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STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

IVAN CONTRERAS-SANCHEZ,

Appellant.

RESPONDENT'S BRIEF

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LEGAL ISSUES

I. Does a geofence warrant constitute a Fourth Amendment search? If they do, are they categorically prohibited as general warrants?

Rulings below: The district court did not expressly address whether a geofence warrant is a Fourth Amendment search or whether they are categorically prohibited. The court of appeals also did not reach the issue of whether the first geofence warrant in this case constituted a search of Appellant. But the court of appeals did hold that geofence warrants are not categorically barred.

Authorities: *State v. Contreras-Sanchez*, 5 N.W.3d 151 (Minn. App. 2024)
United States v. Chatrie, 107 F.4th 319 (4th Cir. 2024)

II. Were the two geofence warrants in this case supported by probable cause?

Rulings below: Both the district court and court of appeals held both geofence warrants were adequately supported by probable cause.

Authority: *United States v. James*, 3 F.4th 1102 (8th Cir. 2021)

III. Did the first geofence warrant satisfy the particularity and breath requirements of a search warrant?

Rulings below: Both the district court and court of appeals held the geofence warrant was sufficiently particular and not overbroad.

Authorities: *United States v. Rhine*, 652 F.Supp.3d 38 (D.D.C. Jan. 24, 2023)
State v. Hannuksela, 452 N.W.2d 668 (Minn. 1990)

IV. Does the Minnesota Constitution establish more stringent requirements on geofence warrants than does the Fourth Amendment?

Rulings below: Appellant did not raise this issue before the district court, and the court of appeals held Appellant failed to offer a "principled basis" for concluding this geofence warrant should be examined differently under the state constitution than under the federal constitution.

Authority: *State v. McMurray*, 860 N.W.2d 686 (Minn. 2015)

V. Even if the district court erred by not suppressing evidence from the first geofence warrant, was that error harmless?

Rulings below: Neither the district court nor the court of appeals addressed harmless error because both courts held that the geofence warrant satisfied constitutional requirements. The court of appeals also determined that, "even assuming the geofence warrant's authorization to acquire step-three data was overbroad, its severance from the warrant does not impair the geofence's validity as to the collection of anonymized data under steps one and two."

Authority: *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625 (Minn. 2000)

STATEMENT OF THE CASE AND FACTS

In November 2021, Appellant Ivan Contreras-Sanchez was charged with one count of intentional second-degree murder and one count of unintentional second-degree felony murder for the horrific beating death of M.M., which had occurred about six months prior. *See* Doc. Index #1 (complaint). M.M. was brutally beaten to death in Minneapolis, Hennepin County, Minnesota, and his body was found about four weeks later in a drainage ditch, or culvert, in rural Dakota County. *Id.* His hands were bound behind his back and a nail was embedded in the heel of one of his feet. *Id.* His death was ruled a homicide. *Id.*

A. Suppression Motion and Evidentiary Hearing

Before trial, Appellant moved to suppress evidence[1] obtained from a geofence search warrant served on Google to obtain limited location history data. Doc. Index #25, #39. Appellant argued the geofence warrant was an unconstitutional general warrant and that the warrant was overbroad and lacked particularity. *Id*. The State opposed the motion.[2] Doc. Index #29, #30.

On May 17, 2022, an evidentiary hearing on Appellant's suppression motions was held before the Honorable Tamara Garcia. The State called four

[1] Appellant also moved to suppress evidence obtained from his vehicle and statements Appellant made while in custody. Doc. Index #23, #24. Only the motion to suppress evidence from the geofence warrant is at issue in this appeal. *See State v. Contreras-Sanchez*, 5 N.W.23d 151, 160 n.3 (Minn. App. 2024).

[2] The State also made various pretrial motions. The State moved to join Appellant's case for trial with that of his codefendant, which the district court denied. Doc. Index #13, #14, #15, #35. The State also provided notice of its intent to seek an upward sentencing departure. Doc. Index #38.

witnesses and submitted 16 exhibits. One detective and one investigator from the Dakota County Sheriff's Office testified regarding the geofence warrant, and exhibits 1-14 pertained to the geofence warrant.[3]

On April 26, 2021, the detective was called to respond to a scene where a dead body had been found in Castle Rock Township in Dakota County, which is a few miles south of Farmington, Minnesota. Evid. Tr. 45-46.[4] The body was found by people working in the adjacent farm field. *Id*. at 46. The body was lying inside a round, plastic drainage ditch, or culvert, next to a rural roadway, with just the victim's feet sticking out. *Id*. The detective described the area where the body was found as a remote area. *Id*. at 47. The road is paved but not well traveled. *Id*. at 48, 106. The stretch of road only has three or four houses, and the closest house was about 1300 feet away from the culvert where the body was found. *Id*. at 47-48. The nearest intersecting road is "a very desolate road," and beyond that is an intersection with a gravel road. *Id*. at 48. The body was eventually identified to be that of a missing person, M.M., from Minneapolis. *Id*. at 47.

B. The Google Three-Step Process for Geofence Data

In the course of the investigation, the detective obtained a geofence search warrant to serve on Google to obtain anonymous information about possible cellular devices that could have been in the area. *Id*. at 49-50. Law enforcement identified

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[3] The two other witnesses and exhibits 15-16 pertained to Appellant's other suppression motions: the search warrant for Appellant's car and the recording of the November 2, 2021, *Miranda* interview.

[4] "Evid. Tr." refers to the transcript of the evidentiary hearing held on May 17, 2022.

the boundaries of the area – the “geofence” – using latitudinal and longitudinal coordinates, as well as a specific timeframe. *Id*. at 55-58.

Google requires law enforcement to submit a search warrant to obtain this type of data. *Id*. at 51. Google has a three-step process for responding to this type of warrant. *Id*.

- Frist, in response to the geofence search warrant, Google provides data identifying anonymous devices that were located in the geofence area during the specified time according to Google’s location history data. *Id*. at 51. Officers then look at the data to determine if any devices could be related to the crime. *Id*. at 52.

- Second, under the same warrant, officers can request an additional two hours of anonymous data on any devices they specify, including data outside the geofence area. *Id*. at 52. Google then supplies additional location data, not confined to the geofence area, but once again it is anonymous data. *Id*. at 52. This allows officers to rule out devices not involved in the crime. *Id.* at 113. The purpose of this step is “specifically to eliminate or to include a device as being an item of interest.” *Id*. at 120.

- Google’s third step is to provide an account number and basic subscriber information for devices identified by law enforcement. *Id*. at 52-53.

C. Execution of the Geofence Warrant

In this case, the geofence-warrant application sought location-history data for devices within a 65-foot-wide by 290-foot-long geofence. *Id.* at 57. The proposed geofence “encompasse[d] a public roadway and a portion of a right of way ditch.” Evid. Ex. 13 at 9. In this case, the detective obtained a search warrant for data within this geofence using GPS coordinates. *Id*. at 58; Evid. Ex. 13. The timeframe he specified in the search warrant was from the date that M.M.’s family last saw him up until the date that the body was found. Evid. Tr. 59-60. After

providing the search warrant to Google, Google contacted the detective and asked him to narrow down the timespan. *Id*. at 60-61, 90, 102. The detective then narrowed the timeframe down to seven days: March 25-31, 2021, and a second set of seven days of April 1-7, 2021. *Id*. at 61, 67.

Under the first step of its three-step process, Google then provided anonymous data for the geographic area for each of those two 7-day timeframes[5]. *Id*. at 61-62, 67; Evid. Ex. 2, 3. In the first 7-day period, only 12 devices in total entered the geofence area. Evid. Ex. 2. 11 of those devices only registered location data with Google one time in the geofence area, suggesting that the devices drove through quickly enough not to register location data more than once. Evid. Ex. 2; Evid. Tr. 66. Just a single device was in the geofence area for a period of roughly 10 minutes, registering location data with Google 46 separate times during those 10 minutes. Evid. Ex. 2; Evid. Tr. 65-66. The device was in the geofence area on March 29, 2021, a few days after the victim was last seen by his family. Evid. Tr. 66. Each of those 46 location data points include latitudinal and longitudinal coordinates. Evid. Ex. 2. Officers plotted those coordinates and determined that the device was directly on top of the culvert during that time. Evid. Ex. 2-7.

