STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Hood, P.J., Redford and Maldonado, J.J.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL GEORGIE CARSON,

Defendant-Appellee.

Supreme Court No. 166923

Court of Appeals No. 355925

Emmet County Circuit Court No. 20-005054-FC

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BRIEF OF PROJECT FOR PRIVACY AND SURVEILLANCE ACCOUNTABILITY, INC. AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

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INTRODUCTION AND INTEREST OF *AMICUS*[1]

After Michael Georgie Carson was suspected of stealing funds from his neighbor's safe, police raided his home, discovered a phone, obtained a warrant to search the phone for "records or documents* pertaining to the investigation of Larceny in a Building and Safe Breaking," and used text messages from the phone to obtain a conviction. App'x[2] pp 1, 11–12. So far, so good.

But the Warrant itself contained a fatal flaw. Later clauses of the warrant made the language limiting it to records "pertaining to the investigation of" specific crimes illusory. These later clauses stated that "[i]n order to search for any such items" in the first clause, police could "seize and search" literally everything on the phone: "Any and all data . . . all records or documents . . . and any data . . . capable of being read or interpreted by a cell phone[.]" App'x p 127. This violates the Fourth Amendment's requirement that warrants describe the "things to be seized" with particularity. See Appellee's Brief at 4 (emphasis omitted) (quoting US Const Am IV).

The Court of Appeals recognized this flaw, explained that the earlier "guardrail was negated by the ensuing instruction to search for such items by searching and seizing the entirety of the phone's contents," App'x p 12, and correctly overturned the conviction and remanded for additional proceedings, *id.* at 18.

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[1] No counsel for a party authored this brief in whole or in part, nor did anyone other than *Amicus* or its counsel make a monetary contribution intended to fund the preparation or submission of the brief.

[2] All citations to "App'x" refer to the Appellant's Appendix filed on November 20, 2024.

The State now challenges this holding by arguing that the warrant's later expansive clauses are merely a gloss on the first, more reasonable one. Appellant's Brief at 23. But this cannot be squared with the fact that these expansive clauses also authorize seizure of tangible objects in addition to data from the phone—and make the warrant an improper general warrant.

The application of the Fourth Amendment to personal electronic devices is an issue of significant importance to *Amicus* Project for Privacy & Surveillance Accountability (PPSA), a nonprofit, nonpartisan organization focused on protecting Fourth Amendment rights from high-tech threats to privacy. PPSA urges this Court to ensure protection of the level of privacy that existed at the Founding by enforcing the Fourth Amendment's prohibition on general warrants whether they are directed at all documents in a home or at all documents in a phone.

BACKGROUND

In 2019, Defendant Michael Georgie Carson and his romantic partner, Brandie DeGroff, were asked by their neighbor Don Billings to help sell Billings' goods online in exchange for a share of the proceeds. App'x p 2. They were given keys to Billings's home and access to much of his property, but not access to his safe, where he kept savings, valuables, and documents. *Id.* Sometime after the sales were completed, Billings forgot his safe combination, took the safe to a locksmith to be opened, and discovered all the cash he had stored in it was gone. *Id.*

Suspecting Carson and DeGroff of stealing the cash, police raided their home and arrested them in February of 2020. *Id.* at 2–3. During the arrest, a detective noticed a phone on Carson's nightstand, asked if it was Carson's, and when he

responded in the affirmative, seized it. *Id.* at 3. The police obtained a warrant to search the phone and found text messages referencing the safe that were crucial to obtaining Carson's conviction. *Id.*

The warrant itself described the "place or thing to be searched" as the cellular phone, and initially described the property to be seized from it as "[a]ny and all records or documents* pertaining to the investigation of Larceny in a Building and Safe Breaking"—an apparently sensible limit. *Id.* at 127.

