UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)(	
	)(	**Criminal No. 21-204 (BAH)**
v.	)(	**Chief Judge Howell**
	)(	**Trial: August 1, 2022**
MATTHEW BLEDSOE	)(	

MOTION TO SUPPRESS DATA RECOVERED FROM SEARCHES OF CELL PHONES AND DERIVATIVE EVIDENCE AND INFORMATION AND POINTS AND AUTHORITY IN SUPPORT THEREOF

COMES NOW the defendant, Matthew Bledsoe, by and through undersigned counsel, and respectfully moves this Honorable Court, pursuant to the Fourth Amendment to the United States Constitution, to suppress data obtained by law-enforcement agents from the searches of two cell phones allegedly found in his home and any evidence and information derived from exploitation of that data. In support of this motion, Mr. Bledsoe would show:

1. On January 14, 2021, law-enforcement agents obtained a warrant (Warrant) to search Mr. Bledsoe's home in Cordova, Tennessee and seize, among other things, "[c]ellular telephones and other mobile devices, including tablets, cameras, mobile video cameras, and other mobile electronic devices [hereinafter referred to collectively as 'electronic devices']." Warrant at 1 & Attachment B. The warrant authorized the agents to then search any such electronic devices they seized during the search of Mr. Bledsoe's home. Warrant at 1.

2. The application for the Warrant contained an affidavit (Affidavit) that had been attested to by a law-enforcement agent (affiant). In the Affidavit, the affiant stated that, sometime after January 6, 2021, law-enforcement agents developed evidence indicating that Mr. Bledsoe had entered the United States Capitol on January 6, 2021 with a large group of people when then Vice President Michael Pence was in the building and a joint session of Congress was underway to count the Electoral College votes from the recent presidential election. Affidavit at 3-8. The affiant indicated that federal agents had obtained photos and videos posted to an Instagram account that could be attributed to Mr. Bledsoe. The photos and videos appeared to show Mr. Bledsoe with a crowd of people both outside and inside the Capitol on January 6, 2021. Id. at 4-7. These photos and videos appeared to have been taken by Mr. Bledsoe on a "mobile device." Id. at 4-5. The affiant claimed that the evidence the law-enforcement agents acquired in connection with Mr. Bledsoe establishes probable cause that, on January 6, 2021, he violated 18 U.S.C. § 1752(a) (Knowingly Entering or Remaining in any Restricted Building or Grounds without Lawful Authority) and 40 U.S.C. § 5104(e)(2) (Violent Entry and Disorderly Conduct on Capitol Grounds). Affidavit at 2.

3. In the Affidavit, the affiant indicated that he is applying for a warrant to search Mr. Bledsoe's home "for records that might be found on the PREMISES in whatever form they are found. One form in which the records might be found is data stored on a computer's hard drive or other storage media, including cell phones." Affidavit at 11. The affiant then went on to say that "this application [for a warrant] seeks permission to locate not only computer files and/or mobile cellular data that might

serve as direct evidence of the crimes described in the warrant [violations of 18 U.S.C. § 1752(a) and 40 U.S.C. § 5104(e)(2)], but also for forensic electronic evidence that establishes how such devices were used, the purpose of their use, who used them, and when." Id. at 13-14.

4. In the Affidavit, the affiant indicated that Mr. Bledsoe is married and even cited evidence indicating this. Affidavit at 8, 9. The affiant also cited evidence indicating that Mr. Bledsoe has children. Id. at 7, 9. Given that the affiant provided reasons for thinking that other people live with Mr. Bledsoe in his home, the affiant correctly noted that "it is possible that that the PREMISES will contain storage media that are predominantly used, and perhaps owned, by persons who are not suspected of a crime." Id. at 21. The affiant, however, then went on to say that, if the law-enforcement agents executing the warrant that was being applied for "determine[] that it is possible that the things described in this warrant could be found on any of those computers or storage media, the warrant applied for would permit the seizure and review of those items as well." Id.