Under the second step of the process, the detective then requested (pursuant to the initial search warrant) anonymous location history data outside the geofence

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[5] The set of anonymous data Google provided for the second timeframe showed 19 devices entered the geofence area between April 1 and April 7, 2021. Evid. Ex. 3. None of the devices in this batch indicated a device had stayed in the geofence area for more than a minute. *Id*.

area itself for the one device identified in the geofence area for 10 minutes at the culvert where the body was found. Evid. Tr. 74. This was the only device for which the detective sought additional anonymous location history data. *Id*. at 105. The detective requested location history data for one hour before the anonymous device first entered the geofence area and one hour after the device was last in the geofence area. *Id*. at 74. Google supplied this additional anonymous data pursuant to the warrant, which consisted of location-history data for the single device from 7:29 p.m. to 9:37 p.m. on March 29, 2021. Evid. Tr. 76; Evid. Ex. 8. This additional location-history data showed the device was at a Speedway Gas Station in Inver Grove Heights prior to being directly over the culvert where the victim's dead body was found. Evid. 75-81; Evid. Ex. 9-12.

The detective obtained surveillance-video footage from the date and time the suspect device was located at that gas station. Evid. Tr. 82. A car and an individual that the detective saw on the surveillance-video footage matched descriptions the detective had gathered during the investigation of people who may have been involved in the murder. *Id*. at 82.

For step three of Google's process, instead of obtaining non-anonymous information from Google through the original search warrant, the detective obtained a separate, second search warrant to obtain additional information. *Id*. at 53-54, 84; Evid. Ex. 14. Google then informed law enforcement that the subscriber's name for the device was Ivan Contreras and provided an email address for him. Evid. Tr. 87.

D. District Court's Order

After the suppression hearing, the district court, Judge Garcia again presiding, issued a written order denying Appellant's motion to suppress evidence obtained from the geofence search warrant.[6] Doc. Index #52. Judge Garcia explained that Google "continuously tracks tens of millions of users, storing their location information." *Id*. at 10. Judge Garcia described how a geofence warrant allows law enforcement to delineate an area on a map and seek a warrant to obtain data from Google to establish what, if any, Google-connected devices were in the identified area at a particular date and time. *Id*. at 10. Judge Garcia laid out the three-step process that Google employs to respond to such warrants: First, Google "provides anonymized location data on all Google-connected devices within the geofence's time and space constraints." *Id*. at 10. Next, an "investigator may request additional location data [for] some or all [of] the anonymized devices," allowing investigators to see where a particular device was "up to an hour before and after the geofence period, extending beyond the geofence location." *Id*. at 10. Third, law enforcement may request identifying information, including names and IP and email addresses, for the anonymized device. *Id*. at 11.

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[6] Judge Garcia granted some of Appellant's other suppression motions. She suppressed statements that Appellant made prior to being *Mirandized* but denied Appellant's motion to suppress statements made after he was *Mirandized*. Doc. Index #52 at 6, 8. Judge Garcia also suppressed evidence obtained from the search and seizure of Appellant's vehicle. *Id.* at 9.

In her legal analysis, Judge Garcia first noted that none of the published opinions on the constitutionality of geofence warrants (at that time) had concluded that such warrants are categorically barred. *Id*. at 13. Judge Garcia then analyzed whether the search warrant was supported by probable cause. *Id*. at 13. Judge Garcia then noted that, in the context of geofence search warrants, courts consider whether there is a fair probability a crime was committed and whether there is a fair probability a geofence search will uncover evidence of that crime. *Id*. at 14. Judge Garcia determined that both were established by the search-warrant application. *Id*. at 14-15. Judge Garcia also concluded that the search warrant was sufficiently particular, given the specific, unique facts of the case. *Id*. at 15-17.

E. Trial Evidence

The case proceeded to a jury trial, over which the Honorable Hilary L. Caliguiri presided. Tr. 1.[7] At trial, the State called 20 witnesses (including police officers, forensic scientists, a medical examiner, and cooperating codefendants), and introduced over 200 exhibits (including evidence obtained from the geofence warrant). The evidence established that, in the early morning hours of March 27, 2021, Appellant and accomplices went to a homeless encampment to find M.M. because Appellant thought M.M. had given police information about Appellant selling drugs. Tr. 1108-09. When they found M.M., they took him by gunpoint into Appellant's car and drove him back to an acquaintance's house. Tr. 1113-15. They

[7] "Tr." refers to the multiple-volume, successively paginated transcript of the jury trial held from July 19-29, 2022.

took M.M. down to the basement and tied him up. Tr. 898, 1118, 1133. Appellant – and multiple different accomplices at Appellant's direction – assaulted M.M., brutally beating him throughout the day, including using a power drill and a hammer on him. Tr. 898-908, 1118-24, 1238. Appellant even called other accomplices to the house to beat M.M., telling these accomplices he had a snitch for them. Tr. 1128, 1132. Appellant took videos of M.M. during this day-long violent assault, showing him severely injured. Ex. 230, 232, 234. In one video, Appellant taunts M.M. that "that's what you get for being a snitch, right." Ex. 230, 231. Appellant later admitted to accomplices that he dumped M.M.'s body. Tr. 915. Cell-phone location data establish that Appellant disposed of M.M.'s body on March 29, 2021 in a culvert in rural Dakota County. Tr. 821, 827, 837.

Nearly a month later, M.M.'s body was discovered in a drainage ditch by a farm worker. Tr. 664-65. M.M.'s hands were bound with tape and wire. Tr. 795. There were ligatures around his neck and a nail in his heel. Tr. 796. M.M. had multiple blunt-force injuries, 17 rib fractures, a fractured finger, and injuries to his knee and heel, including a nail driven into the bone of his heel. Tr. 1313-14, 1326-27, 1329. The medical examiner determined the manner and cause of death was homicide, but by unspecified means due to the decomposition of the body. Tr. 1311-12.

In November 2021, Appellant gave a statement to law enforcement. Tr. 1215. Appellant told investigators he had gotten into a physical fight with M.M. about 20 days before the murder. Tr. 1215, 1219. On the day of the murder, Appellant told

investigators, he saw his acquaintances hit the victim with a pipe and that a younger kid pounded a nail into M.M.'s heel while he was still alive. Tr. 1221-22. Appellant also told investigators some guys from St. Paul came over to the house and also beat M.M. Tr. 1223. Appellant ultimately admitted that he drove his car down to the culvert in Dakota County with accomplices, who dumped the body in the ditch using a wheelbarrow. Tr. 1224. Appellant showed investigators videos he took of M.M. on his cell phone on the day M.M. was beaten to death, admitted that he took the videos, and said that his voice is the one on the video. Tr. 1226.

F. Verdicts

The jury found Appellant guilty of both intentional and unintentional second-degree murder. Tr. 1505; Doc. Index #73, 74. The case proceeded to the bifurcated sentencing phase. Tr. 1507. The jury was given a special-verdict form with 12 questions of fact to answer. Tr. 1507-10; Doc. Index #75. After further deliberations, the jury unanimously found that the State proved 9 of the 12 questions on the special-verdict form beyond a reasonable doubt. Tr. 1511-13; Doc. Index #75.

G. Sentencing

On August 11, 2022, the sentencing hearing was held. S. Tr. 1.[8] The State sought an aggravated sentence based on the findings by the jury which supported a conclusion that M.M. was treated with particular cruelty. S. Tr. 4-6. Appellant argued for a bottom-of-the-box sentence of 261 months. S. Tr. 6. Judge Caliguiri

[8] "S. Tr." refers to the transcript of the sentencing hearing held on August 11, 2022.

sentenced Appellant to 480 months in prison, the statutory maximum, which was an upward durational departure of 113 months from the top of the guidelines range.[9] Doc. Index #81. The basis for the departure was the treatment of M.M. with particular cruelty, based on the facts found by the jury in its special verdict. Doc. Index #82, 85. In sentencing Appellant, Judge Caliguri explained:

> I do find the facts found by the jury constitute particular cruelty. And that particular cruelty is a substantial and compelling reason to depart upward from the presumptive sentence in this case. In fact, I find that the facts found by the jury constitute a severe, aggravating circumstance.
>
> This is, in fact, the most depraved crime I have ever seen in my career. And based on severe, aggravating circumstances, the *Blakely* factors would support a double upward departure. Of course, the double presumptive sentence is not permissible given the statutory maximum of 40 years. So I will grant the State's motion to sentence to Mr. Contreras-Sanchez to the statutory maximum of 480 months.

S. Tr. 7.

ARGUMENT

Appellant essentially raises one issue on appeal, claiming that the district court erred by denying his motion to suppress evidence obtained from the geofence search warrant. *See* Appellant's Brief ("App. Br.") 16-54. Appellant argues that geofence warrants are categorically unconstitutional as impermissible general search warrants and argues the geofence warrant was not sufficiently particularized, was overbroad, and was not supported by probable cause. *Id.* at 17-43.

