

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

v.

CASE NO. CR-2016-370-2

JAMES A. BATES

DEFENDANT

**MEMORANDUM OF LAW IN SUPPORT OF
AMAZON'S MOTION TO QUASH SEARCH WARRANT**

Pursuant to Rule 13 of the Arkansas Rules of Criminal Procedure, Petitioner Amazon.com, Inc. ("Amazon"), submits this memorandum in support of its Motion to Quash a search warrant served on Amazon.¹ The warrant requests that Amazon produce any audio recordings and transcripts that were created as a result of interactions with an Amazon Echo device owned by the defendant James Bates and located in his residence. Given the important First Amendment and privacy implications at stake, the warrant should be quashed unless the Court finds that the State has met its heightened burden for compelled production of such materials.

PRELIMINARY STATEMENT

The Amazon Echo is a hands-free speaker that users control with their voice. Echo uses a processor on the device to identify a "wake word" and in response to that word connects the device to Amazon's cloud-based Alexa Voice Service to receive and respond to voice commands. In response to such commands the device delivers information such as news, weather, music, and other forms of entertainment and content over the device's speaker. Such

¹ Amazon and the State have agreed to confer with the Court, following the filing of Amazon's Motion to Quash, to determine dates for the filing of any response and reply, and for holding any hearing in this matter.

interactions may constitute expressive content that implicates privacy concerns and First Amendment protections.

Echo has received rave reviews from consumers and experts, and its popularity has led to other companies developing and selling similar “smart” speakers for use in the home. In addition to the original Echo device, Amazon also sells two additional Alexa-enabled devices – the Echo Dot and the Amazon Tap.

Amazon does not seek to obstruct any lawful investigation, but rather seeks to protect the privacy rights of its customers when the government is seeking their data from Amazon, especially when that data may include expressive content protected by the First Amendment. As courts have observed, “[t]he fear of government tracking and censoring one’s reading, listening, and viewing choices chills the exercise of First Amendment rights.” *Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154, 1168 (W.D. Wash. 2010).

Accordingly, Amazon asks this Court, consistent with the rulings of many other courts, to require the State in the first instance to make a heightened showing of relevance and need for any recordings. Specifically, the State must demonstrate: (1) a compelling need for the information sought, including that it is not available from other sources; and (2) a sufficient nexus between the information and the subject of the criminal investigation. *See, e.g., Amazon.com LLC v. Lay*, 758 F. Supp. 2d at 1167-69; *In re Grand Jury Subpoena to Amazon.com dated August 7, 2006*, 246 F.R.D. 570, 572-74 (W.D. Wis. 2007); *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. § 1461*, 706 F. Supp. 2d 11, 18-19 (D.D.C. 2005); *In re Grand Jury Subpoena to Kramerbooks & Afterwords Inc.*, 26 Media L. Rep. 1599, 1599-1601 (D.D.C. 1998) (attached hereto as Exhibit 1); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1058-59 (Colo. 2002) (*en banc*).

In order to ensure consistent application of these standards, Amazon asks the Court to confirm that such a heightened standard applies when the requested audio recordings (and transcripts) of speech and sounds in a subscriber's home implicate privacy and First Amendment concerns. If the Court finds that the State has made a *prima facie* showing of heightened need and relevance for recordings from the defendant's Echo, then this Court should review the specific recordings *in camera* to determine whether the heightened standard for disclosure has been satisfied.

FACTUAL BACKGROUND

A. Amazon

Amazon is one of the world's leading online retailers, selling books, music, movies, and other types of products to millions of customers worldwide, and it seeks to be Earth's most customer-centric company. Stanford Aff. ¶ 4.² Amazon takes very seriously any attempts to invade the privacy of its customers, and Amazon advises customers of its privacy practices – including that Amazon does not voluntarily share its customers' product choices – in a Privacy Notice linked at the bottom of nearly every page on Amazon's website. *See* <https://www.amazon.com/privacy>. Stanford Aff. ¶ 5.

Amazon customers have expressed concern about disclosure of their purchase choices and have indicated a reluctance to use Amazon for online purchasing if their privacy is not protected. For example, when the North Carolina Department of Revenue demanded that Amazon disclose names and addresses along with purchases that included expressive works, several customers took the extraordinary step of intervening anonymously and submitting

² Amazon submits the Affidavit of Jeff Stanford ("Stanford Aff."), attached hereto as Exhibit 3, to provide background information concerning the characteristics and operation of the Echo device. These details supplement – but do not conflict with – the description of Echo set forth in the search warrant affidavit. *See* Stanford Aff. Ex. A-1.

declarations to describe sensitive purchases that they deemed private and did not want disclosed. *Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154. Each intervenor testified that disclosure of sensitive personal information about their Amazon purchases could harm their career and reputation, and the possibility of such disclosure would dissuade them from purchasing expressive works from Amazon. *Id.* at 1160, 1163, 1168.³ Consistent with its privacy practices, Amazon likewise sought to protect this information from disclosure. The court agreed with this request, finding that “Amazon and the Intervenor have established that the First Amendment protects the disclosure of individual’s reading, listening, and viewing habits.” *Id.* at 1168.

B. The Amazon Echo

The Amazon Echo is a 9.3-inch voice-controlled speaker equipped with seven microphones, which use beam-forming technology to pick up sound from anywhere in the room, even when music is playing. Stanford Aff. ¶ 6. When in standby mode, Echo is available to recognize the “wake word,” which activates the device.⁴ *Id.* ¶ 7. When it detects the wake word, Echo connects remotely to the Alexa Voice Service – Amazon’s intelligent personal assistant – and transmits audio to the Alexa Voice Service in the cloud to process and respond to the user’s request. *Id.* When Echo is capturing and transmitting audio to the cloud, a blue light on the device is illuminated. *Id.* Echo’s microphones can also be manually disabled by a user by pressing a mute button, in which case a red light on the device is illuminated and power to the microphones is cut off. *Id.*

³ For example, intervenors in the *Lay* case explained that they had purchased, among other things, “self-help” books from Amazon explaining how to obtain a divorce and restraining order against an abusive spouse, books that revealed political affiliations, books about atheism, and books about coping with specific mental health conditions. See Complaint in Intervention for Declaratory and Injunctive Relief, *Amazon.com LLC v. Lay*, No. 1:10-cv-00664-MJP, ECF No. 61, ¶¶ 68-127 (W.D. Wash. Aug. 16, 2010).

⁴ The default wake word is “Alexa” but it can be changed by a user to “Amazon,” “Echo,” or “Computer.” Stanford Aff. ¶ 7, n.1.

When the Alexa Voice Service receives and processes a user's audio query, Alexa responds with the requested information or content, or else might state that it is unable to understand the request or to provide the information requested. Stanford Aff. ¶ 8. No audio recording of the user's request is stored on the device itself. *Id.* Instead, an audio recording and a transcript of the request is stored on Amazon's servers, none of which are located in Arkansas. *Id.* Alexa's response to the request or a depiction of the source material (for example, the album cover for a song requested and played) may also be stored. *Id.* All data is protected during transmission and securely stored. *Id.*

Users convey, and the Alexa Voice Service returns, expressive content through their Alexa-enabled devices. Stanford Aff. ¶ 9. For example, as the search warrant affidavit in this case notes, Echo can be commanded to, among other things, play music, stream podcasts, play audio books, request information about various subjects, or request "real-time information," including news, weather, and traffic conditions related to the user's or any other location. *Id.* For example, users may ask for information about a sensitive health condition or a controversial political figure. *Id.* Users can also now order products from Amazon, including books and other expressive materials, using the Alexa Voice Service. *Id.*

Echo customers can access and review all voice interactions with Alexa through the Alexa App, which is available for Android, Apple, and Fire devices, and desktop browsers. Stanford Aff. ¶ 10. Customers have the ability to listen to their voice recordings, view transcripts of those recordings, and delete any or all past recordings. *Id.* In this case, the defendant's Alexa account remains available and accessible to him, and no recordings have been deleted from the requested time period. *Id.* ¶ 16.

C. Procedural Posture

Amazon brings this motion to quash a search warrant that was issued as part of the Bentonville Police Department's investigation into the death of Victor Collins, which is believed to have occurred at the residence of the defendant James Bates either late in the evening of November 21, 2015, or early in the morning of November 22. According to the search warrant affidavit, the victim's body was found by the Bentonville Police on the morning of November 22 after they responded to a 911 call from the defendant. Stanford Aff. Ex. A-1. The defendant was arrested on February 22, 2016, and charged with first-degree murder. He pleaded not guilty and is currently released on bail pending trial.

During a search of the defendant's residence on December 3, 2015, the Bentonville Police seized an Echo device located in the kitchen. Stanford Aff. Ex. A-1. On December 4, 2015, the Bentonville Police emailed a preservation request to Amazon for all records associated with the Echo device. *Id.* ¶ 11. Amazon promptly and fully complied with that preservation request. *Id.*

On December 4, 2015, the Bentonville Police also obtained a search warrant directed to Amazon, and later served that warrant on Amazon. Stanford Aff. ¶ 12. On January 29, 2016, the Bentonville Police obtained and served on Amazon an extension of the warrant. *Id.* Both the original search warrant and the extension specified that the Bentonville Police should search for and seize "audio recordings, transcribed records, or other text records related to communications and transactions" between the Echo device and Amazon's servers during the 48-hour period of November 21 through 22, 2015, as well as subscriber and account information. *Id.* Exs. A-1, A-2. The search warrant included a non-disclosure requirement stating that "Amazon.com and any other involved party shall not supply information of this search warrant to anyone other than those necessary to comply with this search warrant." *Id.*

On February 8, 2016, Amazon partially complied with the warrant by producing subscriber information and purchase history for the defendant's Amazon account. Stanford Aff. ¶ 13. Amazon has not yet produced any recordings or transcripts. *Id.*

On April 18, 2016, the State filed in the public records of the Circuit Clerk's office a search warrant return, along with the search warrants and supporting affidavits, accurately informing the Court that Amazon "eventually complied with the search warrants on February 8, 2016, but only supplied a portion of what was requested in both search warrants." Stanford Aff. ¶ 14, Ex. A. Amazon was not served with a copy of the State's April 18, 2016 filing. *Id.* ¶ 14.

On June 28, 2016, the Bentonville Police obtained a search warrant for data contained on the defendant's Echo device, the defendant's Huawei Nexus cell phone, and the victim's LG cell phone, all of which had been previously seized. Stanford Aff. Ex. B. According to a search warrant return filed by the State in the public records of the Circuit Clerk's office on August 26, 2016, the Bentonville Police were able to "extract the data" from the Echo device and the LG cell phone, but not from the Nexus cell phone. *Id.*⁵

The June 28, 2016 search warrant return also indicated that the Bentonville Police were unable to extract any data from the defendant's Nexus cell phone "due to the device being encrypted at the chipset level." Stanford Aff. Ex. B. If the defendant had installed the Alexa App, and the cell phone could be accessed, then any stored audio recordings, transcripts of recordings, and records of responses from Alexa would be accessible on the cell phone. *Id.* ¶ 10.

The search warrant to Amazon received widespread coverage by local, national, and international news outlets following a December 27, 2016 article on the technology news website

⁵ Data extracted from the Echo device would not have included any voice recordings from Alexa because such data is stored remotely. Stanford Aff. ¶ 8.

The Information discussing the efforts by the Bentonville Police in this case to obtain data from the Echo device, and warning readers to “[b]e careful what you say around your Amazon Echo.” Stanford Aff. ¶ 17.⁶ Soon after the December 27, 2016 article was published, the State informed Amazon that it intended to pursue full compliance with the search warrant. *Id.* ¶ 18.

Virtually all of the press coverage has centered on privacy concerns.⁷ Indeed, both the State and the defense in this case have made public statements to the press about the matter, and those comments have at times also focused on user privacy. *See* Stanford Aff. ¶ 19, Ex. D.

⁶ *See, e.g.*, Tom Dotan & Reed Albergotti, “Amazon Echo and the Hot Tub Murder,” *The Information* (Dec. 27, 2016), <https://www.theinformation.com/amazon-echo-and-the-hot-tub-murder?eu=1HJyR6S41hGbiyraV-j7Jw> (attached as Exhibit C to the Stanford Affidavit). *See also, e.g.*, Max Bradley, “Bentonville police try to tap high-tech devices for murder case clues,” *Arkansas Times: Arkansas Blog* (Dec. 28, 2016), <http://www.arktimes.com/ArkansasBlog/archives/2016/12/28/bentonville-police-try-to-tap-high-tech-devices-for-murder-case-clues>; Elliott C. McLaughlin & Keith Allen, “Alexa, can you help with this murder case?,” *CNN* (Dec. 28, 2016), <http://www.cnn.com/2016/12/28/tech/amazon-echo-alexa-bentonville-arkansas-murder-case-trnd/>; Elizabeth Weise, “Police ask Alexa: Who dunnit,” *USA Today* (Dec. 29, 2016), <http://www.usatoday.com/story/tech/news/2016/12/27/amazon-alexa-echo-murder-case-bentonville-hot-tub-james-andrew-bates/95879532/>; Billy Steele, “Police seek Amazon Echo data in murder case (updated),” *Engadget* (Dec. 27, 2016), <https://www.engadget.com/2016/12/27/amazon-echo-audio-data-murder-case/>; Amy B. Wang, “Can Alexa help solve a murder? Police think so – but Amazon won’t give up her data,” *Wash. Post.* (Dec. 28, 2016), https://www.washingtonpost.com/news/the-switch/wp/2016/12/28/can-alexa-help-solve-a-murder-police-think-so-but-amazon-wont-give-up-her-data/?utm_term=.bdba2356dffa; Sean Gallagher, “Police ask: ‘Alexa, did you witness a murder?’,” *Ars Technica* (Dec. 28, 2016), <http://arstechnica.com/tech-policy/2016/12/police-ask-alexa-did-you-witness-a-murder/>; Erik Ortiz, “Prosecutors Get Warrant for Amazon Echo Data in Arkansas Murder Case,” *NBC News* (Dec. 28, 2016), <http://www.nbcnews.com/tech/internet/prosecutors-get-warrant-amazon-echo-data-arkansas-murder-case-n700776>; Christopher Mele, “Bid for Access to Amazon Echo Audio in Murder Case Raises Privacy Concerns,” *N.Y. Times* (Dec. 28, 2016), <https://www.nytimes.com/2016/12/28/business/amazon-echo-murder-case-arkansas.html>; “Arkansas Prosecutors Seek Possible Evidence for Murder From Amazon Echo Device,” *ABC News* (Dec. 29, 2016), <http://abcnews.go.com/US/arkansas-prosecutors-seek-evidence-murder-amazon-echo-device/story?id=44439545>; “Murder squad sought Amazon Echo data,” *BBC News* (Dec. 28, 2016), <http://www.bbc.com/news/technology-38450658>; Alfred Ng, “Police request Echo recordings for homicide investigation,” *CNET* (Dec. 27, 2016), <https://www.cnet.com/news/police-request-echo-recordings-for-homicide-investigation/>; Tom Brant, “Amazon Alexa data wanted in murder investigation,” *Fox News* (Dec. 28, 2016), <http://www.foxnews.com/tech/2016/12/28/amazon-alexa-data-wanted-in-murder-investigation.html>; David Lohr, “Amazon Refuses To Comply With Police Request In Arkansas Murder Case,” *Huffington Post* (Dec. 28, 2016), http://www.huffingtonpost.com/entry/amazon-arkansas-murder-case_us_58642d86e4b0eb586488082c; Tony Bradley, “How Amazon Echo Users Can Control Privacy,” *Forbes* (Jan. 5, 2017), <http://www.forbes.com/sites/tonybradley/2017/01/05/alexa-is-listening-but-amazon-values-privacy-and-gives-you-control/#46ddbfb95eed>; Agatha French, “Alexa may be listening, but will she tell on you?,” *L.A. Times* (Jan. 5, 2017), <http://www.latimes.com/business/technology/la-fi-tn-amazon-echo-privacy-qa-20170105-story.html>.