5. According to information provided to Mr. Bledsoe by the government through discovery, shortly after obtaining the Warrant, law-enforcement agents executed it at Mr. Bledsoe's residence. Three electronic devices were seized: two cell phones and one laptop computer. Subsequently, the devices were searched and data was recovered from the devices. According to information provided in discovery, the two cell phones belong to Mr. Bledsoe.

6. The Affidavit provided no specific reason for thinking that there was a particular cell phone in Mr. Bledsoe's home whose data would contain evidence related to the crimes that he was suspected of being involved in.

7. The search of the two cell phones found in Mr. Bledsoe's home was conducted in violation of his Fourth Amendment rights. Moreover, the government cannot rely on the Leon good-faith exception to avoid application of the exclusionary rule to the data recovered from those phones. Accordingly, that data and any evidence and information derived from exploitation of that data must be suppressed.

DISCUSSION

A. No Particularized Probable Cause

As a general matter, in order to make out probable cause for a warrant to conduct a search, law enforcement officers seeking the warrant must establish that "there is a fair probability that contraband or evidence of a crime will be found in [the] particular place [to be searched]." Illinois v. Gates, 462 U.S. 213, 238 (1983). Having probable cause to believe that a person has committed a crime does not mean that there is probable cause to search his effects. See Steagald v. United States, 451 U.S. 204, 212-213 (1981); see also United States v. Griffith, 867 F.3d 1265, 1271 (D.C. Cir. 2017) ("probable cause to arrest a person will not itself justify a warrant to search his property"). In order to establish probable cause for a search, a nexus must be shown to exist between the item to be searched and the criminal activity under investigation. Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 307 (1967); Groh v. Ramirez, 540 U.S. 551, 568 (2004). This is in keeping with the fact that the "manifest purpose of th[e] [Fourth Amendment's]

particularity requirement was to prevent general searches." Maryland v. Garrison, 480 U.S. 79, 84 (1987). Indeed, the Fourth Amendment's particularity requirement is to "ensure that [a] search will be carefully tailored to its justifications, and will not take the character of the wide-ranging exploratory searches the Framers intended to prohibit." Id.

In regards to what the Fourth Amendment's particularity requirement means in the context of searches of cell phones, Riley v. California, 573 U.S. 373 (2014) is instructive. In Riley, the Supreme Court held that, when police officers making an arrest locate a cell phone on the arrestee's person, they "must generally secure a warrant before conducting… a search [of that phone]." Id. at 386. In reaching this holding, the Court recognized that it was creating an exception to the rule that police may normally conduct a warrantless search incident to arrest of an arrestee's person and any property on his person. Id. at 381-86. In Riley, the Court recognized that warrantless searches incident to arrest are ordinarily considered reasonable under the Fourth Amendment. For one thing, this is because the police need to be able to search an arrestee's person and any property on his person to see if he has evidence on him so that they can prevent its destruction or concealment. Id. at 383 (citing Chimel v. California, 395 U.S. 752, 762-63 (1969)). On this point, the Court specifically discussed United States v. Robinson, 414 U.S. 218 (1973). Riley, 573 U.S at 383-84. In Robinson, the police had found a pack of cigarettes on an arrestee's person, and in a warrantless search incident to arrest, searched it and found capsules of heroin. In Robinson, the Court had held that, if the underlying arrest was lawful, a warrantless search of property on the arrestee is also lawful. Riley, 573 U.S. at 383-84 (discussing Robinson, 414 U.S. at 220, 223, 236). However, in Riley,

the Court found that the rule announced in Robinson was not applicable where the property found on the arrestee's person is a cell phone. Riley, 573 U.S. at 385-86. Where the property at issue is a cell phone, the police cannot just search the cell phone to see if it might contain evidence of criminal activity. If they want to search the phone, they must get a warrant. This is because a search of a cell phone implicates privacy rights in an extraordinary way. See Riley, 134 S.Ct. at 384-401.