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[9] The guidelines sentence for intentional second-degree murder, a level 11 offense, for an offender with zero criminal history points is 306 months, with a range of 261-367 months. Minn. Sent. Guidelines 4.A; Doc. Index #9.

Until this case, no Minnesota caselaw addressed geofence search warrants. Likewise, the United States Supreme Court has also not addressed this issue. Instead, there exists a series of federal district court orders and opinions, a pair of very recent federal circuit court decisions, and a few state-court appellate decisions from other jurisdictions, all of which, of course, are not binding on this Court.

Because the geofence warrants in this case are validly based on the constitutional principles of reasonable expectations of privacy, probable cause, particularity, and breadth, this Court should affirm the district court's order denying Appellant's suppression motion.

Standard of Review

When reviewing pretrial orders on motions to suppress evidence, this Court reviews factual findings for clear error and legal determinations de novo. *State v. Jackson*, 742 N.W.2d 163, 168 (Minn. 2007). However, when determining whether a search warrant is supported by probable cause, this Court "do[es] not review the lower court's decision de novo." *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). Rather, this Court "give[s] 'great deference to the issuing judge's determination' of probable cause for a search warrant." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (*quoting State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004)). This Court simply ensures "whether the issuing judge 'had a substantial basis for concluding that probable cause existed.'" *State v. Fawcett*, 884 N.W.2d 380, 384 (Minn. 2016) (*quoting State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). Reviewing courts "defer to the issuing magistrate, recognizing that doubtful

or marginal cases should be largely determined by the preference to be accorded to warrants." *Fawcett*, 884 N.W.2d at 385 (internal quotation marks omitted) (*citing State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990)); *see also Harris*, 589 N.W.2d at 791; *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). This Court affords the same deference when evaluating the other constitutional warrant requirements (besides probable cause), such as the particularity requirement. *See, e.g., State v. Miller*, 666 N.W.2d 703, 713 (Minn. 2003).

I. Obtaining Limited Anonymous Device Location-History Data from Google Does Not Constitute a Search Under the Fourth Amendment, Nor – in the Alternative – Does It Constitute an Impermissible General Warrant.

Both the United States and Minnesota Constitutions – with identical language – protect against unreasonable searches and seizures and require warrants to be supported by probable cause. U.S. CONST. amend. IV; MINN. CONST. art. I, § 10.[10] A search occurs within the meaning of the Fourth Amendment "when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001). Likewise, a search does not occur unless society is willing to recognize an individuals' expectation of privacy as reasonable. *Id*. "The ultimate touchstone of the Fourth Amendment is reasonableness." *State v. Brown*, 932 N.W.2d 283, 288-89 (Minn. 2009).

[10] Appellant urges this Court to find greater protection in the Minnesota Constitution (*see* App. Br. 44-46), which Appellant did not argue for in district court. *See* Doc. Index #25, #39.

Here, the information was not seized from a particular person; it was disclosed by a corporation, Google, which had previously collected the location data from its customers for its own business purposes and to improve the functionality of its applications for its users (such as Google maps). The information obtained from the first geofence warrant was limited to *anonymized* device numbers, the specific date/time a device was in the delineated geofence area, and the device's more precise location within that area. A subsequent search warrant was sought and granted to obtain *non-anonymous* subscriber information from the single device for which law enforcement had developed probable cause.

The collection of this data from Google is not a search under the Fourth Amendment because: (1) neither this Court, nor the Supreme Court, has held that individuals have a reasonable expectation of privacy in this limited type of data, (2) the data is anonymized, and (3) the data was voluntarily given by individuals to a third party.

A. The Supreme Court Has Not Held that Individuals Have a Reasonable Expectation of Privacy in *Limited* Location History Data.

Fourth Amendment jurisprudence has addressed privacy interests implicated from evolving technology. *See, e.g. Carpenter v. United States*, 585 U.S. 296 (2018); *Riley v. California*, 573 U.S. 373 (2014); *United States v. Jones*, 565 U.S. 400 (2012); *Kyllo v. United States*, 533 U.S. 27 (2001). The Supreme Court has considered an individual's expectation of privacy in their location information, but the Court has not yet determined whether individuals have a reasonable expectation

of privacy in limited, anonymized electronic device location data for short periods of time.

In *United States v. Jones*, FBI agents installed a GPS tracking device on the defendant's vehicle and monitored its movements for 28 days. 565 U.S. at 404-05. *Jones* held that attaching a GPS tracker to a vehicle, known to be used by a specific person, and the subsequent use of that device to monitor the vehicle's movements on public streets constituted a search under the Fourth Amendment subject to the warrant requirement. *Id*. at 404.

In *Riley v. California*, the Supreme Court addressed the nature of location data on modern cell phones in holding that police must get a warrant before searching the contents of a cell phone. 573 U.S. at 403. *Riley* observed how modern cell phones contain an all-encompassing look into "the privacies of life," stating that – when the decision was issued in 2014 – " it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives – from the mundane to the intimate." *Id*. at 395, 403. Regarding location data, *Riley* noted that historical location data "can reconstruct someone's specific movements down to the minute, not only around town but also within a particular building." *Id*. at 396.

In *Carpenter v. United States*, the Supreme Court held that obtaining historical cell-site location information (CSLI) from a cell-phone company for an individual user over a longer period of time constitutes a search under the Fourth Amendment that requires a warrant. *Carpenter*, 585 U.S. at 309-10. In reaching this

conclusion, Carpenter emphasized the comprehensive and sweeping nature of historical cell-site location information, describing it as "detailed," "encyclopedic," and "comprehensive." *Id*. at 309, 312, 315. Indeed, obtaining this information over a lengthy period of time for an identified user:

> provides an all-encompassing record of the holder's whereabouts. As with GPS information, the time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations… These location records hold for many Americans the privacies of life… [A cell phone] tracks nearly exactly the movements of its owner. While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time. A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales.

Id. at 311 (internal quotation marks omitted). As such, the Court held that "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI." *Id*. at 310. The Court stated that individuals have a "reasonable expectation of privacy in the whole of [their] physical movements." *Id*. at 313.

But *Carpenter's* holding was "a narrow one," and the Court explicitly did not consider other situations that capture location data, such as real-time cell location data[11] and cell-tower dumps. *Id*. at 316. *Carpenter* expressly did not decide "whether there is a limited period for which the Government may obtain an

[11] For instance, the Seventh Circuit Court of Appeals determined that the collection of real-time cell site location data of a suspect who was in a public space for a six-hour period was not a Fourth Amendment search. *See United States v. Hammond*, 996 F.3d 374, 390-392 (7th Cir. 2021).

individual's CSLI free from Fourth Amendment scrutiny, and if so, how long that period might be. It is sufficient for purposes today to hold that accessing 7 days of CSLI constitutes a Fourth Amendment search." *Id*. at 310 n.3.

Thus, *Carpenter* does not address the type and scope of data obtained from geofence warrants.[12] Just last month, the Fourth Circuit Court of Appeals held that law enforcement "did not conduct a Fourth Amendment search when it obtained" device location information for a particular geofence from Google, and in reaching this decision, the Fourth Circuit explained how *Carpenter* did not control this issue or apply to geofence data. *United States v. Chatrie*, 107 F.4th 319, 337 (4th Cir. 2024) ("*Carpenter* did not cast aside everything that came before it and create a new framework for assessing Fourth Amendment violations.").

Appellant describes the data obtained from geofence warrants as a "sweeping" mode of surveillance, just like in *Carpenter*. App. Br. 17-20. But this vastly overstates the scope and magnitude of the data collected. Unlike *Carpenter*, geofence warrants do not catalogue "the whole of" an individual's movements like CSLI, which amounts to continuous surveillance, revealing the entirety of all of a person's movements. Instead, geofence warrants gather data of *anonymous* devices

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[12] Most other courts analyzing geofence warrants have consistently not reached the question of whether obtaining this type of data is a search for the purposes of the Fourth Amendment. *See, e.g., Rhine,* 652 F.Supp.3d at 82 (stating "the Court does not decide the question of whether Defendant had a reasonable expectation of privacy over his [location history] data); *Google V*, 579 F.Supp.3d at 74 (assuming but not deciding whether it was a Fourth Amendment search);[12] *Arson Google III*, 497 F.Supp.3d at 359 (where the Court did decide "whether a warrant is a necessary requirement to request Google location data.").

in a small, specific area at a given timespan. The execution of a geofence warrant only provides a cell phone's user's whereabouts in a single area for the limited time that the device was there, "not the sum-total of their daily movements." *In re Search of Info. that is Stored at Premises Controlled by Google LLC* ("*Google V*"), 579 F.Supp.3d 62, 81 (D.D.C. 2021); *see also Jones*, 565 U.S. at 430 (Alito, J., concurring) ("[R]elatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable.").