⁷ *See, e.g.*, Sean Gallagher, “Police ask: ‘Alexa, did you witness a murder?’,” *Ars Technica* (Dec. 28, 2016), <http://arstechnica.com/tech-policy/2016/12/police-ask-alexa-did-you-witness-a-murder/> (warning consumers that “it may behoove you to watch what you say around your Echo”); Billy Steele, “Police seek Amazon Echo data in murder case (updated),” *Engadget* (Dec. 27, 2016), <https://www.engadget.com/2016/12/27/amazon-echo-audio-data->

ARGUMENT⁸

A. The First Amendment Applies to Alexa's Audio Recordings and Responses

Once the Echo device detects the wake word, the Alexa Voice Service endeavors to respond to any ensuing voice communications detected in the user's home. Accordingly, searching Alexa's recordings is not the same as searching a drawer, a pocket, or a glove compartment. Like cell phones, such modern "smart" electronic devices contain a multitude of data that can "reveal much more in combination than any isolated record," allowing those with access to it to reconstruct "[t]he sum of an individual's private life." *Riley v. California*, 134 S. Ct. 2473, 2489 (2014). The recordings stored by Amazon for a subscriber's Echo device will usually be both (1) the user's speech, in the form of a request for information from Alexa, and (2) a transcript or depiction of the Alexa Voice Service response conveying the information it determines would be most responsive to the user's query. Both types of information are protected speech under the First Amendment.

[murder-case/](#) ("the request for stored Echo information raises a bigger question about privacy"); Elizabeth Weise, "Police ask Alexa: Who dunnit," USA Today (Dec. 29, 2016), <http://www.usatoday.com/story/tech/news/2016/12/27/amazon-alexa-echo-murder-case-bentonville-hot-tub-james-andrew-bates/95879532/> (discussing concerns with information stored by Echo and similar devices in light of the instant case); Blake Montgomery, "A Murder Case Highlights The Amazon Echo's Big Privacy Concerns," BuzzFeed (Dec. 27, 2016), <https://www.buzzfeed.com/blakemontgomery/cops-in-arkansas-are-trying-to-solve-a-murder-with-amazon-ec> ("The Amazon Echo speaker you got for Christmas may have privacy concerns in the package — the device, whose always-listening AI is one of its key features, could record and store information you wouldn't want law enforcement to access."); Tony Bradley, "How Amazon Echo Users Can Control Privacy," Forbes (Jan. 5, 2017), <http://www.forbes.com/sites/tonybradley/2017/01/05/alexa-is-listening-but-amazon-values-privacy-and-gives-you-control/#46ddbfb95eed> ("The idea that Alexa is always listening or may somehow incriminate you is a concern for owners of the Amazon ... devices.").

⁸ By its own terms, the search warrant has expired. The original warrant was dated December 4, 2015, and in accordance with Ark. R. Crim. P. 13.2(c), the Court authorized execution of the warrant within 60 days. On January 29, 2016, the warrant was extended to allow for another 60 days. Accordingly, the warrant expired more than 10 months ago, on March 29, 2016, and no further extension or revised warrant was sought or obtained. That notwithstanding, Amazon does not intend to challenge the warrant on this ground.

1. Amazon Users' Requests to Alexa Are Protected by the First Amendment

It is well established that the First Amendment protects not only an individual's right to speak, but also his or her "right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *see also Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) ("The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read ... and freedom of inquiry"). At the heart of that First Amendment protection is the right to browse and purchase expressive materials anonymously, without fear of government discovery. *See, e.g., McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995); *Lamont v. Postmaster Gen.*, 381 U.S. 301, 307 (1965).

For this reason, courts have recognized that government demands for records of an individual's requests for and purchases of expressive material implicate First Amendment concerns. For example, when independent counsel Kenneth W. Starr demanded records of Monica Lewinsky's book purchases from a local bookstore as part of his investigation of former President Bill Clinton, the court held that the request implicated First Amendment concerns, requiring the government to make a heightened showing to obtain the requested information. *In re Grand Jury Subpoena to Kramerbooks & Afterwords Inc.*, 26 Media L. Rep. at 1599-1601.⁹

Following that precedent, the Colorado Supreme Court held that law enforcement was required to make a similar heightened showing before forcing a bookstore to produce records – in response to a search warrant – concerning whether a suspect had purchased two "how-to" books on drug laboratories that were found at the scene of a methamphetamines lab operating out

⁹ Ultimately, the dispute was resolved when Ms. Lewinsky agreed to provide the independent counsel with information about her own book purchases, avoiding the need to seek this information from the bookstore. *See* David Streitfeld, "Starr Will Get Bookstore Records," *Wash. Post* (June 23, 1998), *available at* <http://www.washingtonpost.com/wp-srv/politics/special/clinton/stories/starr062398.htm>.

of the suspect's trailer. *Tattered Cover*, 44 P.3d at 1056-59. As Justice Douglas of the Supreme Court once warned: "Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow." *United States v. Rumely*, 345 U.S. 41, 57-58 (1953) (Douglas, J., concurring).

Here, as the search warrant affidavit recognizes, Amazon customers use their Alexa-enabled devices to request a variety of information and expressive material, including "music playback," "streaming podcasts," and "playing audio books." Given these functions, Amazon's recordings of its customers' requests for information through the devices are subject to the heightened protections of the First Amendment.¹⁰

2. Alexa's Responses to User Queries Are Protected by the First Amendment

In addition to the recordings of user requests for information, Alexa's *responses* are also protected by the First Amendment. First, as noted above, the responses may contain expressive material, such as a podcast, an audiobook, or music requested by the user. Second, the response itself constitutes Amazon's First Amendment-protected speech. In a similar context, courts have recognized that "the First Amendment protects as speech the results produced by an Internet search engine." *Zhang v. Baidu.com Inc.*, 10 F. Supp. 3d 433, 435 (S.D.N.Y. 2014). Alexa's decision about what information to include in its response, like the ranking of search results, is "constitutionally protected opinion" that is "entitled to 'full constitutional protection.'" *Search*

¹⁰ In addition to its own rights, Amazon has standing to assert the First Amendment rights of its customers. *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392-93 (1988).

King, Inc. v. Google Tech., Inc., 2003 WL 21464568, at *4 (W.D. Okla. May 27, 2003) (citation omitted).

B. Under the Heightened Standard, the State Must Make a Threshold Showing of *Compelling Need* for the Requested Information and *Sufficient Nexus* to the Investigation

Courts have consistently applied a heightened level of scrutiny when the government seeks First Amendment-protected material, whether through a search warrant, grand jury subpoena, or other demand. In such cases, it is the government's burden to show both that (1) it has a "*compelling interest*" in the requested information and (2) there is a "*sufficient nexus*" between the information sought and the underlying inquiry of the investigation. *In re Grand Jury Subpoenas Duces Tecum*, 78 F.3d 1307, 1312 (8th Cir. 1996) (applying heightened standard to grand jury subpoena for records of campaign contributions); *In re Faltico*, 561 F.2d 109, 111 (8th Cir. 1977) (*per curiam*) (applying heightened standard to grand jury subpoena for membership of trade association); *see also, e.g., In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1461*, 706 F. Supp. 2d at 13, 16-21 (applying heightened standard to grand jury subpoena seeking to compel company to produce records of customer purchases of movies); *Tattered Cover*, 44 P.3d 1044 (applying heightened standard to search warrant for criminal suspect's book purchase records); *In re Grand Jury Subpoena to Kramerbooks & Afterwords*, 26 Media L. Rep. at 1601 (applying heightened standard to grand jury subpoena for Monica Lewinsky's book-purchase records).

In particular, courts have repeatedly applied this heightened standard to government requests for customer information from Amazon. In *In re Grand Jury Subpoena to Amazon.com dated August 7, 2006*, the court held that the government must show a compelling need to obtain buyers' personal identities and titles of books purchased through Amazon from a seller suspected of tax evasion. 246 F.R.D. at 572-73. In *Amazon.com LLC v. Lay*, the court considered a request

from the North Carolina Department of Revenue seeking information about sales of all purchases, including expressive works, to North Carolina buyers as part of an audit to determine tax liability for purchases from Amazon. Because the court found that Amazon “established that the First Amendment protects the disclosure of individual's reading, listening, and viewing habits,” the court required the government to show a “compelling government interest,” that “less restrictive means to achieve the government’s needs are not available,” and that there was a “substantial relation” between the information sought and the compelling state interest – and found that the government failed to meet that burden. 758 F. Supp. 2d at 1168-69.

Similarly, a court in Florida applied the heightened standard to a search warrant for an Amazon customer’s purchase of expressive materials in a homicide investigation. The court required that there be a “compelling need,” a “substantial nexus” between the information sought and the subject under investigation, and that the government had “exhausted all other avenues to obtain the information in ways that do not burden First Amendment rights.” In that case, the court found the burden to be satisfied after *in camera* review of the requested materials. *In re Search Warrant, Pinellas Cty.* (6th Jud. Cir. Ct., Pinellas Cty., Fla., Mar. 7, 2013 (attached hereto as Exhibit 2)).

In practice, the heightened standard is similar to “strict scrutiny” – the level of review required when government action collides with First Amendment-protected activity. Implicit in the requirement that the government’s interest be “compelling” and that the information have a “sufficient nexus” to that interest are additional factors that are often used in the strict-scrutiny analysis, such as whether the request sweeps more broadly than necessary and whether the information can be obtained from another source. As the *Tattered Cover* court observed, “law enforcement officials’ need for the information sought cannot be compelling if there are

reasonable alternate ways of conducting an investigation” and, accordingly, “[o]fficials must exhaust these alternatives before resorting to techniques that implicate fundamental expressive rights.” 44 P.3d at 1058-59.

The reason for this heightened standard is that government requests for expressive information, by their very nature, chill the exercise of First Amendment rights. As another court explained, the knowledge that government agents are seeking records concerning customer purchases of expressive material from Amazon “would frost keyboards across America.” *In re Grand Jury Subpoena to Amazon.com dated August 7, 2006*, 246 F.R.D. at 573. Indeed, “rumors of an Orwellian federal criminal investigation into the reading habits of Amazon’s customers could frighten countless potential customers” into cancelling their online purchases through Amazon, “now and perhaps forever,” resulting in a chilling effect on the public’s willingness to purchase expressive materials. *Id.*

Absent such protection for customers to seek and obtain expressive content, “the free flow of newsworthy information would be restrained and the public’s understanding of important issues and events would be hampered in ways inconsistent with a healthy republic.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000). Indeed, the publicity generated by this search warrant in particular has led to numerous articles raising concerns about the use of Alexa-enabled devices and other in-home intelligent personal assistants, and in particular whether use of such devices exposes customers’ audio recordings and information requests to government review.¹¹ Such government demands inevitably chill users from exercising their First Amendment rights to seek and receive information and expressive content in the privacy of their own home, conduct which lies at the core of the Constitution. To guard against such a chilling

¹¹ See *supra* notes 6-7.

effect, this Court should require the State to make a *prima facie* showing that it has a *compelling need* for any recordings that were created as a result of interactions with the Echo device, and that the State's request bears a *sufficient nexus* to the underlying investigation.

C. If the Threshold Showing Is Met, the Court Should Review the Requested Material *In Camera* to Determine If Production is Warranted

If the State makes a *prima facie* showing that it has met its threshold heightened burden with respect to the type and scope of material sought, this Court should conduct an *in camera* review of any recordings in order to determine if, in fact, this material meets the heightened requirements for its production. *In camera* review is proper to ensure that First Amendment concerns are properly protected with respect to the specific materials requested. *See, e.g., In re Search Warrant, Pinellas Cty.* (Ex. 2 hereto) (reviewing materials sought by search warrant *in camera* to determine whether heightened standard was satisfied). The rules of this Court specifically contemplate the use of *in camera* proceedings (Ark. R. Crim. P. 19.6), and such proceedings are regularly used in analogous cases involving the assertion of privileges and confidentiality concerns to determine whether the specific materials at issue should be shielded from disclosure. *See, e.g., Orsini v. State*, 340 Ark. 665 (2000) (holding that *in camera* review of report was appropriate to determine whether the report contained sensitive or confidential information shielded from disclosure by applicable regulations). The State's threshold showing must be made *before* submission to the court *in camera*, since "forced disclosure of these materials, even to a judge for *in camera* inspection, will have a deleterious effect" and "inhibit the ... exercise of First Amendment rights." *N.Y. Times Co. v. Jascarevich*, 439 U.S. 1331, 1334-35 (1978) (Marshall, J., in chambers).

CONCLUSION

For the reasons set forth herein, Amazon respectfully requests that this Court quash the warrant for any audio recordings and transcripts that were created as a result of interactions with the Echo device owned by the defendant and located in his residence, unless the State first determines that the State has met its heightened showing of need and then, upon *in camera* review, determines that the specific demand for this particular material satisfies the heightened requirements.

Respectfully submitted,

AMAZON.COM, INC.,
Petitioner

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CERTIFICATE OF SERVICE

I, Todd P. Lewis, hereby certify that a true and correct copy of the above and foregoing document was served via U.S. Mail, postage prepaid on the following attorneys of record:

Nathan Smith
Stuart Cearley
Benton County Prosecuting Attorney's Office
100 Northeast A Street
Bentonville, AR 72712

Kimberly Weber
Matthews, Campbell, Rhoads, McClure & Thompson, P.A.
119 S. Second Street
Rogers, AR 72756

This the 17th day of February, 2017.

/s/ Todd P. Lewis
Todd P. Lewis

EXHIBIT 1



Source: Media Law Reporter Cases > U.S. District Courts, District of Columbia > Grand Jury Subpoena to Kramerbooks & Afterwords Inc, In re, 26 Med.L.Rptr. 1599 (D.D.C. 1998)

26 Med.L.Rptr. 1599
Grand Jury Subpoena to Kramerbooks & Afterwords Inc, In re
U.S. District Court, District of Columbia

Misc. Action Nos. 98-135 (NHJ) and 98-138 (NHJ)

April 6, 1998

IN RE GRAND JURY SUBPOENA TO KRAMERBOOKS & AFTERWORDS INC.; IN RE
GRAND JURY SUBPOENA TO BARNES & NOBLE INC.

Headnotes

NEWSGATHERING

[1] Forced disclosure of information — Disclosure of unpublished information — In general (►60.1001)

Forced disclosure of information — Common law privilege (►60.20)

Subpoenas issued by office of independent counsel to two bookstores seeking titles of books purchased by former White House intern chilled their First Amendment rights and those of intern, and office must submit ex parte filing describing its need for materials sought and connection between information sought from bookstores and grand jury investigation.

