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

**STATE OF IDAHO,**

**Plaintiff,**

**V.**

**BRYAN C. KOHBERGER,**

**Defendant.**

**CASE NUMBER CR01-24-31665**

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

**RE: AT&T FIRST WARRANT**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and respectfully submits the following reply to the State's Objection to Defendant's Motion to Suppress and Memorandum in Support regarding the AT&T First Warrant filed with the Court on December 6<sup>th</sup>, 2024. The words "proof upon oath" are not synonymous with "the affidavit for search warrant and

its exhibits are hereby incorporated”. A non-particularized general affidavit in support of a search warrant held in the hands of law enforcement, which never accompanied the electronically served warrant, cannot be relied upon to validate a warrant.

The issue addressed by the state, relating to this motion, is that of particularity. Mr. Kohberger maintains his argument as laid out in his opening memorandum and provides additional argument as the state’s objection is limited to the argument regarding particularity.

The Fourth Amendment requires particularity. “The particularity requirement’s objective is that those searches deemed necessary based on a probable cause determination by a magistrate should be as limited as possible.” *State v. Teal*, 145 Idaho 985, 991, 188 P.3d 927, 931 (2008). The particularity requirement means that a warrant must be “specific enough to enable the person conducting the search reasonably to identify the things authorized to be sized.” *U.S. v. Spilotro*, 800 F.2d 959, 963 (9<sup>th</sup> Cir. 1986). Mr. Kohberger is aware that the Supreme Court has acknowledged “that a court may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant.” *Groh v. Ramirez*, 540 U.S. 551, 557–58, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004). The AT&T warrant was void of any language that the affidavit was incorporated therein. *See* State’s Exhibit S-2, page 1. The State relies incorrectly on *Adamcik v. State*, which upheld a warrant where “the opening paragraph of the warrant unambiguously referenced the affidavit and sworn testimony of Detective Sellers as the basis for the warrant.” 163 Idaho 114, 125 (Idaho S. Ct. 2017). In this case, no such words exist in the warrant. The affidavit nor any of its exhibits were incorporated.

This warrant was served remotely. The affidavit was not made part of the search warrant. The officer serving the warrant did not attach the documents that may have provided clarity.

Those documents are therefore included in this filing as attachments<sup>1</sup>. Where a supporting affidavit does not accompany the search warrant at the time of execution, the detail set out in the affidavit does not cure any deficiencies. *U.S. v. Pilling*, 721 F.Supp. 3d 1113, 1126 (D. Idaho 2024) (warrant suppressed where supporting affidavit was not provided to Apple). An affidavit is considered “to be part of a warrant, and therefore potential curative of any defects, ‘only if (1) the warrant expressly incorporated the affidavit by reference and (2) the affidavit either is attached physically to the warrant or at least accompanies the warrant while agents execute the search.’” *SDI Future Health Inc.*, at 699 (citing *United States v. Kow*, 58 F.3d 423, 429 n. 3 (9th Cir.1995)).

In this situation the warrant contained a broad sweep of all kinds of information relating to location information – tower connections and hand-offs, other location programs, messaging, calls made and account information. The request was a wide sweep. The search warrant was emailed to AT&T and there is no indication the affidavit accompanied the search warrant.

The process described by the State as meeting the criteria of *State v. Teal* simply does not exist. In its incorporated Objection to the Motion to Suppress Apple Warrant, the State indicates that the “investigators necessarily had copies of the affidavit in their possession when they executed the warrant by emailing it to Apple.” *See* Apple Objection, p. 5. Further, the State offers that “[t]he effect of this is that the Affidavit for Search Warrant and appended Exhibit A cure any supposed deficiencies in the naked warrant.” *See* Apple Objection, pp. 5-6. An officer sitting at a computer executing a search warrant by submitting it electronically to AT&T and having the affidavit for search warrant in his hand is different than an officer being physically present when executing a search warrant and having the affidavit for search warrant available for reference.

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<sup>1</sup> *See* Exhibit A - Receipt and Inventory of Warrant for AT&T, Return of the search warrant for AT&T, and Order

In response to the State’s arguments under “Defendant Has Not Demonstrated the Search Warrant Affidavits Contain Intentionally or Recklessly False Statements or Omissions,” Defendant refers the Court to and hereby incorporates “Defendant’s Reply in Support of Defendant’s Motion and Memorandum in Support for a *Franks* Hearing” and “Reply in Support of Motion to Suppress Genetic Information.”

DATED this   19   day of December, 2024.