The fact that the data is from one limited area, and is not comprehensive historical data tracking everywhere a person goes, makes a geofence warrant much more similar to a single surveillance video camera trained on one location than a GPS monitor surveilling a known individual's every movement. This type of location data is a far cry from the dragnet, continuous, 24-hour surveillance of a person's movements over a lengthy period of time that was at issue in *Carpenter*.

B. No Reasonable Expectation of Privacy Exists for Anonymous Location-History Data.

Perhaps even more so than the limited nature of the data, the anonymity of the data is one of the most striking differences between data gleaned from the first two steps of a geofence warrant and the comprehensive historical CSLI obtained in *Carpenter*. Anonymous data, on its face, does not violate an individual's privacy interests. "Obviously, a person does not have a reasonable expectation of privacy over information that cannot be connected to her." *In re Search of Info. Stored at*

Premises Controlled by Google ("*Texas Google VI*"), No. 2:22-MJ-01325, 2023 WL 2236493, *8 (S.D. Tex. Feb. 14, 2023). Last year, a federal district court noted, in the context of geofence warrants, that "it is *far* from clear that Defendant's Fourth Amendment rights [are] implicated by the anonymized list provided" by Google in the first step of the geofence warrant process. *United States v. Rhine*, 652 F.Supp.3d 38, 82-83 (D.D.C. Jan. 24, 2023) (emphasis added). That is because:

> No one's whereabouts will be learned through this warrant, and no one's movements will be tracked or catalogued. No one's "familial, political, professional, religious, [or] sexual associations" will be divined from the information disclosed pursuant to the warrant. *Cf. United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring) (discussing constitutionality of warrantless tracker surreptitiously attached to a privately owned car, which monitored its movements for four consecutive weeks). In short, the anonymized information disclosed under this warrant will not link law enforcement to anyone.

Texas Google VI, 2023 WL 2236493, *8; *see also Google V*, 579 F.Supp.3d at 90 n.26 (noting "there is little to no infringement of personal privacy implicated by the anonymized location records disclosed at step one"); *Brennan v. Dickson*, 45 F.4th 48, 64 (D.C. Cir. 2022) (anonymized location tracking of a drone does not violate the Fourth Amendment, in part, because the drone's only unique identifier "does not disclose who is flying the drone.").

Here, the data produced in response to the geofence warrant is anonymized and is not connected to any person. No person's whereabouts "will be learned" through this warrant, and no person's movements "will be tracked or catalogued." *Texas Google VI*, 2023 WL 2236493, *8. There is no possibility of law enforcement

gleaning any individual's private associations. Instead, law enforcement simply gains anonymized data that shows how many devices entered a specific geographic area, how many times the devices were present in that area, and where within the geographic area the devices went. This is a far cry from what *Carpenter* identified as a protected reasonable expectation of privacy under the Fourth Amendment.

C. Appellant Had No Reasonable Expectation of Privacy Because He Voluntarily Provided His Device Location Data to a Third-Party.

Another reason Appellant did not have a reasonable expectation of privacy in his anonymous location data is the third-party doctrine, which establishes that a person "has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979). This, indeed, was the key basis for the Fourth Circuit's recent holding that device data obtained from a geofence warrant is not a Fourth Amendment search. *See Chatrie*, 107 F.4th at 339 ("We hold that the government did not conduct a Fourth Amendment search when it accessed two hours' worth of Chatrie's location information that he voluntarily exposed to Google.").

This reasoning is consistent with multiple United States Supreme Court decisions. For instance, in *United States v. Miller*, the defendant was under investigation for tax evasion. 425 U.S. 435, 438-39 (1976). The government subpoenaed the defendant's bank for numerous records. The Supreme Court rejected the defendant's Fourth Amendment challenge because he could "assert neither ownership nor possession" of these "business records of the banks." *Id*. at

440. *Miller* concluded the defendant had a limited expectation of privacy based on the nature of the records, in that they were used in transactions and the records were exposed to bank employees "in the ordinary course of business." *Id*. at 442. As such the defendant did not have a legitimate expectation of privacy because he voluntarily shared the information with a third party. *Id*. at 443. This is true "even if the information is revealed on the assumption that it will be used only for a limited purpose." *Id*.

In *Smith v. Maryland*, the Supreme Court applied the third-party doctrine to information transmitted to a phone company. 442 U.S. 735, 737-46 (1979). The Supreme Court held that individuals do not have a reasonable expectation of privacy that the numbers they dial will be kept private because they voluntarily convey those numbers to the phone company, exposing that information to the company in the ordinary course of business. *Id*. at 742-44. *Smith* concluded that the government's use of a tool to record the phone number dialed on a landline was not a search for the purposes of the Fourth Amendment. *Id*. at 745-46.

In *Carpenter*, the Supreme Court considered this third-party doctrine and created a "narrow" exception for historical CSLI, acknowledging that "in no meaningful sense does the user voluntarily assume the risk of turning over a *comprehensive dossier of his physical movements*." *Carpenter*, 585 U.S. at 315 (internal quotation marks omitted) (emphasis added). But, importantly, *Carpenter* did not abandon the third-party doctrine altogether; its holding is limited to the historical CSLI that was at issue in that case. In this case, testimony indicated that

users opt into Google's location data tracking to use such features as Google maps, for instance. Evid. Tr. 50. Applying the third-party doctrine to limited, *anonymous* location data is a reasonable application of that still-very-valid doctrine.

D. The Geofence Warrant Was Not an Impermissible General Warrant.

Assuming a search warrant was required, the search warrants obtained by law enforcement here were constitutionally valid.[13] This Court should affirm the district court's denial of the suppression motion because the geofence warrant did not constitute an impermissible general warrant.[14]

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[13] The search warrants also complied with requirements of Minn. Stat. § 626A.42 if that tracking statute applies to this anonymous location data. The district court's order concluded the search warrant met the statutory requirements (*see* Doc. Index #52 at 13-15), and Appellant has not argued on appeal that the search warrants ran afoul of this statute.

[14] Many of Appellant's arguments seem aimed at the fact that the initial search warrant authorized all three steps of the Google geofence-warrant process. The initial search warrant, however, should be read in conjunction with its accompanying affidavit, which explicitly specified that law enforcement would seek and obtain another search warrant *before* obtaining any identifying subscriber information (step three). Evid. Ex. 13 at 4. Because the search-warrant application explicitly limited itself to the first two steps of the Google geofence search warrant process (the anonymous-data-only portions), the search warrant itself was limited to those first two steps. *See, e.g., Bourke*, 718 N.W.2d 927 (looking to the reasonable inferences that can be drawn from a search-warrant application – which were lacking in the search warrant itself – to establish the reasonable suspicion necessary to justify a nighttime search).

Here, the search-warrant application explicitly specified that a second search warrant would be sought to obtain any of the identifying subscriber information (i.e., the third step of Google's geofence-warrant process). The detective who wrote the application was the same detective who executed the warrant (and therefore knew of its intended limitations), sending it to Google and obtaining data in return. This detective followed the stated limitations of the search-warrant application, obtaining a second search warrant before obtaining any identifying subscriber information.

Appellant argues that geofence warrants are categorically unconstitutional as general warrants. *See* App. Br. 17-23 "General warrants of course, are prohibited by the Fourth Amendment." *Miller*, 666 N.W.2d at 712. "General warrants specified only an offense and left the decision of whom to arrest and where to search to the discretion of the official executing the warrant." *State v. Jackson*, 742 N.W.2d 163, 169 (Minn. 2007) (*citing Steagald v. United States*, 451 U.S. 204, 220 (1981)). "The central objectionable feature of both warrants was that they provided no judicial check on the determination of the executing officials that the evidence available justified an intrusion into any particular home." *Steagald*, 451 U.S. at 220.

Although the district court did not extensively analyze the argument that geofence warrants are unconstitutional general warrants, the district court did accurately note that, at the time, no published opinions on geofence warrants had concluded that such warrants "are categorically barred." Doc. Index #52 at 13.[15] *See In re Search of Info. Stored at Premises Controlled by Google*, 481 F.Supp.3d 730, 756 (N.D. Ill. 2020) ("*Google Pharma II*") ("[N]or does the Court intend to suggest that geofence warrants are categorically unconstitutional.").[16]

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[15] Additionally, the district court also noted that the Eighth Circuit had concluded that a cell phone tower dump – a comparable issue – is not an unconstitutional general search. *United States v. James*, 3 F.4th 1102, 1106 (8th Cir. 2021).