Case History and Disposition

Motion by non-party bookstores and former White House intern seeking to quash subpoenas issued by office of independent counsel.

Office of independent counsel ordered to submit ex parte filing describing its need for materials sought and connection between information sought and grand jury investigation.

Opinion Text

Opinion By:

Johnson, J.:

Full Text of Opinion

The Independent Counsel has issued a subpoena to Kramerbooks & afterwords, Inc. ("Kramerbooks"), an independent bookstore and cafe in Dupont Circle. The subpoena requests "all documents and things referring or relating to any purchase by Monica Lewinsky" from November 1995 to the present, including but not limited to certain purchases made by check. Both Kramerbooks and Monica Lewinsky have moved to quash the subpoenas. Barnes & Noble, a national chain of bookstores, has received a similar subpoena directed to one of its local stores, and has moved to quash that subpoena. ¹ Before the Court are also briefs filed by *amici curiae* in support of the motions to quash: one from the American Civil Liberties Union and the American Civil Liberties Union of the National Capital Area and another from the American Booksellers Foundation for Free Expression *et al.*

¹ The Court finds that Kramerbooks and Barnes & Noble have standing to challenge the subpoena. See *Virginia v. American Booksellers Associations*, 484 U.S. 383, 392-93 [14 Med.L.Rptr. 2145] (1988).

The Office of Independent Counsel ("OIC") contends that the Supreme Court's decision in *United States v. R. Enterprises*, 498 U.S. 292 (1991), governs the outcome of the motions to quash. In *R. Enterprises*, a federal grand jury issued subpoenas to three companies its suspected of interstate transportation of obscene materials. *Id.* at 294. The subpoenas in that case sought corporate books and records

Page 1600

as well as copies of videotapes and the three companies moved to quash the subpoenas, arguing that the materials sought were irrelevant to the grand jury's investigation and that the enforcement of the subpoenas was likely to infringe upon their First Amendment rights. *Id.* at 294-95.

The *R. Enterprises* Court decided that the movants' relevancy argument was unavailing because there existed a "reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation. *Id.* at 301. The Court went on to state: "The Court of Appeals determined that the subpoenas did not satisfy Rule 17(c) and thus did not pass on the First Amendment issue. We express no view on this issue and leave it to be resolved by the Court of Appeals." *Id.* at 303. Because it did not address the First Amendment question at issue here, *R. Enterprises* does not end the Court's inquiry.

The Court finds that the First Amendment is indeed implicated by the subpoenas to Kramerbooks and Barnes & Noble. The First Amendment right to receive ideas "follows ineluctably from the sender's ... right to send them" and is also "a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom." *Board of Education v. Pico*, 457 U.S. 853, 867 (1982); see also *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) ("In a variety of contexts this Court has referred to a First Amendment 'right to receive information and ideas.'"); *Griswold v. Connecticut* 381 U.S. 479, 482 ("The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read...").

It is apparent that the materials sought by the subpoenas would disclose specific titles of books purchased by Ms. Lewinsky, whose First Amendment rights are at issue here. See *Virginia v. American Booksellers Association* 484 U.S. 383, 393 [14 Med.L.Rptr. 2145] (1988) (recognizing First Amendment rights of bookbuyers). Kramerbooks and Barnes & Noble are also engaged in constitutionally protected expressive activities. "The constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 65 n.6 [1 Med.L.Rptr. 1116] (1963). Justice Douglas emphasized the First Amendment implications of revealing an individual's book purchases: "A requirement that a publisher disclose the identity of those who buy his books, pamphlets, or papers is indeed the beginning of surveillance of the press ... Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears ... the purchase of a book or pamphlet today may result in a subpoena tomorrow." *United States v. Rumely*, 345 U.S. 41, 57 (1953) (Douglas, J., concurring); see also *Denver Area Educational Telecommunications Consortium Inc. v. FCC*, 116 S.Ct. 2374, 2391 (1996) (finding that the requirement that viewers must affirmatively request certain programming "will further restrict viewing by subscribers who fear for their reputations should the operator, advertently or inadvertently, disclose the list of those who wish to watch the 'patently offensive' channel"); *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965) (finding unconstitutional the requirement that an addressee file a written request with the post office to receive political propaganda because such a requirement "is almost certain to have a deterrent effect").

[1] The bookstores and Ms. Lewinsky have persuasively alleged a chilling effect on their First Amendment rights. Many customers have informed Kramerbooks personnel that they will no longer shop at the bookstore because they believed Kramerbooks to have turned documents over to the OIC that reveal a patron's choice of books. Kramer Decl. at ¶17. Sales at the bookstore have also declined, *id.* at ¶18, and the store was picketed by a group of librarians. Kramerbooks' Mot. to Quash at Exh. 2. Barnes & Nobles states that it believes the compelled disclosure of this information will chill its First Amendment right to distribute reading material and its customers' First Amendment right to have access to such material. Rosen Decl. at ¶18. Ms. Lewinsky alleges that her right to purchase books has been chilled for fear of intrusion and embarrassment. Lewinsky's Mot. to Quash at p. 6.

The Supreme Court has never explicitly defined the standard under which a grand jury subpoena that implicates the First Amendment must be examined, though it has noted, "We do not expect that courts will forget that grand juries must operate within the limits of the First Amendment." *Branzburg v. Hayes*,

Page 1601

408 U.S. 665, 710 [1 Med.L.Rptr. 2617] (1972). In *Branzburg*, the Supreme Court ruled that there was no "reporter's privilege" and that reporters were obliged to respond to grand jury subpoenas and to answer questions relevant to an investigation into the commission of crime just as any citizen would. The Court found that the First Amendment did not apply to prevent the testimony; "neither the First Amendment nor any other constitutional provision protects the average citizen from disclosing to a grand jury information that he has received in confidence." *Id.* at 682. The Court stated that, "[i]f the test is that the government 'convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest,' " then that test was met in that case. *Id.* at 700-01 (citation omitted).

That test has been adopted by the courts of appeal facing the question of a grand jury subpoena implicating the First Amendment. First, the government must demonstrate a compelling interest in the information sought or a compelling need for the information sought. *In re Grand Jury Subpoena Duces Tecum*, 78 F.3d 1307, 1312 (8th Cir.) (holding that "a grand jury subpoena will be enforced despite a First Amendment challenge if the government can demonstrate a compelling interest in ... the information sought"), *cert. denied* 117 S.Ct. 432 (1996); *In re Grand Jury Proceedings*, 776 F.2d 1099, 1102-03 (2d Cir. 1985) (holding that state interests must be "compelling" and able to survive "exacting scrutiny" as to whether they are "sufficiently important to outweigh the possibility of infringement" of the First Amendment by a grand jury subpoena); *In re Grand Subpoena*, 701 F.2d 115, 119 (10th Cir. 1983) (holding that, if the district court determines that enforcement of a subpoena would chill associational rights, the government "must show a compelling need to obtain documents identifying petitioners' members"); *Bursey v. United States*, 466 F.2d 1059, 1083 (9th Cir. 1972) (holding in the grand jury subpoena context that "[w]hen governmental activity collides with First Amendment rights, the Government has the burden of establishing that its interest are legitimate and compelling and that the incidental infringement upon First Amendment rights is no greater than is essential to vindicate its subordinating interests"), *overruled in part on other grounds*, *In re Grand Jury Proceedings*, 863 F.2d 667, 670 (9th Cir. 1988).

Second, the government must also show a sufficient connection between the information sought and the grand jury investigation where there is a First Amendment challenge to a grand jury subpoena. *In re Grand Jury Subpoena Duces Tecum*, 78 F.3d at 1312 (holding that "a grand jury subpoena will be enforced despite a First Amendment challenge if the government can demonstrate ... a sufficient nexus between the information sought and the subject matter of its investigation"); *In re Grand Jury Proceedings*, 776 F.2d at 1103 (holding that there must be a "substantial relation" between the governmental interest and the information required to be disclosed.)

The Court finds, then, that it must determine whether the Office of Independent Counsel has a compelling need for the materials it seeks and whether there is a sufficient connection between that information and the grand jury's investigation. Because the OIC did not have an opportunity at the public hearing on this matter to make such a submission, the Court will order that it do so at this time.

Accordingly it is this 6th day of April 1998,

ORDERED that the Office of Independent Counsel submit to the Court *ex parte* a filing describing its need for the materials sought by the subpoenas to Kramerbooks and Barnes & Noble and the connection between the information sought and the grand jury investigation, no later than Thursday, April 9, 1998, at 5:00 p.m.

ORDER

Before the Court are two motions of *amici curiae*. The Court has previously granted the motion of American Booksellers Foundation for Free Expression *et al* ("American Booksellers move to file their amicus brief on the public record. Also pending is the motion of the American Civil Liberties Union and the American Civil Liberties Union of the National Capital Area for leave to file a memorandum of law as *amici curiae* in support of Kramerbooks' motion to quash a grand jury subpoena.

Upon consideration of these motions, it is this 6th day of April 1998.

Page 1602

ORDERED that the motion of the American Booksellers Foundation for Free Expression *et al* for leave to file their *amici curiae* brief on the public record be, and hereby is, granted; it is further

ORDERED that the motion of the American Civil Liberties Union and the American Civil Liberties Union of the National Capital Area for leave to file a memorandum of law as *amici curiae* in support of Kramerbooks' motion to quash a grand jury subpoena, be, and hereby is, granted; it is further

ORDERED that the motions of *amici curiae* American Booksellers Foundation for Free Expression *et al*, and the American Civil Liberties Union and the American Civil Liberties Union of the National Capital Area in support of the motion of Kramerbooks to quash a grand jury subpoena be, and hereby are, *unsealed*.

- End of Case -

Contact us at <http://www.bna.com/contact-us/> or call 1-800-372-1033

ISSN 1944-0359

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EXHIBIT 2

SEARCH WARRANT

STATE OF FLORIDA
COUNTY OF PINELLAS

THIS WARRANT IS ISSUED PURSUANT TO FLORIDA STATUTE 92.605. A
RESPONSE IS DUE WITHIN 20 BUSINESS DAYS OF RECEIPT OF THIS WARRANT
UNLESS A LONGER TIME PERIOD IS STATED HEREIN.

TO THE SHERIFF AND/OR DEPUTY SHERIFFS OF PINELLAS COUNTY, FLORIDA
OR ANY INVESTIGATOR WITH THE STATE ATTORNEY'S OFFICE OF THE SIXTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, OR ANY POLICE OFFICER OF
THE CITY OF CLEARWATER POLICE DEPARTMENT

The Court having read the Affidavit for Search Warrant coming
on to be heard and the Court having examined the Affiant, Joseph
Ruhlin, Detective, Clearwater Police Department, and having been
satisfied that the facts as alleged do exist, and that the laws of
the State of Florida, Chapter 782.04, Homicide, are being violated
as alleged, and/or property which constitutes evidence relevant to
proving that said crime, Homicide, has been committed, is located
therein, upon review in camera of the requested information and a
finding that the requested information includes expressive content
and private information protected by the First Amendment, the
Florida Constitution, and the Video Privacy Protection Act of
1988, and that a heightened showing of relevance and need must be
made before issuing the Search Warrant, and having found a
compelling need does exist only for the requested information
identified by this Court in the Affidavit, a substantial nexus is
demonstrated between the information identified by this Court in
the Affidavit and the subject of the criminal investigation; and
the State of Florida has exhausted all other avenues to obtain the
information in ways that do not burden First Amendment rights, a

Search Warrant is hereby allowed pursuant to Article I, Section 23 of the Florida Constitution, F.S. 934 and T18, USC, Section 2703 and T18, USC, Section 2710 and is issued to search the premises described in the Affidavit for Search Warrant, to-wit: Amazon.com, LLC, Attn: Legal Department - Search Warrant, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501, regarding records for the Amazon.com account of [REDACTED] and/or [REDACTED] [REDACTED] who utilizes E-mail account: [REDACTED] between May 1, 2010 and February 29, 2012, as described in the Affidavit for Search Warrant sworn by the Affiant, Joseph Ruhlin, Detective, Clearwater Police Department.

THESE PRESENTS THEREFORE are to command you with the necessary and proper assistance as the exigencies of the occasion may demand or require, either in the daytime or the nighttime, and on any day of the week, including Sunday, in or on said premises, to diligently search for the herein described property, to-wit: titles and authors (including the ASIN) of Book purchases, Digital Ebook purchases, and/or Audio Book purchases for the Amazon.com account of [REDACTED] and/or [REDACTED] who utilizes E-mail account: [REDACTED] between May 1, 2010 and February 29, 2012, as described in the Affidavit for Search Warrant, and if the same shall be found, to seize same and to return to a Court having jurisdiction, a complete inventory of the evidence seized.

The tangible evidence seized shall be maintained at the law enforcement agency as evidence, within the constructive custody of the Court, until further Order of the Court of competent

jurisdiction.

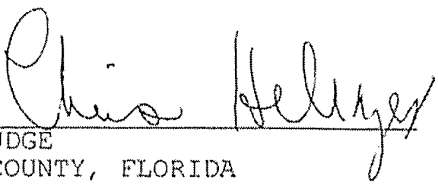
YOU ARE FURTHER ORDERED that in accordance with F.S. 92.605, service may be made by hand, United States mail, overnight delivery service, or facsimile as the circumstances permit, and a copy of the Search Warrant be provided to the Custodian of Records with a complete inventory of the property seized.

Custodian of Records, Amazon.com, LLC, Attn: Legal Department - Search Warrant, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501, may comply with this Warrant in a timely manner by forwarding the requested material to Bernie McCabe, State Attorney, Attn: Doyle Jourdan (C.I.D.), by hand or United States mail, at 14250 49th St. North, Room 1000, Clearwater, FL 33762; or to P.O. Box 5028, Clearwater, FL 33758; or by overnight delivery service; or sent in electronic format by email, to saosubpoenarequest@co.pinellas.fl.us; or facsimile, to 727/464-7650.

The Court further finds good cause to seal the Affidavit of the Affiant and to Order the sealed Affidavit be attached to the Warrant when filed with the Clerk of the Court, in accordance with Chapter 933, until further Order of a Court of competent jurisdiction. The Return will itemize the inventory of property

seized, but will not identify the content of any expressive content seized.

DONE AND ORDERED in Pinellas County, Florida, this 7 day of March, 2013.


CIRCUIT JUDGE
PINELLAS COUNTY, FLORIDA

REV.061008/SOK/SearchWarrantMySpaceYahoo/SP-GB/^

TRUE COPY

EXHIBIT 3

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

v.

CASE NO. CR-2016-370-2

JAMES A. BATES

DEFENDANT

AFFIDAVIT OF JEFF STANFORD

STATE OF WASHINGTON)

COUNTY OF KING) ss.

Comes now the affiant, Jeff Stanford, of lawful age and having first been duly sworn, on oath hereby and states as follows:

1. I am the Law Enforcement Response Team Manager at Amazon.com, Inc. ("Amazon"), Petitioner herein.
2. The following is based on my personal knowledge of the facts set forth herein and/or on information made available to me in the course of performing my duties at Amazon. To the extent that the facts and matters set out in this affidavit are within my knowledge, I believe them to be true. To the extent I have relied upon information made available to me, those facts are true to the best of my knowledge, information, and belief.
3. I submit this affidavit and its accompanying exhibits in support of Amazon's motion to quash the search warrant served on Amazon in this proceeding.