In Riley, the Court pointed out that, unlike most physical objects, "[c]ell phones place vast quantities of personal information literally in the hand of individuals." Riley, 573 U.S. at 386. The Court pointed out that saying that the search of a cell phone is materially indistinguishable from the search of any other physical item is "like saying a ride on horseback is materially indistinguishable from a flight to the moon." Id. at 393. The Court elaborated that cell phones are in fact "minicomputers" and, in addition to being used to make phone calls, can also be used as "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps or newspapers." Id. Indeed, the Court noted that "the sum of an individual's private life can be reconstructed" from the data on his cell phone." Id. at 394. It is important to stress here that, in Riley, the Court specifically distinguished a search of a cell phone from a search of records: "there is an element of pervasiveness that characterizes cell phones but not physical records." Id. at 395. In fact, the Court went on to note, "[A] cell phone search would typically expose to the government far more than the most exhaustive search of a house." Id. at 396 (emphasis in original). Continuing this theme even further, the Court noted:

> Treating a cell phone as a container whose contents can be searched incident to an arrest is a bit strained as an initial matter. See New York v. Belton, 453 U.S. 454,

> 460, n.4… (1981) (describing a "container" as "any object capable of holding another object"). But the analogy crumbles entirely when a cell phone is used is to access data located elsewhere, at the tap of a screen. That is what cell phones, with increasing frequency, are designed to do by taking advantage of "cloud computing." Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself.

Riley, 573 U.S. at 397. The Court then went on to say that allowing police officers to search a cell phone incident to arrest is like allowing police officers who "find[] a key in a suspect's pocket… to unlock and search [his] house." Id.

Given the Supreme Court's finding that cell phones are not like containers or records or even houses, it seems clear that, even where there is probable cause to believe that data of evidentiary value might be located on electronic devices in a suspect's home, a warrant authorizing the search of any cell phones found in the home merely because such phones could be possible receptacles of such data would still not comport with the Fourth Amendment. In order for the warrant to properly authorize the search of cell phones found in a suspect's home, it must be based on an affidavit that provides probable cause for believing that there is a particular cell phone in the residence that does in fact contain evidence of criminal activity. That this is the case is confirmed by the holdings in Griffith, 867 F.3d 1265.

In Griffith, the Court for Appeals for the District of Columbia Circuit held that, given the Fourth Amendment's particularity requirement, a warrant to search a suspect's residence for any cell phones that might be found there will not be valid unless the affidavit submitted with the application for that warrant shows 1) that the suspect does in fact own a cell phone, 2) that that cell phone is likely to be found in his residence, and 3) that that cell phone would contain incriminating evidence about his suspected offense.

867 F.3d at 1273. In Griffith, the Court found that the warrant at issue there was invalid because, just as an initial matter, the affidavit failed to even establish that the suspect did in fact own a cell phone. Id. at 1272-73. Additionally, the Court noted that the warrant allowed for the police to seize all electronic devices, including cell phones, found in the residence regardless of who owned those devices. Id. at 1275-76. The Court held that this "overbreadth" in the warrant also did not comport with the Fourth Amendment's particularity requirement. Id. at 1275. The Court indicated that the warrant should have been limited to only those devices owned by the suspect or those linked to the crime that he was suspected of being involved in. Id.

In the instant matter, the warrant authorized a wide-ranging exploratory search of all electronic devices in Mr. Bledsoe's home regardless of who used or owned those devices and regardless of their linkage to criminal activity. Already, the warrant's overbreadth rendered it invalid. Beyond this, the warrant also allowed the law-enforcement agents to search any cell phones found in Mr. Bledsoe's home as part of this wide-ranging exploratory search of all electronic devices in the home. Moreover, it did so based on an affidavit that provided no specific reason for thinking that there was a particular cell phone in Mr. Bledsoe's home that would contain evidence related to the crimes he was suspected of being involved in. Given all this, the two cell phones that were allegedly found in Mr. Bledsoe's home were searched without there being the necessary showing of particularized probable cause that they did in fact contain data that has evidentiary value. Accordingly, the search of the phones violated Mr. Bledsoe's Fourth Amendment rights.

