visit Google from that particular device).

## Unique identifiers

A unique identifier is a string of characters that can be used to uniquely identify a browser, app, or device. Different identifiers vary in how permanent they are, whether they can be reset by users, and how they can be accessed.

Unique identifiers can be used for various purposes, including security and fraud detection, syncing services such as your email inbox, remembering your preferences, and providing personalized advertising. For example, unique identifiers stored in cookies help sites display content in your browser in your preferred language. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. Learn more about [how Google uses cookies](#).

On other platforms besides browsers, unique identifiers are used to recognize a specific device or app on that device. For example, a unique identifier such as the Advertising ID is used to provide relevant advertising on Android devices, and can be [managed](#) in your device's settings. Unique identifiers may also be incorporated into a device by its manufacturer (sometimes called a universally unique ID or UUID), such as the IMEI-number of a mobile phone. For example, a device's unique identifier can be used to customize our service to your device or analyze device issues related to our services.

## Additional Context

### ads you'll find most useful

For example, if you watch videos about baking on YouTube, you may see more ads that relate to baking as you browse the web. We also may use your IP address to determine your approximate location, so that we can serve you ads for a nearby pizza delivery service if you search for "pizza." Learn more [about Google ads](#) and [why you may see particular ads](#).

### advertising and research services on their behalf

For example, advertisers may upload data from their loyalty-card programs so that they can better understand the performance of their ad campaigns. We only provide aggregated reports to advertisers that don't reveal information about individual people.

### Android device with Google apps

Android devices with Google apps include devices sold by Google or one of our partners and include phones, cameras, vehicles, wearables, and televisions. These devices use Google Play Services and other pre-installed apps that include services like Gmail, Maps, your phone's camera and phone dialer, text-to-speech conversion, keyboard input, and security features.

### combine the information we collect

Some examples of how we combine the information we collect include:

- When you're signed in to your Google Account and search on Google, you can see search results from the public web, along with relevant information from the content you have in other Google products, like Gmail or Google Calendar. This can include things like the status of your upcoming flights, restaurant, and hotel reservations, or your photos. [Learn more](#)
- If you have communicated with someone via Gmail and want to add them to a Google Doc or an event in Google Calendar, Google makes it easy to do so by autocompleting their email address when you start to type in their name. This feature makes it easier to share things with people you know. [Learn more](#)
- The Google app can use data that you have stored in other Google products to show you personalized content, depending on your settings. For example, if you have searches stored in your Web & App Activity, the Google app can show you news articles and other information about your interests, like sports scores, based your activity. [Learn more](#)
- If you link your Google Account to your Google Home, you can manage your information and get things done through the Google Assistant. For example, you can add events to your Google Calendar or get your schedule for the day, ask for status updates on your upcoming flight, or send information like driving directions to your phone. [Learn more](#)

## customized search results

For example, when you're signed in to your Google Account and have the Web & App Activity control enabled, you can get more relevant search results that are based on your previous searches and activity from other Google services. You can [learn more here](#). You may also get customized search results even when you're signed out. If you don't want this level of search customization, you can [search and browse privately](#) or turn off [signed-out search personalization](#).

## deliver our services

Examples of how we use your information to deliver our services include:

- We use the IP address assigned to your device to send you the data you requested, such as loading a YouTube video
- We use unique identifiers stored in cookies on your device to help us authenticate you as the person who should have access to your Google Account
- Photos and videos you upload to Google Photos are used to help you create albums, animations, and other creations that you can share. [Learn more](#)

- A flight confirmation email you receive may be used to create a “check-in” button that appears in your Gmail
- When you purchase services or physical goods from us, you may provide us information like your shipping address or delivery instructions. We use this information for things like processing, fulfilling, and delivering your order, and to provide support in connection with the product or service you purchase.

## detect abuse

When we detect spam, malware, illegal content, and other forms of abuse on our systems in violation of our policies, we may disable your account or take other appropriate action. In certain circumstances, we may also report the violation to appropriate authorities.

## devices

For example, we can use information from your devices to help you decide which device you’d like to use to install an app or view a movie you buy from Google Play. We also use this information to help protect your account.

## ensure and improve

For example, we analyze how people interact with advertising to improve the performance of our ads.

## ensure our services are working as intended

For example, we continuously monitor our systems to look for problems. And if we find something wrong with a specific feature, reviewing activity information collected before the problem started allows us to fix things more quickly.

## Information about things near your device

If you use Google’s Location services on Android, we can improve the performance of apps that rely on your location, like Google Maps. If you use Google’s Location services, your device sends information to Google about its location, sensors (like accelerometer), and nearby cell towers and Wi-

Wi-Fi access points (like MAC address and signal strength). All these things help to determine your location. You can use your device settings to enable Google Location services. [Learn more](#)

## legal process, or enforceable governmental request

Like other technology and communications companies, Google regularly receives requests from governments and courts around the world to disclose user data. Respect for the privacy and security of data you store with Google underpins our approach to complying with these legal requests. Our legal team reviews each and every request, regardless of type, and we frequently push back when a request appears to be overly broad or doesn't follow the correct process. Learn more in our [Transparency Report](#).

## make improvements

For example, we use cookies to analyze how people interact with our services. And that analysis can help us build better products. For example, it may help us discover that it's taking people too long to complete a certain task or that they have trouble finishing steps at all. We can then redesign that feature and improve the product for everyone.

## may link information

Google Analytics relies on first-party cookies, which means the cookies are set by the Google Analytics customer. Using our systems, data generated through Google Analytics can be linked by the Google Analytics customer and by Google to third-party cookies that are related to visits to other websites. For example, an advertiser may want to use its Google Analytics data to create more relevant ads, or to further analyze its traffic. [Learn more](#)

## partner with Google

There are over 2 million non-Google websites and apps that partner with Google to show ads. [Learn more](#)

## payment information

For example, if you add a credit card or other payment method to your Google Account, you can use it to buy things across our services, like apps in the Play Store. We may also ask for other information,



like a business tax ID, to help process your payment. In some cases, we may also need to verify your identity and may ask you for information to do this.

We may also use payment information to verify that you meet age requirements, if, for example, you enter an incorrect birthday indicating you're not old enough to have a Google Account. [Learn more](#)

## personalized ads

You may also see personalized ads based on information from the advertiser. If you shopped on an advertiser's website, for example, they can use that visit information to show you ads. [Learn more](#)

## phone number

If you add your phone number to your account, it can be used for different purposes across Google services, depending on your settings. For example, your phone number can be used to help you access your account if you forget your password, help people find and connect with you, and make the ads you see more relevant to you. [Learn more](#)

## protect against abuse

For example, information about security threats can help us notify you if we think your account has been compromised (at which point we can help you take steps to protect your account).

## publicly accessible sources

For example, we may collect information that's publicly available online or from other public sources to help train Google's language models and build features like Google Translate.

## rely on cookies to function properly

For example, we use a cookie called 'lbc's' that makes it possible for you to open many Google Docs in one browser. Blocking this cookie would prevent Google Docs from working as expected. [Learn more](#)

## safety and reliability

Some examples of how we use your information to help keep our services safe and reliable include:

- Collecting and analyzing IP addresses and cookie data to protect against automated abuse. This abuse takes many forms, such as sending spam to Gmail users, stealing money from advertisers by fraudulently clicking on ads, or censoring content by launching a Distributed Denial of Service (DDoS) attack.
- The “last account activity” feature in Gmail can help you find out if and when someone accessed your email without your knowledge. This feature shows you information about recent activity in Gmail, such as the IP addresses that accessed your mail, the associated location, and the date and time of access. [Learn more](#)

## sensitive categories

When showing you personalized ads, we use topics that we think might be of interest to you based on your activity. For example, you may see ads for things like "Cooking and Recipes" or "Air Travel." We don't use topics or show personalized ads based on sensitive categories like race, religion, sexual orientation, or health. And we [require the same from advertisers](#) that use our services.

## Sensor data from your device

Your device may have sensors that can be used to better understand your location and movement. For example, an accelerometer can be used to determine your speed and a gyroscope to figure out your direction of travel.

## servers around the world

For example, we operate data centers located [around the world](#) to help keep our products continuously available for users.

## services to make and receive calls or send and receive messages

Examples of these services include:

- Google Hangouts, for making domestic and international calls
- Google Voice, for making calls, sending text messages, and managing voicemail

- Google Fi, for a phone plan

## show trends

When lots of people start searching for something, it can provide useful information about particular trends at that time. Google Trends samples Google web searches to estimate the popularity of searches over a certain period of time and shares those results publicly in aggregated terms. [Learn more](#)

## specific Google services

For example, you can delete [your blog](#) from Blogger or [a Google Site you own](#) from Google Sites. You can also delete [reviews](#) you've left on apps, games, and other content in the Play Store.

## specific partners

For example, we allow YouTube creators and advertisers to work with measurement companies to learn about the audience of their YouTube videos or ads, using cookies or similar technologies. Another example is merchants on our shopping pages, who use cookies to understand how many different people see their product listings. [Learn more](#) about these partners and how they use your information.

## synced with your Google Account

Your Chrome browsing history is only saved to your account if you've enabled Chrome synchronization with your Google Account. [Learn more](#)

## the people who matter most to you online

For example, when you type an address in the To, Cc, or Bcc field of an email you're composing, Gmail will suggest addresses based on the people you [contact most frequently](#).

## third parties

For example, we process your information to report use statistics to rights holders about how their content was used in our services. We may also process your information if people search for your name and we display search results for sites containing publicly available information about you.

## Views and interactions with content and ads

For example, we collect information about views and interactions with ads so we can provide aggregated reports to advertisers, like telling them whether we served their ad on a page and whether the ad was likely seen by a viewer. We may also measure other interactions, such as how you move your mouse over an ad or if you interact with the page on which the ad appears.

## your activity on other sites and apps

This activity might come from your use of Google services, like from syncing your account with Chrome or your visits to sites and apps that partner with Google. Many websites and apps partner with Google to improve their content and services. For example, a website might use our advertising services (like AdSense) or analytics tools (like Google Analytics), or it might embed other content (such as videos from YouTube). These services may share information about your activity with Google and, depending on your [account settings](#) and the products in use (for instance, when a partner uses Google Analytics in conjunction with our advertising services), this data may be associated with your personal information.

[Learn more](#) about how Google uses data when you use our partners' sites or apps.

## Exhibit 12

Keyword Search Warrant 10/1/2020



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

County/District Court
City and County of Denver, Colorado

DATE FILED: June 30, 2022 12:03 PM
FILING ID: 2D0BFA23AF560
CASE NUMBER: 2021CR20000



Case No: 2020-472026

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT AND COURT ORDER FOR
PRODUCTION OF RECORDS PURSUANT TO 18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-
301.1, §19-2-504

I, Detective Ernest Sandoval 06154 state under oath that I have reason to believe that at the place or business
entity known or described as:

Google Inc.
Google Custodian of Records
1600 Amphitheatre Parkway
Mountain View, CA 94043

Registered Agent of Google
Corporation Service Company
1900 W. Littleton Boulevard,
Littleton, CO 80120

Via Google online https://lers.google.com, the Law Enforcement Response System operated by this
company

There is now located the following described property, which is in the active or constructive possession of
Google:

For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome,
Google Maps, or any other Google service) using any one or more of the following the search terms:

- "5312 Truckee"
• "5312 Truckee St"
• "5312 Truckee Street"
• "5312 N Truckee St"
• "5312 N. Truckee St."
• "5312 N. Truckee St"
• "5312 N Truckee St."
• "5312 North Truckee"
• "5312 North Truckee Street"

For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include
August 5, 2020 at 0245 M.S.T.:

The following record(s) will be searched for and if found seized and provided:

- Records reflecting the personal identification of the subject account, to include full name,
date of birth, email address(es), physical address(es), and telephone numbers;
• The date on which the account was created and the IP address with associated Port ID(s)
used to register the account.

\*These records will be searched by the Denver Police Department and/or the Denver District



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

Attorney's Office for evidence pertaining to a Homicide that occurred during August 5, 2020 at 2:45 a.m.

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

Google is an Internet company which, among other things, provides electronic communication services to subscribers. Google allows subscribers to obtain email accounts at the domain name gmail.com. Subscribers obtain an account by registering with Google. During the registration process, Google asks subscribers to provide basic personal information, including email address (or one is created), phone number, date of birth. For Google users, the computers of Google are likely to contain stored electronic communications, including searches conducted through Google services such as the Google search engine, Google Chrome, and Google Maps. Based on Your Affiant's training and experience, such information may constitute direct evidence of the crimes under investigation or may lead to the identification of other evidence related to the below-described offenses.

Statement of probable cause for issuance of the requested warrant

The facts tending to establish the grounds for issuance of a Search Warrant are as follows:

Your Affiant is a Detective with the Denver Police Department Homicide Unit and has been so assigned since July 2020. Your affiant is also a Special Deputy for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

Your Affiant has been a Peace Officer for approximately 14 years with the Denver Police Department and held the rank of Detective for the past five years. The Denver Police Department (DPD) has formally trained your Affiant in general investigations, including several specialized schools sponsored by the Denver Police Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Your Affiant has personally participated in numerous search warrants. Your Affiant has debriefed, interviewed, and discussed with numerous defendants, confidential sources, and highly experienced investigators at the state and federal level, the techniques and methods of firearms and narcotics possession, and distribution. Your Affiant also has completed several hundred firearm related investigations, where Your Affiant was the primary investigator. Additionally, Your Affiant has obtained training in gang-related investigations, specifically in gang identification, such as identifying gang members' names, initials, monikers, hand signs, and specific gang neighborhoods.

In November of 2017, your Affiant was assigned to the ATF Crime Gun Intelligence Center (CGIC) as a Task Force Officer (TFO) to conduct firearms investigations. Your affiant has been involved in investigations where firearms have been shown to be used at several shootings over a time span at
REV 1/19



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

different locations. During these investigations your affiant has seen that at times the suspects do not rid themselves of this firearm. In your affiants training and experience firearms are not easily flushed and suspects will tend to keep a firearm they already have obtained. Your affiant has also been involved in several investigations where a search warrant has been authorized for a suspect residence and a firearm has been recovered, days and even weeks later. Your Affiant left this position in February 2020 and is currently assigned to the Denver Police Department Homicide Unit.

Background of Investigation – Arson and Quintuple Homicide

On August 5, 2020 at approximately 2:40 AM, Denver Police Officer Gordon KING 17050 was in the area of E. 51st Ave. and N. Tower Rd. when he observed a house on fire at 5312 N. Truckee St.

Officer KING immediately called for the fire department and as he arrived on scene, he observed a large group of people watching the fire and asked if anyone was still inside. Getting no answer, Officer KING went into the open garage of the home.

Officer KING observed that the home was fully engulfed in fire. He pushed open the interior door from the garage to the main house but was immediately met with extreme heat. He observed the fire in the immediate hallway of the home.

Officer KING went around to the front door of the home where someone was attempting to unlock the door with a keypad but was unsuccessful. Officer KING kicked in the front door but was forced away from the door due to the extreme heat. Officer KING was able to see a small human body approximately 3 feet inside of the front door. As Officer KING attempted to get the person out, it was apparent that the person was not alive and Officer KING was forced back due to the extreme heat of the fire.

As additional officers and Fire Department personnel arrived on scene, information was received that three victims from the home had escaped through an upstairs back window and that five individuals were possibly still inside of the home. The three parties who escaped out of the window were transported to University of Colorado Hospital from injuries sustained from the fall.

As firefighters began attacking the fire, they were able to recover the body observed by Officer KING which was moved to the front lawn of the residence. The bodies of four other individuals could be observed in the front area of the house in the southwest room.

Paramedic DRHAN received death pronouncements for all five victims from Dr. EBERHARDT of the Denver Health Medical Center at 3:37 AM.

At approximately 3:30 AM, YOUR AFFIANT received a phone call from Homicide Sgt. Scott HAGAN, 01004 regarding the house fire and the five deceased victims and was requested to respond to the scene.

YOUR AFFIANT arrived on scene at 4:15 AM. Upon arrival, numerous police and fire personnel could be seen in the area and flames could still be seen coming out of the second story west side of the residence. Fire personnel were still actively fighting the fire.

YOUR AFFIANT was advised that three surviving victims were transported to the hospital and at least five victims were deceased on scene.

REV 1/19





GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

Upon gathering information, YOUR AFFIANT was advised that a neighbor living at 5318 N. Truckee St. possibly had video of footage of the incident. Witness, Noe REZA 1/23/82 was contacted in the front driveway of his home by Detective BAKER and showed video footage on his cell phone of the surveillance cameras located on his house.

YOUR AFFIANT reviewed video footage from a camera located on the southeast corner of his house which captures the entire north side of the victim's home. The video shows the side yards of the victim's home and Mr. REZA's home and shows the fence separating the two side yards. At approximately 2:26 AM, three individuals can be seen standing in the side yard of the victim's home. The three individuals are stationary and looking around. The individuals appear to be wearing dark hooded sweatshirts with the hoods up and full masks which appeared to be light in color. The video footage is set on night vision and the colors are reversed. The masks the individuals are wearing appeared to be a solid theater type mask or something resembling a hockey mask.



At 2:27 AM, a second video shows the same individuals in the same area pointing to an area on the northeast corner of the victim's home.

At 2:38 AM, a third video from the same camera shows the same three individuals running westbound from the backyard area of the victim's home through the side yard and out of the gate towards the front of the residence.

At 2:40 AM the camera located on the north east corner of Mr. REZA's captures the back area of the victim's home. The camera faces north covering the back of Mr. REZA's home and also captures the small portion of the victim's backyard. An individual can be seen in the victim's backyard and is believed to be one of the surviving victims who had jumped out of the back window. Flames can be seen coming out of the lower level of the home and individuals can be heard screaming.

It is notable that large flames can be seen on this camera approximately 2 minutes after the three individuals are seen running from the backyard towards the front of the victim's home.

REV 1/19



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

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Several other videos were observed from the same camera minutes after and the fire is observed to be getting larger.

After canvassing the neighborhood, officers spoke with a resident at 5313 Uravan St. The homeowner, Nelson VELEZ lives directly behind the victim's home on the east side. Mr. VELEZ has a security camera on the back of his home which captured the fire at approximately **2:42 AM**.