Amazon

4. Amazon is one of the world's leading online retailers, selling books, music, movies, and other types of products to millions of customers worldwide, and it seeks to be Earth's most customer-centric company.

5. Amazon takes very seriously any attempts to invade the privacy of its customers, and Amazon advises customers of its privacy practices – including that Amazon does not voluntarily share its customers' product choices – in a Privacy Notice linked at the bottom of nearly every page on Amazon's website. See <https://www.amazon.com/privacy>.

The Amazon Echo

6. The Amazon Echo is a 9.3-inch voice-controlled speaker equipped with seven microphones, which use beam-forming technology to pick up sound from anywhere in the room, even when music is playing.

7. When in standby mode, Echo is available to recognize the “wake” word, which activates the device.¹ When it detects the wake word, Echo connects remotely to the Alexa Voice Service – Amazon's intelligent personal assistant – and transmits audio to the Alexa Voice Service in the cloud to process and respond to the user's request. When Echo is capturing and transmitting audio to the cloud, a blue light on the device is illuminated. Echo's microphones can also be manually disabled by a user by pressing a mute button, in which case a red light on the device is illuminated and power to the microphones is cut off.

8. When the Alexa Voice Service receives and processes a user's audio query, Alexa responds with the requested information or content, or else might state that it is unable to understand the request or to provide the information requested. No audio recording of the user's

¹ The default wake word is “Alexa” but it can be changed by a user to “Amazon,” “Echo,” or “Computer.”

request is stored on the device itself. Instead, an audio recording and a transcript of the request is stored on Amazon's servers, none of which are located in Arkansas. Alexa's response to the request or a depiction of the source material (for example, the album cover for a song requested and played) may also be stored. All data is protected during transmission and securely stored.

9. Users convey, and the Alexa Voice Service returns, expressive content through their Alexa-enabled devices. For example, as the search warrant affidavit in this case notes, Echo can be commanded to, among other things, play music, stream podcasts, play audio books, request information about various subjects, or request "real-time information," including news, weather, and traffic conditions related to the user's or any other location. For example, users may ask for information about a sensitive health condition or a controversial political figure. Users can also now order products from Amazon, including books and other expressive materials, using the Alexa Voice Service.

10. Echo customers can access and review all voice interactions with Alexa through the Alexa App, which is available for Android, Apple, and Fire devices, and desktop browsers. Customers have the ability to listen to their voice recordings, view transcripts of those recordings, and delete any or all past recordings.

The Search Warrant

11. On December 4, 2015, the Bentonville Police emailed a preservation request to Amazon for all records associated with an Echo device seized from the defendant's residence. Amazon promptly and fully complied with that preservation request.

12. On December 4, 2015, the Bentonville Police also obtained a search warrant directed to Amazon, and later served that warrant on Amazon. On January 29, 2016, the Bentonville Police obtained and served on Amazon an extension of the warrant.

13. On February 8, 2016, Amazon partially complied with the warrant by producing subscriber information and purchase history for the defendant's Amazon account. Amazon has not yet produced any recordings or transcripts.

14. On April 18, 2016, the State filed in the public records of the Circuit Clerk's office a search warrant return, along with the search warrants and supporting affidavits, accurately informing the Court that Amazon "eventually complied with the search warrants on February 8, 2016, but only supplied a portion of what was requested in both search warrants." Attached as **Exhibit A** is a true and correct copy of the search warrant return filed in the public records of the Circuit Clerk's office by the State on April 18, 2016, attaching the search warrant extension and supporting affidavit (**Exhibit A-1**) and the original search warrant and supporting affidavit (**Exhibit A-2**) served on Amazon. Amazon was not served with a copy of the State's April 18, 2016 filing.

15. On August 26, 2016, the State filed in the public records of the Circuit Clerk's office a search warrant return, along with the search warrant and supporting affidavits, for data contained on the defendant's Echo device, the defendant's Huawei Nexus cell phone, and the victim's LG cell phone, all of which had been previously seized, according to the search warrant. Attached as **Exhibit B** is a true and correct copy of the search warrant return filed in the public records of the Circuit Clerk's office by the State on August 26, 2016, attaching the search warrant and supporting affidavit for data stored on devices seized from the defendant's residence.

16. The defendant's Alexa account remains available and accessible to him, and no recordings have been deleted from the requested time period.

News Coverage of the Search Warrant

17. The search warrant to Amazon received widespread coverage by local, national, and international news outlets, following a December 27, 2016 article on the technology news website *The Information* discussing the efforts by the Bentonville Police in this case to obtain data from the Echo device, and warning readers to “[b]e careful what you say around your Amazon Echo.” Attached as **Exhibit C** is a true and correct copy of the December 27, 2016 article by Tom Dotan and Reed Albergotti, titled “Amazon Echo and the Hot Tub Murder,” which was printed from the website *The Information*, available at <https://www.theinformation.com/amazon-echo-and-the-hot-tub-murder?eu=1HJyR6S41hGbiyraV-j7Jw>.

18. Soon after the December 27, 2016 article was published, the State informed Amazon that it intended to pursue full compliance with the search warrant.

19. Virtually all of the press coverage has centered on privacy concerns. Indeed, both the State and the defense in this case have made public statements to the press about the matter, and those comments have at times also focused on user privacy. Attached as **Exhibit D** is a collection of certain news articles containing on-the-record comment from counsel for the defendant and the State, respectively, concerning the Amazon search warrant, as follows:

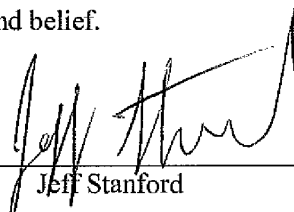
- a. “Arkansas Prosecutors Seek Possible Evidence for Murder From Amazon Echo Device,” ABC News (Dec. 29, 2016), available at <http://abcnews.go.com/US/arkansas-prosecutors-seek-evidence-murder-amazon-echo-device/story?id=44439545>;
- b. Erik Ortiz, “Prosecutors Get Warrant for Amazon Echo Data in Arkansas Murder Case,” NBC News (Dec. 28, 2016), available at

<http://www.nbcnews.com/tech/internet/prosecutors-get-warrant-amazon-echo-data-arkansas-murder-case-n700776>;

- c. Elliott C. McLaughlin & Keith Allen, "Alexa, can you help with this murder case?," CNN (Dec. 28, 2016), available at <http://www.cnn.com/2016/12/28/tech/amazon-echo-alexa-bentonville-arkansas-murder-case-trnd/>.

Further affiant sayeth not.

I hereby declare under penalty of perjury under the laws of Washington that the foregoing is true and correct to the best of my knowledge and belief.



Jeff Stanford

Seattle, Washington

Subscribed and sworn to before me this 17th day of February, 2017.



Rebecca M. Joseph
Notary Public

My Commission expires on: Mar. 1, 2020



EXHIBIT A

04CR-16-370-2

SEARCH WARRANT RETURN

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

I received the attached Search Warrant originally on the 4th day of December, 2015, and also obtained a Search Warrant Extension on January 29th, 2016, and have executed it as follows:

On the 4th day of December, I served a copy of the original search warrant on Amazon and then served the Search Warrant Extension on January 29th, 2016 due to Amazon not complying with our search warrant in its entirety. Amazon eventually complied with the search warrants on February 8th, 2016, but only supplied a portion of what was requested in both search warrants.

The following is an inventory of the property taken pursuant to the warrant:

Account Holder Information for James Bates and Purchase History

I swear that this inventory is a true and detailed account of all the property taken by me on the Search Warrant.


313
Det. Corporal Josh Woodhams
Bentonville Police Department

Subscribed and sworn to and returned before me this 18th day of April, 2016


HONORABLE JUDGE
Brad Warren

FILED
2016 APR 18 AM 10 59
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

04SN-16-162

EXHIBIT A-1

EXTENSION FOR SEARCH WARRANT

IN THE BENTON COUNTY CIRCUIT COURT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

FILED
2016 APR 18 AM 10 59
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

TO ANY SHERIFF, CONSTABLE OR POLICE OFFICER IN THE STATE OF
ARKANSAS:

Affidavit having been made before me by Detective Corporal Josh Woodhams, Bentonville Police Department, Criminal Investigations Division, has reason to believe that Amazon.com is in possession of records related to a homicide investigation being conducted by the Bentonville Police Department,

there is now being retained certain records, namely electronic data in the form of audio recordings, transcribed records, or other text records related to communications and transactions between an Amazon Echo device (FCC ID ZWJ-0823) that was located at James A. Bates' residence of 3502 SW Elm Manor Avenue in Bentonville, Arkansas, and Amazon.com's servers and other computer hardware maintained by Amazon.com in another location, between the time period of November 21st, 2015, at 0001 Hours Central Standard Time and November 22nd, 2015, at 2359 Hours Central Standard Time,

which are stored and maintained by Amazon.com, as well as the purchase and billing history for the Amazon Echo device, the IP Address associated with Amazon Echo device utilized by **James A. Bates (White/Male, DOB: 06/05/1984) (Email Addresses: jamesbates84@gmail.com; jaber84@aol.com; jaber84@gmail.com; jaber84@yahoo.com; and any other possible email associated with the above mentioned subject)**, the Subscriber information for James A. Bates with Amazon, including all Subscriber information to include name, tax identification number (social security number or employer identification number), the physical address, mailing addresses, residential addresses, business addresses, e-mail addresses and any other address information, the credit information obtained or used by the company to grant account status, all phone numbers associated with account, billing records, all payments to include method, date and time of payments, and location (store name, address, and phone number of location where payment(s) were made), all Authorized users on the associated account, activation date and termination date of each device associated with the account and above listed device, types of service subscriber(s) utilized and services subscribed to, the make, model, and serial number associated with the above listed device including any and all equipment changes or device services for the life of the account, and all customer service and account notes,

which is evidence of the crime of Murder in the Second Degree, in violation of Ark. Code Ann. 5-10-103, et. Seq,

and I am satisfied that there is probable cause to believe that the data so described is being concealed within the storage facilities above described and that the for foregoing grounds for application for issuance of the search warrant exists. The Court further finds that there is reasonable cause to believe:

☐ That the place to be searched is difficult of speedy access.

☒ That the objects to be seized are in danger of imminent removal.

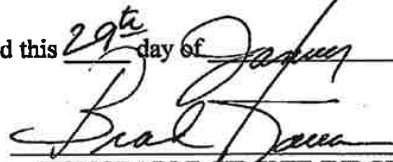
☐ That the warrant can only be safely or successfully executed at nighttime or under circumstances, the occurrence of which is difficult to predict with accuracy.

☐ That the officers are authorized to serve this warrant without complying with the "knock and announce" provision.

Non-Disclosure- It is hereby ordered that the served party, Amazon.com, and any other involved parties, shall not supply information of this search warrant to anyone other than those necessary to comply with this search warrant.

YOU ARE HEREBY COMMANDED to search within a reasonable time, not to exceed sixty (60) days, the storage facilities described above, for the property specified, serving this warrant and making this search between the hours of 6:00 a.m. and 8:00 p.m. and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property within the time as required by law, not to exceed five (5) days after execution of the warrant.

Dated this 29th day of January, 2016.


HONORABLE CIRCUIT JUDGE Brad Karren

REPORT #2015-39460

EXTENSION OF SEARCH WARRANT

AFFIDAVIT FOR SEARCH WARRANT

IN THE BENTON COUNTY CIRCUIT COURT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

BEFORE THE HONORABLE CIRCUIT JUDGE

The undersigned being duly sworn deposes and says: That he, Detective Corporal Josh Woodhams, Bentonville Police Department, Criminal Investigations Division, has reason to believe that Amazon.com is in possession of records related to a homicide investigation being conducted by the Bentonville Police Department,

there is now being retained certain records, namely electronic data in the form of audio recordings, transcribed records, or other text records related to communications and transactions between an Amazon Echo device (FCC ID ZWJ-0823) that was located at James A. Bates' residence of 3502 SW Elm Manor Avenue in Bentonville, Arkansas, and Amazon.com's servers and other computer hardware maintained by Amazon.com in another location, between the time period of November 21st, 2015, at 0001 Hours Central Standard Time and November 22nd, 2015, at 2359 Hours Central Standard Time,

which are stored and maintained by Amazon.com, as well as the purchase and billing history for the Amazon Echo device, the IP Address associated with Amazon Echo device utilized by James A. Bates (White/Male, DOB: 06/05/1984) (Email Addresses: jamesbates84@gmail.com; jaber84@aol.com; jaber84@gmail.com; jaber84@yahoo.com; and any other possible email associated with the above mentioned subject), the Subscriber information for James A. Bates with Amazon, including all Subscriber information to include name, tax identification number (social security number or employer identification number), the physical address, mailing addresses, residential addresses, business addresses, e-mail addresses and any other address information, the credit information obtained or used by the company to grant account status, all phone numbers associated with account, billing records, all payments to include method, date and time of payments, and location (store name, address, and phone number of location where payment(s) were made), all Authorized users on the associated account, activation date and termination date of each device associated with the account and above listed device, types of service subscriber(s) utilized and services subscribed to, the make, model, and serial number associated with the above listed device including any and all equipment changes or device services for the life of the account, and all customer service and account notes,

which is evidence of the crime of Murder in the Second Degree, in violation of Ark. Code Ann. 5-10-103, et. Seq,

and that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows;

The records of the Bentonville Police Department reflect that on Sunday, November 22nd, 2015 at 0937 hours, Officers Andrew and Adam Corbett responded to 3502 SW Elm Manor Avenue, in reference to a death investigation. Dispatch advised James Bates contacted the police department via 911 to report Victor Collins was found deceased in the hot tub on the back patio at his residence.

Officer Andrew Corbett was first to arrive on the scene and entered the residence with Bentonville EMS. EMS advised at 0941 hours that Victor was deceased and they would not be rendering medical aid.

Officer Adam Corbett arrived shortly after and entered the residence and made contact with James Bates who was in the kitchen near the backdoor of the house. Adam asked James to have a seat in the living room and explain the events of what had occurred. James stated that he lives at the residence with his five year old son, who had not been at the residence this weekend as he was with his mother. James stated he had several of his friends over to his residence the night before (Saturday, November 21st), watching the Arkansas Razorback football game.

James advised that he knew the friends from work. He stated Victor Collins was the deceased male who was in the hot tub. Two other friends Owen McDonald and Sean Henry were also over, and were no longer at the residence.

According to James, he and his friends had been drinking beer and taken several shots of vodka. Following the conclusion of the football game Sean had left the residence. James, Victor, and Owen decided to get in the hot tub located on the back patio. James stated he and his friends continued to drink until approximately 0100 hours on Sunday, November 22, 2015, when he decided to go to bed for the night. James stated that Victor and Owen had decided to stay the night at his house because they were arguing with their wives, and he informed them they could sleep on his living room couch and a bed was available in his son's bedroom.

Shortly before the time of call, James awoke and exited his bedroom. James did not observe anyone on the living room couch, and walked into the kitchen. James began cleaning up some empty beer bottles lying on the kitchen counter and moments later opened the back door of the residence and observed a male laying face down and floating in the hot tub.

James ran over to the hot tub, flipped him over, and attempted to pull him out of the hot tub. James stated while he was pulling on Victor's body he realized Victor was deceased and called 911 for assistance. Owen was not located at the residence at the time of the call to 911.

