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IN THE DISTRICT COURT OF THE FOURTH DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER,
Defendant.

Case No. CR01-24-31665

STATE'S OBJECTION TO
DEFENDANT'S MOTION TO
SUPPRESS AND MEMORANDUM
IN SUPPORT

RE: AT&T FIRST WARRANT

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney and respectfully responds to "Defendant's Motion to Suppress and Memorandum in Support Re: AT&T First Warrant" filed on November 13, 2024.¹

¹ Defendant's filing refers to a "contemporaneously filed Motion for an Order suppressing all evidence gathered by law enforcement from its search of his AT&T account." However, the State is not aware of a separate "contemporaneous" filing, so the State's response is only to the contents of the Defendant's singular "Motion to Suppress and Memorandum in Support."

FACTS

Regarding the Defendant's represented "FACTS," the State respectfully refers the Court to the State's Exhibits S-1 and S-2 filed in support of his instant motion as opposed to relying on the Defendant's subjective summary and interpretation that begins at Page 2. The State's Exhibits are attached as follows:

- Affidavit for Search Warrant for AT&T with appended Exhibits (State's Exhibit S-1)
- AT&T Search Warrant (State's Exhibit S-2)

ARGUMENTS

I. DEFENDANT HAS NOT DEMONSTRATED THE SEARCH WARRANT AFFIDAVITS CONTAIN INTENTIONALLY OR RECKLESSLY FALSE STATEMENTS OR OMISSIONS.

As the Defendant correctly acknowledges, he has a privacy interest in his AT&T account records. As such, the State sought and was granted a search warrant to review those records. Defendant mounts an attack on the warrant under *Franks*. For the reasons articulated in the State's response to Defendant's *Franks* motion, this argument fails. The State incorporates its argument and pleadings on the *Franks* issue as opposed to restating the same.

II. THE AT&T WARRANT WAS NOT A GENERAL WARRANT

A. Fourth Amendment Analysis Regarding Particularity

For the Court's convenience, the State incorporates its analysis in "State's Objection to Defendant's Motion to Suppress and Memorandum in Support Re: Apple First Warrant" regarding the applicable case law to apply for Fourth Amendment analysis as opposed to restating the same. See pages 6-11.

B. *State v Wilson*

Defendant additionally relies on *State v Wilson*, 884 S.E.2d 298, 300-01 (Ga. 2023) so the State will address it here. Unfortunately for the Defendant, his reliance is misplaced because *Wilson* is not binding on this Court and is factually distinct from this case. *Wilson* dealt with the particularity requirement specific to a cell phone warrant. Since the particularity determination is fact specific, it is important to understand the facts in *Wilson*.

In *Wilson*, a man was shot and killed at an apartment complex. After investigating at the crime scene, officers determined the shooter was a “black male driving a teal 1990s model Ford Aerostar van with a missing hubcap.” Using a license plate reader system, officers located a matching vehicle a few miles from the location. Wilson was the registered owner of the vehicle and was arrested. Pursuant to a search warrant, officers located two cell phones belonging to Wilson. An investigator subsequently sought a second warrant for a “forensic examination” of the cell phone based on a search warrant application. The magistrate issued a warrant for “all stored electronic information, including but not limited to; user account information, stored phone information, images, text messages, videos, documents, e-mails, internet activity, call logs, contact information, phonebook, or any deleted data.” The Search Warrant included preprinted language with check boxes from which officers checked which crimes the investigators believed the cell phones were used in the commission of. The *Wilson* Court held the “warrant's complete absence of limiting language distinguishes it from other warrants we have upheld in prior cases based on the presence of so-called ‘residual clauses’ or other limiting language.” The Court took issue with simple listing of crimes as the limiting instruction. The *Wilson* Court noted a warrant that stated “cell phones (to include all data contained therein) ... which are being possessed in violation of Georgia Laws: OCGA § 16-5-1 Murder” was sufficient. Further, “messages photographs, videos, contacts, and

another application data, or any other evidence of the crime of murder” were sufficiently particularized because it limited the search to “items reasonably appearing to be connected to the [the victim’s] murder.”

The Georgia Supreme Court’s decision in *Wilson* has no factual or legal bearing on this case. First, the warrant application was not a simple check the box form and was supported by a substantial probable cause affidavit. The Defendant argues the only limiting factor was the reference to “homicide(s) in this case” however this ignores the actual language of the warrant. The actual language of the Search Warrant (Exhibit S-2) limited the evidence to the “crime(s) of homicide at 1122 King Road in Moscow, Idaho ...on the AT&T account associated with the phone number 509-592-8458 between November 12, 2022, at 12:00 a.m. PST to November 14, 20222 at 12:00 a.m. PSWT).” Exhibit A limited the scope of the warrant even further:

In this particular investigation, I believe that historical phone records between the hours of November 12, 2022, at 12:00 a.m. and November 14, 2022, at 12:00 a.m. would aid in determining whether the 8458 Phone’s activity is consistent with the travel of the white Elantra, whether the 8458 Phone was in the vicinity of the King Road Residence on November 13, 2022, or prior as part of planning this offense, or if the phone was not reporting to the network during the alleged offense due to being turned off.