Detective BAKER reviewed the video which shows the fire engulfing the home and appears to be coming out of the lower level of the home. A small female child is seen in the backyard of Mr. VELEZ 's home and appears to be in distress. Individuals can be seen in the victim's backyard using a garden hose to spray on the fire.

Your Affiant obtained a search warrant for the residence to conduct the criminal investigation.

Detective BAKER responded to Denver Police Headquarters and met with Amadou SOW 1/2/74 who had been transported there from University Hospital after being released.

Detective BAKER met with Mr. SOW in interview room number 2A and the interview was both audio and video recorded, and a video advisement form was completed. Mr. SOW stated that he was the homeowner of the residence at 5312 N. Truckee St. He said that he lived there with his wife, Hawa KA 02/12/77 and their daughter, Adama SOW 10/23/09.

Mr. SOW said that another family lives with them and described them as one adult male, two adult females and two small female children.

Mr. SOW stated that he and his family are from Senegal Africa and he has been living at that residence for almost 2 years. He said that another African family, also from Senegal, came to live with them and identified them as Djibril DIOL 10/25/90, his wife, Adja DIOL 06/27/97 and their daughter, Kadidia DIOL (unknown DOB). He said that Djibril had his sister, Hassan DIOL and her daughter, Hawa BEYE (unknown DOB) recently move in with them from Columbus, Ohio.

Mr. SOW stated that they were all downstairs watching television located on the first floor near the backside of the residence. He said that around **10 PM** on **August 4, 2020**, Djibril and his family went upstairs to go to bed. He said that Djibril 's sister and daughter also went upstairs at the same time to go to bed. He said that Djibril and his family sleep in one bedroom while Hassan and her daughter sleep in another bedroom.

Mr. SOW stated that he and his wife and daughter went upstairs to bed at approximately **11 PM**. He said that he sleeps in a bedroom with his wife and daughter. He said that he has a son, identified as Oumar SOW 09/11/97, who also lives in the residence and has his own bedroom upstairs. He said that his son was working at 7-11 at the time.

Mr. SOW stated that he woke up hearing a fire alarm and tried to wake his family up. He said that he did not remember what time that was but when he opened the door of his bedroom, he could see the thick smoke, so he immediately shut the door. Mr. SOW said that he went to the window and pushed the screen out of the window. He said that he and his wife jumped out of the window landing on some rocks below in the backyard. He said that his daughter then jumped out of the window and he caught her. Mr. SOW said  
REV 1/19



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

that the house was on fire, so he carried his daughter and put her over the fence into the neighbor's backyard.

Mr. SOW stated that he ran around the north side of the residence to the front of the house and tried to throw a rock at the window upstairs to wake up his son, Oumar. He said that he remembered his son was at work and noticed that his car was not there. He said that he then tried to go to the front door and open it using the keypad and entering the code which did not work. He said that he tried several times and could not get the front door open.

Mr. SOW stated that he opened the garage door using the same code but was unable to get into the interior door because he locks it at night, and it locks from the inside. He said that they have a propane tank and cooktop in the garage which he pulled out of the garage so that it would not catch fire. Mr. SOW stated that emergency personnel were arriving on scene and he told them that there were five people inside. Mr. SOW said that he ran around the block to retrieve his family.

Detective BAKER met with Mr. SOW's son, Oumar SOW 9/11/97 in interview room number 2A. The interview was both audio and video recorded, and a video advisement form was completed.

Oumar provided the same information about the dynamics of the families and who lived at the residence. Oumar stated that he left for work on **August 4, 2020** at around **11:20 PM** arriving at around **11:30 PM**. He stated that he works at the 7-11 located at 8111 Tower Rd. Omar stated that he received a phone call stating that his house was on fire, so he immediately got into his vehicle and drove home. He said that when he arrived on scene, he spoke with officers who told him that his family was transported to University Hospital, so he left to respond there to be with his family. Oumar said that he got lost and was having a hard time finding the hospital, so he called his manager from 7-11 to help him get to the hospital to be with his family.

Detective BAKER asked Oumar if he was having problems with anyone and he stated that he was not. He was asked if he knew of anyone that wanted to harm him or his family and he stated that he did not. Detective BAKER asked Oumar about the shift that he worked as he was the only person in the family not present during the fire. He stated that he works **2 PM to 10 PM**. He stated that on this night, he was working **11 PM to 7 AM** although he said that he didn't leave for work until **11:20 PM**.

Adama SOW was interviewed in interview room number 2A by Dulce Solis of the Denver Children's Advocacy Center.

Adama stated that she was upstairs in her room with her mom woke her up and they went towards the window. She said that she could see smoke in the house. She remembers jumping out of the window and her father throwing her over the fence into the neighbor's yard.

At approximately **1:20 PM**, Detective BAKER responded to University Hospital and met with Hawa KA in room number 479 where she was being admitted for injuries caused from jumping out of the window. This interview was captured on body worn camera and Officer Simeon CODO assisted with translation.

Mrs. KA provided the same information as her husband about the events leading up to waking up to the fire alarm. She also provided the same information about the other families living in the home. Mrs. KA stated that she woke up to the fire alarm and her husband tried to go out of the bedroom door and then  
REV 1/19



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

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slammed it shut because the smoke was too thick. She said that they all ran to the window of the bedroom and she could hear Djibril in the hallway trying to gather his family and lead them out of the home. She remembers him saying something to the effect of “this way this way”.

Mrs. KA provided the same information regarding the events after jumping out of the window. She was unaware that the other family did not survive the fire.

Your AFFIANT spoke to Arson Investigators who believe an accelerant was used to start the fire. Their investigation showed that the fire started in the rear of the residence where the suspects were seen on video running from. Their investigation also showed signs of an accelerant found inside of the home from the back-door area indicating that the suspects possibly entered the home. This information was confirmed as the accelerant used was gasoline and evidence of gasoline was found on the interior living room wall.

Based on the information provided, YOUR AFFIANT believes that the suspects entered the home and may have been familiar with the residence.

Based on the extreme nature of this crime and the extensive planning it must have taken to carry out the events involved in this offense, Your Affiant feels that this crime was very personal and involved a substantial amount of anger towards someone in the victim residence and/or was intended to send some sort of message. This belief is based on years of investigation of violent crimes and the motives associated with such crimes that Your Affiant has been exposed to over the years. Considering the personal nature of this offense, the actions of the suspects as observed on the surveillance videos, and the amount of planning that likely went into a coordinated attack such as this one, Your Affiant believes that there is a reasonable probability that one or more of the suspects searched for directions to the victim’s address prior to the fire. The victim’s home is in a densely populated subdivision and does not “stick out” as a house that would likely have been picked at random. It is not on a corner lot, which would be an easier target residence as there would be more area to move in before and after setting the fire. As such, it is reasonable to believe that this home was targeted, and that the person or persons targeting the home sought its location and/or directions in planning this attack.

The information requested is limited to information that can be used to identify a person who engaged in a search for this residence close to but not after the offense occurred. No other contents of the account are being sought at this time. If this warrant yields an account that qualifies under the parameters set forth above, additional investigation will be conducted to determine if that person has any connection to this crime.

Based on these facts, Your Affiant believes there exists probable cause to believe that there is material evidence now located in the above described Google account that is crucial to the investigation of this case and the offenses described above, and a search warrant is requested pursuant to 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
**1331 Cherokee Street**  
**Denver, Colorado 80204**  
**(720) 913-6167**  
**Ernest.sandoval@denvergov.org**  
REV 1/19



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

**Further requests:**

FURTHER, pursuant to 18 U.S.C. §2705(b) and 18 U.S.C. §2705(b)(1)-(5), and Crim. P. 41 and §16-3-304(2), Your Affiant requests that Google be ordered NOT to disclose the existence of this search warrant and court order to the subscriber for a period of one year from receipt of the requested documents, unless otherwise ordered by a court of competent jurisdiction. Based on the information set forth in this affidavit, notification of the warrant may have an adverse result, as defined in 18 USC §2705(b)(1)-(5), i.e., disclosure may endanger the life or physical safety of an individual; allow flight from prosecution; allow destruction of or tampering with evidence; allow intimidation of potential witnesses; and/or would otherwise seriously jeopardize an investigation or unduly delay a trial.

FURTHER, so as not to disrupt this ongoing investigation, Your Affiant also requests that this Court order Google NOT to take adverse action against the subject account, such as disabling or terminating the account, because of this warrant.

FURTHER, pursuant to Crim. P. 41 and §16-3-304(2), Your Affiant requests that this Court seal the affidavit and search warrant and court order for production of records that has been filed with the court in this matter. The affidavit establishes grounds to believe that disclosure at this time of the affidavit and search warrant and court order for production of records would be contrary to the public interest. Such order for sealing does not apply to representatives of the Denver Police Department, Denver District Attorney's Office, and other law enforcement officers, but those individuals are precluded from further dissemination prior to expiration of this order without an order of the court handling the case.

Your affiant has read the above and foregoing application and affidavit, and the statements therein contained are true to the best of his knowledge, information, and belief.

Ernest Sandoval 06/154  
Signature of Affiant

This Affidavit has been read and approved by Supervisor: Sgt Abel Salas 05088

**Review & Approval**

<u>/s Katherine A. Hansen</u>	Deputy District Attorney, Reg. No. 25464	<u>September 30, 2020 at 5:20 p,m</u>
District Attorney – Signature or eSignature	District Attorney Title & Registration #	Date and Time

Subscribed under oath before me on 10/1/2020 at 10:23 am

Beth A. Swager



2603 03/19/21

# DENVER POLICE DEPARTMENT

PEOPLE v BUI, KEVIN 21CR20000

GO# 2020-472026

2603 03/19/21 OPEN

GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

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Signature of Judge

Beth A. Faragher

Printed Name of Judge

REV 1/19

Page 9 of 9

County/District Court  
City and County of Denver, Colorado



Case No. 2020-472026

**SEARCH WARRANT AND COURT ORDER FOR PRODUCTION OF RECORDS PURSUANT TO  
18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-301.1 AND §19-2-504**

The Court, upon review of an affidavit filed by Detective Ernest Sandoval 06154, in support of the issuance of this order, hereby orders the production of the following records, for which there is probable cause to believe are in the actual or constructive possession or control of the business entity known or described as:

**Google Inc.  
Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043**

**Registered Agent of Google  
Corporation Service Company  
1900 W. Littleton Boulevard,  
Littleton, CO 80120**

**Via Google online <https://lers.google.com>, the Law Enforcement Response System operated by this company**

This Court also finds that there is probable cause to issue this search warrant and court order for production of the following described records or information pursuant to the provisions of 18 U.S.C. §2703, the Colorado Rules of Criminal Procedure, CRS §16-3-301, §16-3-301.1, and §19-2-504, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state, or the seizure of which is expressly required, authorized or permitted by any statute of this state, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

**For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome, Google Maps, or any other Google service) using any one or more of the following the search terms:**

- “5312 Truckee”
- “5312 Truckee St”
- “5312 Truckee Street”
- “5312 N Truckee St”
- “5312 N. Truckee St.”
- “5312 N. Truckee St”
- “5312 N Truckee St.”
- “5312 North Truckee”
- “5312 North Truckee Street”

**For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.:**

**The following record(s) will be searched for and if found seized and provided:**

- **Records reflecting the personal identification of the subject account, to include full name, date of birth, email address(es), physical address(es), and telephone numbers;**
- **The date on which the account was created and the IP address with associated Port ID(s) used to register the account.**

**\*These records will be searched by the Denver Police Department and/or the Denver District Attorney's Office for evidence pertaining to a Homicide that occurred during August 5, 2020 at 2:45 a.m.**

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

This warrant and court order for the production of records shall be served upon the business entity to whom it is directed within fourteen days after being signed by the court.

The business entity is ORDERED to produce the above described records to the affiant or his/her designee within fourteen (14) days of service.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
**1331 Cherokee Street**  
**Denver, Colorado 80204**  
**(720) 913-6167**  
**Ernest.sandoval@denvergov.org**

The business entity shall also provide a notarized attestation of accuracy that the records produced represent complete and accurate copies of all records identified in this order that are in the actual or constructive control of the business entity. If the business entity does not produce all records identified in this order, it shall identify the records not produced. Failure to comply with this order shall support a finding of contempt of court.

Upon receiving the records from the business entity, the peace officer named herein shall file a return and inventory with the court indicating the records that have been received and the date and time upon which the records were received. The peace officer named herein may also file the original of the attestation of accuracy with the court.

**IT IS FURTHER ORDERED:**



- 1) Pursuant to 18 U.S.C. §§ 2703(b)(1)(A) and 2705(b)(1)-(5) that Google and any of its employees or third party vendors processing this request not disclose the existence of this search warrant to any person for the period of one year, including the subscriber, other than its personnel essential for compliance with the execution of this warrant;
- 2) That Google and any of its employees or third party vendors processing this request not take adverse action against the subject account because of this warrant, such as shutting it down, so as not to disrupt this ongoing investigation;
- 3) That this search warrant and affidavit be sealed from public release of the information herein contained, to assure that this case is not compromised so that witnesses mentioned in this warrant can be protected from any type of early reprisals, and so that this investigation can continue.

Date Oct. 1, 2020  
Time 10:23 am

In Denver, Colorado

  
\_\_\_\_\_  
Signature of Judge

Beth A. Faragher  
\_\_\_\_\_  
Printed Name of Judge

# Exhibit 13

Supplemental Report

## SUPPLEMENTARY REPORT

Case #2020-472026

hard-working and all they do is work and send money back to their families. She stated that they do not go out to restaurants, they do not do things for themselves but save their money and send it back.

DATE FILED: June 30, 2022 12:03 PM  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 2021CR20001

Detective BAKER inquired with GRACIANO on how the transfers are conducted.

GRACIANO stated that any transfer over \$3000 there has to be paperwork filled out for that transfer. She stated that they also have to show proof of where the money came from.

GRACIANO pulled some paperwork out of the drawer to show an example and the paperwork happened to be a \$5000 transfer from MBATHIE. She showed the paperwork that had to be filled out and other paperwork showing that the money was withdrawn from Wells Fargo Bank. She showed where the money that was deposited in the bank was from a 401(k) disbursement. She showed somewhere around \$43,000 be deposited from a 401(k) disbursement.

GRACIANO stated that many of them build houses for all of their families. She stated that some of the men have more than one wife and they have to support all of them. She stated that she has seen photographs of the building going on in Senegal and how they are helping to support that.

GRACIANO stated that the company is called RIA that provides the transfers. When asked about transfers from California that were made by citizens of Silverthorne Colorado, she explained that some of the younger Senegalese kids will use apps on their phones to do that which goes through California. She stated most of the older people will still use her to make the transfers. GRACIANO stated that she keeps all paper records for five years by law.

GRACIANO also explained that many share the same P.O. Box because there are very few P.O. boxes available and they can't receive mail at their apartments.

At **12:30 PM**, Detective BAKER, Detective SANDOVAL and Officer CODO responded to 5818 España Way in Denver. Yagouba DIALLO 12/10/2000 was contacted as he was also identified as coming from Silverthorne Colorado and originally from Senegal Africa. DIALLO stated that he did know Djibril and his sister. He stated that he worked with his sister but didn't know them very well. He stated that he heard of the fire and responded to the house as most all of the other Senegalese people did. He stated that he did not know them very well other than they were very nice people.

### September 3, 2020

At **8:45 a.m.**, Detective SANDOVAL prepared an affidavit and a search warrant for subscriber information on several cellular numbers. (EBS)

At approximately **3:00 p.m.**, Deputy District Attorney Cathee HANSEN approved the search warrant and affidavit. (EBS)

At approximately **4:00 p.m.**, Detective SANDOVAL sent the search warrant and affidavit to the Honorable Judge Adam ESPINOSA. (EBS)

## SUPPLEMENTARY REPORT

Case #2020-472026

### November 17, 2020

At approximately **3:45 p.m.**, Detective SANDOVAL, DA HANSEN and Hayley BERLIN had a phone call to work out the language that Ms. BERLIN would like in the warrant. (EBS)

### November 18, 2020

At approximately **12:21 PM**, Detective BAKER received an email from Senior Deputy District Attorney, Bill WINTER addressed to Sgt. Richard LABER of the Denver Police Sex Crimes Unit. The email stated that they had just had a hearing for ESTES who received a \$100,000 cash only bond. The email stated that ESTES refused the assistance of the Public Defender and was fully advised. The email stated that he wanted to proceed pro se and no longer has an attorney. The email stated that ESTES also specifically asked that the detective in these cases contact him immediately because he wants to talk about the people involved. He also wanted to talk about the house that burned down in the Green Valley Ranch. Senior Deputy DA WINTER advised him that he would pass on the information to the detectives.

At approximately **2:55 PM**, Detective BAKER and Detective SANDOVAL responded to the Denver Jail and met with ESTES in an interview room on the second floor. The interview was both audio and video recorded with a Body Worn Camera.

Detective BAKER asked ESTES if he had any information regarding the house fire in Green Valley Ranch. ESTES stated that he did have information and stated the following:

ESTES stated that about a month or so ago, he was sitting in a car with his brother, who he identified as Golias HORTON 4/12/94 and another individual that he knows as "Sin". ESTES stated that HORTON asked him if he had heard about the house fire in Green Valley Ranch and stated that it was a robbery. He stated that HORTON told him that they tried to rob this house and stated that it was because they knew there was a lot of money there because immigrants don't normally use banks. He stated that they were trying to get \$40,000 and something went wrong so they set fire to the house. He stated that he did not know if there was a physical altercation that happened in the house or if they were just trying to get rid of evidence, but the fire was set. ESTES stated that he was not there, and he was not totally sure that HORTON was there but stated that he may have been a lookout. He stated that HORTON would have more information about this case to provide to detectives. He also stated that "Sin" would also have information as he believes he was there as well. He stated that they are all in a gang, including himself and admitted that they have done robberies before.

Detective BAKER asked ESTES why he was providing this information to detectives and he stated that he wanted to talk to detectives at the time of his arrest and asked to do so. He stated that he wanted the detectives to have this information.