[16] Earlier this month, the Fifth Circuit issued a decision holding "that geofence warrants categorically prohibited by the Fourth Amendment." *United States v. Smith*, --- F.4 th ---, 2024 WL 3738050, *16 (5th Cir. 2024). But the Fifth Circuit also agreed with the district court in that case that "law enforcement acted in good faith in relying on this type of warrant" and "affirm[ed] the district court's denial of Appellants' motion to suppress." Id. at *1. If this Court is included to look to this

Here, unlike a general warrant, the geofence search warrant specified where the search is to occur: Google's databases for location history at a specific, limited geographic location during a particular timeframe. This is far different from a general warrant specifying "only an offense" and leaving it to the official to decide "whom to arrest and where to search." *Jackson*, 742 N.W.2d at 169. The geofence warrant in this case was not an open-ended authorization for law enforcement to rummage as they pleased through the actual devices that were in the geographic area in that timeframe to see what they could find. Instead, law enforcement was provided with discrete sets of anonymous data on spreadsheets that met the parameters of the search warrant. Evid. Ex. 2, 3.

Appellant argues that the search warrant allows law enforcement to "min[e] the private data of many innocent people." App. Br. 23. But this greatly overstates what the geofence warrant in this case authorized and ultimately produced: a list of devices identified by unique, anonymous numbers, along with the dates/times the devices were in the geographic area specified in the warrant. As explained earlier in this brief, this limited, anonymous data is not protected by the Fourth

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Fifth Circuit decision for any persuasive guidance, it should strongly consider expanding the good-faith exception to the warrant requirement in line with how many other jurisdictions interpret and apply that exception, consistent with Justice Procaccini's recent concurrence in *State v. Carbo*, 6 N.W.3d 114, 134-37 (Minn. 2024) (Procaccini, J., concurring) ("In a situation such as this, when technological developments leap ahead of existing jurisprudence, the good-faith exception should apply.").

Amendment. Unlike ongoing, comprehensive, long-term CSLI for a particular, known individual, which allows law enforcement to sift through that individual's personal history, the geofence search warrant only shows – through anonymous identification numbers – when devices were in one geographic area. Even the second step of the search warrant only yielded limited – just two hours – anonymous location data. There was simply no trove of cell-phone data available for law enforcement officers to rummage through.

Appellant also complains that the geofence search warrant was used as an investigative tool before law enforcement have even identified a suspect, suggesting that a search warrant should primarily be used for confirmatory purposes later, or near the end, of an investigation. *See* App. Br. 20-23, 36. But, to the contrary, having an identified suspect is *not* a requirement for a constitutionally valid search warrant. "[S]earch warrants are often employed early in an investigation, perhaps before the identity of any likely criminal and certainly before all the perpetrators are or could be known." *Zurcher v. Stanford Daily*, 436 U.S. 547, 561 (1978)p.[17] As such, search warrants are an "effective and constitutionally acceptable [law] enforcement tool." *Id*. Instead of requiring an identified suspect, the constitution requires that a

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[17] *See also Google V*, 579 F.Supp.3d at 84 n19 ("But the Fourth Amendment does not and has never required that law enforcement know a suspect's identity for certain or even have a suspect in mind to obtain a search warrant. Although law enforcement will often have identified a suspect or group of potential suspects before seeking warrants, many cases remain 'whodunnits' at the time the government begins to seek warrants…. Said another way, a suspect's identity is not a prerequisite to a search warrant, which itself can be lawfully used to determine who a suspect is or develop a group of potential suspects.")

search warrant establish probable cause that a crime has been committed and that the place to be searched is likely to contain evidence of that crime. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The fact that the geofence warrant in this case was used as an investigative tool does not run afoul of the constitution or render the warrant an impermissible general warrant.

II. The Geofence Warrant Was Supported by Probable Cause.

A search warrant is supported by probable cause if there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Wiley*, 366 N.W.2d at 268. Probable cause does not require proof beyond a reasonable doubt, but rather "the kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.'" *Fla. v. Harris*, 568 U.S. 237, 243-44 (2013) (brackets in original). "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… there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238. This Court considers "the totality of the circumstances alleged in the supporting affidavit and 'must be careful not to review each component of the affidavit in isolation.'" *Fawcett*, 884 N.W.2d at 385 (*quoting Wiley*, 366 N.W.2d at 268). "[A] collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause." *Jones,* 678 N.W.2d at 11.

Here, the geofence warrant was amply supported by probable cause. Consistent with *Gates*, the district court correctly determined that there existed a

fair probability that (1) a crime was committed and (2) a geofence search will uncover evidence of that crime.

First, the geofence-warrant application established that the victim's body was found in the center of the geographic area identified in the warrant. His body is incontrovertible evidence that a murder took place: his hands were bound behind his back, there was evidence of extensive blunt force trauma, and his body was disposed of inside a culvert only twenty-one inches wide. The geofence-warrant application established that the medical examiner concluded the manner of death was a homicide. The application included information from an informant that the victim had been beaten to death and that his body had been transported from Minneapolis to the drainage ditch. The geofence-warrant application conclusively established that a crime had taken place.

Second, there was a fair probability that evidence would be found in the Google location data for the geofence area specified in the warrant. The application indicated that the involved suspects all had cell phones.[18] Evid. Ex. 13 at 4. Even without further details about the suspects' cell phones or cell-phone use, it is appropriate for an issuing magistrate to consider the fact that cell phones are ubiquitous today.[19] Indeed, an issuing magistrate's role is to make a "practical,

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[18] The Supreme Court has acknowledged the ubiquitous nature of cell phones in both *Riley* and *Carpenter*. *Riley,* 573 U.S. at 385; *Carpenter*, 585 U.S. at 311.

[19] Appellant claims this commonsense inference about the ubiquity of cell phones leads to searching individuals based on their proximity to where a crime took place, citing *Ybarra v. Illinois*, 444 U.S. 85, 100 (1979). Appellant argues *Ybarra* applies to geofence warrants because these geofence warrants impermissibly search people

common-sense decision" when deciding whether "there is a fair probability that… evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238. Reviewing courts have repeatedly emphasized that the issuing magistrate can and should make common-sense inferences in this analysis. *See, e.g*., *State v. Harris,* 589 N.W.2d at 788 (allowing the issuing magistrate to use common sense and draw inferences about the types of documents that would typically be found in a person's home); *State v. Wiley*, 205 N.W.2d 667, 670 (Minn. 1973) (noting that when considering a search warrant application, "the magistrate is not required to ignore such familiar facts of normal life as the habit of most people to have items of identification at their residence.") As the Eighth Circuit has reasoned:

> [E]ven if nobody knew for sure whether the robber actually possessed a cell phone, the judges [who issued "cell phone tower dump" warrants] were not required to check their common sense at the door and ignore the fact that most people 'compulsively carry cell phones with them all the time.'

United States v. James, 3 F.4th 1102, 1105 (8th Cir. 2021) (*quoting Carpenter*, 585 U.S. at 311). Another court has even taken note that "it would be the 'relatively rare' case when a cell phone does not transmit location information to Google," given the prevalence of Google's applications and operating systems. *Google V*, 579

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and their devices based on their proximity to the crime. But, just like the court of appeals determined, *Ybarra* is inapplicable. Contrary to Appellant's assertion that "thirty-one devices were searched here" (App. Br. 32), no *devices* were searched. The devices that were located in the geofence area are only identified anonymously and only their location date/time/place in the geofence was provided. Neither the devices – nor their owners – were searched. A new search warrant supported by probable cause was obtained before a search occurred related to one identified device.

F.Supp.3d at 78 (*citing Google Pharma II*, 481 F.Supp.3d at 734). As such, there was both a reasonable likelihood a crime had occurred and that geofence search for the delineated area would uncover evidence of that crime.

Here, the initial geofence warrant should be construed as only authorizing anonymous data from steps one and two of Google's geofence process. The warrant application explicitly stated that law enforcement would seek a second search warrant for any identifying data, such as subscriber data and other more detailed location history at that time. Therefore, under these facts, probable cause simply requires that there is a fair probability that a crime was committed and there is a fair probability that evidence of that crime will be found in the place searched (Google's location data) – i.e., that a geofence search will uncover evidence of that crime. The fact that some other *anonymous* devices' limited location data would also be received does not invalidate the warrant.