James was read the Bentonville Police Department Consent to Search form. He stated he understood his rights, and consented to the search of his residence, vehicle, and person. He was then escorted out of the residence and remained outside for the duration of the investigation. Det. Oliver was notified to respond to the scene.

Upon Oliver's arrival, Adam briefed Det. Oliver of the aforementioned incident and how Victor's remains were discovered in the hot tub. Adam also advised him that the home owner, James, had given consent to search the residence.

Detective Oliver proceeded to enter the residence to the back yard. In the back yard on the patio was a Hot Springs Spa hot tub. Det. Oliver observed Victor's body lying in the water in the spa face up. Det. Oliver observed blood and pink foam coming from Victor's nose. Victor's left eye and lips appeared to be dark and swollen. The water inside the spa had turned a dark reddish tint that appeared to be discolored because of blood, feces and vomit.

There also appeared to be signs of struggle around the spa. Several knobs and head rests from inside the spa were lying on the ground near the spa. There were suspected blood spots around the rim and side of the spa. I also observed the head rests and knobs had suspected blood them as well. There was broken blue glass bottle and a broken beer bottle next to the spa. Part of the blue bottle was busted against the privacy fence across the yard on the north side. Det. Oliver then contacted Detective Boyle and Captain Thompson to respond and process the scene. Det. Boyle photographed the scene and swabbed some the suspected blood areas around the spa and seized it as evidence.

On Tuesday, November 24th, 2015, Det. Oliver contacted James Bates and Owen McDonald and asked them if they would voluntarily come to the Bentonville Police Department for further a further detailed interview. Upon their arrival, Sgt. Moffitt and Det. Oliver interviewed Owen McDonald while Cpt. Thompson and I interviewed James Bates. Neither James nor Owen remembered what happened to cause the death of Victor Collins. They stated that they were very intoxicated and recalled very little about the night of his death. During this time, James consented to having pictures taken of his hands and some injuries sustained to them, but no further examination was done at that time.

On November 25, 2015, Dr. Charles Kokes, Medical Examiner, advised me that Victor Collins death was ruled a homicide. After speaking with Dr. Kokes, Bentonville Detectives secured the residence mentioned above for a search warrant. I conducted the search, along with Detective Lieutenant Tony Marveggio, Detective Sergeant David Townsend, Detective Corporal Tracy Brown, Detective Corporal Josh Woodhams, and Detective Oliver.

Upon searching the interior of the home, we located three separate areas of what appeared to be dried blood. These areas were swabbed and collected as evidence to be sent to the Arkansas State Crime Lab for analysis. While searching the hot tub in the backyard of the residence, a set of broken glasses and a men's ring were discovered at the bottom, both of which were learned to have belonged to the victim in this case. Additionally, a broken shot glass was found in the hot tub and there was suspected blood spatter discovered on the covered awning located directly above the hot tub. These items, along with the observations of officers during the initial investigation, the medical examiner's findings, and the facts of this investigation thus far, suggest that a physical altercation occurred that resulted in the death of Victor Collins.

It should be noted that during a follow-up interview with Owen, he consented to an examination of his person for injuries and none were discovered. At the time of this writing, James has ceased cooperation with law enforcement. At the time of the initial search of his home when James reported Victor's death, James' truck was not thoroughly searched or processed and it was believed that it contained evidence related to the case

under investigation. The truck was later seized pursuant to the issuance of a search warrant and it is still in the process of being search at the time of this writing.

On December 3rd, 2015, the Honorable Judge Brad Karren reviewed and approved a search warrant for James Bates' residence once again, located at 3502 SW Elm Manor Avenue, specifically for the search and seizure of electronic devices capable of storing and transmitting any form of data that could be related to this investigation. Officers executed this search warrant on this same date and during the course of the search, I located an Amazon Echo device in the kitchen, lying on the kitchen counter next to the refrigerator, plugged into the wall outlet. I had previously observed this device in the same position and state during the previous search warrant on November 25th, 2015. I recognized this device from my previous training and personal experience as a product that Amazon.com sold to consumers for a variety of different services.

In summary and according to Amazon.com's website and other online sources, the Amazon Echo is a wireless speaker and voice command device. The device is cylindrical in shape and consists of a 9.25-inch (23.5 cm) tall cylinder speaker with a seven-piece microphone array. The device responds to the name "Alexa," which is a "wake word" that can be changed by the user to one other choice at the present, which is "Amazon." The device is capable of voice interaction, music playback, making to-do lists, setting alarms, streaming podcasts, playing audio books, providing weather, traffic and other real time information. It is also capable of controlling a variety of smart-home features, to include home security, lighting, and video surveillance, which are services offered by companies that are supported by Amazon Echo, to include WeMo. Amazon.com states that the Echo is equipped with an array of seven microphones, equipped with sensors that use beam-forming technology to hear users from any direction. With enhanced noise cancellation, Echo can hear users ask a question even while the device is playing music or if there is background noise. Echo then uses on-device keyword spotting to detect the wake word, either "Alexa" or "Amazon," and then lights up to stream what the user says to their cloud service, where Amazon leverages the Alexa Voice Service to recognize and respond to the user's request.

While searching James' residence, we discovered numerous devices that were used for "smart home" services, to include a "Nest" thermometer that is Wi-Fi connected and remotely controlled, a Honeywell alarm system that included door monitoring alarms and motion sensor in the living room, a wireless weather monitoring system outside on the back patio, and WeMo devices in the garage area for remote-activated lighting purposes that had not been opened yet. All of these devices, to include the Amazon Echo device, can be controlled remotely using a cell phone, computer, or other device capable of communicating through a network and are capable of interacting with one another through the use of one or more applications or programs. Through investigation, it was learned that during the time period of Victor's time at the residence, music was being wirelessly streamed throughout the home and onto the back patio of the residence, which could have been activated and controlled utilizing the Amazon Echo device or an application for the device installed on James' cell Apple iPhone.

The Amazon Echo device is constantly listening for the "wake" command of "Alexa" or "Amazon," and records any command, inquiry, or verbal gesture given after that point, or possibly at all times without the "wake word" being issued, which is uploaded to Amazon.com's servers at a remote location. It is believed that these records are retained by Amazon.com and that they are evidence related to the case under investigation.

Search Warrant Extension

On December 4th, 2015, Amazon.com was served with a search warrant that was reviewed and approved by Circuit Court Judge Brad Karren on the same date. The search warrant was sent through Amazon's law enforcement email service and was also sent through United States Postal Service Certified Mail to their corporate headquarters in Tumwater, Washington. The search warrant was received by Amazon through the mail on December 11th, 2015, and representatives with Amazon have been in contact with this agency since receiving the search warrant. In speaking with their law enforcement liaison, Greg Haney, I was informed on two separate occasions that Amazon was in possession of the requested data in the search warrant but needed to consult with their counsel prior to complying with the search warrant. As of January 29th, 2016, Amazon

has not provided our agency with the requested data and an extension for the originally ordered search warrant is being sought.

The reliability of said Affiant has been established by the following;

I, Detective Corporal Josh Woodhams, have been a Bentonville Police Officer for the past (9) years and a total of (10) years in law enforcement. I have had extensive training in criminal investigation, specifically related to personal crimes and evidence collection, as well as technology-based training and evidence handling processes related to this discipline.

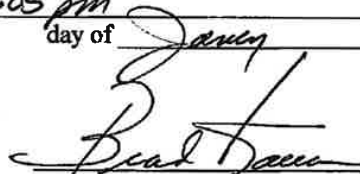
Non-Disclosure- It is hereby ordered that the served party, Amazon.com, and any other involved parties, shall not supply information of this search warrant to anyone other than those necessary to comply with this search warrant.

It is further believed that the above-described items are in danger of being removed from said storage facilities or destroyed. It is, therefore, prayed by the affiant(s) herein that a Warrant to Search the remotely stored data, issue for the herein above-described items.


313

Detective Corporal Josh Woodhams
Bentonville Police Department

Sworn to before me and subscribed in my presence, at
5:05 pm, this 29th
day of January, 2016.



HONORABLE CIRCUIT JUDGE
Brad Karen

REPORT #2015-39460

EXHIBIT A-2

SEARCH WARRANT

IN THE BENTON COUNTY CIRCUIT COURT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

FILED
2016 APR 18 PM 10 59
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

TO ANY SHERIFF, CONSTABLE OR POLICE OFFICER IN THE STATE OF ARKANSAS:

Affidavit having been made before me by Detective Corporal Josh Woodhams, Bentonville Police Department, Criminal Investigations Division, has reason to believe that Amazon.com is in possession of records related to a homicide investigation being conducted by the Bentonville Police Department,

there is now being retained certain records, namely electronic data in the form of audio recordings, transcribed records, or other text records related to communications and transactions between an Amazon Echo device (FCC ID ZWJ-0823) that was located at James A. Bates' residence of 3502 SW Elm Manor Avenue in Bentonville, Arkansas, and Amazon.com's servers and other computer hardware maintained by Amazon.com in another location, between the time period of November 21st, 2015, at 0001 Hours Central Standard Time and November 22nd, 2015, at 2359 Hours Central Standard Time,

which are stored and maintained by Amazon.com, as well as the purchase and billing history for the Amazon Echo device, the IP Address associated with Amazon Echo device utilized by James A. Bates (White/Male, DOB: 06/05/1984) (Email Addresses: jamesbates84@gmail.com; jaber84@aol.com; jaber84@gmail.com; jaber84@yahoo.com; and any other possible email associated with the above mentioned subject), the Subscriber information for James A. Bates with Amazon, including all Subscriber information to include name, tax identification number (social security number or employer identification number), the physical address, mailing addresses, residential addresses, business addresses, e-mail addresses and any other address information, the credit information obtained or used by the company to grant account status, all phone numbers associated with account, billing records, all payments to include method, date and time of payments, and location (store name, address, and phone number of location where payment(s) were made), all Authorized users on the associated account, activation date and termination date of each device associated with the account and above listed device, types of service subscriber(s) utilized and services subscribed to, the make, model, and serial number associated with the above listed device including any and all equipment changes or device services for the life of the account, and all customer service and account notes,

which is evidence of the crime of Murder in the Second Degree, in violation of Ark. Code Ann. 5-10-103, et. Seq,

and I am satisfied that there is probable cause to believe that the data so described is being concealed within the storage facilities above described and that the for foregoing grounds for application for issuance of the search warrant exists. The Court further finds that there is reasonable cause to believe:

_____ That the place to be searched is difficult of speedy access.

✓ _____ That the objects to be seized are in danger of imminent removal.

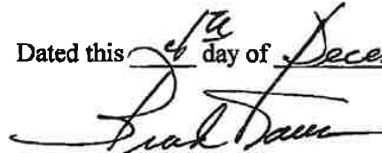
_____ That the warrant can only be safely or successfully executed at nighttime or under circumstances, the occurrence of which is difficult to predict with accuracy.

_____ That the officers are authorized to serve this warrant without complying with the "knock and announce" provision.

Non-Disclosure- It is hereby ordered that the served party, Amazon.com, and any other involved parties, shall not supply information of this search warrant to anyone other than those necessary to comply with this search warrant.

YOU ARE HEREBY COMMANDED to search within a reasonable time, not to exceed sixty (60) days, the storage facilities described above, for the property specified, serving this warrant and making this search between the hours of 6:00 a.m. and 8:00 p.m. and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property within the time as required by law, not to exceed five (5) days after execution of the warrant.

Dated this 14 day of December, 2015.



HONORABLE CIRCUIT JUDGE
Brad Kamen

REPORT #2015-39460

FILED
2016 APR 18 AM 10 59
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

BEFORE THE HONORABLE CIRCUIT JUDGE, *Brad Karren*

which is evidence of the crime of Murder in the Second Degree, in violation of Ark. Code Ann. 5-10-103, et. Seq.

and that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows;

The records of the Bentonville Police Department reflect that on Sunday, November 22nd, 2015 at 0937 hours, Officers Andrew and Adam Corbett responded to 3502 SW Elm Manor Avenue, in reference to a death investigation. Dispatch advised James Bates contacted the police department via 911 to report Victor Collins was found deceased in the hot tub on the back patio at his residence.

Officer Andrew Corbett was first to arrive on the scene and entered the residence with Bentonville EMS. EMS advised at 0941 hours that Victor was deceased and they would not be rendering medical aid.

Officer Adam Corbett arrived shortly after and entered the residence and made contact with James Bates who was in the kitchen near the backdoor of the house. Adam asked James to have a seat in the living room and explain the events of what had occurred. James stated that he lives at the residence with his five year old son, who had not been at the residence this weekend as he was with his mother. James stated he had several of his friends over to his residence the night before (Saturday, November 21st), watching the Arkansas Razorback football game.

James advised that he knew the friends from work. He stated Victor Collins was the deceased male who was in the hot tub. Two other friends Owen McDonald and Sean Henry were also over, and were no longer at the residence.

According to James, he and his friends had been drinking beer and taken several shots of vodka. Following the conclusion of the football game Sean had left the residence. James, Victor, and Owen decided to get in the hot tub located on the back patio. James stated he and his friends continued to drink until approximately 0100 hours on Sunday, November 22, 2015, when he decided to go to bed for the night. James stated that Victor and Owen had decided to stay the night at his house because they were arguing with their wives, and he informed them they could sleep on his living room couch and a bed was available in his son's bedroom.

Shortly before the time of call, James awoke and exited his bedroom. James did not observe anyone on the living room couch, and walked into the kitchen. James began

cleaning up some empty beer bottles lying on the kitchen counter and moments later opened the back door of the residence and observed a male laying face down and floating in the hot tub.

James ran over to the hot tub, flipped him over, and attempted to pull him out of the hot tub. James stated while he was pulling on Victor's body he realized Victor was deceased and called 911 for assistance. Owen was not located at the residence at the time of the call to 911.

James was read the Bentonville Police Department Consent to Search form. He stated he understood his rights, and consented to the search of his residence, vehicle, and person. He was then escorted out of the residence and remained outside for the duration of the investigation. Det. Oliver was notified to respond to the scene.

Upon Oliver's arrival, Adam briefed Det. Oliver of the aforementioned incident and how Victor's remains were discovered in the hot tub. Adam also advised him that the home owner, James, had given consent to search the residence.

Detective Oliver proceeded to enter the residence to the back yard. In the back yard on the patio was a Hot Springs Spa hot tub. Det. Oliver observed Victor's body lying in the water in the spa face up. Det. Oliver observed blood and pink foam coming from Victor's nose. Victor's left eye and lips appeared to be dark and swollen. The water inside the spa had turned a dark reddish tint that appeared to be discolored because of blood, feces and vomit.

There also appeared to be signs of struggle around the spa. Several knobs and head rests from inside the spa were lying on the ground near the spa. There were suspected blood spots around the rim and side of the spa. I also observed the head rests and knobs had suspected blood them as well. There was broken blue glass bottle and a broken beer bottle next to the spa. Part of the blue bottle was busted against the privacy fence across the yard on the north side. Det. Oliver then contacted Detective Boyle and Captain Thompson to respond and process the scene. Det. Boyle photographed the scene and swabbed some the suspected blood areas around the spa and seized it as evidence.