Detective BAKER asked ESTES what his phone number was, and he stated that it was (303)661-7444. He stated that he has had that phone for about a year.

ESTES stated that he believes HORTON had left the state a couple of weeks ago and is possibly in Iowa. He stated that HORTON has a warrant for his arrest for parole violation and is "on the

# Exhibit 14

Keyword Search Warrant 10/20/2020

County/District Court  
City and County of Denver, Colorado



Case No: 2020-472026

DATE FILED: June 30, 2022 12:03 PM

FILING ID: 2D0BFA23AF560

CASE NUMBER: 2021CR20001

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT AND COURT ORDER FOR  
PRODUCTION OF RECORDS PURSUANT TO 18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-301.1, §19-2-504**

I, Detective Ernest Sandoval 06154 state under oath that I have reason to believe that at the place or business entity known or described as:

**Google Inc.  
Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043**

**Registered Agent of Google  
Corporation Service Company  
1900 W. Littleton Boulevard,  
Littleton, CO 80120**

Via Google online <https://lers.google.com>, the Law Enforcement Response System operated by this company

A company conducting business in the City of Denver, County of Denver, State of Colorado, there is now located the following described property or contraband:

Records currently under the control of Google, Inc. that show certain property, things or data described as search history data with the following applicable parameters:

**For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome, Google Maps, or any other Google service) using any one or more of the following the search terms:**

- "5312 Truckee"
- "5312 Truckee St"
- "5312 Truckee Street"
- "5312 N Truckee St"
- "5312 N. Truckee St."
- "5312 N. Truckee St"
- "5312 N Truckee St."
- "5312 North Truckee"
- "5312 North Truckee Street"

**For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.:**

For each account identified as having met the parameters described above, Google shall produce anonymized information specifying the corresponding unique device IDs along with all location data pertaining to the time period of August 4, 2020 00:01

UTC through August 6, 23:59 UTC, whether derived from Global Positioning System (GPS) data, cell site/cell tower triangulation/trilateration, Bluetooth beacons, precision measurement information such as timing advance or per call measurement data, and Wi-Fi location, including the GPS coordinates, estimated radius, and the dates and times of all location recordings (with captured time zone), data source and device type (platform), during the date and time period associated with specific device IDs (the “**Anonymized List**”). The Anonymized List shall consist of an identifier assigned by Google representing each device that meets the above target parameters (i.e., accounts that conducted searches with the search terms identified above), which does not contain any unique device identifier/individual account identifier. Google shall not provide law enforcement with any unique device identifier/individual account identifier in the Anonymized List.

Law enforcement shall review the **Anonymized List** to remove device IDs that are not relevant to the investigation, for example, device IDs that were not in the location for a relevant period of time, or devices that remained at the location after law enforcement arrival. Law enforcement will also shortlist the Anonymized List by reviewing the time stamped location coordinates for each device ID and compare that against the known time and location information that is specific to this crime.

If additional information for a given anonymized device ID is needed in order to determine whether that anonymized device ID is relevant to the investigation, law enforcement may request that Google provide additional information for the time period that fall outside of the **Initial Search Parameters**. This will be accomplished through a subsequent warrant.

Law enforcement shall not seek or be provided any further subscriber/device information unless an additional search warrant is obtained for those Google accounts associated with each identified device ID.

**\*These records will be searched by the Denver Police Department and/or the Denver District Attorney’s Office for evidence pertaining to a Homicide that occurred during August 5, 2020 at 2:45 a.m.**

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

Google is an Internet company which, among other things, provides electronic communication services to subscribers. Google allows subscribers to obtain email accounts at the domain name gmail.com. Subscribers obtain an account by registering with Google. During the registration process, Google asks

REV 1/19

subscribers to provide basic personal information, including email address (or one is created), phone number, date of birth. For Google users, the computers of Google are likely to contain stored electronic communications, including searches conducted through Google services such as the Google search engine, Google Chrome, and Google Maps. Based on Your Affiant's training and experience, such information may constitute direct evidence of the crimes under investigation or may lead to the identification of other evidence related to the below-described offenses.

*Statement of probable cause for issuance of the requested warrant*

The facts tending to establish the grounds for issuance of a Search Warrant are as follows:

**Your Affiant is a Detective with the Denver Police Department Homicide Unit and has been so assigned since July 2020. Your affiant is also a Special Deputy for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).**

**Your Affiant has been a Peace Officer for approximately 14 years with the Denver Police Department and held the rank of Detective for the past five years. The Denver Police Department (DPD) has formally trained your Affiant in general investigations, including several specialized schools sponsored by the Denver Police Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Your Affiant has personally participated in numerous search warrants. Your Affiant has debriefed, interviewed, and discussed with numerous defendants, confidential sources, and highly experienced investigators at the state and federal level, the techniques and methods of firearms and narcotics possession, and distribution. Your Affiant also has completed several hundred firearm related investigations, where Your Affiant was the primary investigator. Additionally, Your Affiant has obtained training in gang-related investigations, specifically in gang identification, such as identifying gang members' names, initials, monikers, hand signs, and specific gang neighborhoods.**

**In November of 2017, your Affiant was assigned to the ATF Crime Gun Intelligence Center (CGIC) as a Task Force Officer (TFO) to conduct firearms investigations. Your affiant has been involved in investigations where firearms have been shown to be used at several shootings over a time span at different locations. During these investigations your affiant has seen that at times the suspects do not rid themselves of this firearm. In your affiants training and experience firearms are not easily flushed and suspects will tend to keep a firearm they already have obtained. Your affiant has also been involved in several investigations where a search warrant has been authorized for a suspect residence and a firearm has been recovered, days and even weeks later. Your Affiant left this position in February 2020 and is currently assigned to the Denver Police Department Homicide Unit.**

*Background of Investigation – Arson and Quintuple Homicide*

On **August 5, 2020** at approximately **2:40 AM**, Denver Police Officer Gordon KING 17050 was in the area of E. 51st Ave. and N. Tower Rd. when he observed a house on fire at 5312 N. Truckee St.

Officer KING immediately called for the fire department and as he arrived on scene, he observed a large group of people watching the fire and asked if anyone was still inside. Getting no answer, Officer KING went into the open garage of the home.



Officer KING observed that the home was fully engulfed in fire. He pushed open the interior door from the garage to the main house but was immediately met with extreme heat. He observed the fire in the immediate hallway of the home.

Officer KING went around to the front door of the home where someone was attempting to unlock the door with a keypad but was unsuccessful. Officer KING kicked in the front door but was forced away from the door due to the extreme heat. Officer KING was able to see a small human body approximately 3 feet inside of the front door. As Officer KING attempted to get the person out, it was apparent that the person was not alive and Officer KING was forced back due to the extreme heat of the fire.

As additional officers and Fire Department personnel arrived on scene, information was received that three victims from the home had escaped through an upstairs back window and that five individuals were possibly still inside of the home. The three parties who escaped out of the window were transported to University of Colorado Hospital from injuries sustained from the fall.

As firefighters began attacking the fire, they were able to recover the body observed by Officer KING which was moved to the front lawn of the residence. The bodies of four other individuals could be observed in the front area of the house in the southwest room.

Paramedic DRHAN received death pronouncements for all five victims from Dr. EBERHARDT of the Denver Health Medical Center at **3:37 AM**.

At approximately **3:30 AM**, YOUR AFFIANT received a phone call from Homicide Sgt. Scott HAGAN, 01004 regarding the house fire and the five deceased victims and was requested to respond to the scene.

YOUR AFFIANT arrived on scene at **4:15 AM**. Upon arrival, numerous police and fire personnel could be seen in the area and flames could still be seen coming out of the second story west side of the residence. Fire personnel were still actively fighting the fire.

YOUR AFFIANT was advised that three surviving victims were transported to the hospital and at least five victims were deceased on scene.

Upon gathering information, YOUR AFFIANT was advised that a neighbor living at 5318 N. Truckee St. possibly had video of footage of the incident. Witness, Noe REZA 1/23/82 was contacted in the front driveway of his home by Detective BAKER and showed video footage on his cell phone of the surveillance cameras located on his house.

YOUR AFFIANT reviewed video footage from a camera located on the southeast corner of his house which captures the entire north side of the victim's home. The video shows the side yards of the victim's home and Mr. REZA's home and shows the fence separating the two side yards. At approximately **2:26 AM**, three individuals can be seen standing in the side yard of the victim's home. The three individuals are stationary and looking around. The individuals appear to be wearing dark hooded sweatshirts with the hoods up and full masks which appeared to be light in color. The video footage is set on night vision and the colors are reversed. The masks the individuals are wearing appeared to be a solid theater type mask or something resembling a hockey mask.



At **2:27 AM**, a second video shows the same individuals in the same area pointing to an area on the northeast corner of the victim's home.

At **2:38 AM**, a third video from the same camera shows the same three individuals running westbound from the backyard area of the victim's home through the side yard and out of the gate towards the front of the residence.

At **2:40 AM** the camera located on the north east corner of Mr. REZA's captures the back area of the victim's home. The camera faces north covering the back of Mr. REZA's home and also captures the small portion of the victim's backyard. An individual can be seen in the victim's backyard and is believed to be one of the surviving victims who had jumped out of the back window. Flames can be seen coming out of the lower level of the home and individuals can be heard screaming.

It is notable that large flames can be seen on this camera approximately 2 minutes after the three individuals are seen running from the backyard towards the front of the victim's home.

Several other videos were observed from the same camera minutes after and the fire is observed to be getting larger.

After canvassing the neighborhood, officers spoke with a resident at 5313 Uravan St. The homeowner, Nelson VELEZ lives directly behind the victim's home on the east side. Mr. VELEZ has a security camera on the back of his home which captured the fire at approximately **2:42 AM**.

Detective BAKER reviewed the video which shows the fire engulfing the home and appears to be coming out of the lower level of the home. A small female child is seen in the backyard of Mr. VELEZ's home and appears to be in distress. Individuals can be seen in the victim's backyard using a garden hose to spray on the fire.

Your Affiant obtained a search warrant for the residence to conduct the criminal investigation.

Detective BAKER responded to Denver Police Headquarters and met with Amadou SOW 1/2/74 who had been transported there from University Hospital after being released.

Detective BAKER met with Mr. SOW in interview room number 2A and the interview was both audio and video recorded, and a video advisement form was completed. Mr. SOW stated that he was the homeowner of the residence at 5312 N. Truckee St. He said that he lived there with his wife, Hawa KA 02/12/77 and their daughter, Adama SOW 10/23/09.

Mr. SOW said that another family lives with them and described them as one adult male, two adult females and two small female children.

Mr. SOW stated that he and his family are from Senegal Africa and he has been living at that residence for almost 2 years. He said that another African family, also from Senegal, came to live with them and identified them as Djibril DIOL 10/25/90, his wife, Adja DIOL 06/27/97 and their daughter, Kadidia DIOL (unknown DOB). He said that Djibril had his sister, Hassan DIOL and her daughter, Hawa BEYE (unknown DOB) recently move in with them from Columbus, Ohio.

Mr. SOW stated that they were all downstairs watching television located on the first floor near the backside of the residence. He said that around **10 PM on August 4, 2020**, Djibril and his family went upstairs to go to bed. He said that Djibril 's sister and daughter also went upstairs at the same time to go to bed. He said that Djibril and his family sleep in one bedroom while Hassan and her daughter sleep in another bedroom.

Mr. SOW stated that he and his wife and daughter went upstairs to bed at approximately **11 PM**. He said that he sleeps in a bedroom with his wife and daughter. He said that he has a son, identified as Oumar SOW 09/11/97, who also lives in the residence and has his own bedroom upstairs. He said that his son was working at 7-11 at the time.

Mr. SOW stated that he woke up hearing a fire alarm and tried to wake his family up. He said that he did not remember what time that was but when he opened the door of his bedroom, he could see the thick smoke, so he immediately shut the door. Mr. SOW said that he went to the window and pushed the screen out of the window. He said that he and his wife jumped out of the window landing on some rocks below in the backyard. He said that his daughter then jumped out of the window and he caught her. Mr. SOW said that the house was on fire, so he carried his daughter and put her over the fence into the neighbor's backyard.

Mr. SOW stated that he ran around the north side of the residence to the front of the house and tried to throw a rock at the window upstairs to wake up his son, Oumar. He said that he remembered his son was at work and noticed that his car was not there. He said that he then tried to go to the front door and open it using the keypad and entering the code which did not work. He said that he tried several times and could not get the front door open.

Mr. SOW stated that he opened the garage door using the same code but was unable to get into the interior door because he locks it at night and it locks from the inside. He said that they have a propane tank and cooktop in the garage which he pulled out of the garage so that it would not catch fire. Mr. SOW stated that emergency personnel were arriving on scene and he told them that there were five people inside. Mr. SOW said that he ran around the block to retrieve his family.

REV 1/19

Detective BAKER met with Mr. SOW's son, Oumar SOW 9/11/97 in interview room number 2A. The interview was both audio and video recorded, and a video advisement form was completed.

Oumar provided the same information about the dynamics of the families and who lived at the residence. Oumar stated that he left for work on **August 4, 2020** at around **11:20 PM** arriving at around **11:30 PM**. He stated that he works at the 7-11 located at 8111 Tower Rd. Omar stated that he received a phone call stating that his house was on fire, so he immediately got into his vehicle and drove home. He said that when he arrived on scene he spoke with officers who told him that his family was transported to University Hospital, so he left to respond there to be with his family. Oumar said that he got lost and was having a hard time finding the hospital, so he called his manager from 7-11 to help him get to the hospital to be with his family.

Detective BAKER asked Oumar if he was having problems with anyone and he stated that he was not. He was asked if he knew of anyone that wanted to harm him or his family and he stated that he did not. Detective BAKER asked Oumar about the shift that he worked as he was the only person in the family not present during the fire. He stated that he works **2 PM to 10 PM**. He stated that on this night, he was working **11 PM to 7 AM** although he said that he didn't leave for work until **11:20 PM**.

Adama SOW was interviewed in interview room number 2A by Dulce Solis of the Denver Children's Advocacy Center.

Adama stated that she was upstairs in her room with her mom woke her up and they went towards the window. She said that she could see smoke in the house. She remembers jumping out of the window and her father throwing her over the fence into the neighbor's yard.

At approximately **1:20 PM**, Detective BAKER responded to University Hospital and met with Hawa KA in room number 479 where she was being admitted for injuries caused from jumping out of the window. This interview was captured on body worn camera and Officer Simeon CODO assisted with translation.

Mrs. KA provided the same information as her husband about the events leading up to waking up to the fire alarm. She also provided the same information about the other families living in the home. Mrs. KA stated that she woke up to the fire alarm and her husband tried to go out of the bedroom door and then slammed it shut because the smoke was too thick. She said that they all ran to the window of the bedroom and she could hear Djibril in the hallway trying to gather his family and lead them out of the home. She remembers him saying something to the effect of "this way this way".

Mrs. KA provided the same information regarding the events after jumping out of the window. She was unaware that the other family did not survive the fire.

Your AFFIANT spoke to Arson Investigators who believe an accelerant was used to start the fire. Their investigation showed that the fire started in the rear of the residence where the suspects were seen on video running from. Their investigation also showed signs of an accelerant found inside of the home from the back-door area indicating that the suspects possibly entered the home. This information was confirmed as the accelerant used was gasoline and evidence of gasoline was found on the interior living room wall.

Based on the information provided, YOUR AFFIANT believes that the suspects entered the home and may have been familiar with the residence.

Based on the extreme nature of this crime and the extensive planning it must have taken to carry out the events involved in this offense, Your Affiant feels that this crime was very personal and involved a substantial amount of anger towards someone in the victim residence and/or was intended to send some sort of message. This belief is based on years of investigation of violent crimes and the motives associated with such crimes that Your Affiant has been exposed to over the years. Considering the personal nature of this offense, the actions of the suspects as observed on the surveillance videos, and the amount of planning that likely went into a coordinated attack such as this one, Your Affiant believes that there is a reasonable probability that one or more of the suspects searched for directions to the victim's address prior to the fire. The victim's home is in a densely populated subdivision and does not "stick out" as a house that would likely have been picked at random. It is not on a corner lot, which would be an easier target residence as there would be more area to move in before and after setting the fire. As such, it is reasonable to believe that this home was targeted, and that the person or persons targeting the home sought its location and/or directions in planning this attack.

The information requested is limited to information that can be used to identify a person who engaged in a search for this residence close to but not after the offense occurred. No other contents of the account are being sought at this time. If this warrant yields an account that qualifies under the parameters set forth above, additional investigation will be conducted to determine if that person has any connection to this crime.

Based on these facts, Your Affiant believes there exists probable cause to believe that there is material evidence now located in the above described Google account that is crucial to the investigation of this case and the offenses described above, and a search warrant is requested pursuant to 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
**1331 Cherokee Street**  
**Denver, Colorado 80204**  
**(720) 913-6167**  
**Ernest.sandoval@denvergov.org**

*Further requests:*

FURTHER, pursuant to 18 U.S.C. §2705(b) and 18 U.S.C. §2705(b)(1)-(5), and Crim. P. 41 and §16-3-304(2), Your Affiant requests that Google be ordered NOT to disclose the existence of this search warrant and court order to the subscriber for a period of one year from receipt of the requested documents, unless otherwise ordered by a court of competent jurisdiction. Based on the information set forth in this affidavit, notification of the warrant may have an adverse result, as defined in 18 USC §2705(b)(1)-(5), i.e., disclosure may endanger the life or physical safety of an individual; allow flight from prosecution; allow destruction of or tampering with evidence; allow intimidation of potential witnesses; and/or would otherwise seriously jeopardize an investigation or unduly delay a trial.

FURTHER, so as not to disrupt this ongoing investigation, Your Affiant also requests that this Court order  
REV 1/19

Google NOT to take adverse action against the subject account, such as disabling or terminating the account, because of this warrant.