But later catch-all clauses in the warrant made this limit illusory. "In order to search for any such items" from this limited category, police were authorized to "seize and search" from a second, broader category. This second category included "[a]ny and all data" on the phone, "any data on the SIM card" and, if that weren't enough, "all records or documents which were created, modified, or stored in electronic or magnetic form and any data, image, or information that is capable of being read or interpreted by a cellular phone or a computer." *Id.* And this second category was not merely a description of or a gloss on the first, because it also included physical items—including "physical keys," "cellular devices," and "test keys"—while the first was limited to "records or documents." *Id.*

After Carson was convicted, he moved to suppress texts taken from the phone in post-trial motions. But the motion to suppress was denied, and he appealed. *Id.* at 6–7. The Court of Appeals correctly held that the warrant failed the Fourth Amendment's particularity requirement, because it was analogous to "the sort of general search of a home that the framers originally intended to avoid." *Id.* at 13. The

Court of Appeals also correctly held that the warrant was so facially bare that the good faith exception did not apply. *Id.* at 14–16. The government appealed to this Court, arguing that the warrant's expansive clauses merely shed light on the first clause, Appellant's Brief at 23–24, that the warrant was severable, *id.* at 35–36, and that a good-faith exception to the exclusionary rule applies in any event, *id.* at 37–41.

ARGUMENT

For reasons stated by Defendant and by the Court of Appeals, the warrant failed to satisfy the particularity requirement, the good faith exception does not apply, and the evidence seized pursuant to it should be suppressed. But there is an additional reason that the warrant fails the particularity requirement: It corresponds almost exactly to two of the canonical examples of an improper general warrant. First, it corresponds to an expansive search of all documents within a dwelling, because the warrant is comprehensive and cell phones are equivalent to a dwelling for Fourth Amendment purposes. Second, the warrant corresponds to a writ of assistance, because the warrant described the "place to search" as the Defendant's cell phone, but authorized seizure of tangible items, making the warrant unbound by place. See App'x p 127.

Finally, given that this is a general warrant that authorizes nearly boundless discretion, the good faith exception does not apply, regardless of the good conduct or intentions of the executing officers.

I. The Warrant Here Resembles Two Canonical Forms of General Warrants.

As the U.S. Supreme Court has noted, "[t]he Founding generation crafted the Fourth Amendment as a response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Carpenter v United States*, 585 US 296, 303 (2018) (nested quotations omitted) (quoting *Riley v California*, 573 US 373, 403 (2014)). "In fact, as John Adams recalled, the patriot James Otis's 1761 speech condemning writs of assistance was 'the first act of opposition to the arbitrary claims of Great Britain' and helped spark the Revolution itself." *Id.* at 303–04 (citations omitted).

The U.S. Supreme Court has also made clear that the Fourth Amendment also prohibits the equivalent of general warrants against modern electronic devices, noting that courts should "assure [] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted[,]" *Carpenter*, 585 US at 305 (quoting *Kyllo v United States,* 533 US 27, 34 (2001)), rather than leave society "'at the mercy of advancing technology,'" *id.* (quoting *Kyllo*, 533 US at 35). And this Court heeded that mandate in *People v Hughes*, stating that "respect for the Fourth Amendment's requirement of particularity and the extensive privacy interests implicated by cell-phone data . . . requires that officers reasonably limit the scope of their searches . . . and not employ that authorization as a basis for seizing and searching digital data in the manner of a *general warrant*[.]" *People v Hughes*, 506 Mich 512, 553–54 (2020) (emphasis in original) (citing *Riley,* 573 US 373).

Over the course of English and colonial history, there were multiple types of general warrants, and the warrant here is closely analogous to the category first struck down by Founding-era English courts: An extensive search of a dwelling for a very broad category of documents. *Stanford v Texas*, 379 US 476, 484 (1965) (quoting *Entick v Carrington*, 19 How St Tr 1029, 1064 (1765)). In addition, because the warrant authorizes searches for certain items that cannot possibly be in the described "place"—a cell phone—it corresponds to a second category of general warrant, the writ of assistance. *Steagald v United States*, 451 US 204, 220 (1981).[3]

A. Intrusive seizures of all or numerous documents in a dwelling are a canonical form of general warrant, and a cell phone is equivalent to a dwelling for Fourth Amendment purposes.