On Tuesday, November 24th, 2015, Det. Oliver contacted James Bates and Owen McDonald and asked them if they would voluntarily come to the Bentonville Police

Department for further a further detailed interview. Upon their arrival, Sgt. Moffitt and Det. Oliver interviewed Owen McDonald while Cpt. Thompson and I interviewed James Bates. Neither James nor Owen remembered what happened to cause the death of Victor Collins. They stated that they were very intoxicated and recalled very little about the night of his death. During this time, James consented to having pictures taken of his hands and some injuries sustained to them, but no further examination was done at that time.

On November 25, 2015, Dr. Charles Kokes, Medical Examiner, advised me that Victor Collins death was ruled a homicide. After speaking with Dr. Kokes, Bentonville Detectives secured the residence mentioned above for a search warrant. I conducted the search, along with Detective Lieutenant Tony Marveggio, Detective Sergeant David Townsend, Detective Corporal Tracy Brown, Detective Corporal Josh Woodhams, and Detective Oliver.

Upon searching the interior of the home, we located three separate areas of what appeared to be dried blood. These areas were swabbed and collected as evidence to be sent to the Arkansas State Crime Lab for analysis. While searching the hot tub in the backyard of the residence, a set of broken glasses and a men's ring were discovered at the bottom, both of which were learned to have belonged to the victim in this case. Additionally, a broken shot glass was found in the hot tub and there was suspected blood spatter discovered on the covered awning located directly above the hot tub. These items, along with the observations of officers during the initial investigation, the medical examiner's findings, and the facts of this investigation thus far, suggest that a physical altercation occurred that resulted in the death of Victor Collins.

It should be noted that during a follow-up interview with Owen, he consented to an examination of his person for injuries and none were discovered. At the time of this writing, James has ceased cooperation with law enforcement. At the time of the initial search of his home when James reported Victor's death, James' truck was not thoroughly searched or processed and it was believed that it contained evidence related to the case under investigation. The truck was later seized pursuant to the issuance of a search warrant and it is still in the process of being search at the time of this writing.

On December 3rd, 2015, the Honorable Judge Brad Karren reviewed and approved a search warrant for James Bates' residence once again, located at 3502 SW Elm Manor Avenue, specifically for the search and seizure of electronic devices capable of storing and transmitting any form of data that could be related to this investigation. Officers executed this search warrant on this same date and during the course of the search, I located an Amazon Echo device in the kitchen, lying on the kitchen counter next to the refrigerator, plugged into the wall outlet. I had previously observed this device in the same position and state during the previous search warrant on November 25th, 2015. I recognized this device from my previous training and personal experience as a product that Amazon.com sold to consumers for a variety of different services.

In summary and according to Amazon.com's website and other online sources, the Amazon Echo is a wireless speaker and voice command device. The device is cylindrical in shape and consists of a 9.25-inch (23.5 cm) tall cylinder speaker with a seven-piece microphone array. The device responds to the name "Alexa," which is a "wake word" that can be changed by the user to one other choice at the present, which is "Amazon." The device is capable of voice interaction, music playback, making to-do lists, setting alarms, streaming podcasts, playing audio books, providing weather, traffic and other real time information. It is also capable of controlling a variety of smart-home features, to include home security, lighting, and video surveillance, which are services offered by companies that are supported by Amazon Echo, to include WeMo. Amazon.com states that the Echo is equipped with an array of seven microphones, equipped with sensors that use beam-forming technology to hear users from any direction. With enhanced noise cancellation, Echo can hear users ask a question even while the device is playing music or if there is background noise. Echo then uses on-device keyword spotting to detect the wake word, either "Alexa" or "Amazon," and then lights up to stream what the user says to their cloud service, where Amazon leverages the Alexa Voice Service to recognize and respond to the user's request.

While searching James' residence, we discovered numerous devices that were used for "smart home" services, to include a "Nest" thermometer that is Wi-Fi connected and remotely controlled, a Honeywell alarm system that included door monitoring alarms

and motion sensor in the living room, a wireless weather monitoring system outside on the back patio, and WeMo devices in the garage area for remote-activated lighting purposes that had not been opened yet. All of these devices, to include the Amazon Echo device, can be controlled remotely using a cell phone, computer, or other device capable of communicating through a network and are capable of interacting with one another through the use of one or more applications or programs. Through investigation, it was learned that during the time period of Victor's time at the residence, music was being wirelessly streamed throughout the home and onto the back patio of the residence, which could have been activated and controlled utilizing the Amazon Echo device or an application for the device installed on James' cell Apple iPhone.

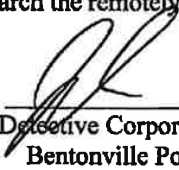
The Amazon Echo device is constantly listening for the "wake" command of "Alexa" or "Amazon," and records any command, inquiry, or verbal gesture given after that point, or possibly at all times without the "wake word" being issued, which is uploaded to Amazon.com's servers at a remote location. It is believed that these records are retained by Amazon.com and that they are evidence related to the case under investigation.

The reliability of said Affiant has been established by the following;

I, Detective Corporal Josh Woodhams, have been a Bentonville Police Officer for the past (9) years and a total of (10) years in law enforcement. I have had extensive training in criminal investigation, specifically related to personal crimes and evidence collection, as well as technology-based training and evidence handling processes related to this discipline.

Non-Disclosure It is hereby ordered that the served party, Amazon.com, and any other involved parties, shall not supply information of this search warrant to anyone other than those necessary to comply with this search warrant.

It is further believed that the above-described items are in danger of being removed from said storage facilities or destroyed. It is, therefore, prayed by the affiant(s) herein that a Warrant to Search the remotely stored data, issue for the herein above-described items.


3/3
Detective Corporal Josh Woodhams
Bentonville Police Department

Sworn to before me and subscribed in my presence, at
11:20 AM, this 14th
day of December, 2015.


HONORABLE CIRCUIT JUDGE Brad Warren

REPORT #2015-39460

EXHIBIT B

CR-16-370-2
SEARCH WARRANT RETURN

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

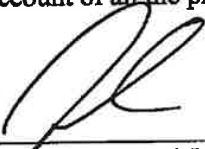
I received the attached Search Warrant on the 28th day of June, 2016, and have executed it as follows:

On the 28th day of June, efforts began on executing the search warrant on the devices described in the search warrant. Detective Mike Stegall was able to extract the data from the Amazon Echo device and the LG cell phone, but not from the Huewei cell phone due to the device being encrypted at the chipset level.

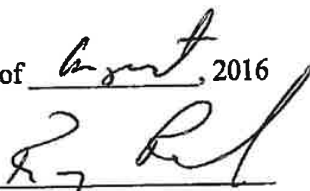
The following is an inventory of the property taken pursuant to the warrant:

Data contained on the Amazon Echo device and LG cell phone

I swear that this inventory is a true and detailed account of all the property taken by me on the Search Warrant.


Det. Corporal Josh Woodhams
Bentonville Police Department

Subscribed and sworn to and returned before me this 26 day of August, 2016


HONORABLE JUDGE

04SW-16-330

FILED
2016 AUG 26 PM 1 36
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR

SEARCH WARRANT

IN THE BENTON COUNTY CIRCUIT COURT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

FILED
2016 AUG 26 PM 1 36
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

TO ANY SHERIFF, CONSTABLE OR POLICE OFFICER IN THE STATE OF ARKANSAS:

Affidavit having been made before me by Detective Corporal Josh Woodhams, Bentonville Police Department, Criminal Investigations Division, has reason to believe that on devices seized as evidence related to a homicide investigation being conducted by the Bentonville Police Department,

there is now being concealed certain data, namely electronic data in the form of audio recordings, transcribed records, text records, and other data contained on an Amazon Echo device (FCC ID ZWJ-0823, ASIN B00L9EOQCO, MAC Wireless 74C2463EEE39, MAC Bluetooth 00BB3ACC0666, DSN B0F00712524201KQ), and certain data such as text messages, emails, photographs, video, call logs, and other cell phone data contained on a LG cell phone (Model LG-E980, IMEI 013520004007136, SN 403KPTM400713) belonging to the victim in this investigation, Victor Collins, and certain data such as text messages, emails, photographs, video, call logs, and other cell phone data contained on a Huawei Nexus cell phone (Model H1511, IMEI 867979021136608) belonging to the suspect in this investigation, James Bates,

which is evidence of the crime of Murder in the First Degree, in violation of Ark. Code Ann. 5-10-102, et. Seq,

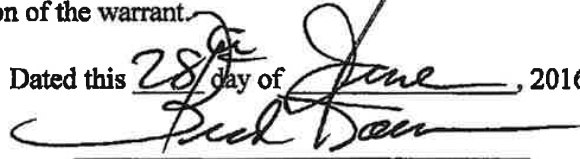
and I am satisfied that there is probable cause to believe that the data so described is being concealed within the devices above described and that the foregoing grounds for application for issuance of the search warrant exists. The Court further finds that there is reasonable cause to believe:

_____ That the objects to be seized are in danger of imminent removal.

YOU ARE HEREBY COMMANDED to search within a reasonable time, not to exceed sixty (60) days, the devices described above, for the property specified, serving this warrant and making this search between the hours of 6:00 a.m. and 8:00 p.m. and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this

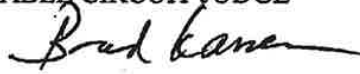
warrant and bring the property within the time as required by law, not to exceed five (5) days after execution of the warrant.

Dated this 28th day of June, 2016.

A handwritten signature in cursive script, appearing to read "Brad Kane", written over a horizontal line.

HONORABLE CIRCUIT JUDGE

REPORT #2015-39460

A handwritten signature in cursive script, appearing to read "Brad Kane", written below the text "HONORABLE CIRCUIT JUDGE".

AFFIDAVIT FOR SEARCH WARRANT

IN THE BENTON COUNTY CIRCUIT COURT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

BEFORE THE HONORABLE CIRCUIT JUDGE

FILED
2016 AUG 26 PM 1 36
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

The undersigned being duly sworn deposes and says: That he, Detective Corporal Josh Woodhams, Bentonville Police Department, Criminal Investigations Division, has reason to believe that on devices seized as evidence related to a homicide investigation being conducted by the Bentonville Police Department,

there is now being concealed certain data, namely electronic data in the form of audio recordings, transcribed records, text records, and other data contained on an Amazon Echo device (FCC ID ZWJ-0823, ASIN B00L9EOQCO, MAC Wireless 74C2463EEE39, MAC Bluetooth 00BB3ACC0666, DSN B0F00712524201KQ), and certain data such as text messages, emails, photographs, video, call logs, and other cell phone data contained on a LG cell phone (Model LG-E980, IMEI 013520004007136, SN 403KPTM400713) belonging to the victim in this investigation, Victor Collins, and certain data such as text messages, emails, photographs, video, call logs, and other cell phone data contained on a Huawei Nexus cell phone (Model H1511, IMEI 867979021136608) belonging to the suspect in this investigation, James Bates,

which is evidence of the crime of Murder in the First Degree, in violation of Ark. Code Ann. 5-10-102, et. Seq,

and that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows;

The records of the Bentonville Police Department reflect that on Sunday, November 22nd, 2015 at 0937 hours, Officers Andrew and Adam Corbett responded to 3502 SW Elm Manor Avenue, in reference to a death investigation. Dispatch advised James Bates contacted the police department via 911 to report Victor Collins was found deceased in the hot tub on the back patio at his residence.

Officer Andrew Corbett was first to arrive on the scene and entered the residence with Bentonville EMS. EMS advised at 0941 hours that Victor was deceased and they would not be rendering medical aid.

Officer Adam Corbett arrived shortly after and entered the residence and made contact with James Bates who was in the kitchen near the backdoor of the house. Adam asked James to have a seat in the living room and explain the events of what had occurred. James stated that he lives at the residence with his five year old son, who had not been at the residence this weekend as he was with his mother. James stated he had several of his friends over to his residence the night before (Saturday, November 21st), watching the Arkansas Razorback football game.

James advised that he knew the friends from work. He stated Victor Collins was the deceased male who was in the hot tub. Two other friends Owen McDonald and Sean Henry were also over, and were no longer at the residence.

According to James, he and his friends had been drinking beer and taken several shots of vodka. Following the conclusion of the football game Sean had left the residence. James, Victor, and Owen decided to get in the hot tub located on the back patio. James stated he and his friends continued to drink until approximately 0100 hours on Sunday, November 22, 2015, when he decided to go to bed for the night. James stated that Victor and Owen had decided to stay the night at his house because they were arguing with their wives, and he informed them they could sleep on his living room couch and a bed was available in his son's bedroom.

Shortly before the time of call, James awoke and exited his bedroom. James did not observe anyone on the living room couch, and walked into the kitchen. James began cleaning up some empty beer bottles lying on the kitchen counter and moments later opened the back door of the residence and observed a male laying face down and floating in the hot tub.

James ran over to the hot tub, flipped him over, and attempted to pull him out of the hot tub. James stated while he was pulling on Victor's body he realized Victor was deceased and called 911 for assistance. Owen was not located at the residence at the time of the call to 911.

James was read the Bentonville Police Department Consent to Search form. He stated he understood his rights, and consented to the search of his residence, vehicle, and

person. He was then escorted out of the residence and remained outside for the duration of the investigation. Det. Oliver was notified to respond to the scene.

Upon Oliver's arrival, Adam briefed Det. Oliver of the aforementioned incident and how Victor's remains were discovered in the hot tub. Adam also advised him that the home owner, James, had given consent to search the residence.

Detective Oliver proceeded to enter the residence to the back yard. In the back yard on the patio was a Hot Springs Spa hot tub. Det. Oliver observed Victor's body lying in the water in the spa face up. Det. Oliver observed blood and pink foam coming from Victor's nose. Victor's left eye and lips appeared to be dark and swollen. The water inside the spa had turned a dark reddish tint that appeared to be discolored because of blood, feces and vomit.

There also appeared to be signs of struggle around the spa. Several knobs and head rests from inside the spa were lying on the ground near the spa. There were suspected blood spots around the rim and side of the spa. I also observed the head rests and knobs had suspected blood them as well. There was broken blue glass bottle and a broken beer bottle next to the spa. Part of the blue bottle was busted against the privacy fence across the yard on the north side. Det. Oliver then contacted Detective Boyle and Captain Thompson to respond and process the scene. Det. Boyle photographed the scene and swabbed some the suspected blood areas around the spa and seized it as evidence.

On Tuesday, November 24th, 2015, Det. Oliver contacted James Bates and Owen McDonald and asked them if they would voluntarily come to the Bentonville Police Department for further a further detailed interview. Upon their arrival, Sgt. Moffitt and Det. Oliver interviewed Owen McDonald while Cpt. Thompson and I interviewed James Bates. Neither James nor Owen remembered what happened to cause the death of Victor Collins. They stated that they were very intoxicated and recalled very little about the night of his death. During this time, James consented to having pictures taken of his hands and some injuries sustained to them, but no further examination was done at that time.

On November 25, 2015, Dr. Charles Kokes, Medical Examiner, advised me that Victor Collins death was ruled a homicide. After speaking with Dr. Kokes, Bentonville

Detectives secured the residence mentioned above for a search warrant. I conducted the search, along with Detective Lieutenant Tony Marveggio, Detective Sergeant David Townsend, Detective Corporal Tracy Brown, Detective Corporal Josh Woodhams, and Detective Oliver.