At this point, it should be stressed that Mr. Bledsoe is not saying that the phones were necessarily completely off-limits for law-enforcement agents to search. In Riley, the Supreme Court indicated that, even if the police cannot, as a matter of course, search a cell phone recovered from a suspect incident to his arrest, they can still seize the phone and then, assuming they can show particularized probable cause that it contains data of evidentiary value, obtain a warrant to search it. Riley, 573 U.S. at 388-91. Moreover, in Griffith, the Court of Appeals for the District of Columbia Circuit noted that the warrant there could have been saved from being overly broad if it had provided guidance that would help ensure that the law-enforcement agent executing it only seized devices that could be linked to the suspect or the crime he was suspected of being involved in. 867 F.3d at1275. Here, however, the warrant did not provide any such guidance and just allowed the law-enforcement agents to search any and all cell phones found in Mr. Bledsoe's home as part of wide-ranging exploratory search of all electronic devices in the home.

B. No Good-Faith Reliance

Likely, the government will argue that, even if the two cell phones at issue were searched in violation of the Fourth Amendment, application of the exclusionary rule to the data recovered from those phones is still not appropriate because the law-enforcement agents who searched them were relying in good faith on the Warrant. See United States v. Leon, 468 U.S. 897 (1984). However, the Leon good-faith exception was not intended to apply in those situations where a warrant "is based on an affidavit that does not 'provide the magistrate with a substantial basis for determining the existence of probable

cause.'" Leon, 468 U.S. at 915 (quoting Gates, 462 U.S. at 239). Additionally, the exception does not apply "when the affidavit [used to obtain a warrant] is so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable." Leon, 468 U.S. at 914. Furthermore, for the exception to apply, the judicial officer's action in authorizing the warrant "cannot be a mere ratification of the bare conclusions of others." Leon 468 U.S. at 915 (quoting Aguilar v. Texas, 378 U.S. 108, 114-115 (1964)). Finally, "[e]ven if the warrant application was supported by more than a 'bare bones' affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances." Leon, 468 U.S at 915 (citing Gates, 462 U.S. at 238-239).

Here, law-enforcement agents searched two cell phones allegedly belonging to Mr. Bledsoe as part of wide-ranging exploratory search of all electronic devices in his home regardless of who used or owned those devices. However, the Affidavit provided no specific reason for thinking that there was a particular cell phone in Mr. Bledsoe's home that would in fact contain evidence related to the crimes that he was suspected of. Especially in light of Riley, it cannot be credibly claimed that the Affidavit provided the judicial officer who signed the warrant with a "substantial basis for determining the existence of probable cause" to search any and all cell phones found in the home, nor can it be credibly claimed that it was objectively reasonable for the law-enforcement agents executing the Warrant to have relied on it to search any and all cell phones they just happened to find in the home. See Griffith, 867 F.3d at 1279 (because warrant was not

based on probable cause to believe that a cell phone with incriminating evidence on it would be found in the residence and because the warrant permitted the search of all electronic devices found in the residence regardless of who owned them, the government could not rely on the Leon good-faith exception to prevent application of the exclusionary rule). Beyond this, it cannot be credibly claimed that, to the extent the judicial officer who signed the warrant allowed law-enforcement agents to search any and all cell phones found in Mr. Bledsoe's home as part of a wide-ranging exploratory search of all electronic devices in the home, he was properly exercising independent legal judgment, nor can it be denied that his probable-cause determination in regards to the search of any cell phones that might be found in Mr. Bledsoe's home "reflected an improper analysis of the totality of the circumstances."

C. Suppression

Because the search of the two cell phones allegedly found in Mr. Bledsoe's home was conducted in violation of his Fourth Amendment rights and because the government cannot rely on the Leon good-faith exception to avoid application of the exclusionary rule to the data obtained from those phones, that data must be suppressed. Additionally, any evidence and information derived from exploitation of that data must also be suppressed. Taylor v. Alabama, 457 U.S. 687, (1982); United States v. Crews, 445 U.S. 463, 471 (1980); Dunaway v. New York, 442 U.S. 590 (1975); Brown v. Illinois, 422 U.S. 590 (1975); Wong Sun v. United States, 371 U.S. 471 (1973).

CONCLUSION

WHEREFORE, the defendant, Matthew Bledsoe, moves this Honorable Court to suppress the data obtained by law-enforcement agents from the search of two cell phones that were allegedly found in his home and any evidence and information derived from exploitation of that data.

Respectfully submitted,

____/s/_____
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