The first category of general warrant to be disapproved by Founding-era English courts was an extensive search of a dwelling for books and papers, where one's "house is rifled; his most valuable secrets are taken out of his possession," *Stanford*, 379 US at 484 (quoting *Entick*, 19 How St Tr at 1064). The warrant here, authorizing seizure of the entire contents of a phone, closely resembles this warrant.

Indeed, an extensive seizure of documents in a dwelling constitutes a general warrant even where all documents seized are related to a violation of a specific statute. *Id.* at 478–81 (Where warrant authorized seizure from specific address of

[3] Other categories of general warrant included the category dealt with in *People v Hughes*, searching for "evidence [un]related to the criminal activity alleged in the warrant[,]" 506 Mich at 553, and broad searches for evidence of a single offense, typically seditious libel, which "left to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched[,]" *Steagald,* 451 US at 220.

"books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas" which were "unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas," and the search took "more than four hours," it was "clear that this warrant was . . . a general warrant."). And this is true even where possession of some subcategory of records is itself a crime.[4] *Id.* at 478–79 (documents included "books and records . . . concerning the Communist Party of Texas" including "party lists and dues payments"); Tex Rev Civ Stat Ann art 6889-3A, § 2 (1956) (repealed 1993) ("All books, records, and files" of the "Communist Party and component or related organizations" must be "turned over to the Attorney General").

The warrant here, authorizing seizure of an unbounded category of information with no necessary connection to the commission of a crime, would clearly constitute this type of general warrant if it were directed against a dwelling. The later clauses of the warrant here authorized searching and seizing "[a]ny and all data" on the phone, and even "any data, image, or information that is *capable of* being read or interpreted by a cellular phone or a computer," regardless of connection to any crime. App'x p 127 (emphasis added). In contrast, the warrant in *Stanford* specifically restricted its scope to documents "concerning the Communist Party of Texas" and its operations, and only those unlawfully possessed in violation of two specific statutes.

[4] The statutes operated as criminal laws despite being described as "civil statutes." Both proscribed certain violent actions, with one authorizing execution and both authorizing imprisonment of up to 20 years. Tex Rev Civ Stat Ann art 6889-3, § 5 (1952) (repealed 1993); Tex Rev Civ Stat Ann art 6889-3A, §§ 5–6 (1956) (repealed 1993).

Stanford, 379 US at 478–79. And, given the quantity of information available on a cell phone, this is arguably broader than the warrant to seize an individual's "books and papers," executed with a four-hour search, that was disapproved by Founding-era English courts. *Id.* at 483–84 (citing *Entick*, 19 How St Tr at 1064).

To preserve the degree of privacy that existed at the Founding—as *Carpenter* requires—a warrant should be treated no differently if directed against a phone rather than a dwelling, as even the government appears to concede. See Appellant's Brief at 15 ("As noted by *Riley*, a home and a cell phone are similarly situated" (quoting *Hughes*, 506 Mich at 539 n.12)). Modern cell phones are "a cache of sensitive personal information" from which "[t]he sum of an individual's private life can be reconstructed," *Riley*, 573 US at 394–95, and searching all documents in one's phone is arguably even more intrusive than rummaging through all documents in a house.

Indeed, the warrant at issue here recognized the expansiveness of this store of information, describing the cell phone as the "place" to be searched, and files within it as items to be seized. App'x p 127. And the warrant authorized a truly comprehensive search, even broader than what could be uncovered in a four-hour search of a dwelling. *Stanford*, 379 US at 479–80.