Upon searching the interior of the home, we located three separate areas of what appeared to be dried blood. These areas were swabbed and collected as evidence to be sent to the Arkansas State Crime Lab for analysis. While searching the hot tub in the backyard of the residence, a set of broken glasses and a men's ring were discovered at the bottom, both of which were learned to have belonged to the victim in this case. Additionally, a broken shot glass was found in the hot tub and there was suspected blood spatter discovered on the covered awning located directly above the hot tub. These items, along with the observations of officers during the initial investigation, the medical examiner's findings, and the facts of this investigation thus far, suggest that a physical altercation occurred that resulted in the death of Victor Collins.

It should be noted that during a follow-up interview with Owen, he consented to an examination of his person for injuries and none were discovered. At the time of this writing, James has ceased cooperation with law enforcement. At the time of the initial search of his home when James reported Victor's death, James' truck was not thoroughly searched or processed and it was believed that it contained evidence related to the case under investigation. The truck was later seized pursuant to the issuance of a search warrant and it is still in the process of being search at the time of this writing.

On December 3rd, 2015, the Honorable Judge Brad Karren reviewed and approved a search warrant for James Bates' residence once again, located at 3502 SW Elm Manor Avenue, specifically for the search and seizure of electronic devices capable of storing and transmitting any form of data that could be related to this investigation. Officers executed this search warrant on this same date and during the course of the search, I located an Amazon Echo device in the kitchen, lying on the kitchen counter next to the refrigerator, plugged into the wall outlet. I had previously observed this device in the same position and state during the previous search warrant on November 25th, 2015. I

recognized this device from my previous training and personal experience as a product that Amazon.com sold to consumers for a variety of different services.

In summary and according to Amazon.com's website and other online sources, the Amazon Echo is a wireless speaker and voice command device. The device is cylindrical in shape and consists of a 9.25-inch (23.5 cm) tall cylinder speaker with a seven-piece microphone array. The device responds to the name "Alexa," which is a "wake word" that can be changed by the user to one other choice at the present, which is "Amazon." The device is capable of voice interaction, music playback, making to-do lists, setting alarms, streaming podcasts, playing audio books, providing weather, traffic and other real time information. It is also capable of controlling a variety of smart-home features, to include home security, lighting, and video surveillance, which are services offered by companies that are supported by Amazon Echo, to include WeMo. Amazon.com states that the Echo is equipped with an array of seven microphones, equipped with sensors that use beam-forming technology to hear users from any direction. With enhanced noise cancellation, Echo can hear users ask a question even while the device is playing music or if there is background noise. Echo then uses on-device keyword spotting to detect the wake word, either "Alexa" or "Amazon," and then lights up to stream what the user says to their cloud service, where Amazon leverages the Alexa Voice Service to recognize and respond to the user's request.

While searching James' residence, we discovered numerous devices that were used for "smart home" services, to include a "Nest" thermometer that is Wi-Fi connected and remotely controlled, a Honeywell alarm system that included door monitoring alarms and motion sensor in the living room, a wireless weather monitoring system outside on the back patio, and WeMo devices in the garage area for remote-activated lighting purposes that had not been opened yet. All of these devices, to include the Amazon Echo device, can be controlled remotely using a cell phone, computer, or other device capable of communicating through a network and are capable of interacting with one another through the use of one or more applications or programs. Through investigation, it was learned that during the time period of Victor's time at the residence, music was being wirelessly streamed throughout the home and onto the back patio of the residence, which

could have been activated and controlled utilizing the Amazon Echo device or an application for the device installed on James' cell Apple iPhone.

The Amazon Echo device is constantly listening for the "wake" command of "Alexa" or "Amazon," and records any command, inquiry, or verbal gesture given after that point, or possibly at all times without the "wake word" being issued, which is uploaded to Amazon.com's servers at a remote location. It is believed that these records are retained by Amazon.com and that they are evidence related to the case under investigation.

On December 4th, 2015, Amazon.com was served with a search warrant that was reviewed and approved by Circuit Court Judge Brad Karren on the same date. The search warrant was sent through Amazon's law enforcement email service and was also sent through United States Postal Service Certified Mail to their corporate headquarters in Tumwater, Washington. The search warrant was received by Amazon through the mail on December 11th, 2015, and representatives with Amazon have been in contact with this agency since receiving the search warrant. In speaking with their law enforcement liaison, Greg Haney, I was informed on two separate occasions that Amazon was in possession of the requested data in the search warrant but needed to consult with their counsel prior to complying with the search warrant. As of January 29th, 2016, Amazon has not provided our agency with the requested data and an extension for the originally ordered search warrant was sought.

After being served with the second search warrant, Amazon did not comply with providing all of the requested information listed in the search warrant, specifically any information that the Echo device could have transmitted to their servers. This agency maintains custody of the Echo device and it has since been learned that the device contains hardware capable of storing data, to potentially include time stamps, audio files, or other data. It is believed that the device may contain evidence related to this investigation and a search of the device itself will yield additional data pertinent to this case.

Our agency has also maintained custody of Victor Collins' cell phone, an LG Model LG-E980, and James Bates' cell phone, a Huawei Nexus cell phone, that was

seized from Bates as a result of his arrest on February 22nd, 2016, and we have been unable to access the data stored on the devices due to a passcode lock on them. Despite efforts to obtain the passcode, the devices could not be accessed. Our agency now has the ability to utilize data extraction methods that negate the need for passcodes and efforts to search Victor and Bates' devices will continue upon issuance of this warrant.

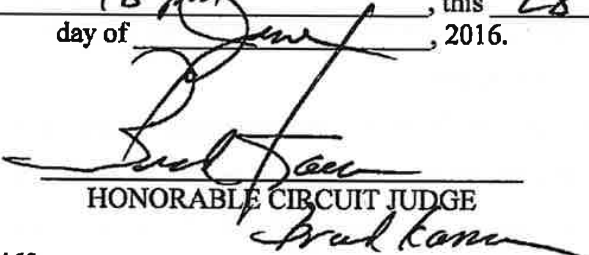
The reliability of said Affiant has been established by the following;

I, Detective Corporal Josh Woodhams, have been a Bentonville Police Officer for the past (10) years and a total of (11) years in law enforcement. I have had extensive training in criminal investigation, specifically related to personal crimes and evidence collection, as well as technology-based training and evidence handling processes related to this discipline.

It is further believed that evidence related to this case is in danger of being removed from said devices. It is, therefore, prayed by the affiant(s) herein that a Warrant to Search the devices, issue for the herein above-described items.


Detective Corporal Josh Woodhams
Bentonville Police Department

Sworn to before me and subscribed in my presence, at 2:45 pm, this 28th
day of June, 2016.


HONORABLE CIRCUIT JUDGE

REPORT #2015-39460

EXHIBIT C

EXCLUSIVE

Amazon Echo and the Hot Tub Murder

By Tom Dotan and Reed Albergotti Dec. 27, 2016 7:01 AM PST

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Be careful what you say around your Amazon Echo. Your words may be recorded and used against you in court.

In what may be the first case of its kind, police investigating a murder in Bentonville, Arkansas, issued a warrant to Amazon.com to turn over audio and other records from an Echo. The device in question belongs to James Andrew Bates, who was charged earlier this year with first-degree murder. The victim, Victor Collins, **was found dead in Mr. Bates' hot tub** one Sunday morning in November of last year.

THE TAKEAWAY

Internet of Things devices that are always listening are emerging as a new tool for police, raising the prospect of more battles between tech companies and law enforcement. In this case, Arkansas detectives got a search warrant for an Amazon Echo in the house where a man was murdered late last year.

According to court records, Amazon twice declined to hand over information the Echo transmitted to its servers. The company did hand over Mr. Bates' account information and purchase history. Police also said they took the device and extracted data off it, the records show. Amazon did not respond to questions about the case or how it responded to the search warrant.

Mr. Bates pleaded not guilty in April and is out on bail. The case is due to go to trial in early 2017, according to Mr. Bates' defense attorney. Police referred questions to the prosecutor's office, which didn't respond to a request for comment.

This murder investigation in a 40,000-person town in Arkansas, miles away from Silicon Valley or Seattle, offers a glimpse at the kinds of investigations that will increasingly become commonplace, lawyers specializing in electronic privacy say. In one sense, the episode has echoes of Apple's showdown with the FBI over unlocking an iPhone belonging to the alleged San Bernardino shooter. But the "always on" Internet of Things devices—which record and remotely store snippets of audio—present a new wrinkle as fodder for criminal investigations.

It's a relevant issue for a growing number of people. The Echo was a widely popular holiday gift this year; Amazon sold out of the full-sized model and on Christmas Day the companion app shot to the top five most downloaded free apps on the iTunes store, above Facebook and Instagram.

In this case, Mr. Bates had several IoT devices in his home, according to police records filed with the court. These included a Nest Thermostat, a Honeywell Alarm System, a wireless weather monitoring system and an unopened remote-activated lighting device—as well as the Echo.

In the spotlight are events that occurred overnight on Saturday, Nov. 21, 2015. Mr. Bates told detectives Mr. Collins and two others came over to his house to watch the Arkansas Razorbacks football game at his place, according to court records. Everyone in the group worked at Walmart, which is headquartered in Bentonville. Mr. Bates worked in loss prevention for the retailer.

The group drank beers and "several shots of vodka." Accounts vary of what happened after that. Police established through witness statements and other inquiries that the two other men had left late in the evening.

Blood and Broken Glass

The next morning, Mr. Bates told police he found Mr. Collins dead in a hot tub on the back patio. A police report says there was a broken shot glass, vodka bottle and blood spatter near the tub; the water had turned a dark reddish tint and Mr. Collins' left eye and lips appeared dark and

swollen. The county medical examiner later ruled that he'd been strangled to death.

Detectives noticed Mr. Bates' Echo in his kitchen while searching the home. They learned the music was being streamed wirelessly during the night, which they said could have been "activated and controlled" using the Echo, detectives said in an affidavit for the Amazon search warrant.

EXCLUSIVE Amazon Echo and the Hot Tub Murder

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errant recordings, like ambient sound or partial conversations, are sent to Amazon's servers just like any other.

One big question is how much data could potentially be available from the device. An Echo is equipped with seven microphones that are always "on," listening for a person to utter a "wake word" like "Alexa" before perking up. At that point, it records a person's commands—but only records while the device's blue light is on, according to a person close to Amazon. That data is sent to Amazon's cloud servers where it can carry out tasks like telling someone the weather, playing music or setting an alarm.

That would limit how much data could be captured. But as most owners probably have experienced, the microphones can often be triggered inadvertently. And those errant recordings, like ambient sound or partial conversations, are sent to Amazon's servers just like any other. A look through the user history in an Alexa app often reveals a trove of conversation snippets that the device picked up and is stored remotely; people have to delete those audio clips manually.

"The interesting thing in a murder trial would be if there was this 'false fire' [accidental recording] and audio snippets were recorded in the process," said Todd Mozer, CEO of Sensory, which builds so-called "embedded speech recognition" in products made by companies like Samsung, Amazon and Motorola.

Mr. Bates' defense attorney, Kimberly Weber, said in an interview it was alarming that police are now issuing warrants for an "always on" device. "You have an expectation of privacy in your home, and I have a big problem that law enforcement can use the technology that advances our quality of life against us," Ms. Weber said.

Mr. Mozer said that even more interesting than analyzing Alexa data to solve a murder case is a scenario where a government agency went to a company like Google and asked them to remotely configure a voice recognition device to constantly record a suspected terrorist. "Is the plumbing in place to allow the device to do that? I suspect there is," he said.

IOT Skepticism

Some are skeptical about the potential of IoT devices to help police investigations. In a Feb. 5 letter to Harvard professor and privacy advocate Jonathan Zittrain, who authored a paper about how IoT devices can be used for surveillance, Manhattan District Attorney Cyrus Vance argued that the Internet of Things won't end up being as useful as cell phones in criminal investigations. "Even if evidence collection through IoT can be done efficiently," he said, "People with something to hide can (and will) choose to avoid IoT."

It's unclear whether a tech company would be compelled to turn over customer data from an IoT device, said Ian Ballon, an Internet litigator at Greenberg Traurig. Most case law revolves around cell phone towers and location data, rather than Internet of Things devices—and much of it relates to the Electronic Communications and Privacy Act, which was crafted in the 1980s.

Moreover, there is a discrepancy in data collection rules between civil and criminal cases. As current law stands, in a civil case, someone can only get information about what time someone communicated with a device or for how long, but wouldn't be able to get "content data" like an audio recording. But it theoretically could in a criminal case, Mr. Ballon said.

As for Mr. Bates, court records suggest the device prosecutors got more from wasn't the Alexa but the home's smart water meter. It showed that someone used 140 gallons of water between 1 a.m. and 3 a.m. at Mr. Bates' house, a much heavier than usual amount. Prosecutors allege that was a result of Mr. Bates using a garden hose to spray down the back patio area from the blood. Ms. Weber is disputing the accuracy of the smart meter readings. And, in a decidedly non-digital strategy, she says the water outside the tub couldn't have come from a garden hose. Mr. Bates had a salt water tub, and she says all the water on the outside of the tub had salt residue.

**3 SUBSCRIBER COMMENTS****EXCLUSIVE Amazon Echo and the Hot Tub Murder**[Share full article](#)

CEO and Founder, Ideas Never Cease

8 days ago

Hmpf, this reeks of the same federal ploys to put surveillance in devices that the FBI tried to play with Apple. Setting precedents and all that.

Of *course* the smart water meter would provide more information about this particular crime than a device like Alexa. We're supposed to like this brave new world? Hah.

[Like](#) · Reed Albergotti and C.Y. Lee liked this.

**Jonathan David Nelson**

CEO, Hackers / Founders

8 days ago

Can we please invent technology that doesn't require me to throw away my privacy to enjoy?

[Like](#) · Dave Morin, Felice Lesser and 2 others liked this.

**Danny Sullivan**

Founding editor, Marketing Land

8 days ago

My understanding with these devices is that they're always listening but not always recording. And in particular, they're always listening for particular their particular hotwords like "Alexa" or "OK Google."

This is covered in the story, of course – but I think the distinction can be lost on some. It's one reason I've not had a privacy freakout over these. What's recorded is what actually follows a wake-word.

Of course, it would be interesting if they could be remotely triggered to listen. I suspect we'll see some digging now on what the safeguards are or, perhaps more likely, the technical limitations of having them always broadcasting back. I suspect the backend systems aren't designed to receive a long stream of data like that.

One last thing: if handing over the "account information" means username and password, then they also got all the Echo information that's recorded. It's all stored and reviewable by anyone in the Alexa app.

[Like](#) · Marcel Weiss, Jeff Weisbein and 9 others liked this.