FURTHER, pursuant to Crim. P. 41 and §16-3-304(2), Your Affiant requests that this Court seal the affidavit and search warrant and court order for production of records that has been filed with the court in this matter. The affidavit establishes grounds to believe that disclosure at this time of the affidavit and search warrant and court order for production of records would be contrary to the public interest. Such order for sealing does not apply to representatives of the Denver Police Department, Denver District Attorney’s Office, and other law enforcement officers, but those individuals are precluded from further dissemination prior to expiration of this order without an order of the court handling the case.

Your affiant has read the above and foregoing application and affidavit, and the statements therein contained are true to the best of his knowledge, information, and belief.

Ernest Sandoval 06154  
Signature of Affiant

This Affidavit has been read and approved by Supervisor: \_\_\_\_\_

**Review & Approval**

<u>/s Katherine A. Hansen</u>	Deputy District Attorney, Reg. No. 25464	<u>October 20, 2020 at 10:00 a.m.</u>
District Attorney – Signature or eSignature	District Attorney Title & Registration #	Date and Time

Subscribed under oath before me on Oct. 20, '20 at 11:11 am

Beth A. Faragher  
Signature of Judge

Beth A. Faragher  
Printed Name of Judge



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

County/District Court  
City and County of Denver, Colorado



Case No. 2020-472026

**SEARCH WARRANT AND COURT ORDER FOR PRODUCTION OF RECORDS PURSUANT TO 18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-301.1 AND §19-2-504**

The Court, upon review of an affidavit filed by Detective Ernest Sandoval 06154, in support of the issuance of this order, hereby orders the production of the following records, for which there is probable cause to believe are in the actual or constructive possession or control of the business entity known or described as:

**Google Inc.  
Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043**

**Registered Agent of Google  
Corporation Service Company  
1900 W. Littleton Boulevard,  
Littleton, CO 80120**

Via Google online <https://lrs.google.com>, the Law Enforcement Response System operated by this company

This Court also finds that there is probable cause to issue this search warrant and court order for production of the following described records or information pursuant to the provisions of 18 U.S.C. §2703, the Colorado Rules of Criminal Procedure, CRS §16-3-301, §16-3-301.1, and §19-2-504, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state, or the seizure of which is expressly required, authorized or permitted by any statute of this state, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

**For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome, Google Maps, or any other Google service) using any one or more of the following the search terms:**

- "5312 Truckee"
- "5312 Truckee St"
- "5312 Truckee Street"
- "5312 N Truckee St"
- "5312 N. Truckee St."
- "5312 N. Truckee St"
- "5312 N Truckee St."
- "5312 North Truckee"
- "5312 North Truckee Street"



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.:

Records currently under the control of Google, Inc. that show certain property, things or data described as search history data with the following applicable parameters:

For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome, Google Maps, or any other Google service) using any one or more of the following the search terms:

- "5312 Truckee"
• "5312 Truckee St"
• "5312 Truckee Street"
• "5312 N Truckee St"
• "5312 N. Truckee St."
• "5312 N. Truckee St"
• "5312 N Truckee St."
• "5312 North Truckee"
• "5312 North Truckee Street"

For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.:

For each account identified as having met the parameters described above, Google shall produce anonymized information specifying the corresponding unique device IDs along with all location data pertaining to the time period of August 4, 2020 00:01 UTC through August 6, 23:59 UTC, whether derived from Global Positioning System (GPS) data, cell site/cell tower triangulation/trilateration, Bluetooth beacons, precision measurement information such as timing advance or per call measurement data, and Wi-Fi location, including the GPS coordinates, estimated radius, and the dates and times of all location recordings (with captured time zone), data source and device type (platform), during the date and time period associated with specific device IDs (the "Anonymized List").

Law enforcement shall review the Anonymized List to remove device IDs that are not relevant to the investigation, for example, device IDs that were not in the location for a relevant period of time, or devices that remained at the location after law enforcement arrival. Law enforcement will also shortlist the Anonymized List by reviewing the time stamped location coordinates for each device ID and compare that against the known time and location information that is specific to this crime.

If additional information for a given anonymized device ID is needed in order to determine whether that anonymized device ID is relevant to the investigation, law enforcement may request that Google provide additional information for the time period that fall outside of the Initial Search Parameters. This will be accomplished through a subsequent warrant.





GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

Law enforcement shall not seek or be provided any further subscriber/device information unless an additional search warrant is obtained for those Google accounts associated with each identified device ID.

**\*These records will be searched by the Denver Police Department and/or the Denver District Attorney's Office for evidence pertaining to a Homicide that occurred during August 5, 2020 at 2:45 a.m.**

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

This warrant and court order for the production of records shall be served upon the business entity to whom it is directed within fourteen days after being signed by the court.

The business entity is ORDERED to produce the above described records to the affiant or his/her designee within fourteen (14) days of service.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
**1331 Cherokee Street**  
**Denver, Colorado 80204**  
**(720) 913-6167**  
**Ernest.sandoval@denvergov.org**

The business entity shall also provide a notarized attestation of accuracy that the records produced represent complete and accurate copies of all records identified in this order that are in the actual or constructive control of the business entity. If the business entity does not produce all records identified in this order, it shall identify the records not produced. Failure to comply with this order shall support a finding of contempt of court.

Upon receiving the records from the business entity, the peace officer named herein shall file a return and inventory with the court indicating the records that have been received and the date and time upon which the records were received. The peace officer named herein may also file the original of the attestation of accuracy with the court.

**IT IS FURTHER ORDERED:**

- 1) Pursuant to 18 U.S.C. §§ 2703(b)(1)(A) and 2705(b)(1)-(5) that Google and any of its employees or third party vendors processing this request not disclose the existence of this search warrant to any person for the period of one year, including the subscriber, other than its personnel essential for compliance with the execution of this warrant;



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

- 2) That Google and any of its employees or third party vendors processing this request not take adverse action against the subject account because of this warrant, such as shutting it down, so as not to disrupt this ongoing investigation;
- 3) That this search warrant and affidavit be sealed from public release of the information herein contained, to assure that this case is not compromised so that witnesses mentioned in this warrant can be protected from any type of early reprisals, and so that this investigation can continue.

Date Oct. 20, 2020  
 Time 11:11 am

In Denver, Colorado

  
 \_\_\_\_\_  
 Signature of Judge

Beth A. Faragher  
 \_\_\_\_\_  
 Printed Name of Judge

## Exhibit 15

Email with Google and Hayley Berlin

**From:** [Sandoval, Ernest B. - DPD Detective](#)  
**To:** [Berlin, Hayley L. \(Perkins Coie\)](#)  
**Subject:** Re: [EXTERNAL] RE:  
**Date:** Monday, November 16, 2020 10:05:51 PM  
**Attachments:** [image006.png](#)  
[image007.png](#)  
[image001.png](#)

DATE FILED: June 30, 2022 12:03 PM  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 2021CR20001

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Hi sorry I was waiting for a response from her. We would be available from 1230-230 mountain time. Then from 345pm-430pm mountain time.

Sent from my iPhone

On Nov 16, 2020, at 13:30, Berlin, Hayley L. (Perkins Coie)  
<[HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)> wrote:

Hi Ernest,

Can you please provide me with some times that work for you and the DA tomorrow afternoon?

Thank you,  
Hayley

**Hayley Berlin | Perkins Coie LLP**  
1201 Third Avenue Suite 4900  
Seattle, WA 98101-3099  
D. +1.206.359.6161  
F. +1.206.359.7161  
E. [HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)

[<image001.png>](#)

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**From:** Sandoval, Ernest B. - DPD Detective <[Ernest.Sandoval@denvergov.org](mailto:Ernest.Sandoval@denvergov.org)>  
**Sent:** Monday, November 16, 2020 9:14 AM  
**To:** Berlin, Hayley L. (SEA) <[HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)>  
**Subject:** RE: [EXTERNAL] RE:

Hi Hayley

I was hoping to find a time we can chat about this warrant with our DA. Sorry last week got a little busy

**Detective Ernest Sandoval 06154 | Major Crimes Division  
Homicide Unit**  
Denver Police Department | City and County of Denver  
720-913-6167 | 720-641-2294 | [ernest.sandoval@denvergov.org](mailto:ernest.sandoval@denvergov.org) | Fax 720-  
913-7027

<image005.jpg>

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**From:** Berlin, Hayley L. (Perkins Coie) <[HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)>  
**Sent:** Wednesday, November 11, 2020 10:48 PM  
**To:** Sandoval, Ernest B. - DPD Detective <[Ernest.Sandoval@denvergov.org](mailto:Ernest.Sandoval@denvergov.org)>  
**Subject:** RE: [EXTERNAL] RE:

Hi Ernest,

I am available tomorrow between 10 and 12 PT if there is any time in that window that works for you and the DA.

Thank you and I look forward to speaking.

Sincerely,

**Hayley Berlin | Perkins Coie LLP**  
1201 Third Avenue Suite 4900  
Seattle, WA 98101-3099  
D. +1.206.359.6161  
F. +1.206.359.7161  
E. [HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)

<[image006.png](#)>

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**From:** Sandoval, Ernest B. - DPD Detective <[Ernest.Sandoval@denvergov.org](mailto:Ernest.Sandoval@denvergov.org)>  
**Sent:** Wednesday, November 11, 2020 6:19 AM  
**To:** Berlin, Hayley L. (SEA) <[HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)>  
**Subject:** RE: [EXTERNAL] RE:

Thank you. Would you be available today and we can call you

**Detective Ernest Sandoval 06154 | Major Crimes Division  
Homicide Unit**  
Denver Police Department | City and County of Denver  
720-913-6167 | 720-641-2294 | [ernest.sandoval@denvergov.org](mailto:ernest.sandoval@denvergov.org) | Fax 720-  
**913-7027**  
<image005.jpg>

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**From:** Berlin, Hayley L. (Perkins Coie) <[HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)>  
**Sent:** Tuesday, November 10, 2020 1:55 PM  
**To:** Sandoval, Ernest B. - DPD Detective <[Ernest.Sandoval@denvergov.org](mailto:Ernest.Sandoval@denvergov.org)>  
**Subject:** [EXTERNAL] RE:

Detective Sandoval,

I would be happy to speak with the DA. Please feel free to pass along my contact information.

Sincerely,

**Hayley Berlin | Perkins Coie LLP**

1201 Third Avenue Suite 4900  
Seattle, WA 98101-3099  
D. +1.206.359.6161  
F. +1.206.359.7161  
E. [HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)

[<image007.png>](#)

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**From:** Sandoval, Ernest B. - DPD Detective <[Ernest.Sandoval@denvergov.org](mailto:Ernest.Sandoval@denvergov.org)>

**Sent:** Tuesday, November 10, 2020 9:23 AM

**To:** Berlin, Hayley L. (SEA) <[HBerlin@perkinscoie.com](mailto:HBerlin@perkinscoie.com)>

**Subject:**

Good Morning Hayley

I spoke with the Denver District Attorney who is helping us with this google search warrant for the map search. She wanted me to clarify that we are looking for a keyword search. I am not the best when it comes to electronic warrants. Would you be available to speak with our District Attorney so we can get this warrant figured out and made proper.

Thank you

**Detective Ernest Sandoval 06154 | Major Crimes Division  
Homicide Unit**

Denver Police Department | City and County of Denver

720-913-6167 | 720-641-2294 | [ernest.sandoval@denvergov.org](mailto:ernest.sandoval@denvergov.org) | Fax 720-913-7027

[<image005.jpg>](#)

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error,

please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

## Exhibit 16

Keyword Search Warrant 11/19/2020



County/District Court  
City and County of Denver, Colorado

DATE FILED: Jun 30, 2023 12:03 PM  
Case No: 2020-472026  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 2021CR20001

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT AND COURT ORDER FOR  
PRODUCTION OF RECORDS PURSUANT TO 18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-301.1, §19-2-504**

I, Detective Ernest Sandoval 06154 state under oath that I have reason to believe that at the place or business entity known or described as:

**Google Inc.  
Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043**

**Registered Agent of Google  
Corporation Service Company  
1900 W. Littleton Boulevard,  
Littleton, CO 80120**

Via Google online <https://lers.google.com>, the Law Enforcement Response System operated by this company

There is now located the following described property, which is in the active or constructive possession of Google:

**-For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome, Google Maps, or any other Google service) using any one or more of the following the search terms:**

- “5312 Truckee”
- “5312 Truckee St”
- “5312 Truckee Street”
- “5312 N Truckee St”
- “5312 N. Truckee St.”
- “5312 N. Truckee St”
- “5312 N Truckee St.”
- “5312 North Truckee”
- “5312 North Truckee Street”

**-For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.:**

**-Google shall produce anonymized information to include the IP addresses used by all accounts that are found to have conducted any of the above described keyword searches.**

**The Anonymized List shall consist of an identifier assigned by Google representing each device that meets the keyword search parameters described above, along with the associated IP address used to conduct that keyword search.**

**Law enforcement shall review the Anonymized List to remove device IDs that are not relevant to the investigation, for example, device IDs that are associated with IP addresses that do not resolve to a location relevant to the investigation.**

**If information such as basic subscriber information or other specific Google account information for a given anonymized device ID is needed in order to determine whether that anonymized device ID is relevant to the investigation, law enforcement may request that Google provide such additional information through appropriate legal process.**

**\*These records will be searched by the Denver Police Department and/or the Denver District Attorney's Office for evidence pertaining to a Homicide that occurred during August 5, 2020 at 2:45 a.m.**

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

Google is an Internet company which, among other things, provides electronic communication services to subscribers. Google allows subscribers to obtain email accounts at the domain name gmail.com. Subscribers obtain an account by registering with Google. During the registration process, Google asks subscribers to provide basic personal information, including email address (or one is created), phone number, date of birth. For Google users, the computers of Google are likely to contain stored electronic communications, including searches conducted through Google services such as the Google search engine, Google Chrome, and Google Maps. Based on Your Affiant's training and experience, such information may constitute direct evidence of the crimes under investigation or may lead to the identification of other evidence related to the below-described offenses.

***Statement of probable cause for issuance of the requested warrant***

The facts tending to establish the grounds for issuance of a Search Warrant are as follows:

**Your Affiant is a Detective with the Denver Police Department Homicide Unit and has been so assigned since July 2020. Your affiant is also a Special Deputy for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).**

**Your Affiant has been a Peace Officer for approximately 14 years with the Denver Police Department**

REV 1/19

and held the rank of Detective for the past five years. The Denver Police Department (DPD) has formally trained your Affiant in general investigations, including several specialized schools sponsored by the Denver Police Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Your Affiant has personally participated in numerous search warrants. Your Affiant has debriefed, interviewed, and discussed with numerous defendants, confidential sources, and highly experienced investigators at the state and federal level, the techniques and methods of firearms and narcotics possession, and distribution. Your Affiant also has completed several hundred firearm related investigations, where Your Affiant was the primary investigator. Additionally, Your Affiant has obtained training in gang-related investigations, specifically in gang identification, such as identifying gang members' names, initials, monikers, hand signs, and specific gang neighborhoods.

In November of 2017, your Affiant was assigned to the ATF Crime Gun Intelligence Center (CGIC) as a Task Force Officer (TFO) to conduct firearms investigations. Your affiant has been involved in investigations where firearms have been shown to be used at several shootings over a time span at different locations. During these investigations your affiant has seen that at times the suspects do not rid themselves of this firearm. In your affiants training and experience firearms are not easily flushed and suspects will tend to keep a firearm they already have obtained. Your affiant has also been involved in several investigations where a search warrant has been authorized for a suspect residence and a firearm has been recovered, days and even weeks later. Your Affiant left this position in February 2020 and is currently assigned to the Denver Police Department Homicide Unit.

#### *Background of Investigation – Arson and Quintuple Homicide*

On **August 5, 2020** at approximately **2:40 AM**, Denver Police Officer Gordon KING 17050 was in the area of E. 51st Ave. and N. Tower Rd. when he observed a house on fire at 5312 N. Truckee St.

Officer KING immediately called for the fire department and as he arrived on scene, he observed a large group of people watching the fire and asked if anyone was still inside. Getting no answer, Officer KING went into the open garage of the home.

Officer KING observed that the home was fully engulfed in fire. He pushed open the interior door from the garage to the main house but was immediately met with extreme heat. He observed the fire in the immediate hallway of the home.

Officer KING went around to the front door of the home where someone was attempting to unlock the door with a keypad but was unsuccessful. Officer KING kicked in the front door but was forced away from the door due to the extreme heat. Officer KING was able to see a small human body approximately 3 feet inside of the front door. As Officer KING attempted to get the person out, it was apparent that the person was not alive and Officer KING was forced back due to the extreme heat of the fire.

As additional officers and Fire Department personnel arrived on scene, information was received that three victims from the home had escaped through an upstairs back window and that five individuals were possibly still inside of the home. The three parties who escaped out of the window were transported to University of Colorado Hospital from injuries sustained from the fall.

As firefighters began attacking the fire, they were able to recover the body observed by Officer KING which was moved to the front lawn of the residence. The bodies of four other individuals could be

REV 1/19

observed in the front area of the house in the southwest room.

Paramedic DRHAN received death pronouncements for all five victims from Dr. EBERHARDT of the Denver Health Medical Center at **3:37 AM**.

At approximately **3:30 AM**, YOUR AFFIANT received a phone call from Homicide Sgt. Scott HAGAN, 01004 regarding the house fire and the five deceased victims and was requested to respond to the scene.

YOUR AFFIANT arrived on scene at **4:15 AM**. Upon arrival, numerous police and fire personnel could be seen in the area and flames could still be seen coming out of the second story west side of the residence. Fire personnel were still actively fighting the fire.

YOUR AFFIANT was advised that three surviving victims were transported to the hospital and at least five victims were deceased on scene.

Upon gathering information, YOUR AFFIANT was advised that a neighbor living at 5318 N. Truckee St. possibly had video of footage of the incident. Witness, Noe REZA 1/23/82 was contacted in the front driveway of his home by Detective BAKER and showed video footage on his cell phone of the surveillance cameras located on his house.