This is particularly true for searches of communications devices, where private speech or expression is likely to be uncovered among the items searched, as here. *Id.* at 485. Although the particularity requirement is certainly stronger in a case where "the basis for [the documents'] seizure is the ideas which they contain," cell phones are ubiquitously used for public debate, and that heightens the need for the

particularity requirement even if the search is not expressly targeting speech. *Id.* at 484–85 (explaining the First and Fourth Amendments "are indeed closely related," and First Amendment concerns can heighten the particularity requirement).

Of course, "the degree of specificity required" by a warrant "is flexible and will vary depending on the crime involved and the types of items sought." *United States v Henson*, 848 F2d 1374, 1383 (CA 6, 1988). There may be cases where, because of obfuscation of files or lack of knowledge of relevant items, a warrant may need to seize the entire contents of a phone or computer. But here, there was no limit on the search, and it was not impracticable to detail the types of documents—such as text messages between suspects or discussing spending, financial records, and files such as cryptographic keys needed to access such information—that would be relevant to a search. But the warrant here went well beyond that, sweeping in obviously non-helpful categories of information, including medical applications, or compromising but obviously non-criminal internet searches. App'x pp 11–12.

It is also true that acceptable warrants sometimes have "a category of seizable papers [that have] been adequately described, with the description delineated in part by an illustrative list of seizable items," *United States v Ables*, 167 F3d 1021, 1034 (CA 6, 1999) (quoting *Riley*, 573 US at 845). But here, that logic is flipped on its head, with the "illustrative list" not serving as a limit by example, but instead being literally the entire contents of the phone.

Finally, the government argues that the warrant's first clause, limiting items to be seized to "records or documents* pertaining to the investigation of Larceny in a

Building and Safe Breaking," imposes a similar limitation on the second category of items that may be seized including, *inter alia*, "[a]ny and all data" on the phone. Appellant's Brief at 23–24 (emphasis omitted from first quotation); App'x p 127. Under this reading, the government argues, the first clause is "fleshed out" by the gloss of the later, expansive ones. Appellant's Brief at 24.

But far from being a "common-sense" reading, *id.,* this reading renders the warrant incoherent. The principal problem is that the first clause only authorizes seizure of "documents and records," while the later clauses include not just any and all data on the phone, but also tangible objects that cannot be described as documents or records, including "cellular devices" and "physical keys." App'x p 127. Moreover, the first clause is already "fleshed out" by its own clarifying sentence, which comes before the later expansive clauses. *Id.* ("As used above, the term records or documents includes records or documents which were created, modified or stored in electronic or magnetic form and any data, image, or information that is capable of being read or interpreted by a computer."). As further confirmation that the first clause describes a separate category of items, identical language is used to clarify the later clauses. *Id.* And the later clauses also have a separate purpose: After the first clause, the warrant states that "[i]n order to search for any such items" described by the first clause, officers may "seize and search" items in the more expansive list. *Id.*

In short, the government cannot dispute that the unbounded scope of the warrant at issue here makes it invalid under a proper historical understanding of the Fourth Amendment.

B. By listing the place to be searched as a phone, and listing physical items to be seized that could not be contained in the phone, the warrant was unconstrained by place, analogous to a writ of assistance.

The warrant here is also invalid because it closely resembles an ancient writ of assistance. The "writs of assistance used in the Colonies" were warrants which "noted only the object of the search—any uncustomed goods—and thus left customs officials completely free to search any place where they believed such goods might be." *Steagald*, 451 US at 220; see also *Reed v Rice*, 25 Ky (2 JJ Marsh) 44, 46 (1829) (similar state provision prohibited search warrant specifying people to be seized but not place). Here, the warrant effectively has no place limits, because it authorizes a search for certain items physical items in a place (the cell phone) which cannot possibly contain them. Compare App'x p 127 (warrant authorizing seizure of items including "physical keys," "cellular devices," "encryption devices and similar physical items . . .") with Appellant's Brief at 24 ("the warrant identifies the *location* to be searched: a '[c]ellular device belonging to Michael Georgie Carson,' an 'LG Cellular phone blue in color with' the phone's 21-digit serial number. Hard to get more particular than that." (emphasis in original)).

