

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

D-1329-CR-2017-00170
DA File # SV 17 0637(A)2

FILED IN CIVIL
DISTRICT COURT
~~2017 JUL 31~~ AM 10:29
AUG - 1 2017
CHRISTAL R. DRAEFORD
BY _____ DEPUTY

STATE OF NEW MEXICO,
Plaintiff,

v

JACOB JOHNSON,
Defendant

STATE'S MOTION TO PRODUCE CELL PHONE RECORDS

COMES NOW the State of New Mexico, by and through Assistant District Attorney Mathew Wadsworth, to request that this Honorable Court issue an Order authorizing the State to issue a subpoena to Sprint PCS so that the State may obtain all phone records from Sprint PCS belonging to phone number [REDACTED]. The State requests all phone records relating to Defendant Jacob Johnson's cell phone from April 19 until April 22, 2017 including the text detail report, the call detail report, subscriber and activation information, and all cell site data.

This motion is based on the grounds that there is probable cause to believe that this evidence will be relevant to the investigation and prosecution of this case. In support of this motion, the State asserts the following:

1. On Friday, April 21, 2017, a jogger located the remains of D C K in an arroyo in Rio Rancho, New Mexico. A wooden pallet and wooden fencing had been placed on top of D C K, and he had clearly died from massive blunt force trauma to the back of his head. Detectives with the Rio Rancho Police Department (RRPD) located a large sledge hammer

with apparent blood on it down the road from D C K , and various debris around the area that appeared to have been left with D C K Based on the debris and the manner in which D C K had been disposed, RRPD determined that he had likely been thrown from the back of a pickup truck

- 2 Later in the day on April 21, 2017, RRPD went to D C K 's last known address in Bernalillo, New Mexico (the Bernalillo Property) Family members who also reside at the Bernalillo Property gave RRPD permission to look around the property, which contains two separate family dwellings and a detached garage with a loft where D C K resided RRPD located a blue pickup truck on the property that appeared to have been recently washed as there were still puddles of water in the truck bed and around the truck RRPD observed a substance that looked like blood in the puddles of water in the truck bed RRPD also located miscellaneous items in the truck bed and around the truck that were consistent with miscellaneous items located around D C K 's remains in the arroyo RRPD also observed a large puddle of apparent dried blood outside the building where D C K resided and a substance appearing to be blood on the outside of one of the other building on the property When it became apparent that D C K had died at the Bernalillo Property, RRPD called detectives from the Sandoval County Sheriff's Office (SCSO) to take over the investigation
- 3 Defendant Jacob Johnson owns the blue pickup truck SCSO read Defendant Jacob his Miranda rights, and he agreed to speak with police Defendant Jacob eventually told SCSO that he and his younger brother were at their father, Joel Johnson's, residence when they decided to kill D C K because he was interfering in their relationship The Defendants

returned to the Bernalillo property, where Defendant Liam Johnson, went into D C K 's residence intending to stab him. Defendant Liam changed his mind when D C K woke up, and he then lured D C K outside, where Defendant Jacob struck him in the back of the head with a sledgehammer. Defendant Jacob gave a detailed statement about how he and Defendant Liam placed D C K in the back of the truck and drove him to the arroyo where he was located. Defendant Liam was read his Miranda rights and gave a very similar statement about how the murder occurred and his involvement in the murder. For additional details see the sworn criminal complaint affidavit prepared by Detective Frank Tomlinson with the Sandoval County Sheriff's Office. See Exhibit A, attached.

- 4 After the interview with Defendant Jacob, SCSO left the interview room to discuss what they had learned. Detectives watching the camera in the interview room watched Defendant pull a cell phone out of his pocket and begin typing into it. Detectives entered the phone to retrieve the phone, and Defendant struggled with them before they got the phone away. Detectives tagged the phone into evidence, noting that it is a silver LG G4 Samsung phone, which is the subject of this motion. Detectives spoke with Defendant's family members, and they learned that his phone number for this phone is [REDACTED].
- 5 On May 10, 2017, SCSO interviewed Joel Johnson in connection with this case. SCSO read Joel Johnson his Miranda rights, and he agreed to speak with police. Joel told SCSO that the defendants were at his house on April 20, 2017. Late in the evening, they began arguing, and he told them to go to the garage to settle their dispute. Joel went to bed at about 11:30 pm, and he did not know when they left the residence. At about 3:35 am on April 21, Defendant