YOUR AFFIANT reviewed video footage from a camera located on the southeast corner of his house which captures the entire north side of the victim's home. The video shows the side yards of the victim's home and Mr. REZA's home and shows the fence separating the two side yards. At approximately **2:26 AM**, three individuals can be seen standing in the side yard of the victim's home. The three individuals are stationary and looking around. The individuals appear to be wearing dark hooded sweatshirts with the hoods up and full masks which appeared to be light in color. The video footage is set on night vision and the colors are reversed. The masks the individuals are wearing appeared to be a solid theater type mask or something resembling a hockey mask.



At **2:27 AM**, a second video shows the same individuals in the same area pointing to an area on the northeast corner of the victim's home.

REV 1/19

At **2:38 AM**, a third video from the same camera shows the same three individuals running westbound from the backyard area of the victim's home through the side yard and out of the gate towards the front of the residence.

At **2:40 AM** the camera located on the north east corner of Mr. REZA's captures the back area of the victim's home. The camera faces north covering the back of Mr. REZA's home and also captures the small portion of the victim's backyard. An individual can be seen in the victim's backyard and is believed to be one of the surviving victims who had jumped out of the back window. Flames can be seen coming out of the lower level of the home and individuals can be heard screaming.

It is notable that large flames can be seen on this camera approximately 2 minutes after the three individuals are seen running from the backyard towards the front of the victim's home.

Several other videos were observed from the same camera minutes after and the fire is observed to be getting larger.

After canvassing the neighborhood, officers spoke with a resident at 5313 Uravan St. The homeowner, Nelson VELEZ lives directly behind the victim's home on the east side. VELEZ has a security camera on the back of his home which captured the fire at approximately **2:42 AM**.

Detective BAKER reviewed the video which shows the fire engulfing the home and appears to be coming out of the lower level of the home. A small female child is seen in the backyard of Mr. VELEZ's home and appears to be in distress. Individuals can be seen in the victim's backyard using a garden hose to spray on the fire.

Your Affiant obtained a search warrant for the residence to conduct the criminal investigation.

Detective BAKER responded to Denver Police Headquarters and met with Amadou SOW 1/2/74 who had been transported there from University Hospital after being released.

Detective BAKER met with Mr. SOW in interview room number 2A and the interview was both audio and video recorded, and a video advisement form was completed. Mr. SOW stated that he was the homeowner of the residence at 5312 N. Truckee St. He said that he lived there with his wife, Hawa KA 02/12/77 and their daughter, Adama SOW 10/23/09.

Mr. SOW said that another family lives with them and described them as one adult male, two adult females and two small female children.

Mr. SOW stated that he and his family are from Senegal Africa and he has been living at that residence for almost 2 years. He said that another African family, also from Senegal, came to live with them and identified them as Djibril DIOL 10/25/90, his wife, Adja DIOL 06/27/97 and their daughter, Kadidia DIOL (unknown DOB). He said that Djibril had his sister, Hassan DIOL and her daughter, Hawa BEYE (unknown DOB) recently move in with them from Columbus, Ohio.

Mr. SOW stated that they were all downstairs watching television located on the first floor near the backside of the residence. He said that around **10 PM** on **August 4, 2020**, Djibril and his family went upstairs to go to bed. He said that Djibril's sister and daughter also went upstairs at the same time to go to

REV 1/19

bed. He said that Djibril and his family sleep in one bedroom while Hassan and her daughter sleep in another bedroom.

Mr. SOW stated that he and his wife and daughter went upstairs to bed at approximately **11 PM**. He said that he sleeps in a bedroom with his wife and daughter. He said that he has a son, identified as Oumar SOW 09/11/97, who also lives in the residence and has his own bedroom upstairs. He said that his son was working at 7-11 at the time.

Mr. SOW stated that he woke up hearing a fire alarm and tried to wake his family up. He said that he did not remember what time that was but when he opened the door of his bedroom, he could see the thick smoke, so he immediately shut the door. Mr. SOW said that he went to the window and pushed the screen out of the window. He said that he and his wife jumped out of the window landing on some rocks below in the backyard. He said that his daughter then jumped out of the window and he caught her. Mr. SOW said that the house was on fire, so he carried his daughter and put her over the fence into the neighbor's backyard.

Mr. SOW stated that he ran around the north side of the residence to the front of the house and tried to throw a rock at the window upstairs to wake up his son, Oumar. He said that he remembered his son was at work and noticed that his car was not there. He said that he then tried to go to the front door and open it using the keypad and entering the code which did not work. He said that he tried several times and could not get the front door open.

Mr. SOW stated that he opened the garage door using the same code but was unable to get into the interior door because he locks it at night, and it locks from the inside. He said that they have a propane tank and cooktop in the garage which he pulled out of the garage so that it would not catch fire. Mr. SOW stated that emergency personnel were arriving on scene and he told them that there were five people inside. Mr. SOW said that he ran around the block to retrieve his family.

Detective BAKER met with Mr. SOW's son, Oumar SOW 9/11/97 in interview room number 2A. The interview was both audio and video recorded, and a video advisement form was completed.

Oumar provided the same information about the dynamics of the families and who lived at the residence. Oumar stated that he left for work on **August 4, 2020** at around **11:20 PM** arriving at around **11:30 PM**. He stated that he works at the 7-11 located at 8111 Tower Rd. Omar stated that he received a phone call stating that his house was on fire, so he immediately got into his vehicle and drove home. He said that when he arrived on scene, he spoke with officers who told him that his family was transported to University Hospital, so he left to respond there to be with his family. Oumar said that he got lost and was having a hard time finding the hospital, so he called his manager from 7-11 to help him get to the hospital to be with his family.

Detective BAKER asked Oumar if he was having problems with anyone and he stated that he was not. He was asked if he knew of anyone that wanted to harm him or his family and he stated that he did not. Detective BAKER asked Oumar about the shift that he worked as he was the only person in the family not present during the fire. He stated that he works **2 PM to 10 PM**. He stated that on this night, he was working **11 PM to 7 AM** although he said that he didn't leave for work until **11:20 PM**.

Adama SOW was interviewed in interview room number 2A by Dulce Solis of the Denver Children's  
REV 1/19

Advocacy Center.

Adama stated that she was upstairs in her room with her mom woke her up and they went towards the window. She said that she could see smoke in the house. She remembers jumping out of the window and her father throwing her over the fence into the neighbor's yard.

At approximately **1:20 PM**, Detective BAKER responded to University Hospital and met with Hawa KA in room number 479 where she was being admitted for injuries caused from jumping out of the window. This interview was captured on body worn camera and Officer Simeon CODO assisted with translation.

Mrs. KA provided the same information as her husband about the events leading up to waking up to the fire alarm. She also provided the same information about the other families living in the home. Mrs. KA stated that she woke up to the fire alarm and her husband tried to go out of the bedroom door and then slammed it shut because the smoke was too thick. She said that they all ran to the window of the bedroom and she could hear Djibril in the hallway trying to gather his family and lead them out of the home. She remembers him saying something to the effect of "this way this way".

Mrs. KA provided the same information regarding the events after jumping out of the window. She was unaware that the other family did not survive the fire.

Your AFFIANT spoke to Arson Investigators who believe an accelerant was used to start the fire. Their investigation showed that the fire started in the rear of the residence where the suspects were seen on video running from. Their investigation also showed signs of an accelerant found inside of the home from the back-door area indicating that the suspects possibly entered the home. This information was confirmed as the accelerant used was gasoline and evidence of gasoline was found on the interior living room wall.

Based on the information provided, YOUR AFFIANT believes that the suspects entered the home and may have been familiar with the residence.

Based on the extreme nature of this crime and the extensive planning it must have taken to carry out the events involved in this offense, Your Affiant feels that this crime was very personal and involved a substantial amount of anger towards someone in the victim residence and/or was intended to send some sort of message. This belief is based on years of investigation of violent crimes and the motives associated with such crimes that Your Affiant has been exposed to over the years. Considering the personal nature of this offense, the actions of the suspects as observed on the surveillance videos, and the amount of planning that likely went into a coordinated attack such as this one, Your Affiant believes that there is a reasonable probability that one or more of the suspects searched for directions to the victim's address prior to the fire. The victim's home is in a densely populated subdivision and does not "stick out" as a house that would likely have been picked at random. It is not on a corner lot, which would be an easier target residence as there would be more area to move in before and after setting the fire. As such, it is reasonable to believe that this home was targeted, and that the person or persons targeting the home sought its location and/or directions in planning this attack.

The information requested is limited to information that can be used to identify a person who engaged in a search for this residence close to but not after the offense occurred. No other contents of the account are being sought at this time. If this warrant yields an account that qualifies under the parameters set forth above, additional investigation will be conducted to determine if that person has any connection to this crime.

REV 1/19

Page 7 of 9

Based on these facts, Your Affiant believes there exists probable cause to believe that there is material evidence now located in the above described Google account that is crucial to the investigation of this case and the offenses described above, and a search warrant is requested pursuant to 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
**1331 Cherokee Street**  
**Denver, Colorado 80204**  
**(720) 913-6167**  
**Ernest.sandoval@denvergov.org**

*Further requests:*

FURTHER, pursuant to 18 U.S.C. §2705(b) and 18 U.S.C. §2705(b)(1)-(5), and Crim. P. 41 and §16-3-304(2), Your Affiant requests that Google be ordered NOT to disclose the existence of this search warrant and court order to the subscriber for a period of one year from receipt of the requested documents, unless otherwise ordered by a court of competent jurisdiction. Based on the information set forth in this affidavit, notification of the warrant may have an adverse result, as defined in 18 USC §2705(b)(1)-(5), i.e., disclosure may endanger the life or physical safety of an individual; allow flight from prosecution; allow destruction of or tampering with evidence; allow intimidation of potential witnesses; and/or would otherwise seriously jeopardize an investigation or unduly delay a trial.

FURTHER, so as not to disrupt this ongoing investigation, Your Affiant also requests that this Court order Google NOT to take adverse action against the subject account, such as disabling or terminating the account, because of this warrant.

FURTHER, pursuant to Crim. P. 41 and §16-3-304(2), Your Affiant requests that this Court seal the affidavit and search warrant and court order for production of records that has been filed with the court in this matter. The affidavit establishes grounds to believe that disclosure at this time of the affidavit and search warrant and court order for production of records would be contrary to the public interest. Such order for sealing does not apply to representatives of the Denver Police Department, Denver District Attorney's Office, and other law enforcement officers, but those individuals are precluded from further dissemination prior to expiration of this order without an order of the court handling the case.

Your affiant has read the above and foregoing application and affidavit, and the statements therein contained are true to the best of his knowledge, information, and belief.

*Ernest Sandoval 06154*  
\_\_\_\_\_  
Signature of Affiant

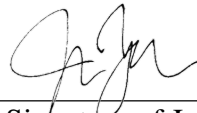


This Affidavit has been read and approved by Supervisor: Sgt Abel Salas 05088

**Review & Approval**

<u>/s Katherine A. Hansen</u>	<u>Deputy District Attorney, Reg. No. 25464</u>	<u>November 19, 2020 at 11:45 a.m.</u>
District Attorney – Signature or eSignature	District Attorney Title & Registration #	Date and Time

Subscribed under oath before me on 11/19/20 at 12:33pm



\_\_\_\_\_  
Signature of Judge

Judge James Zobel and Ordered Sealed

\_\_\_\_\_  
Printed Name of Judge



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

County/District Court  
City and County of Denver, Colorado

Case No. 2020-472026

**SEARCH WARRANT AND COURT ORDER FOR PRODUCTION OF RECORDS PURSUANT TO  
18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-301.1 AND §19-2-504**

The Court, upon review of an affidavit filed by Detective Ernest Sandoval 06154, in support of the issuance of this order, hereby orders the production of the following records, for which there is probable cause to believe are in the actual or constructive possession or control of the business entity known or described as:

**Google Inc.  
Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043**

**Registered Agent of Google  
Corporation Service Company  
1900 W. Littleton Boulevard,  
Littleton, CO 80120**

Via Google online <https://lers.google.com>, the Law Enforcement Response System operated by this company

This Court also finds that there is probable cause to issue this search warrant and court order for production of the following described records or information pursuant to the provisions of 18 U.S.C. §2703, the Colorado Rules of Criminal Procedure, CRS §16-3-301, §16-3-301.1, and §19-2-504, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state, or the seizure of which is expressly required, authorized or permitted by any statute of this state, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

**-For any Google accounts that conducted a search while using Google Services (i.e., Google Chrome, Google Maps, or any other Google service) using any one or more of the following the search terms:**

- "5312 Truckee"
- "5312 Truckee St"
- "5312 Truckee Street"
- "5312 N Truckee St"
- "5312 N. Truckee St."
- "5312 N. Truckee St"
- "5312 N Truckee St."
- "5312 North Truckee"
- "5312 North Truckee Street"

**-For the period beginning and inclusive of July 22, 2020 at 00:01 M.S.T. through and to include August 5, 2020 at 0245 M.S.T.:**



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

-Google shall produce anonymized information to include the IP addresses used by all accounts that are found to have conducted any of the above described keyword searches. The Anonymized List shall consist of an identifier assigned by Google representing each device that meets the keyword search parameters described above, along with the associated IP address used to conduct that keyword search.

Law enforcement shall review the Anonymized List to remove device IDs that are not relevant to the investigation, for example, device IDs that are associated with IP addresses that do not resolve to a location relevant to the investigation.

If information such as basic subscriber information or other specific Google account information for a given anonymized device ID is needed in order to determine whether that anonymized device ID is relevant to the investigation, law enforcement may request that Google provide such additional information through appropriate legal process.

\*These records will be searched by the Denver Police Department and/or the Denver District Attorney's Office for evidence pertaining to a Homicide that occurred during August 5, 2020 at 2:45 a.m.

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

This warrant and court order for the production of records shall be served upon the business entity to whom it is directed within fourteen days after being signed by the court.

The business entity is ORDERED to produce the above described records to the affiant or his/her designee within fourteen (14) days of service.

The records should be provided to:
Detective Ernest Sandoval 06154
1331 Cherokee Street
Denver, Colorado 80204
(720) 913-6167
Ernest.sandoval@denvergov.org

The business entity shall also provide a notarized attestation of accuracy that the records produced represent complete and accurate copies of all records identified in this order that are in the actual or constructive control of the business entity. If the business entity does not produce all records identified in this order, it shall identify the records not produced. Failure to comply with this order shall support a finding of contempt of court.

Upon receiving the records from the business entity, the peace officer named herein shall file a return and inventory with the court indicating the records that have been received and the date and time upon which the records were received. The peace officer named herein may also file the original of the attestation of accuracy with the court.



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

IT IS FURTHER ORDERED:

- 1) Pursuant to 18 U.S.C. §§ 2703(b)(1)(A) and 2705(b)(1)-(5) that Google and any of its employees or third party vendors processing this request not disclose the existence of this search warrant to any person for the period of one year, including the subscriber, other than its personnel essential for compliance with the execution of this warrant;
- 2) That Google and any of its employees or third-party vendors processing this request not take adverse action against the subject account because of this warrant, such as shutting it down, so as not to disrupt this ongoing investigation;
- 3) That this search warrant and affidavit be sealed from public release of the information herein contained, to assure that this case is not compromised so that witnesses mentioned in this warrant can be protected from any type of early reprisals, and so that this investigation can continue.

Date November 19, 2020  
Time 12:33pm

In Denver, Colorado

\_\_\_\_\_  
Signature of Judge

Judge James Zobel and Ordered Sealed  
Printed Name of Judge

# Exhibit 17

Keyword Warrant Return Data

Time	Country	Subdivision	IP	Query	Result	Host	Request	Truncated	Truncated
2020-07-23 10:51:03.491848			-062607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:03.491848	US	US-IL	2607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:03.491848	US	US-CO	2607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:21.425946			-062607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:21.425946	US	US-IL	2607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:21.425946	US	US-CO	2607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:39.787704			-062607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
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2020-07-23 10:51:39.787704	US	US-CO	2607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
2020-07-23 10:51:59.500433			-062607:fb90	5312 Truckee St Den	www.google	GET /asyn	80068	0	
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2020-07-23 10:52:35.955282	US	US-CO	2607:fb90	5312 Truckee St Den	www.google	GET /search	80068	0	
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2020-07-23 22:30:04.657163	US	US-CO	107.77.19	5312 Truckee St, Den	www.google	GET /servi	99279	0	
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DATE FILED: June 30, 2022 12:03 PM  
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# Exhibit 18

Google Warrant 12/4/2020



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

County/District Court
City and County of Denver, Colorado

DATE FILED: June 30, 2022 12:03 PM
FILING ID: 2D0BFA23AF560
CASE NUMBER: 2021CR20000



Case No: 2020-472026

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT AND COURT ORDER FOR
PRODUCTION OF RECORDS PURSUANT TO 18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-
301.1, §19-2-504

I, Detective Ernest Sandoval 06154, state under oath that I have reason to believe that at the place or business
entity known or described as:

Google Inc.
Google Custodian of Records
1600 Amphitheatre Parkway
Mountain View, CA 94043

Registered Agent of Google
Corporation Service Company
1900 W. Littleton Boulevard,
Littleton, CO 80120

Via Google online https://lers.google.com, the Law Enforcement Response System operated by this
company

There is now located the following described property, which is in the active or constructive possession of
Google:

Target identifier: Google account information belonging to anonymized accounts 99279, 85283,
80068, 51813, and 31891 associated with Google LERS reference number 4574430.

For the period beginning and inclusive of 07/23/2020 through and to include PRESENT DATE:

The following record(s) will be searched for and if found seized:

- Basic subscriber information for the subject account(s), to include full name, date of birth,
gender, other contact email addresses, physical address, telephone numbers, and any other
personal identifiers;
• The date on which the account was created, the length of service, the IP address with
associated Port ID(s) used to register the account;
• Any other Gmail addresses associated with the account(s) listed above along with all personal
identifiers related to those Gmail accounts;
• All Google/Gmail accounts associated to the above account(s) by device or cookie: to include
User ID, subscriber name, cellphone number and email address for such associated accounts;
• All devices(s) used and otherwise associated with the subscriber's account(s) – ESN, ICCID,
IMSI, IMEI and MAC address numbers and activation dates;
• All log-in IP addresses with Port IDs associated with the account(s) identified above;
• All location data collected, whether derived from Global Positioning System (GPS) data, cell
site/cell tower triangulation/trilateration, precision measurement information such as timing
advance or per call measurement data, Wi-Fi location, and all Google SensorVault data,





GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

including coordinates, timeline data, and dates and times of all locations where the account was accessed or used;

- All records or other information stored at any time by an individual using the subject account(s), including address books, contacts (including groups and buddy lists), calendar data, electronic chat content;
- All records pertaining to communications between Google and any person regarding the account(s), including contacts with support services and records of actions taken;
- All files, keys, or other information necessary to decrypt any data produced in an encrypted form, when available to the provider;
- All privacy settings and account verification methods, including two factor authentication associated phone number(s);
- All means and source of payment (including any credit or bank account numbers) used and/or stored in connection with the Google account(s) identified above, purchase history, and subscriptions.