It could be that the "place" to be searched also includes the address listed where the cell phone is located. But this would mean that either (1) the warrant's first clause, authorizing "records or documents* pertaining to the investigation of Larceny in a Building and Safe Breaking," App'x p 127, was actually for a search of the entirety of that address and not just the mobile device, contradicting the government's claims, or (2) the later, expansive clauses, authorizing searches for those physical items and

"[a]ny and all data" on the phone are separate seizure clauses and are not modified by the "pertaining to" restriction from the first clause, *id*. Either way, the warrant is not sufficiently particularized to pass Fourth Amendment muster.

II. The Good Faith Exception Does Not Apply.

For these reasons, the court below correctly held that "this was a facially invalid general warrant upon which no reasonable officer could have relied in objective good faith." App'x p 14. *Amicus* offers two additional reasons to affirm this holding.

First, the warrant is incoherent, specifying the "place" to be searched as a specific cell phone, but also authorizing seizure of physical items including "physical keys." App'x p 127.[5] This alone renders it facially incoherent and, hence, invalid. See, e.g., *People v Franklin*, 500 Mich 92, 101 (2017) (Every warrant requires "there is a fair probability that contraband or evidence of a crime will be found in a particular place." (quoting *Illinois v Gates*, 462 US 213, 238 (1983))); *People v Hellstrom*, 264 Mich App 187, 197; 690 NW2d 293 (2004) (good faith exception does not apply when a warrant is "so facially deficient . . .that the executing officers cannot reasonably presume it to be valid."); *United States v Lazar*, 604 F3d 230, 237–38 (CA 6, 2010) (discussing "that aspect of the exclusionary rule which applies to warrants that are facially deficient warrants *ab initio*.").

[5] While one could argue that the listed address where the phone was located was also part of the place to be searched, the government has consistently argued that the phone alone was the location to be searched, see Appellant's Brief at 24 ("Hard to get more particular than that"), and that later clauses merely "flesh[] out" the first clause in the warrant authorizing a search of the phone, *id.*

Second, even if the place to be searched were sufficiently described, when a warrant specifies the place to be searched, but not the things to be seized, the good faith exception does not apply, regardless of officers' care or detail in the warrant request process. *Groh v Ramirez*, 540 US 551, 557–58 (2004) (Where warrant described only house to search, good faith exception did not apply, even where requesting officer had described list of items to issuing judge and constrained search to such items). And, as noted above, the warrant here authorized such an extensive search of documents that it constitutes a general warrant, and so it is equivalent to a failure to list any items to be seized. Binding precedent was and is that cell phone search warrants may not "in effect give 'police officers unbridled discretion to rummage at will among a person's private effects'" outside of unusual circumstances such as file obfuscation. *Hughes,* 506 Mich at 542 (quoting *Riley*, 573 US at 399). But that is what this warrant did.

Additionally, for the reasons explained in Appellee's Brief, the warrant is not severable.

CONCLUSION

This Court's holding in *Hughes* makes clear that cell phones must be protected from the equivalent of general warrants. The broad warrant at issue here, allowing rifling through all documents in an exhaustive search of a cell phone—which can hold more information than might historically be expected of even a home—is shockingly similar to the original form of general warrant rebuked by pre-Revolutionary-War courts. This Court should thus protect the level of privacy that existed at the Founding by affirming the Court of Appeal's decision.

Dated this 16th day of January, 2025

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

This brief complies with the word limit set forth in MCR 7.212(B)(1) because it contains 3,743 words, inclusive of all portions of the brief required to be counted pursuant to MCR 7.212(B)(2). This brief also complies with the typeface and type-style requirements of MCR 7.212(B)(5) because it was prepared using Microsoft Word in 12-point font, double-spaced, and with 1-inch margins.

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2025, I electronically filed the foregoing document with the Clerk of the Court and all counsel of record via MiFILE TrueFiling, which will send notification of such filing to counsel of record for all parties.

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