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ANNE C. TAYLOR  
ANNE TAYLOR LAW, PLLC

#### CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the   19   day of December, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)

Elisa Massoth – via Email: [emassoth@kmrs.net](mailto:emassoth@kmrs.net)

Jay Logsdon – via Email: [Jay.Logsdon@spd.idaho.gov](mailto:Jay.Logsdon@spd.idaho.gov)

Jeffery Nye, Deputy Attorney General – via Email: [Jeff.nye@ag.idaho.gov](mailto:Jeff.nye@ag.idaho.gov)



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JAN 9 2023 AM 7:17  
CLERK OF DIST. COURT  
BY \_\_\_\_\_ DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
Ashley S. Jennings  
Sr. Deputy Prosecuting Attorney  
Latah County Courthouse  
P.O. Box 8068  
Moscow, ID 83843-0568  
(208) 883-2246  
ISB No. 8491  
paservice@latah.id.us

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the Application ) Case No. CR29-  
for a Search Warrant for: )  
)  
AT&T Mobility ) RETURN OF SEARCH WARRANT  
11760 U.S. Highway 1, Suite 300 )  
North Palm Beach, FL 33408-3029 )  
)  
MPD Case No. 22-M09903 )

STATE OF IDAHO )  
 ) :ss.  
County of Latah )

I, CPL Brett Payne, the officer by whom this Warrant was executed, do certify the appended inventory contains a true and detailed account of all property taken by me or other officers pursuant to this Warrant, and that this Warrant and property have been duly returned before Judge Megan E. Marshall at 9:00 o'clock a.m., this 6<sup>th</sup> day of January, 2023.

I certify under penalty of perjury pursuant to the law the State of Idaho that the foregoing is true and correct.

01/06/2023  
(Date)

 #157  
Peace Officer



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF  
THE APPLICATION  
FOR A SEARCH WARRANT FOR

AT&T

11760 U.S. Highway 1, Suite 300

North Palm Beach, FL 33408-3029

Case No. \_\_\_\_\_

RECEIPT AND  
INVENTORY OF WARRANT

On the 23rd day of December, 2022, at approximately 10:28 o'clock AM,  
the following peace officers: Detective Lawrence Mowery

served the Search Warrant heretofore issued upon the place and/or person(s) described therein as  
directed in said Search Warrant. Entrance was obtained by: email

The person(s) found in said place were: \_\_\_\_\_

The property found and taken and the location within or upon said place and/or person(s) are  
as follows:

DESCRIPTION OF PROPERTY

LOCATION/PERSON

509-592-8458

RECEIPT AND INVENTORY

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This Receipt and Inventory was made in the presence of: \_\_\_\_\_

A copy hereof was given to the following named person(s) on the 23<sup>RD</sup> day of  
DECEMBER, 2022;

COMPCEUT @ AT&T. Com

A copy hereof was left on this date in a conspicuous place in the place searched, there being no  
person(s) present during said search: SERVED TO AT&T

DATED this 6 day of January, 2023.

\_\_\_\_\_  
WITNESS

[Signature] #157  
PEACE OFFICER

The undersigned person(s) hereby acknowledge receiving a copy hereof on this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_:

RECEIPT AND INVENTORY

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LATAH COUNTY PROSECUTOR'S OFFICE  
ASHLEY S. JENNINGS  
SR. DEPUTY PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
(208) 883-2246  
ISB No.8491  
paservice@latah.id.us

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the Application	)	Case No.
for a Search Warrant for:	)	
	)	
AT&T Mobility	)	ORDER
11760 U.S. Highway 1, Suite 300	)	
North Palm Beach, FL 33408-3029	)	
	)	
<u>MPD Case No. 22-M09903</u>	)	

In the above-titled matter, this Court having heretofore issued a Search Warrant, and the said Search Warrant having been served according to law, and the Return of Warrant having been duly made as directed in said Search Warrant to this Court, and a written inventory of the property found and seized having been duly made and taken before the undersigned Magistrate or Judge and filed herein;

NOW, THEREFORE IT IS HEREBY ORDERED that the said Peace Officer shall deliver or cause to be delivered, the property described in said inventory to the Moscow Police Department or such other law enforcement agency as may be appropriate for the purpose of preserving said property for use as evidence or until further order of a court of competent jurisdiction. Once any related criminal case has been concluded, including the expiration of time for appeal, or at such other appropriate time, the property can be released or disposed of upon authorization of the jurisdictional

ORDER

1  
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prosecuting attorney.

IT IS FURTHER ORDERED that said property or any part thereof, may be delivered to any person or laboratory or laboratories for the purpose of conducting or obtaining any tests, analysis, or identification of said property which is deemed necessary by the custodial law enforcement agency or jurisdictional prosecuting attorney without further order of this Court.

DATED 1/7/23 @ 9:15 am.

Megan E. Marshall  
Megan E. Marshall  
Magistrate Judge

ORDER

<sup>2</sup>  
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