**\*These records will be searched by the Denver Police Department and/or the Denver District Attorney's Office for evidence pertaining to the Homicide that occurred during August 5, 2020 at approximately 0245 MST.**

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

***Background Relating to Google and Relevant Technology***

A cellular telephone or mobile telephone is a handheld wireless device used primarily for voice communication through radio signals. Cellular telephones send signals through networks of transmitters/receivers called "cells," enabling communication with other cellular telephones or traditional "landline" telephones. Cellular telephones rely on cellular towers, the location of which may provide information on the location of the subject telephone. Cellular telephones may also include global positioning system ("GPS") technology for determining the location of the device.

Google is an Internet company which, among other things, provides electronic communication services to subscribers. Google allows subscribers to obtain email accounts at the domain name gmail.com. Subscribers obtain an account by registering with Google. During the registration process, Google asks subscribers to provide basic personal information. Therefore, the computers of Google are likely to contain stored electronic communications, including retrieved and unretrieved email for Google subscribers, attachments, photos, videos, and other information concerning subscribers and their use of Google services, REV 1/19



**GENERAL OFFENSE HARDCOPY**  
**DISTRICT ATTORNEY ELECTRONIC SUBMISSION**  
**(HOMICIDE - OTHER)**

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such as account access information, email transaction information, and account application information. Based on Your Affiant’s training and experience, such information may constitute direct evidence of the crimes under investigation or may lead to the identification of other evidence related to the below-described offenses.

In Your Affiant’s training and experience, email providers generally ask their subscribers to provide certain personal identifying information when registering for an email account. Such information can include the subscriber’s full name, physical address, telephone numbers and other identifiers, alternative email addresses, and, for paying subscribers, means and source of payment (including any credit or bank account numbers). In Your Affiant’s training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account’s user or users. Based on training and experience, Your Affiant also knows that even if subscribers insert false information to conceal their identity, this information can still often provide clues to their identity, location or illicit activities.

In Your Affiant’s training and experience, email providers typically retain certain transactional information about the creation and use of each account on their systems. This information can include the date on which the account was created, the length of service, records of login (i.e., session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account (such as logging into the account via the provider’s website), and other log files that reflect usage of the account. In addition, email providers often have records of the Internet Protocol address (“IP address”) used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the email account.

As explained herein, information stored in connection with Google account may provide crucial evidence of the “who, what, why, when, where, and how” of the criminal conduct under investigation, thus enabling the prosecution to establish and prove each element or alternatively, to exclude the innocent from further suspicion. This evidence may be found in the various areas of the Google account that are specified above. In Your Affiant’s training and experience, the information stored in connection with a Google/gmail account can also indicate who has used or controlled the account. Further, information maintained by Google can show how, where, and when the account was accessed or used. Based on Your Affiant’s training and experience, Your Affiant has learned that Google also maintains records that may reveal other Google accounts accessed from the same electronic device, such as the same computer or mobile device, including accounts that are linked by Hypertext Transfer Protocol (HTTP) cookies, which are small pieces of data sent from a website and stored in a user’s Internet browser.

Google has developed an operating system for mobile devices, including cellular phones, known as Android. Nearly every cellular phone using the Android operating system has an associated Google account and users are prompted to add a Google account when they first turn on a new Android device.

Based on your affiant’s training and experience, your affiant has learned that Google collects and retains location data from Android-enabled mobile devices when a Google account user has enabled Google location services. The company uses this information for location-based advertising and location-based

REV 1/19



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

search results. This information is derived from sources including GPS data, cell site/cell tower information, and Wi-Fi access points. Your affiant has also learned that users running Google products on the Apple iPhone or other cellular telephone operating systems may also have their location data stored in a similar way as devices running Android operating systems.

Location data can assist investigators in understanding the chronological and geographic context of the account access and use relating to the crime(s) under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Additionally, information stored at the user's account may further indicate the geographic location of the account user at a particular time (e.g., location information integrated into an image or video sent via email).

Statement of probable cause for issuance of the requested warrant

The facts tending to establish the grounds for issuance of a Search Warrant are as follows:

Your Affiant is a Detective with the Denver Police Department Homicide Unit and has been so assigned since July 2020. Your affiant is also a Special Deputy for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

Your Affiant has been a Peace Officer for approximately 14 years with the Denver Police Department and held the rank of Detective for the past five years. The Denver Police Department (DPD) has formally trained your Affiant in general investigations, including several specialized schools sponsored by the Denver Police Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Your Affiant has personally participated in numerous search warrants. Your Affiant has debriefed, interviewed, and discussed with numerous defendants, confidential sources, and highly experienced investigators at the state and federal level, the techniques and methods of firearms and narcotics possession, and distribution. Your Affiant also has completed several hundred firearm related investigations, where Your Affiant was the primary investigator. Additionally, Your Affiant has obtained training in gang-related investigations, specifically in gang identification, such as identifying gang members' names, initials, monikers, hand signs, and specific gang neighborhoods.

In November of 2017, your Affiant was assigned to the ATF Crime Gun Intelligence Center (CGIC) as a Task Force Officer (TFO) to conduct firearms investigations. Your affiant has been involved in investigations where firearms have been shown to be used at several shootings over a time span at different locations. During these investigations your affiant has seen that at times the suspects do not rid themselves of this firearm. In your affiants training and experience firearms are not easily flushed and suspects will tend to keep a firearm they already have obtained. Your affiant has also been involved in several investigations where a search warrant has been authorized for a suspect residence and a firearm has been recovered, days and even weeks later. Your Affiant left this position in February 2020 and is currently assigned to the Denver Police Department Homicide Unit.

Background of Investigation – Arson and Quintuple Homicide



On **August 5, 2020** at approximately **2:40 AM**, Denver Police Officer Gordon KING 17050 was in the area of E. 51st Ave. and N. Tower Rd. when he observed a house on fire at 5312 N. Truckee St.

Officer KING immediately called for the fire department and as he arrived on scene, he observed a large group of people watching the fire and asked if anyone was still inside. Getting no answer, Officer KING went into the open garage of the home.

Officer KING observed that the home was fully engulfed in fire. He pushed open the interior door from the garage to the main house but was immediately met with extreme heat. He observed the fire in the immediate hallway of the home.

Officer KING went around to the front door of the home where someone was attempting to unlock the door with a keypad but was unsuccessful. Officer KING kicked in the front door but was forced away from the door due to the extreme heat. Officer KING was able to see a small human body approximately 3 feet inside of the front door. As Officer KING attempted to get the person out, it was apparent that the person was not alive and Officer KING was forced back due to the extreme heat of the fire.

As additional officers and Fire Department personnel arrived on scene, information was received that three victims from the home had escaped through an upstairs back window and that five individuals were possibly still inside of the home. The three parties who escaped out of the window were transported to University of Colorado Hospital from injuries sustained from the fall.

As firefighters began attacking the fire, they were able to recover the body observed by Officer KING which was moved to the front lawn of the residence. The bodies of four other individuals could be observed in the front area of the house in the southwest room.

Paramedic DRHAN received death pronouncements for all five victims from Dr. EBERHARDT of the Denver Health Medical Center at **3:37 AM**.

At approximately **3:30 AM**, YOUR AFFIANT received a phone call from Homicide Sgt. Scott HAGAN, 01004 regarding the house fire and the five deceased victims and was requested to respond to the scene.

YOUR AFFIANT arrived on scene at **4:15 AM**. Upon arrival, numerous police and fire personnel could be seen in the area and flames could still be seen coming out of the second story west side of the residence. Fire personnel were still actively fighting the fire.

YOUR AFFIANT was advised that three surviving victims were transported to the hospital and at least five victims were deceased on scene.

Upon gathering information, YOUR AFFIANT was advised that a neighbor living at 5318 N. Truckee St. possibly had video of footage of the incident. Witness, Noe REZA 1/23/82 was contacted in the front driveway of his home by Detective BAKER and showed video footage on his cell phone of the surveillance cameras located on his house.

REV 1/19



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

YOUR AFFIANT reviewed video footage from a camera located on the southeast corner of his house which captures the entire north side of the victim's home. The video shows the side yards of the victim's home and Mr. REZA's home and shows the fence separating the two side yards. At approximately **2:26 AM**, three individuals can be seen standing in the side yard of the victim's home. The three individuals are stationary and looking around. The individuals appear to be wearing dark hooded sweatshirts with the hoods up and full masks which appeared to be light in color. The video footage is set on night vision and the colors are reversed. The masks the individuals are wearing appeared to be a solid theater type mask or something resembling a hockey mask.



At **2:27 AM**, a second video shows the same individuals in the same area pointing to an area on the northeast corner of the victim's home.

At **2:38 AM**, a third video from the same camera shows the same three individuals running westbound from the backyard area of the victim's home through the side yard and out of the gate towards the front of the residence.

At **2:40 AM** the camera located on the north east corner of Mr. REZA's captures the back area of the victim's home. The camera faces north covering the back of Mr. REZA's home and also captures the small portion of the victim's backyard. An individual can be seen in the victim's backyard and is believed to be one of the surviving victims who had jumped out of the back window. Flames can be seen coming out of the lower level of the home and individuals can be heard screaming.

It is notable that large flames can be seen on this camera approximately 2 minutes after the three individuals are seen running from the backyard towards the front of the victim's home.

Several other videos were observed from the same camera minutes after and the fire is observed to be getting larger.

REV 1/19



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

After canvassing the neighborhood, officers spoke with a resident at 5313 Uravan St. The homeowner, Nelson VELEZ lives directly behind the victim's home on the east side. Mr. VELEZ has a security camera on the back of his home which captured the fire at approximately **2:42 AM**.

Detective BAKER reviewed the video which shows the fire engulfing the home and appears to be coming out of the lower level of the home. A small female child is seen in the backyard of Mr. VELEZ 's home and appears to be in distress. Individuals can be seen in the victim's backyard using a garden hose to spray on the fire.

Your Affiant obtained a search warrant for the residence to conduct the criminal investigation. Detective BAKER responded to Denver Police Headquarters and met with Amadou SOW 1/2/74 who had been transported there from University Hospital after being released.

Detective BAKER met with Mr. SOW in interview room number 2A and the interview was both audio and video recorded, and a video advisement form was completed. Mr. SOW stated that he was the homeowner of the residence at 5312 N. Truckee St. He said that he lived there with his wife, Hawa KA 02/12/77 and their daughter, Adama SOW 10/23/09.

Mr. SOW said that another family lives with them and described them as one adult male, two adult females and two small female children.

Mr. SOW stated that he and his family are from Senegal Africa and he has been living at that residence for almost 2 years. He said that another African family, also from Senegal, came to live with them and identified them as Djibril DIOL 10/25/90, his wife, Adja DIOL 06/27/97 and their daughter, Kadidia DIOL (unknown DOB). He said that Djibril had his sister, Hassan DIOL and her daughter, Hawa BEYE (unknown DOB) recently move in with them from Columbus, Ohio.

Mr. SOW stated that they were all downstairs watching television located on the first floor near the backside of the residence. He said that around **10 PM** on **August 4, 2020**, Djibril and his family went upstairs to go to bed. He said that Djibril 's sister and daughter also went upstairs at the same time to go to bed. He said that Djibril and his family sleep in one bedroom while Hassan and her daughter sleep in another bedroom.

Mr. SOW stated that he and his wife and daughter went upstairs to bed at approximately **11 PM**. He said that he sleeps in a bedroom with his wife and daughter. He said that he has a son, identified as Oumar SOW 09/11/97, who also lives in the residence and has his own bedroom upstairs. He said that his son was working at 7-11 at the time.

Mr. SOW stated that he woke up hearing a fire alarm and tried to wake his family up. He said that he did not remember what time that was but when he opened the door of his bedroom, he could see the thick smoke, so he immediately shut the door. Mr. SOW said that he went to the window and pushed the screen out of the window. He said that he and his wife jumped out of the window landing on some rocks below in the backyard. He said that his daughter then jumped out of the window and he caught her. Mr. SOW said that the house was on fire, so he carried his daughter and put her over the fence into the neighbor's backyard.

REV 1/19

Page 7 of 11



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

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Mr. SOW stated that he ran around the north side of the residence to the front of the house and tried to throw a rock at the window upstairs to wake up his son, Oumar. He said that he remembered his son was at work and noticed that his car was not there. He said that he then tried to go to the front door and open it using the keypad and entering the code which did not work. He said that he tried several times and could not get the front door open.

Mr. SOW stated that he opened the garage door using the same code but was unable to get into the interior door because he locks it at night, and it locks from the inside. He said that they have a propane tank and cooktop in the garage which he pulled out of the garage so that it would not catch fire. Mr. SOW stated that emergency personnel were arriving on scene and he told them that there were five people inside. Mr. SOW said that he ran around the block to retrieve his family.

Detective BAKER met with Mr. SOW's son, Oumar SOW 9/11/97 in interview room number 2A. The interview was both audio and video recorded, and a video advisement form was completed.

Oumar provided the same information about the dynamics of the families and who lived at the residence. Oumar stated that he left for work on **August 4, 2020** at around **11:20 PM** arriving at around **11:30 PM**. He stated that he works at the 7-11 located at 8111 Tower Rd. Omar stated that he received a phone call stating that his house was on fire, so he immediately got into his vehicle and drove home. He said that when he arrived on scene, he spoke with officers who told him that his family was transported to University Hospital, so he left to respond there to be with his family. Oumar said that he got lost and was having a hard time finding the hospital, so he called his manager from 7-11 to help him get to the hospital to be with his family.

Detective BAKER asked Oumar if he was having problems with anyone and he stated that he was not. He was asked if he knew of anyone that wanted to harm him or his family and he stated that he did not.

Detective BAKER asked Oumar about the shift that he worked as he was the only person in the family not present during the fire. He stated that he works **2 PM to 10 PM**. He stated that on this night, he was working **11 PM to 7 AM** although he said that he didn't leave for work until **11:20 PM**.

Adama SOW was interviewed in interview room number 2A by Dulce Solis of the Denver Children's Advocacy Center.

Adama stated that she was upstairs in her room with her mom woke her up and they went towards the window. She said that she could see smoke in the house. She remembers jumping out of the window and her father throwing her over the fence into the neighbor's yard.

At approximately **1:20 PM**, Detective BAKER responded to University Hospital and met with Hawa KA in room number 479 where she was being admitted for injuries caused from jumping out of the window. This interview was captured on body worn camera and Officer Simeon CODO assisted with translation.

REV 1/19

Page 8 of 11



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

Mrs. KA provided the same information as her husband about the events leading up to waking up to the fire alarm. She also provided the same information about the other families living in the home. Mrs. KA stated that she woke up to the fire alarm and her husband tried to go out of the bedroom door and then slammed it shut because the smoke was too thick. She said that they all ran to the window of the bedroom and she could hear Djibril in the hallway trying to gather his family and lead them out of the home. She remembers him saying something to the effect of “this way this way”.

Mrs. KA provided the same information regarding the events after jumping out of the window. She was unaware that the other family did not survive the fire.

Your AFFIANT spoke to Arson Investigators who believe an accelerant was used to start the fire. Their investigation showed that the fire started in the rear of the residence where the suspects were seen on video running from. Their investigation also showed signs of an accelerant found inside of the home from the back-door area indicating that the suspects possibly entered the home. This information was confirmed as the accelerant used was gasoline and evidence of gasoline was found on the interior living room wall.

Based on the information provided, YOUR AFFIANT believes that the suspects entered the home and may have been familiar with the residence.

Moreover, considering the complex nature of this offense, the actions of the suspects as observed on the surveillance videos, and the amount of planning that likely went into a coordinated attack such as this one, Your Affiant believes that there is a reasonable probability that one or more of the suspects searched for directions to the victim’s address prior to the fire. The victim’s home is in a densely populated subdivision and does not “stick out” as a house that would likely have been picked at random. It is not on a corner lot, which would be an easier target residence as there would be more area to move in before and after setting the fire. As such, it is reasonable to believe that this home was targeted, and that the person or persons targeting the home sought its location and/or directions in planning this attack.

On November 19, 2020 at approximately 12:00 p.m., YOUR AFFIANT prepared an affidavit and search warrant to obtain information on who searched a set of terms regarding this address, otherwise known as a Google Keyword Search. YOUR AFFIANT prepared the warrant with specific search terms that Google would look for and compile a list that would then be sent to your Affiant. The warrant was approved by the Honorable Judge Beth Faragher. Once the warrant was signed it was uploaded into the Google LERS database to be processed. The Google reference number is 4754430.

On November 25, 2020, your Affiant received the results from Google. The results were in a spread sheet and contained the date and time the search was conducted, followed by the IP address associated with the search. The information provided to your Affiant was for any accounts where the states IP addresses were resolved. For this search warrant your Affiant requested all accounts which were all resolved to Colorado. Google also provided a list of the anonymized google identifiers that associate to each google account. YOUR AFFIANT was able to narrow this down to the above listed google anonymized identifiers.

The above requested information can assist investigators in identifying persons who showed a particular interest in the exact address that was the subject of the arson/homicide in this case. The limited information





GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

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requested will allow investigators to identify these individuals in order to determine if they were, in fact, involved in this offense and/or whether they had knowledge of the offense. Pursuant to the original query to Google, the accounts identified would have conducted their search of the exact Truckee street address prior to the offense being committed, so the accounts will not relate simply to individuals who may have searched for the address after the crime was reported in the media. There is a reasonable possibility that someone who searched Google for this exact address within the short time period before the arson/homicide was either involved in or had knowledge of this crime.