Finally, as the district court did here, this Court should consider the probable cause required to support a search warrant for a cell-phone tower dump, which is an analogous technological tool.[20] In *United States v. James*, the defendant challenged

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[20] Cell-phone tower dumps are similar in many respects to data from a geofence. Like geofence warrants, cell phone tower dumps do not track individual users. Instead, a "tower dump seeks every phone that connected to a particular cell site... in a particular period." *Google V*, 579 F. Supp. 3d at 86 n.21 (internal quotation marks omitted). Tower dumps then produce "a chronological list of every phone number that used the tower for any purpose (voice call, text, internet connection, etc.) regardless of provider (e.g., Verizon, AT&T)." *Id*. (*citing United States v. Pembrook*, 876 F.3d 812, 816 (6th Cir. 2017), *judgment vacated on other grounds*, 138 S. Ct. 2676 (2018)). Therefore, while geofence warrants produce location data that is more precise than a cell-phone tower dump, tower dumps yield less

the probable cause supporting a search warrant for a cell phone tower dump. 3 F.4th at 1104. In that case, investigators suspected a sole suspect was responsible for a string of robberies. *Id*. Officers obtained a search warrant to obtain data from each cell tower near each robbery (cell-tower "dumps"). *Id*. The defendant challenged the probable cause supporting the warrant to obtain the cell-phone tower dumps. *Id*. In analyzing whether the cell-phone tower dump search warrants were supported by probable cause, the Eighth Circuit considered whether the search warrant demonstrated a fair probability that a crime had taken place and that "evidence of a crime would be found in the place to be searched." *Id*. at 1104-05. Even though numerous other users' cell phone numbers would likely be acquired in the cell-phone dump,[21] the court did not require the search warrant to establish probable cause as to each of those other phone numbers. *Id*.

Likewise, here, this Court should consider the same standard: whether there was a fair probability that evidence of a crime would be found in the place to be searched. And here, it was reasonable for the issuing magistrate to conclude that there was a fair probability that some evidence of the homicide being investigated would be found on Google's servers – namely location information for devices located in the remote area where the victim's body was found. Accordingly, the

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anonymous data in that they give law enforcement a list of actual phone numbers, not anonymous device identification numbers. *Id*.

[21] "[I]t is well-understood that any order authorizing a cell tower dump is likely to affect at least hundreds of individuals' privacy interests." *Google V*, 579 F. Supp. 3d at 86 n21 (internal quotation marks, brackets, and citations omitted).

district court did not err by concluding that probable cause supported the geofence warrant.

III. The Geofence Warrant was Sufficiently Particular and Not Overbroad.

A. Particularity

A search warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV; MINN. CONST. art. 1, § 10. Like the ban on general warrants, the particularity requirement prevents a "general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). "The requirement that warrants shall particularly describe the things to be seized... prevents the seizure of one thing under a warrant describing another." *Marron v. United States*, 275 U.S. 192, 196 (1927). A search warrant "that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional." *Massachusetts v. Sheppard*, 468 U.S. 981, 988 n.5 (1984).

When "determining whether a clause in a search warrant is sufficiently particular, the circumstances of the case must be considered, as well as the nature of the crime under investigation and whether a more precise description is possible under the circumstances." *Miller*, 666 N.W.2d at 713. As such "there is a degree of flexibility to the particularity requirement." *State v. Poole*, 499 N.W.2d 31, 34 (Minn. 1993). However, a "warrant can only be as specific as the nature of the materials sought will allow." *State v. Ruud*, 259 N.W.2d 567, 573 (Minn. 1977).

Here, the geofence warrant gave exact latitudinal and longitudinal coordinates for the geofence area. The warrant specified that Google was to search for any devices that were in that location only on specified dates and provide that data in the form of anonymous device numbers.

Appellant argues that the search warrant failed the particularity requirement both as to location/size of the geofence area and time/duration of the data sought – the two considerations most courts consider under the particularity requirement. *See* App. Br. 33-41. Appellant contends the warrant was not sufficiently particular when compared to other geofence warrants that have been granted or denied.

First, the location/size of the geofence in this case was sufficiently particular. Again, the size of the geofence area was approximately 290 feet by 65 feet or 18,850 square feet (about 0.43 acre). This is about one-third the size of a football field, smaller than some other geofence warrant applications that have been granted. *See, e.g., Texas Google VI*, 2023 WL 2236493, at *6 (where the geofence warrant was granted for an area of 4,905 square meters or 1.21 acres).[22] Appellant complains the geofence area could have been drawn even smaller and could have excluded the rural road within its bounds. But given the particular facts, excluding the road was not necessary for the geofence area to be reasonably particular. Appellant's

[22] *Cf. Google Pharma I*, 2020 WL 5491763, *3 (where the search warrant application was denied, in part, because the multiple geofence areas encompassed over 9 acres of land) and *Chatrie*, 590 F. Supp. 3d at 918 (where the search warrant application was denied, and the geofence area was "longer than three football fields… [and] encompassed 17.5 acres.")

complaint about the inclusion of the road ignores the fact that the geofence boundary did not include a single house, business, church, school, or any building of any sort. *See id.* (granting a geofence-warrant application where the geofence area was drawn tightly so that "[n]o other buildings of any kind are located within the polygon").[23] No parking lots were within the bounds, and the only road within the boundary was a very rarely traveled road. The detective explained that including the road in the geofence area could capture a suspect parking a car on the road before disposing of the victim's body in the drainage ditch. Evid. Tr. 59. The fact that the geofence area included a rarely traveled road did not render the location/size of the geofence insufficiently particular, given the unique circumstances in this case and context of the area.

Second, while the timing/duration of the geofence search warrant was unusually long, it was sufficiently particular in light of the specific facts of this case. The geofence warrant itself authorized about a month's worth of anonymous location data, although in its execution with Google, the duration was reduced. Although the timeframe is a much longer window than the other cases Appellant cites (*see* App. Br. 34-35),[24] the specific facts of the area of this geofence is critical to analyzing its particularity. As the district court described:

[23] *Cf. Google Pharma I*, 2020 WL 5491763 *1, which denied a search warrant application for a geofence in a congested urban area, as discussed in more detail below in Part C.3.

[24] The cases where multiple short time periods were selected over the course of several days or months often had surveillance footage enabling officers to narrow

> Though this is a greater area and time than other geofence warrants, it is distinguishable on the fact that it was in rural Minnesota and did not encompass any business or home. Unlike an urban area, where even a small geofence is likely to capture hundreds of collateral devices, the rural geofence would plausibly only capture the few people driving on the short stretch of road and whoever hid Victim's body in the culvert. Most importantly, while a suspect device might be difficult to distinguish in an urban environment when surrounded by hundreds or thousands of other devices, a device standing for several minutes on an isolated culvert is imminently distinguishable from those appearing for a data point or two as they drive over the road. This significantly reduces the chances of collateral devices being subjected to greater scrutiny.
>
> Based on these facts, the Court finds the geofence was sufficiently definite, satisfying the Fourth Amendment's particularity requirement.

Doc. Index #52 at 17. The district court's reasoning is well-supported by the record. The area where the body was disposed is a rural area that the detective described as "desolate." Evid. Tr. 59. As mentioned above, the geofence area did not include any homes, churches, schools, clinics, or buildings of any type, including no businesses or other establishments. Only three houses were on that entire stretch of rural road, the closest of which was about 1300 feet away from the geofence – not within the bounds of the geofence. *Id*. at 48. The road itself was not traveled often by cars, and the closest intersecting road was also described as 'very desolate." *Id*. at 48. Because the particularity requirement is necessarily a fact-driven analysis, these facts control whether the search warrant was sufficiently particular. *See Miller*, 666

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down the exact minutes to be captured in the geofence. Some warrants were deemed sufficiently particular, and some were not – the analysis is highly fact-specific.

N.W.2d at 713; *Rhine*, 652 F.Supp.3d. at 45.[25] Here, given that the road was rarely traveled and the area did not contain a single building, the devices captured in the location data would most likely be the occasional car passing through. A wider timeframe would still likely gather very little data, as demonstrated by the actual results of the search warrant: 31 distinct devices in a two-week period (about a mere 2 devices per day) Under the specific facts of this case, the timeframe is sufficiently particular.