Additionally, I believe that prospective phone records will aid in determining the location of the 8458 phone and the white Elantra in efforts to determine whether the white Elantra is the same vehicle identified in front of the King Road Residence (Suspect Vehicle 1) on November 13, 2022, at approximately 4:20 a.m.

I am requesting a search warrant for historical phone records between November 12, 2022 at 12:00 a.m. and November 14, at 12:00 a.m. for Kohberger’s phone number 509-592-8458 held by the phone provider AT&T.

States Exhibit S-1, at Pages 11-12. Even if the *Wilson* court’s decision were binding on this Court—and it is not—the comparative lack of specificity in that case’s warrant application is too factually distinct from this case to be of any value.

C. The AT&T Search Warrant, When Considered with the Search Warrant Affidavit and Exhibit A, Satisfies the Particularity Requirement

Idaho allows a search warrant affidavit to support the particularity requirement when the warrant references the affidavit for probable cause. *Adamcik*, 163 Idaho at 124-25, 408 P.3d at 484-85. There are no magic words for reference. As stated above, the AT&T Search Warrant specifically referenced the Search Warrant Affidavit (and appended Exhibit) with the words “Proof, upon oath, this day showing probable cause.” When the AT&T Search Warrant is considered along with the Affidavit for Probable Cause and the appended 12-page Exhibit, the warrant is sufficiently particular and valid. In fact, Corporal Payne set forth why he believed the Defendant’s cell phone would contain evidence of the crime, specifically, why each category of digital evidence listed on the warrant would reveal such information.

While the AT&T Search Warrant was broadly worded regarding each category of digital evidence listed, the Search Warrant Affidavit and appended Exhibit provide the particularity necessary to satisfy the three-factor test set forth in *Teal*. 145 Idaho 985, 989, 188 P.3d 927, 931 (Ct. App. 2008).

First, probable cause existed to seize all items of a particular type described in the warrant. The specific phone number is listed in the affidavits and the individual categories of digital information sought are set forth in detail, including why probable cause existed to search those digital files.

Second, the warrant set out objective standards by which executing officers could differentiate items subject to seizure from those that were not. First, the seizure of items was limited to the crime for which the Defendant was arrested: homicide(s) at 1122 King Road in Moscow, Idaho. Second the warrant was temporally limited to the time of November 12, 2022, at 12:00 a.m.

PST to November 14, 2022, at 12:00 a.m. PST. The locations of digital information were specific allowing the executing officer to differentiate the digital files subject to seizure from those that were note.

Third, the government was not able to describe the items more particularly considering the information available to it at the time the warrant was issued. Detective Payne was seeking evidence that could be located in multiple formats and areas and considering electronic data can be stored anywhere, it was impossible for Detective Payne to narrow down in advance the AT&T areas that should be searched. As a result, if the Court employs a “common sense and realistic” approach and not the “hyper technical” approach the Defense is suggesting, the Court should find the AT&T Search Warrant passes the *Teal* test and is sufficiently particular. *Wheeler v. State*, 135 A.3d 282, (Del. 206) (quoting *U.S. v. Christine*, 687 F2d 749, 69 A.L.R. Fed. 503 (3d Cir. 1982)).

In summary, given the circumstances of this case, the AT&T Search Warrant and its respective Affidavit and appended Exhibit are as particular as can reasonably be expected. Unlike general exploratory warrants, the AT&T Search Warrant allowed the searcher to “reasonably ascertain and identify the things which are authorized to be seized.” *Teal*, 145 Idaho 992 188 P.3d at 924. Thus, suppression is not warranted.

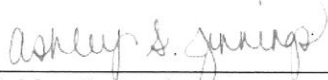
III. IGG

The Defendant raises its objections to the IGG (Investigative Genetic Genealogy) and, again, the State incorporates the State’s arguments in response to the Defendant’s separate IGG Motion as opposed to restating them here.

CONCLUSION

Based on the above, the State respectfully requests the Court deny the Defendant's "Motion to Suppress and Memorandum in Support Re: AT&T First Warrant."

RESPECTFULLY SUBMITTED this 6th day of December 2024.



Ashley S. Jennings
Senior Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS AND MEMORANDUM IN SUPPORT RE: AT&T FIRST WARRANT was served on the following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 2347
Coeur D Alene, ID 83816
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- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 6th day of December, 2024.