Based on these facts, Your Affiant believes there exists probable cause to believe that there is material evidence now located in the above described Google account that is crucial to the investigation of this case and the offenses described above, and a search warrant is requested pursuant to 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
**1331 Cherokee Street**  
**Denver, Colorado 80204**  
**(720) 913-6167**  
**Ernest.sandoval@denvergov.org**

*Further requests:*

FURTHER, pursuant to 18 U.S.C. §2705(b) and 18 U.S.C. §2705(b)(1)-(5), and Crim. P. 41 and §16-3-304(2), Your Affiant requests that Google be ordered NOT to disclose the existence of this search warrant and court order to the subscriber for a period of one year from receipt of the requested documents, unless otherwise ordered by a court of competent jurisdiction. Based on the information set forth in this affidavit, notification of the warrant may have an adverse result, as defined in 18 USC §2705(b)(1)-(5), i.e., disclosure may endanger the life or physical safety of an individual; allow flight from prosecution; allow destruction of or tampering with evidence; allow intimidation of potential witnesses; and/or would otherwise seriously jeopardize an investigation or unduly delay a trial.

FURTHER, so as not to disrupt this ongoing investigation, Your Affiant also requests that this Court order Google NOT to take adverse action against the subject account, such as disabling or terminating the account, because of this warrant.

FURTHER, pursuant to Crim. P. 41 and §16-3-304(2), Your Affiant requests that this Court seal the affidavit and search warrant and court order for production of records that has been filed with the court in this matter. The affidavit establishes grounds to believe that disclosure at this time of the affidavit and search warrant and court order for production of records would be contrary to the public interest. Such order for sealing does not apply to representatives of the Denver Police Department, Denver District Attorney's Office, and other law enforcement officers, but those individuals are precluded from further dissemination prior to expiration of this order without an order of the court handling the case.

Your affiant has read the above and foregoing application and affidavit, and the statements therein contained are true to the best of his knowledge, information, and belief.

REV 1/19

Page 10 of 11



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

Ernest Sandoval 06154  
Signature of Affiant

This Affidavit has been read and approved by Supervisor: Sgt Abel Salas 05088

**Review & Approval**

<u>/s/ Katherine A. Hansen</u>	Deputy District Attorney, Reg. No. 25464	<u>December 3, 2020 at 3:00 p.m.</u>
District Attorney – Signature or eSignature	District Attorney Title & Registration #	Date and Time

Subscribed under oath before me on 12/4/2020 at 1:30 pm

Beth A. Faragher  
Signature of Judge

Beth A. Faragher  
Printed Name of Judge



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

County/District Court  
City and County of Denver, Colorado



Case No. 2020-472026

**SEARCH WARRANT AND COURT ORDER FOR PRODUCTION OF RECORDS PURSUANT TO 18 U.S.C. §2703, AND C.R.S. §16-3-301, §16-3-301.1 AND §19-2-504**

The Court, upon review of an affidavit filed by Detective Ernest Sandoval 06154, which is incorporated by reference, in support of the issuance of this order, hereby orders the production of the following records, for which there is probable cause to believe are in the actual or constructive possession or control of the business entity known or described as:

**Google Inc.  
Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043**

**Registered Agent of Google  
Corporation Service Company  
1900 W. Littleton Boulevard,  
Littleton, CO 80120**

**Via Google online <https://lers.google.com>, the Law Enforcement Response System operated by this company**

This Court also finds that there is probable cause to issue this search warrant and court order for production of the following described records or information pursuant to the provisions of 18 U.S.C. §2703, the Colorado Rules of Criminal Procedure, CRS §16-3-301, §16-3-301.1, and §19-2-504, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state, or the seizure of which is expressly required, authorized or permitted by any statute of this state, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

**Target identifier: Google account information belonging to anonymized accounts 99279, 85283, 80068, 51813, and 31891 associated with Google LERS reference number 4574430.**

**For the period beginning and inclusive of 07/23/2020 through and to include PRESENT DATE:**

**The following record(s) will be searched for and if found seized:**

- **Basic subscriber information for the subject account(s), to include full name, date of birth, gender, other contact email addresses, physical address, telephone numbers, and any other personal identifiers;**
- **The date on which the account was created, the length of service, the IP address with associated Port ID(s) used to register the account;**
- **Any other Gmail addresses associated with the account(s) listed above along with all personal identifiers related to those Gmail accounts;**



GENERAL OFFENSE HARDCOPY  
DISTRICT ATTORNEY ELECTRONIC SUBMISSION  
(HOMICIDE - OTHER)

- All Google/Gmail accounts associated to the above account(s) by device or cookie: to include User ID, subscriber name, cellphone number and email address for such associated accounts;
- All devices(s) used and otherwise associated with the subscriber's account(s) – ESN, ICCID, IMSI, IMEI and MAC address numbers and activation dates;
- All log-in IP addresses with Port IDs associated with the account(s) identified above;
- All location data collected, whether derived from Global Positioning System (GPS) data, cell site/cell tower triangulation/trilateration, precision measurement information such as timing advance or per call measurement data, Wi-Fi location, and all Google SensorVault data, including coordinates, timeline data, and dates and times of all locations where the account was accessed or used;
- All records or other information stored at any time by an individual using the subject account(s), including address books, contacts (including groups and buddy lists), calendar data, electronic chat content;
- All records pertaining to communications between Google and any person regarding the account(s), including contacts with support services and records of actions taken;
- All files, keys, or other information necessary to decrypt any data produced in an encrypted form, when available to the provider;
- All privacy settings and account verification methods, including two factor authentication associated phone number(s);
- All means and source of payment (including any credit or bank account numbers) used and/or stored in connection with the Google account(s) identified above, purchase history, and subscriptions.

\*These records will be searched by the Denver Police Department and/or the Denver District Attorney's Office for evidence pertaining to the Homicide that occurred during August 5, 2020 at approximately 0245 MST.

For which a search warrant and court order for production of records may be issued upon one or more of the grounds set forth in 18 U.S.C. §2703, C.R.S. §16-3-301, §16-3-301.1, §19-2-504, and Crim. P. 41, namely that this property is stolen or embezzled, or is designed or intended for use as a means of committing a criminal offense, or is or has been used as a means of committing a criminal offense, or the possession of which is illegal, or would be material evidence in a subsequent criminal prosecution in this state or another state or federal court, or the seizure of which is expressly required, authorized or permitted by any statute of this state or the United States, or which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health, or which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

This warrant and court order for the production of records shall be served upon the business entity to whom it is directed within fourteen days after being signed by the court.

The business entity is ORDERED to produce the above described records to the affiant or his/her designee within fourteen (14) days of service.

The records should be provided to:  
**Detective Ernest Sandoval 06154**  
1331 Cherokee Street  
Denver, Colorado 80204  
(720) 913-6167

REV 11/18

Page 2 of 3



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)

Ernest.sandoval@denvergov.org

The business entity shall also provide a notarized attestation of accuracy that the records produced represent complete and accurate copies of all records identified in this order that are in the actual or constructive control of the business entity.

Upon receiving the records from the business entity, the peace officer named herein shall file a return and inventory with the court indicating the records that have been received and the date and time upon which the records were received.

IT IS FURTHER ORDERED:

- 1) Pursuant to 18 U.S.C. §§ 2703(b)(1)(A) and 2705(b)(1)-(5) that Google and any of its employees or third party vendors processing this request not disclose the existence of this search warrant to any person for the period of one year, including the subscriber, other than its personnel essential for compliance with the execution of this warrant;
2) That Google and any of its employees or third party vendors processing this request not take adverse action against the subject account because of this warrant, such as shutting it down, so as not to disrupt this ongoing investigation;
3) That this search warrant and affidavit be sealed from public release of the information herein contained, to assure that this case is not compromised so that witnesses mentioned in this warrant can be protected from any type of early reprisals, and so that this investigation can continue.

Date 12/4/2020
Time 2:02 pm

In Denver, Colorado

Beth A. Faragher
Signature of Judge

Beth A. Faragher
Printed Name of Judge

# Attachment 19

Report of Investigation Number 7

# Report of Investigation

Title of Investigation: 5312 Truckee St. Fire	Investigation Number: 788015-20-0098	Report Number: 7
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DATE FILED: June 30, 2022 12:03 PM  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 2021CR20001

## SUMMARY OF EVENT:

SA Sonnendecker reviewed responsive data from Google pursuant to a search warrant for the Google account of Dillan SIEBERT.

## NARRATIVE:

1. Denver Police Department (DPD) Detective Ernie Sandoval obtained a search warrant to Google requesting information about users who queried 5312 Truckee St., Denver, CO and different derivatives of that query. Responsive data from Google indicated at least five users who used Google products to query that address or derivatives of that address from 07/23/2020 – 08/05/2020. Because the user attribution information was anonymized in Google’s responsive data, Det. Sandoval obtained a second search warrant to Google for subscriber information of the five accounts identified in the initial responsive data. In reviewing the responsive data from Google relating to those accounts, SA Sonnendecker noted the following:
  - An account was subscribed to mami diol with an email address of mamidiol@gmail.com. SA Sonnendecker knew from the investigation that the DIOL family were victims in this matter.
  - An account was subscribed to Dillon SIEBERT with an email address of dllnsiebert@gmail.com. SA Sonnendecker noted the recovery SMS phone number in the subscriber information was (720) 726-0719.
  - An account was subscribed to Kevin BUI with an email address of kevin14bui@gmail.com. SA Sonnendecker noted the recovery SMS phone number in the subscriber information was (720) 382-0015.
  - An account was subscribed to Gavin SEYMOUR with an email address of gavin.seymour7@gmail.com. SA Sonnendecker noted the recovery SMS phone number in the subscriber information was (720) 643-6688.
  - An account was subscribed to Elizabeth MARTINEZ with an email address of liizabeth006@gmail.com. SA Sonnendecker noted the recovery SMS phone number in the subscriber information was (505) 306-8584 and a recovery email of Lizzzyy006@yahoo.com.
2. Investigators conducted investigative research on the subscribers and were able to determine that SEYMOUR, SIEBERT, and BUI lived in the Lakewood, CO area, were known associates, and were juveniles. Based on that information from the responsive data from the Google returns and other investigative findings, Det. Sandoval

Prepared by: Mark Sonnendecker	Title: Special Agent, Denver IV (Intelligence) Field Office	Signature:	Date:
Authorized by: Rebecca Sauerhaft	Title: Group Supervisor, Denver II Field Office	Signature:	Date:
Second level reviewer (optional): David S. Booth	Title: Special Agent in Charge, Denver Field Division	Signature:	Date:

obtained another warrant to Google for data relating specifically to the SEYMOUR, SIEBERT, and BUI accounts.

3. This report documents SA Sonnendecker's review of responsive data from Google relating to **Dillan SIEBERT's account**. SA Sonnendecker manually searched the results and also used Cellebrite's Physical Analyzer forensic software to process the responsive data. The original data from Google has timestamps in Universal Coordinated Time (UTC). The Physical Analyzer program allowed for the adjustment of time to Mountain Standard Time/Mountain Daylight Time as appropriate. In reviewing SIEBERT's search history, SA Sonnendecker noted the following:
  - On 07/28/2020, there were searches for 5312 Truckee St, Denver, CO within Google Maps. Those searches occurred between 9:21PM and 9:24PM.
  - On 08/04/2020, directions to Party City, 7735 W. Long Dr., Littleton, CO were searched with Google Maps at 6:03:52PM.
  - On 08/15/2020, there were several searches within Google Maps to 10676 W. Rockland Dr. and numerous name derivatives relating to the address between 11:37PM and 11:42PM. This address is the known address of suspect Kevin BUI.
4. SA Sonnendecker reviewed emails sent/received and noted a number of emails from Apple specific to use of an Apple iCloud account. In reviewing those emails, SA Sonnendecker noted that the Apple ID attributed to SIEBERT's iCloud account was his Google email address – dllnsiebert@gmail.com.
5. While reviewing the data in Cellebrite's Physical Analyzer program, SA Sonnendecker tagged items of evidentiary value. He then exported a PDF file containing the tagged items. Relevant dates, times, and other data for information referenced in this report can be found in the attached PDF file. It should be noted that this review and tagging of items should not be considered all-inclusive of potentially relevant information within the responsive data from Google.

ATTACHMENT:

-PDF file containing tagged items of investigative/evidentiary value from Google account relating to Dillan SIEBERT.



## Attachment 20

Comcast Warrant Return



2774 03/19/21

# DENVER POLICE DEPARTMENT

PEOPLE v BUI, KEVIN 21CR20000

GO# 2020-472026

2774 03/19/21 OPEN

## GENERAL OFFENSE HARDCOPY

DISTRICT ATTORNEY ELECTRONIC SUBMISSION

(HOMICIDE - OTHER)

### Related Attachment - SCANNED CASE/SUSPECT DOCUMENTS

DATE FILED: June 30, 2022 12:03 PM  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 2021CR20001

Description COMCAST RETURNS

Reference Number



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)



Legal Response Center
1800 Bishops Gate Boulevard
Mount Laurel, NJ 08054
866-947-8572 Tel
866-947-5587 Fax

CONFIDENTIAL

December 14, 2020

Detective Ernest Sandoval
Denver Police Department
1331 Cherokee St
Denver, CO 80204

RE: Search Warrant
Comcast File #: LCR548483 & 548485

Dear Detective Sloan:

The Search Warrant received on 12-10-2020 with respect to the above referenced matter has been forwarded to the Legal Response Center for a reply. The Search Warrant requests Comcast to produce certain subscriber records pertaining to the following IP Addresses:

- 2601:285:100:8070:d039:e59a:7929:a966 assigned on 07-28-2020 at 08:46 PM MT, 08:47 PM MT, 08:50 PM MT and 11:23 PM MT
2601:285:100:8070:d10e:82a:d77c:399a assigned on 07-28-2020 at 08:58 PM MT, 08:59 PM MT, 09:00 PM MT and 09:06 PM MT

Based on the information provided pursuant to the Search Warrant, the subscriber information obtained is provided below:

Subscriber Name: STEPHANIE JOHNSON
Service Address: 13547 W EXPOSITION DR LAKEWOOD, CO 802283041
Billing Address: 13547 W EXPOSITION DR LAKEWOOD, CO 802283041
Telephone #: (720) 284-8895
Type of Service: High Speed Internet Service
Account Number: 8497404483696602
Start of Service: Unknown
Account Status: Active
IP Assignment: Dynamically Assigned
Wifi IP History: None Found
Current IP: See Attached
MAC Address: 00:1d:d6:ab:78:22 98:9d:5d:7b:bc:5b
E-mail User Ids: tyler481 (the above user ID(s) end in @comcast.net)

If you have any questions regarding this matter, please feel free to call 866-947-8572.

Very Truly Yours,
Comcast Legal Response Center



2776 03/19/21

# DENVER POLICE DEPARTMENT

PEOPLE v BUI, KEVIN 21CR20000

GO# 2020-472026

2776 03/19/21 OPEN

## GENERAL OFFENSE HARDCOPY

DISTRICT ATTORNEY ELECTRONIC SUBMISSION

(HOMICIDE - OTHER)

Comcast File# LCR548483 & 548485

Current IP (As of Date and Time of Search Warrant, 12/04/2020 at 21:17:00 UTC)

73.243.72.122

2001:0558:6040:003D:8416:894A:1CE6:4C64

Start Address	End Address
2601:0285:0100:8070:0000:0000:0000:0000	2601:0285:0100:807F:FFFF:FFFF:FFFF:FFFF
IPv6 Prefix	



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)



Legal Response Center
1800 Bishops Gate Boulevard
Mount Laurel, NJ 08054
866-947-8572 Tel
866-947-5587 Fax

CONFIDENTIAL

December 14, 2020

Detective Ernest Sandoval
Denver Police Department
1331 Cherokee Street
Denver, Colorado (CO) 80204

RE: Search Warrant
Comcast File #: LCR548484

Dear Detective Sandoval:

The Search Warrant received on 12-10-2020 with respect to the above referenced matter has been forwarded to the Legal Response Center for a reply. The Search Warrant requests Comcast to produce certain subscriber records pertaining to the following IP Address: 2601:285:300:6e30:9440:c949:16e1:f7ee assigned on 07-28-2020 at 08:57 PM MT, 09:00 PM MT and 09:01 PM MT.

Based on the information provided pursuant to the Search Warrant, the subscriber information obtained is provided below:

Target Account
Subscriber Name: TANYA BUI
Service Address: 481 S YOUNGFIELD CIR
LAKEWOOD, CO 802282582
Billing Address: 481 S YOUNGFIELD CIR
LAKEWOOD, CO 802282582
Telephone #: (720) 840-2032
Type of Service: High Speed Internet Service
Account Number: 8497404484042301
Start of Service: 11/16/2017
Account Status: Disconnect 2020-09-01
IP Assignment: Dynamically Assigned
Wifi IP History: None Found
MAC Address: 84:17:ef:f2:bf:8c
9c:97:26:ad:94:89
E-mail User Ids: None Found
Current Account
Subscriber Name: TANYA BUI
Service Address: 10676 W ROCKLAND DR
LITTLETON, CO 801275093

If you have any questions regarding this matter, please feel free to call 866-947-8572.

Very Truly Yours,
Comcast Legal Response Center



GENERAL OFFENSE HARDCOPY
DISTRICT ATTORNEY ELECTRONIC SUBMISSION
(HOMICIDE - OTHER)



Legal Response Center
1800 Bishops Gate Boulevard
Mount Laurel, NJ 08054
866-947-8572 Tel
866-947-5587 Fax

BUSINESS CERTIFICATION OF RECORDS

RE: COMCAST FILE #: LCR548483-85

I, Lee Ann Mayo, do hereby certify under penalties of perjury that I am the custodian of records for Comcast Cable Communications, Inc. and the attached documents are true and accurate copies of our business records made, maintained, and/or prepared by our company in the course of regularly conducted business activity.

It is further certified that the records were made at or near the time of the occurrence of the matters set forth, by a person with knowledge or from information transmitted by a person with knowledge of those matters. The records were made and kept in course of regularly conducted business activity and it is a regular practice of our company to make and keep such records.