B. Not Overbroad

The Fourth Amendment also requires that a search warrant must not be overbroad, a concept that is "related to particularity, but is distinct from it." *Texas Google VI*, 2023 WL 2236493, *11. "Breadth deals with the requirement that the scope of the warrant be limited by the probable cause on which the warrant is based." *Google V*, 579 F.Supp.3d at 75-76. In the context of geofence warrants, some courts consider whether the geofence warrant is likely to "capture *vast swaths* of location data of individuals not connected to the crime." *In re Search Warrant Application for Geofence Location Data Stored at Google Concerning an Arson*

[25] *Rhine* illustrates how fact- and context-specific the particularity inquiry is. *See* 652 F.Supp.3d at 45. In that case, the geofence area was an area much larger than the geofence area in this case, tracing the counters of the U.S. Capitol building. *Id*. at 68. The time period of the geofence search warrant was four-and-a-half hours. *Id*. The search warrant met the particularity requirements, even though the first step of the geofence search warrant yielded around 5,700 unique devices. *Id*. The geofence search warrant was appropriately particular given the context of the crime and the location: the January 6, 2021, riots at the U.S. Capitol.

Investigation, 497 F.Supp.3d 345, 358 (N.D. Ill. 2020) ("*Arson Google III*") (emphasis added). Here, the geofence search warrant is not overbroad because the rural area where the geofence area was located was unlikely to capture "vast swaths" of data, the data obtained was anonymous, and, importantly, the risk of uninvolved individual's privacy rights being indirectly impacted is ultimately not fatal to a search warrant.

First, as previously described, the geofence boundaries in this case were drawn in a rural area and included no buildings. The geofence area is about one-third the size of a football field on a rural, desolate road that is rarely traveled. This is in stark contrast to *In re Search of Info. Stored at Premises Controlled by Google,* No. 20 M 297, 2020 WL 5491763 (N.D. Ill. July 8, 2020)("*Google Pharma I*"), for instance, which was found to be an overly broad geofence-warrant application. In *Google Pharma I*, the geofence area was in "a densely populated city, and the area contains restaurants, various commercial establishments, and at least one large residential complex, complete with a swimming pool, workout facilities, and other amenities." 2020 WL 5491763, *1. A geofence in this type of congested urban area would yield a large amount of data that would "have nothing whatsoever to do with the offenses under investigation." *Id*. at 5. Entirely the opposite of *Google Pharma I*, the geofence area here does not include any buildings: no residences, which deserve particular Fourth Amendment protection, no schools, no businesses, no churches, no social clubs, and not even any garages or parking lots. Even with the longer timeline authorized in the search warrant, this warrant, when considered in

its factual context, was not at all likely to "result in the collection of a *broad* sweep of data from uninvolved individuals." *Arson Google III*, 497 F.Supp.3d at 359. Unlike Appellant's claim that this type of warrant would mine the data of many people (*see* App. Br. 41), it was likely to do just the opposite: gather very little data at all.

The context of the geofence area itself minimizes the risk of sensitive location data being gathered on uninvolved individuals. The area contained no residences, hotels, or churches – places that may justify higher levels of protection or privacy. Instead, the geofence location included a portion of a field,[26] a ditch, and a public road. Based on this context, the only data likely to be captured in this geofence warrant would be the person responsible for disposing of the victim's body and people who drove through the geofence area on the road.[27]

Second, the fact that the geofence warrant authorized the seizure of only anonymous device location data renders the possible intrusion de minimis. As noted above, such a search does not necessarily even implicate the Fourth Amendment. In *Google Pharma I* and *Google Pharma II*, in which the courts denied search-warrant applications, the initial geofence warrant was not limited to the first two

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[26] "Quite simply, an open field, unlike the curtilage of a home, is not one of those protected areas enumerated in the Fourth Amendment." *Jones*, 565 U.S. at 411, (citation omitted).

[27] "A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *United States v. Knotts*, 460 U.S. 276, 281 (1983).

steps of the Google geofence warrant process; it included the third step of obtaining identifying subscriber information, as well. *Google Pharma I*, 2020 WL 5491763; *Google Pharma II*, 481 F.Supp.3d 730. In contrast, in *Texas Google VI*, the court considered the fact that the search warrant only sought anonymous data, not information about any identified individuals, when concluding the geofence search warrant was not overbroad. *Texas Google VI*, 2023 WL 2236493, *11. Here, any data gathered in this rural context was likely to be limited to mere seconds of location data when an individual drove through the geofence area. And this extremely limited data was only identified by an anonymous number. Because the touchstone of a Fourth Amendment analysis is reasonableness, seizure of limited, only-*anonymous* device location data is a reasonable, not overbroad search.

Furthermore, the possible risk of uninvolved individual's privacy rights being indirectly impacted is not fatal to a search warrant. "[T]he fact that one uninvolved individual's privacy rights are indirectly impacted by a search is present in numerous other situations and is not unusual." *Arson Google III*, 497 F.Supp.3d at 361. "The Supreme Court has long recognized and accepted that third party privacy interests could be impacted by lawful searches." *Google V*, 579 F.Supp.3d at 82. For example, "when a court authorizes the search of a house, the entire house is subject to the search, and this includes the most private areas of a house, such as bedrooms and bathrooms, of individuals who may not be involved in the crime but who nonetheless live in the premises, such as spouses and children." *Arson Google III*, 497 F.Supp.3d at 361; *see also Zurcher*, 436 U.S. at 554 (in which the Court

held an otherwise valid search warrant was not unconstitutional simply because the search warrant might indirectly impact individuals uninvolved in the crime)[28]

For instance, in *Rhine*, the first step of the geofence warrant yielded around 5,700 unique devices. 652 F.Supp.3d at 69. After further examination and analysis of these unique but anonymous devices, the government sought authorization for identifying subscriber information of close to 1,500 of the devices. *Id*. at 85-86. The court concluded the search warrant was not overly broad, even though it obtained limited location data on *thousands* of anonymous devices not implicated in the crime (that is to say, uninvolved individuals).

Finally, even if this Court finds some deficit in the search warrant, it can be cured – like the court of appeals determined – by the severance doctrine. "Under the severance doctrine, the insufficient portions of the warrant are stricken and any evidence seized pursuant thereto is suppressed, but the remainder of the warrant is still valid." *State v. Hannuksela*, 452 N.W.2d 668, 673 (Minn. 1990). Accordingly, any seizures pursuant to the valid portions of the warrant are constitutional, and items so seized are not subject to suppression." *Id*. at 674. In *Hannuksela*, most of the search warrant met the particularity requirement, but one portion failed to adequately describe items to be seized with particularity. *Id*. at 673. This Court applied the severance doctrine, holding that the remainder of the search warrant was

[28] Furthermore, courts routinely uphold search warrants for cell tower "dumps," despite the fact that such warrants gather hundreds of phone numbers for individuals uninvolved in the crime. *See Google V*, 579 F. Supp. 3d at 86 n21.

still valid. *Id*. Only evidence seized pursuant to the severed part of the search warrant would be suppressed. *Id*. at 674; *see also State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (applying the severance doctrine to a portion of a search warrant, resulting in suppression of some evidence but not other evidence).

For instance, if this Court is concerned that the initial search warrant authorized law enforcement to obtain identifying – not merely anonymous – information from Google, this portion of the search warrant should be stricken, just like the court of appeals explained. *See Contreras-Sanchez*, 5 N.W.3d at 170-71. No evidence *was* seized or obtained from this portion of the search warrant; law enforcement obtained a second search warrant. Thus, severing this portion of the warrant would not require suppression of any evidence and would not affect the trial verdict. Or, similarly, if this Court is concerned about the larger window of time included in the initial search warrant, the Court could sever the portion of the search warrant that authorized data after the first week of location data, for example, which would also have no effect on the outcome of the trial.

IV. Appellant Does Not Provide a "Principled Basis" for Concluding the Geofence Warrant in this Case Should be Examined Differently Under the Minnesota Constitution than Under the Fourth Amendment.

Appellant contends that this Court should construe the Minnesota Constitution as providing greater protections in the context of this geofence warrant. *See* App. Br. 44-46. Appellant cites to some prior decisions of this Court that have recognized heightened protections offered by article I, section 10 of our state's constitution. *See id.* For example, in *State v. Askerooth*, this Court stated, "[i]t is

axiomatic that we are free to interpret the Minnesota Constitution as affording greater protection against unreasonable searches and seizures than the United States Constitution." 681 N.W.2d 353, 361 (Minn. 2004). But this Court also cautioned that, in interpretating article I, section 10, this Court "will not cavalierly construe our [state's] constitution more expansively than the United States has construed the federal constitution." *Id.* at 362. Critically, this Court "will not construe the Minnesota Constitution as granting greater protection for individual rights unless there is a principled basis to do so." *State v. McMurray*, 860 N.W.2d 686, 689-90 (Minn. 2015) (quotation omitted).