Liam called Joel. Defendant Liam let Joel know that the defendants had a flat tire on Unser Boulevard, past King Road. While Joel was driving to the disabled vehicle, Defendant Liam texted him ' we are on progress way '. Joel observed the vehicle within a couple miles of where D C K 's body was located, and he observed blood in the back of the truck. Joel asked Defendant Jacob about the blood, and Defendant Jacob said "I cannot discuss that."

- 6 There is probable cause to believe that the defendants had their cell phones on their persons during the crime and when D C K 's body was disposed. There is also probable cause to believe that the defendants used their cell phones at least twice while they were in the vicinity of where they disposed of D C K 's remains. This is based on the fact that Defendant Jacob kept his phone on his person through the interview with police until they forcibly removed it from him. Based on the call and text message to Joel Johnson, it is clear that the defendants were using their phones immediately after D C K 's body was disposed in the same area where the body was disposed.
- 7 If the Court holds an evidentiary hearing in this case, SCSO Detective Tomlinson will testify about his training and experience in criminal investigations, and his training and experience in what data can be obtained from cell phone records. The State expects this to include that records from the phone company can corroborate the call or text message logs found within the phone itself to indicate who defendants were contacting during the commission of the crime. Additionally, the State intends to hire a qualified expert who will be able to analyze the cell site data provided by the phone company to provide a detailed timeline of which cell phone towers the defendant's phones were using, which will indicate where the defendants

were when they were using their phones and corroborate that they were in the area where D C K 's remains were disposed at the time that the remains were left there

- 8 The State has been in contact with Sprint PCS to determine what language they require in a court order or subpoena for them to comply with it Sprint PCS requests that this Court make a specific finding pursuant to 18 USC 2703(D) that there is probable cause to support the State's search of Defendant's cell phone records
- 9 18 USC 2703 allows the government to require cell phone carriers to disclose cell phone records and other data maintained by cell phone carriers 18 USC 2703(D) states that "a court order for disclosure may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation "
- 10 As state above, in this case there is probable cause to believe that Defendant Jacob Johnson was using his cell phone during the planning and commission of the murder of D C K based on the calls and text messages to Joel Johnson around the time of the crime and the fact that Defendant Jacob Johnson got his phone into the interview room where he tried to use it and then struggled with SCSO when they tried to retrieve it from him D C K 's remains were located in a remote area far from where the defendants live The cell site data will corroborate that the defendants were in the remote area where D C K 's remains were located, and the cell site data will provide evidence of the time when the defendants disposed

of D C K s remains The call and text message logs maintained by Sprint PCS will corroborate who the defendants were speaking to around the time that this crime was committed, and they will corroborate that they did in fact call for Joel Johnson to meet them in the desert in the early morning hours of April 21 near where the body was located

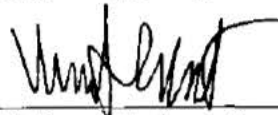
11 Defendant Liam Johnson has stipulated to the State obtaining his phone records

12 Counsel for Defendant, Robert Tangora, was contacted by email on July 12, and Defendant Jacob Johnson opposes this motion

WHEREFORE, the State requests that this Honorable Court issue an Order making a specific finding pursuant to 18 USC 2703(D) that there are specific and articulable facts indicating that these records are relevant to this ongoing investigation, and authorizing the State to issue a subpoena to Sprint PCS for all records maintained by Sprint PCS from April 19, 2017 until April 22, 2017 for Defendant's phone number, [REDACTED]

Respectfully submitted,

Lemuel Martinez
District Attorney



Mathew Wadsworth
Assistant District Attorney
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I hereby certify that a copy of the
foregoing was sent to Robert Tangora,
counsel for the Defendant on 8/1/17

A handwritten signature in black ink, appearing to read "Mathew Wadsworth", is written over a horizontal line.

Mathew Wadsworth
Assistant District Attorney