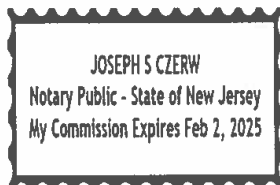
12/14/2020

Lee Ann Mayo (handwritten signature)

Date

Electronic Signature

SWORN TO AND SUBSCRIBED before me on the 14th day of December, 2020



Joseph S. Czerw (Electronically Signed)

Notary Public in and for the State of New Jersey

Notary Public's printed name:

Joseph S. Czerw

My commission expires:

# Exhibit 21

Google Terms of Service

Effective March 31, 2020

[Archived versions](#)

DATE FILED: June 30, 2022 12:03 PM  
FILING ID: 2D0BFA23AF560  
CASE NUMBER: 2021CR20001

## What's covered in these terms

We know it's tempting to skip these Terms of Service, but it's important to establish what you can expect from us as you use Google [services](#), and what we expect from you.

These Terms of Service reflect [the way Google's business works](#), the laws that apply to our company, and [certain things we've always believed to be true](#). As a result, these Terms of Service help define Google's relationship with you as you interact with our services. For example, these terms include the following topic headings:

- [What you can expect from us](#), which describes how we provide and develop our services
- [What we expect from you](#), which establishes certain rules for using our services
- [Content in Google services](#), which describes the intellectual property rights to the content you find in our services – whether that content belongs to you, Google, or others
- [In case of problems or disagreements](#), which describes other legal rights you have, and what to expect in case someone violates these terms

Understanding these terms is important because, by using our services, you're agreeing to these terms.

Besides these terms, we also publish a [Privacy Policy](#). Although it's not part of these terms, we encourage you to read it to better understand how you can [update, manage, export, and delete your information](#).

## Service provider

Google [services](#) are provided by, and you're contracting with:



Google LLC

organized under the laws of the State of Delaware, USA, and operating under the laws of the USA

1600 Amphitheatre Parkway  
Mountain View, California 94043  
USA

## Age requirements

If you're under the [age required to manage your own Google Account](#), you must have your parent or legal guardian's permission to use a Google Account. Please have your parent or legal guardian read these terms with you.

If you're a parent or legal guardian, and you allow your child to use the [services](#), then these terms apply to you and you're responsible for your child's activity on the services.

Some Google services have additional age requirements as described in their [service-specific additional terms and policies](#).

---

## Your relationship with Google

These terms help define the relationship between you and Google. Broadly speaking, we give you permission to use our [services](#) if you agree to follow these terms, which reflect [how Google's business works and how we earn money](#). When we speak of "Google," "we," "us," and "our," we mean Google LLC and its [affiliates](#).

## What you can expect from us

Provide a broad range of useful services

We provide a broad range of services that are subject to these terms, including:

- apps and sites (like Search and Maps)

- platforms (like Google Play)
- integrated services (like Maps embedded in other companies' apps or sites)
- devices (like Google Home)

Our services are designed to work together, making it easier for you to move from one activity to the next. For example, Maps can remind you to leave for an appointment that appears in your Google Calendar.

## Improve Google services

We're constantly developing new technologies and features to improve our services. For example, we invest in artificial intelligence that uses machine learning to detect and block spam and malware, and to provide you with innovative features, like simultaneous translations. As part of this continual improvement, we sometimes add or remove features and functionalities, increase or decrease limits to our services, and start offering new services or stop offering old ones.

If we make material changes that negatively impact your use of our services or if we stop offering a service, we'll provide you with reasonable advance notice and an opportunity to export your content from your Google Account using [Google Takeout](#), except in urgent situations such as preventing abuse, responding to legal requirements, or addressing security and operability issues.

## What we expect from you

### Follow these terms and service-specific additional terms

The permission we give you to use our services continues as long as you meet your responsibilities in:

- **these terms**
- **service-specific additional terms**, which could, for example, include things like additional age requirements

We also make various policies, help centers, and other resources available to you to answer common questions and to set expectations about using our services. These resources include our [Privacy Policy](#), [Copyright Help Center](#), [Safety Center](#), and other pages accessible from our [policies site](#).

Although we give you permission to use our services, we retain any [intellectual property rights](#) we have in the services.

## Respect others

Many of our services allow you to interact with others. We want to maintain a respectful environment for everyone, which means you must follow these basic rules of conduct:

- comply with applicable laws, including export control, sanctions, and human trafficking laws
- respect the rights of others, including privacy and intellectual property rights
- don't abuse or harm others or yourself (or threaten or encourage such abuse or harm) – for example, by misleading, defrauding, defaming, bullying, harassing, or stalking others
- don't abuse, harm, interfere with, or disrupt the services

Our [service-specific additional terms and policies](#) provide additional details about appropriate conduct that everyone using those services must follow. If you find that others aren't following these rules, many of our services allow you to [report abuse](#). If we act on a report of abuse, we also provide a fair process as described in the [Taking action in case of problems](#) section.

## Permission to use your content

Some of our services are designed to let you upload, submit, store, send, receive, or share [your content](#). You have no obligation to provide any content to our services and you're free to choose the content that you want to provide. If you choose to upload or share content, please make sure you have the necessary rights to do so and that the content is lawful.

### License

[Your content](#) remains yours, which means that you retain any [intellectual property rights](#) that you have in your content. For example, you have intellectual property rights in the creative content you make, such as reviews you write. Or you may have the right to share someone else's creative content if they've given you their permission.

We need your permission if your intellectual property rights restrict our use of your content. You provide Google with that permission through this license.

## What's covered

This license covers [your content](#) if that content is protected by intellectual property rights.

## What's not covered

- This license doesn't affect your privacy rights – it's only about your intellectual property rights
- This license doesn't cover these types of content:
  - publicly-available factual information that you provide, such as corrections to the address of a local business. That information doesn't require a license because it's considered common knowledge that everyone's free to use.
  - feedback that you offer, such as suggestions to improve our services. Feedback is covered in the [Service-related communications](#) section below.

## Scope

This license is:

- worldwide, which means it's valid anywhere in the world
- non-exclusive, which means you can license your content to others
- royalty-free, which means there are no fees for this license

## Rights

This license allows Google to:

- host, reproduce, distribute, communicate, and use your content – for example, to save your content on our systems and make it accessible from anywhere you go

- publish, publicly perform, or publicly display your content, if you've made it visible to others
- modify and create derivative works based on your content, such as reformatting or translating it
- sublicense these rights to:
  - other users to allow the services to work as designed, such as enabling you to share photos with people you choose
  - our contractors who've signed agreements with us that are consistent with these terms, only for the limited purposes described in the [Purpose](#) section below

## Purpose

This license is for the limited purpose of:

- **operating and improving the services**, which means allowing the services to work as designed and creating new features and functionalities. This includes using automated systems and algorithms to analyze your content:
  - for spam, malware, and illegal content
  - to recognize patterns in data, such as determining when to suggest a new album in Google Photos to keep related photos together
  - to customize our services for you, such as providing recommendations and personalized search results, content, and ads (which you can change or turn off in [Ads Settings](#))

This analysis occurs as the content is sent, received, and when it is stored.

- **using content you've shared publicly to promote the services**. For example, to promote a Google app, we might quote a review you wrote. Or to promote Google Play, we might show a screenshot of the app you offer in the Play Store.
- **developing new technologies and services** for Google consistent with these terms

## Duration

This license lasts for as long as your content is protected by intellectual property rights.

If you remove from our services any content that's covered by this license, then our systems will stop making that content publicly available in a reasonable amount of time. There are two exceptions:

- If you already shared your content with others before removing it. For example, if you shared a photo with a friend who then made a copy of it, or shared it again, then that photo may continue to appear in your friend's Google Account even after you remove it from your Google Account.
- If you make your content available through other companies' services, it's possible that search engines, including Google Search, will continue to find and display your content as part of their search results.

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## Using Google services

### Your Google Account

If you meet [these age requirements](#) you can [create a Google Account](#) for your convenience. Some [services](#) require that you have a Google Account in order to work – for example, to use Gmail, you need a Google Account so that you have a place to send and receive your email.

You're responsible for what you do with your Google Account, including taking reasonable steps to keep your Google Account secure, and we encourage you to regularly use the [Security Checkup](#).

### Using Google services on behalf of an organization

Many [organizations](#), such as businesses, non-profits, and schools, take advantage of our [services](#). To use our services on behalf of an organization:

- an authorized representative of that organization must agree to these terms
- your organization's administrator may assign a Google Account to you. That administrator might require you to follow additional rules and may be able to access or disable your Google Account.

## Service-related communications

To provide you with our services, we sometimes send you service announcements and other information. To learn more about how we communicate with you, see Google's [Privacy Policy](#).

If you choose to give us feedback, such as suggestions to improve our services, we may act on your feedback without obligation to you.

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## Content in Google services

### Your content

Some of our [services](#) give you the opportunity to make your content publicly available – for example, you might post a product or restaurant review that you wrote, or you might upload a blog post that you created.

- See the [Permission to use your content](#) section for more about your rights in [your content](#), and how your content is used in our services
- See the [Removing your content](#) section to learn why and how we might remove user-generated content from our services

If you think someone is infringing your [intellectual property rights](#), you can [send us notice of the infringement](#) and we'll take appropriate action. For example, we suspend or close the Google Accounts of repeat [copyright](#) infringers as described in our [Copyright Help Center](#).

### Google content

Some of our [services](#) include content that belongs to Google – for example, many of the visual illustrations you see in Google Maps. You may use Google's content as allowed by these terms and any [service-specific additional terms](#), but we retain any intellectual property rights that we have in our content. Don't remove, obscure, or alter any of our branding, logos, or legal notices. If you want to use our branding or logos, please see the [Google Brand Permissions](#) page.

## Other content

Finally, some of our [services](#) give you access to content that belongs to other people or [organizations](#) – for example, a store owner’s description of their own business, or a newspaper article displayed in Google News. You may not use this content without that person or organization’s permission, or as otherwise allowed by law. The views expressed in other people or organizations’ content are theirs, and don’t necessarily reflect Google’s views.

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## Software in Google services

Some of our [services](#) include downloadable software. We give you permission to use that software as part of the services.

The license we give you is:

- worldwide, which means it’s valid anywhere in the world
- non-exclusive, which means that we can license the software to others
- royalty-free, which means there are no fees for this license
- personal, which means it doesn’t extend to anyone else
- non-assignable, which means you’re not allowed to assign the license to anyone else

Some of our services include software that’s offered under open source license terms that we make available to you. Sometimes there are provisions in the open source license that explicitly override parts of these terms, so please be sure to read those licenses.

You may not copy, modify, distribute, sell, or lease any part of our services or software. Also, you may not reverse engineer or attempt to extract any of our source code unless you have our written permission or applicable law lets you do so.

When a service requires or includes downloadable software, that software sometimes updates automatically on your device once a new version or feature is available. Some services let you adjust your automatic update settings.



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## In case of problems or disagreements

By law, you have the right to (1) a certain quality of service, and (2) ways to fix problems if things go wrong. These terms don't limit or take away any of those rights. For example, if you're a [consumer](#), then you continue to enjoy all legal rights granted to consumers under applicable law.

## Warranty

We provide our [services](#) using reasonable skill and care. If we don't meet the quality level described in this [warranty](#), you agree to tell us and we'll work with you to try to resolve the issue.

## Disclaimers

The only commitments we make about our [services](#) (including the content in the services, the specific functions of our services, or their reliability, availability, or ability to meet your needs) are (1) described in the [Warranty](#) section, (2) stated in the [service-specific additional terms](#), or (3) provided under applicable laws. We don't make any other commitments about our services.

And unless required by law, we don't provide implied warranties, such as the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

## Liabilities

### For all users

These terms only limit our responsibilities as allowed by applicable law. Specifically, these terms don't limit Google's [liability](#) for death or personal injury, fraud, fraudulent misrepresentation, gross negligence, or willful misconduct.

Other than the rights and responsibilities described in this section (In case of problems or disagreements), Google won't be responsible for any other losses, unless they're caused by our breach of these terms or [service-specific additional terms](#).

## For business users and organizations only

If you're a [business user](#) or [organization](#), then to the extent allowed by applicable law:

- You'll [indemnify](#) Google and its directors, officers, employees, and contractors for any third-party legal proceedings (including actions by government authorities) arising out of or relating to your unlawful use of the [services](#) or violation of these terms or [service-specific additional terms](#). This indemnity covers any liability or expense arising from claims, losses, damages, judgments, fines, litigation costs, and legal fees.
- Google won't be responsible for the following liabilities:
  - loss of profits, revenues, business opportunities, goodwill, or anticipated savings
  - indirect or consequential loss
  - punitive damages
- Google's total liability arising out of or relating to these terms is limited to the greater of (1) US\$500 or (2) 125% of the fees that you paid to use the relevant services in the 12 months before the breach

If you're legally exempt from certain responsibilities, including [indemnification](#), then those responsibilities don't apply to you under these terms. For example, the United Nations enjoys certain immunities from legal obligations and these terms don't override those immunities.

## Taking action in case of problems

Before taking action as described below, we'll provide you with advance notice when reasonably possible, describe the reason for our action, and give you an opportunity to fix the problem, unless we reasonably believe that doing so would:

- cause harm or [liability](#) to a user, third party, or Google
- violate the law or a legal enforcement authority's order
- compromise an investigation
- compromise the operation, integrity, or security of our [services](#)

## Removing your content

If we reasonably believe that any of [your content](#) (1) breaches these terms, [service-specific additional terms or policies](#), (2) violates applicable law, or (3) could harm our users, third parties, or Google, then we reserve the right to take down some or all of that content in accordance with applicable law. Examples include child pornography, content that facilitates human trafficking or harassment, and content that infringes someone else's [intellectual property rights](#).

## Suspending or terminating your access to Google services

Google reserves the right to suspend or terminate your access to the services or delete your Google Account if any of these things happen:

- you materially or repeatedly breach these terms, [service-specific additional terms or policies](#)
- we're required to do so to comply with a legal requirement or a court order
- we reasonably believe that your conduct causes harm or [liability](#) to a user, third party, or Google – for example, by hacking, phishing, harassing, spamming, misleading others, or scraping content that doesn't belong to you

If you believe your Google Account has been suspended or terminated in error, [you can appeal](#).

Of course, you're always free to stop using our services at any time. If you do stop using a service, we'd [appreciate knowing why](#) so that we can continue improving our services.

## Settling disputes, governing law, and courts

For information about how to contact Google, please visit our [contact page](#).

California law will govern all disputes arising out of or relating to these terms, [service-specific additional terms](#), or any related [services](#), regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.

To the extent that applicable local law prevents certain disputes from being resolved in a California court, then you can file those disputes in your local courts. Likewise, if applicable local law prevents

your local court from applying California law to resolve these disputes, then these disputes will be governed by the applicable local laws of your country, state, or other place of residence.

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## About these terms

By law, you have certain rights that can't be limited by a contract like these terms of service. These terms are in no way intended to restrict those rights.

These terms describe the relationship between you and Google. They don't create any legal rights for other people or [organizations](#), even if others benefit from that relationship under these terms.

We want to make these terms easy to understand, so we've used examples from our [services](#). But not all services mentioned may be available in your country.

If these terms conflict with the [service-specific additional terms](#), the additional terms will govern for that service.

If it turns out that a particular term is not valid or enforceable, this will not affect any other terms.

If you don't follow these terms or the [service-specific additional terms](#), and we don't take action right away, that doesn't mean we're giving up any rights that we may have, such as taking action in the future.

We may update these terms and [service-specific additional terms](#) (1) to reflect changes in our services or how we do business – for example, when we add new services, features, technologies, pricing, or benefits (or remove old ones), (2) for legal, regulatory, or security reasons, or (3) to prevent abuse or harm.

If we materially change these terms or [service-specific additional terms](#), we'll provide you with reasonable advance notice and the opportunity to review the changes, except (1) when we launch a new service or feature, or (2) in urgent situations, such as preventing ongoing abuse or responding to legal requirements. If you don't agree to the new terms, you should remove [your content](#) and stop using the services. You can also end your relationship with us at any time by closing your Google Account.

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## affiliate

An entity that belongs to the Google group of companies, which means Google LLC and its subsidiaries, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, and Google Dialer Inc.

## business user

An individual or entity who is not a consumer (see consumer).

## consumer

An individual who uses Google services for personal, non-commercial purposes outside of their trade, business, craft, or profession. (See business user)

## copyright

A legal right that allows the creator of an original work (such as a blog post, photo, or video) to decide if and how that original work may be used by others.

## disclaimer

A statement that limits someone's legal responsibilities.

## EU Platform-to-Business Regulation

The Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services.

## indemnify or indemnity

An individual or organization's contractual obligation to compensate the losses suffered by another individual or organization from legal proceedings such as lawsuits.

## intellectual property rights (IP rights)

Rights over the creations of a person's mind, such as inventions (patent rights); literary and artistic works (copyright); designs (design rights); and symbols, names, and images used in commerce (trademarks). IP rights may belong to you, another individual, or an organization.

## liability

Losses from any type of legal claim, whether the claim is based on a contract, tort (including negligence), or other reason, and whether or not those losses could have been reasonably anticipated or foreseen.

## organization

A legal entity (such as a corporation, non-profit, or school) and not an individual person.

## services

Google services that are subject to these terms are the products and services listed at <https://policies.google.com/terms/service-specific>, including:

- Google apps and sites (like Search and Maps)
- platforms (like Google Play)
- integrated services (like Maps embedded in other companies' apps or sites)
- devices (like Google Home)

## trademark

Symbols, names, and images used in commerce that are capable of distinguishing the goods or services of one individual or organization from those of another.

## warranty

An assurance that a product or service will perform to a certain standard.

## your content

Things that you write, upload, submit, store, send, receive, or share with Google using our services, such as:

- Docs, Sheets, and Slides you create
- blog posts you upload through Blogger
- reviews you submit through Maps
- videos you store in Drive
- emails you send and receive through Gmail
- pictures you share with friends through Photos
- travel itineraries that you share with Google