Appellant broadly states the "substantial privacy interests at stake here" call for heightened protection because "location data is highly sensitive and contains very personal and revealing information." App. Br. 45. But, as discussed in this brief, the data at issue in this case is anonymous data that merely indicates particular devices were present in a small, specific, rural area in a certain timeframe, rather than any of the expansive information that was at issue in *Carpenter*, in *In re B.H.*, 946 N.W.2d 860 (Minn. 2020), or in *State v. McNeilly*, 6 N.W.3d 161 (Minn. 2024) – all of which was information tied to specific, known individuals. Appellant offers no clear "principled basis" for concluding that the first geofence warrant in this case should be examined differently under the state constitution than under the federal constitution, so there is no reason for this Court to construe article I, section 10 in that fashion in this case. *State v. McMurray*, 860 N.W.2d 686c, 689-90 (Minn. 2015).

V. Any Error in Denying Appellant's Suppression Motion was Harmless.

Appellant argues that the denial of his motion to suppress the evidence from the geofence search warrant is not harmless because, had evidence from the initial geofence warrant been suppressed, all the other evidence of Appellant's guilt would not have been admissible because it constituted fruits of the poisonous tree. *See* App. Br. 47-54. This is simply not true. Here, aside from the evidence obtained from the geofence warrant, ample other evidence of Appellant's guilt supports his conviction: testimony by two accomplices, Appellant's own confession of his involvement, and the highly inculpatory videos Appellant took and provided to police, among other evidence.[29] None of this evidence is fruits of the poisonous tree.

"In a criminal case, the remedy for an illegal search or seizure is generally limited to the suppression of illegally obtained evidence." *State v. Horst*, 880 N.W.2d 24, 36 (Minn. 2016). "This rule, more commonly known as the exclusionary rule, also extends to the 'fruits' of an illegal search or seizure." *Id.* In order for such fruit of the poisonous tree to be admissible, the State must prove that the evidence was obtained "by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (internal quotation marks omitted). In this analysis, this Court examines several factors to determine whether evidence is fruit of the poisonous tree. *Knapp v. Comm'r of Pub.*

[29] Because the district court denied Appellant's suppression motion, the parties did not litigate or create a record in district court of what evidence should properly be considered fruits of the geofence warrant.

Safety, 610 N.W.2d 625, 628 (Minn. 2000). These factors include: (1) the purpose and flagrancy of the officer's misconduct, (2) the presence of intervening circumstances, (3) whether it is likely the evidence would have been obtained in the absence of the illegality, and (4) the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality. *State v. Warndahl*, 436 N.W.2d 770, 776 (Minn. 1989). No single factor is dispositive; rather, this Court balances all these factors. *State v. Weekes*, 268 N.W.2d 705, 709 (Minn. 1978). Consideration of these factors demonstrates that any error in admitting evidence from the initial geofence warrant was harmless.

A. There Was No Flagrant Misconduct by the Officers.

First, there was no misconduct by law enforcement in this case. This Court has "identified deterrence of police misconduct as the central purpose of the exclusionary rule." *State v. Lindquist*, 869 N.W.2d 863, 871 (Minn. 2015). This is not a case of a warrantless search. Rather, detectives obtained a search warrant from a judge to obtain the evidence from Google. "Little more can be expected of a police officer who gathers evidence, presents it to a magistrate, and receives a warrant." *State v. Nolting*, 254 N.W.2d 340, 345 n.7 (Minn. 1977). This factor weighs against excluding any evidence other than the direct result of the initial geofence warrant.

B. Numerous Intervening Circumstances Occurred Between Obtaining the Geofence Data and Gathering Other Key Evidence, Like Appellant's Confession.

Second, numerous intervening circumstances occurred between obtaining the geofence data and investigators uncovering other evidence in the case, such as

Appellant's confession and later statements by his accomplices. The geofence warrant did not directly lead to Appellant's confession and the discovery of the videos on Appellant's phone. Instead, numerous other investigative steps occurred between obtaining the geofence-warrant data on June 11, 2021, and Appellant's confession on November 2, 2021, as described in more detail below. This factor weighs against excluding the other evidence of Appellant's guilt.

C. Evidence of Appellant's Guilt Would Have Likely Been Obtained in the Absence of the Geofence Search Warrant.

Appellant essentially argues that all the compelling inculpatory evidence would never have been found, absent the geofence search warrant. But, to the contrary, the evidence indicates a complex investigation involving multiple jurisdictions was well underway before the geofence-location data was received from Google. The victim's body was discovered on April 26, 2021, and identified two days later. Tr. 804-05. After the victim was identified, Dakota County officers spoke to M.M.'s brother, who gave names of possible suspects he thought were involved, including Tammy, Arturo, Victor, someone with the nickname Chilango (Appellant's nickname), and someone named Ivan and Elvan. Tr. 807. M.M.'s brother had already given these names to Minneapolis police officers after his brother had gone missing. *Id*. For instance, when investigators viewed the surveillance-video footage from the Speedway gas station (before receiving Appellant's subscriber information), they already recognized a car and an individual

in the footage as people who may have been involved from other information officers had already received. Evid. Tr. 82.

On May 24, 2021, a Minneapolis Police homicide detective became involved in this case. Tr. 964. Dakota County shared information with this investigator that M.M. had been violently assaulted, possibly with a hammer, in a basement. Tr. 973. Also on May 24, 2021, a confidential informant told officers that multiple people, including Tammy, Arturo, and someone who was known as Chilango, brought M.M. to the basement of a house located at 425 East 36th Street in Minneapolis, and that M.M. later died. Doc. Index #29; Evid. Ex. 13.

On May 25, 2021, a second confidential informant told police officers that Tammy, her boyfriend Arturo, and Chilango participated in murdering M.M. in the home's basement. Doc. Index #29. They said that M.M. was tortured, that hammers were used, and that the victim was later moved to a car. Doc. Index #29. The confidential informant said that Chilango dumped the body. Doc. Index #29.

Also on May 25, 2021, the homicide investigator in Minneapolis had already identified the house at 425 East 36th Street in Minneapolis as the possible crime scene and had the house searched and processed by the crime lab for evidence. Tr. 967. Roofing nails that matched the nail embedded in M.M.'s heel were found in the basement, along with a bloodlike substance on the walls. Tr. 971. The Minneapolis homicide detective had already identified the individual who was renting the house at the time of the murder. Tr. 964. All this information was known

and gathered well before Dakota County obtained the subscriber information for the suspect device from the second geofence warrant on June 11, 2021. Ex. 61.

Before receiving the subscriber information from Google, investigators had already located the crime scene, identified possible involved individuals, including Appellant's nickname, and had multiple confidential informants supply information. Although the subscriber information obtained from the geofence search warrant on June 11, 2021, unquestionably advanced the investigation, there is no reason to believe, given the ongoing investigation, that investigators would not have obtained much of the compelling evidence of Appellant's guilt through the course of their investigation, absent that subscriber information. This factor again weighs in favor of admission of the evidence.

D. There Is No Temporal Proximity Between the Geofence Search Warrant and Compelling Evidence of Appellant's Guilt.

Here, while there may arguably be an unbroken causal chain between the geofence warrant and the surveillance video at the Speedway gas station, for instance, the same cannot be said for Appellant's confession to police, the videos on his phone, or his accomplice's statements and testimony. As described above, law enforcement already had Appellant's nickname as a likely suspect prior to receiving the subscriber information from Google. While Google provided Appellant's subscriber information on June 11, 2021, Appellant was not interviewed by police until November 2, 2021, well over four months after officers received the subscriber information from Google. This is a far cry from a causal chain with no

break. *See, e.g., State v. Schweich*, 414 N.W.2d 227, 231 (Minn. 1987) (noting "there was no break in the causal chain from the illegal search to the confessions" and "[i]t was less than one hour between the two occurrences"). To the contrary, months of investigation occurred between the execution of the geofence warrant and Appellant's confession (and the statements of his accomplices). Appellant's confession is far too attenuated to be considered a fruit of the search warrant. This factor weighs in favor of admission of the other evidence of Appellant's guilt.

Balancing these factors together, even if the results of the geofence search warrant should have been suppressed, there was ample other evidence of Appellant's guilt that would not have been suppressed. Given the weight, breadth, and, frankly, enormity of the remaining evidence of Appellant's guilt, this Court can conclude that – even if the district court erred by denying Appellant's suppression motion – such error was harmless.

CONCLUSION

Respondent State of Minnesota respectfully asks this Court to affirm the decisions of both the district court and the court of appeals that denied Appellant's suppression motion.

DATED: August 30, 2024

Respectfully submitted,

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A22-1579
STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota, Respondent, vs. Ivan Contreras-Sanchez, Appellant.	**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 13,189 words. This brief was prepared using Microsoft Office 2016, Times New Roman font face size 13.

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