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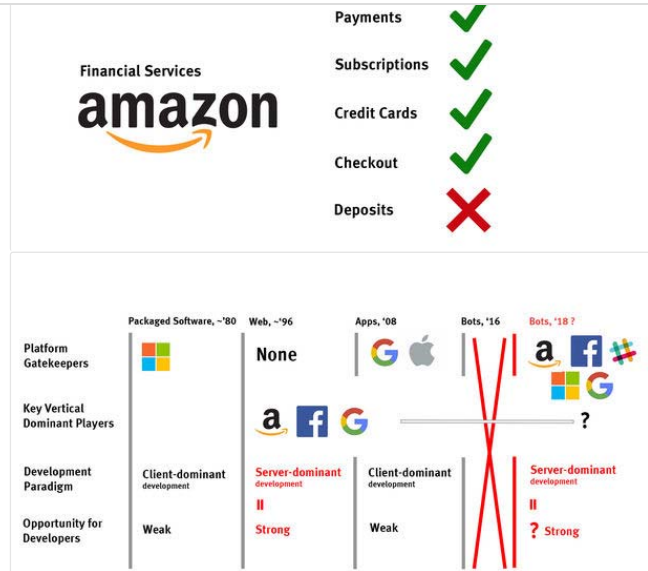
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EXCLUSIVE Amazon Echo and the Hot Tub Murder

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EXHIBIT D

Arkansas Prosecutors Seek Possible Evidence for Murder From Amazon Echo Device

By ABC NEWS • Dec 29, 2016, 7:57 AM ET

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Mark Lennihan/AP Photo

WATCH | Prosecutors Seek Possible Evidence From Amazon Echo in Slaying

0
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Prosecutors in Arkansas believe that information gathered by an Amazon Echo device could potentially provide evidence in an ongoing murder trial, and are pressing Amazon to give them data from the device belonging to the defendant.



Authorities are seeking the data to aid in their investigation of the alleged murder of Victor Collins, whose body was found in a hot tub at the home of his friend, James Bates on November 22, 2015. Bates was charged with Collins' murder, said Nathan Smith, the prosecuting attorney in Bentonville, Arkansas, during an interview with "[Good Morning America](#)" that aired today.

[Amazon Completes 1st Drone Delivery](#)

[Suspect in Death of DC Yoga Teacher Charged With Murder](#)

"Like any other defendant he is innocent until proven guilty," Smith said of Bates. "The issue that I think that has drawn national attention is the search warrant for Amazon echo device."

"We're still in process of trying to obtain any info on that Echo device. I don't know if it has anything on it or not," Smith said. "The purpose of doing the search warrant is to determine if there is information on that Echo device that would either be helpful in the prosecution of Mr. Bates, or be exculpatory for Mr. Bates, and we as law enforcement have an obligation to find out what's on that device to ensure that justice is done."

Smith said that the request for data has "been spun as an issue of privacy."

But, he says, "It really doesn't have anything to do with that. In our legal system, law enforcement can search property by lawfully obtaining a search warrant."

He added, "The only thing novel about is it's a relatively new device."

The Amazon Echo device, which has both speakers and a microphone, can respond to a user's voice commands or questions after it is activated with the wake word "Alexa," according to Amazon's website for the product. A user may also review past voice interactions with Alexa, which are stored in the device's settings.

Amazon pushed back against releasing Bates' information, saying in a statement that it "will not release customer information without a valid and binding legal demand properly served on us."

"Amazon objects to overbroad or otherwise inappropriate demands as a matter of course," the company added.

Bates' defense attorney Kimberly Weber said in an interview with "GMA" she thinks Amazon "is going to take a very strong stance and do everything in its power to prevent this from being released because it wants to make sure that its customers are comfortable with its product."

Weber also argued that Amazon Echo data is not always reliable, and could easily be used out of context.

"My client is innocent," Weber said. "I am not concerned at all with the information being released, but I have a stand and my client is united in my stand, that we are going to do everything we can to protect his privacy and the privacy of others."

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TECH DEC 28 2016, 2:13 PM ET

Prosecutors Get Warrant for Amazon Echo Data in Arkansas Murder Case

by ERIK ORTIZ

SHARE



Why using this Amazon device may mean losing your privacy 4:36

The Amazon Echo is a voice-activated smart speaker that plays music, gives the weather forecast and updates its owner's shopping lists, among other everyday tasks.

But prosecutors in Arkansas believe one such virtual assistant may hold something far more crucial: data that can help in a murder trial.

The case against Bentonville man James Bates is gaining national attention after prosecutors confirmed

there is an active warrant to obtain information from his Amazon Echo.

While Benton County prosecutor Nathan Smith told NBC News they're not trying to force Amazon to comply with the warrant — and the e-commerce giant says it has refused anyway — the case is putting a spotlight on how newer types of personal technology have become sought-after pieces of evidence.

Kim Weber, Bates' attorney, said that although he has nothing to hide, she is still worried about the issue of privacy. It's a familiar concern: How cellphones are [used to track people and whether seizing certain information on them is legal](#) has been taken up by various courts.

"It is disconcerting for me as a defense attorney to know that we are purchasing these wonderful items to help us in our home ... to help us in our quality of life, and then they can be turned around and ... used against us to charge us in crimes," Weber told NBC News on Tuesday.



Alexa, whodunit? Police seek Amazon Echo data to solve murder 2:30

She added that Amazon was right in protecting her client.

In Bates' case, prosecutors sought the Amazon Echo's electronic data from Nov. 21 to Nov. 22 of last year, when a homicide at his home occurred, to help piece

together what happened.

Bates is charged in the murder of co-worker Victor Collins. Police said Bates had invited Collins and two other buddies over to watch football, and they drank beer and vodka.

One of the friends left, and Bates, Collins and the other friend got into a hot tub where they continued to drink until 1 a.m., according to an affidavit. Bates said he decided to go to bed, but woke up hours later and found Collins face down in the water.

Bates called 911, and detectives found Collins' body. The affidavit said he died of homicide by strangulation with a contributing cause of drowning.

But investigators noted that Collins was bleeding and bruised on his face, and that there was evidence of a struggle and a cover-up. They also found Bates made calls throughout the night to various numbers that didn't go through, which appeared inconsistent with him saying he was sleeping, according to the affidavit.

Bates told police the calls were so-called "butt dials."



Amazon Echo Is Siri On Steroids, for the Connected Home 2:28

The other friend who was with the pair had returned home by 12:30 a.m., his wife told investigators, and he showed no signs of physical struggle, the affidavit said. Bates was examined and there was bruising as well as

scratches on his back, arms and abdomen, the document added.

Finally, police said, utility records showed an increase in water usage early in the morning, suggesting the patio had been sprayed down to eradicate evidence.

Bates pleaded not guilty in court in April and posted bail. He faces a trial next year.

While an Amazon Echo was located inside the home, prosecutors have not said exactly what they might be looking for to aid in the case. Police were able to access data on the device, and prosecutors have discussed with Amazon getting further data from it or the company's servers, where the information is stored.

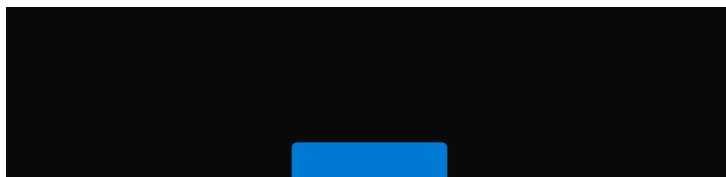
Related: [Microsoft Wins Major Court Battle Over Email Privacy](#)

Amazon in a statement said it "will not release customer information without a valid and binding legal demand properly served on us. Amazon objects to overbroad or otherwise inappropriate demands as a matter of course."

Benton County prosecutors argue Amazon has no legal standing in Bates' case not to turn over pertinent information.

The Amazon Echo, by design, holds a wealth of knowledge. The Internet- and Bluetooth-enabled device is constantly listening. When someone gives the trigger word — usually the name Alexa — and then asks a question or makes a command, the virtual assistant does its best to comply.

And, in those moments, Alexa is also recording.





Police Demand 'Amazon Echo' Data as Part of Arkansas Murder Investigation 1:39

Craig Ball, an Austin, Texas, attorney and computer forensic examiner who owns an Amazon Echo, said he's able to go back to his recording history and listen to what he's commanded in the past. If a conversation was going on simultaneously or the TV was on, he can hear that as well.

That's why prosecutors would be interested in prying into an Amazon Echo — Alexa could in some ways be an alibi for someone or have recorded snippets of an incriminating conversation.

"If there was a quarrel going on, if an individual was on the phone at the same time, you might be able to hear that," Ball said. "While the command is being spoken, it's picking everything up."

But, for now, Benton County prosecutors say the data Amazon might have is not as important as other records, unrelated to the Amazon Echo, that have already been obtained — so there's no need to use litigation to get the company to surrender the data.

It's unclear how long Amazon stores customers' Alexa recordings.

Still, Ball said, people shouldn't have a reasonable expectation that their data is off limits when a third-party company holds it.

The issue of privacy and police seizing personal data and devices, including smartphones and computers, is only going to get thornier as people use more sophisticated technology in their routine activities, the American Civil Liberties Union cautions.

"Just as with mobile phones, the data these devices collect can paint an intimate picture of our inner and personal lives," said ACLU staff attorney Brett Max Kaufman. " ... Going forward the courts should be careful to understand and appreciate the important privacy concerns that these devices present." 🌈

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Alexa, can you help with this murder case?

By [Elliott C. McLaughlin](#) and Keith Allen, CNN
 Updated 8:48 PM ET, Wed December 28, 2016



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Story highlights

Arkansas prosecutor seeks data from murder
suspect's Amazon Echo smart speaker

Amazon won't turn over info; defense attorney
says nothing on device "will hurt us"

(CNN) — Amazon is pushing back
against an Arkansas prosecutor's
demand for information from a murder
suspect's Echo smart speaker, setting
up another legal battle over
investigators' quest for technology-
based evidence and American privacy

rights.

Benton County Prosecuting Attorney Nathan Smith hopes the voice-activated
Echo -- which answers users' questions, plays music, reads news and connects
to other smart devices -- will provide information on how a man came to be
found dead in 31-year-old James Bates' hot tub.

Bates' defense attorney, Kimberly Weber, says there is nothing useful on the
device and applauds Amazon for protecting her client's privacy. Bates, who was
arrested in February on suspicion of first-degree murder, is presently free on a
\$350,000 bond. A discovery hearing in his case is scheduled for March.

As technology has become more and
more integral to daily life, authorities

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have increasingly sought evidence from mobile phones, laptops, social media, [even the Warcraft](#) video game.

The investigation into the 2015 mass shooting in San Bernardino, California, [pitted Apple](#), which built one of the shooter's mobile phones, [against the FBI](#), which wanted the tech giant's help cracking the device's PIN code. The [trial of Justin Ross Harris](#), the Georgia dad convicted of leaving his young son in a hot car to die, regularly delved into texts, Google searches and Reddit posts.

Attempting to mine a smart speaker for information may be a first, though.

Different expectation of privacy?

Joel Reidenberg, the founding academic director for Fordham University's Center for Law and Information Policy, told CNN it's the first such case he's seen, but he isn't surprised that smart speakers are already the subject of a court battle.

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While some might argue that voice technology such as Echo, Siri or Google Home, which assist users with queries and tasks, come with a different expectation of privacy than, say, social media postings or Internet

searches, Reidenberg said he feels such an attitude is naive.

"I think Amazon is likely going to lose that motion if it goes up the chain of appellate courts," he said.

According to Amazon, Echo works by constantly listening for the "wake word" -- "Alexa" or "Amazon," by default -- and then records your voice and transfers it to a processor for analysis so that it can fulfill requests or answer questions. The recordings are streamed and stored remotely, and can be reviewed or deleted over time, Amazon says.

"How is that any different from you sitting at your keyboard typing?" Reidenberg asked.

The case

The Amazon Echo entered the November 2015 murder case because someone present on the night of Collins' death allegedly recalled hearing music streaming through the device that evening.

Bates had invited two friends -- one of them former Georgia police officer Victor Collins, 47 -- over to his Bentonville home, where they watched college football, drank beer and shot vodka, according to the search warrant affidavit filed in Benton County Circuit Court. The men decided to get into Bates' hot tub and Bates said he went to bed around 1 a.m. When he awoke in the morning, Collins was floating face-down in the hot tub, the affidavit says.

Bates' attorney, Kimberly Weber, says Collins was Bates' friend, and his death was a tragic accident, possibly stemming from his drinking. Collins' blood-alcohol content at the time of death was .32, four times the legal limit to drive in Arkansas, she said.

The Amazon Echo is always listening for its wake word.

"It's not a murder at all. It's an accident," she said, adding that she feels calling the case against her client circumstantial would be giving it too much credit.

Investigators contend in the affidavit there were signs of a struggle, including injuries to Collins and Bates, a broken shot glass, dried blood inside the home and indications the patio and hot tub had been hosed down before police arrived.

Another smart device, Bates' water heater, points to an exorbitant amount of water being used in the early-morning hours, in what investigators believe was an attempt to cover up a crime, the affidavit says.

Weber argues the amount of water was unremarkable and nearly equal to the amount of water used in the home 12 hours earlier, she said.

Amazon: Demand 'overbroad'

Smith, the prosecutor, told CNN that the data the Echo captured on the night of Collins' death could provide clues as to what happened.

His office made two attempts to obtain the data from the Echo, but Amazon refused both times. The company declined to comply with a search warrant, he said.

"They'll say it's for privacy reasons, but I don't believe they have a legal leg to

stand on," he said. "I don't think they're a bad company or anything, but I don't think they want to release it because they want to sell more of them."

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Investigators have routinely obtained warrants for suspects' phones, computers, even their blood, he said, so "there's not a rational or legal reason that we shouldn't be able to search that device."

Amazon disagrees.

"Amazon will not release customer information without a valid and binding legal demand properly served on us," it said in a statement. "Amazon objects to overbroad or otherwise inappropriate demands as a matter of course."

The company's representatives did not respond to a follow-up email asking why Amazon did not feel the search warrant constituted a valid legal demand.

Weber said Amazon did provide prosecutors with Bates' subscriber information.

The attorney also noted that [the documentation that comes with the Echo](#) states that Amazon cannot guarantee that "its functionality or content ... is accurate, reliable, or complete." To try to enter an Echo's recordings as evidence is "crazy," given the disclaimer, she said. Not that she's terribly worried.

"There's nothing on the Amazon Echo that will hurt us," Weber said. "We're not fearful of anything being provided, if Amazon does indeed respond."

Orwellian implications?

Weber is adamant in her assertion that devices like the Echo are designed to make life easier around the home and "shouldn't be used against you." While Fordham's Reidenberg understands the sentiment, he expects attitudes to change as the devices become more ubiquitous. We've already witnessed it with mobile phones, he said.

Related Video: Privacy and your emails 03:54

"We haven't yet seen, but we will see, the same kind of things happening with these voice-activated home devices," he said, predicting the content of smart speakers will soon

be regularly featured in divorce cases.

"These are the perfect surveillance devices, if they aren't treated with care."

Another question, he said, is how a device that's "always listening" processes what it hears. Sure, Amazon says the Echo records only after users utter the wake word, but, Reidenberg asks, will that always be the case?

"That could change tomorrow," he said. "That's just today's architecture for it."

The Electronic Privacy Information Center has long been concerned about "always-on" devices and [wrote in a July 2015 letter to the US Justice Department](#) that such machines are "increasingly prevalent in the 'Internet of Things,'" the term used for the networking of common, everyday objects, allowing them to send and receive data.

Along with the Amazon Echo, other technology cited in EPIC's letter were Samsung smart televisions, Google's Chromium browser, Mattel's "Hello Barbie" doll, Microsoft Kinect for the Xbox, Nest Cam security cameras and Canary Connect home security devices.

"Americans do not expect that the devices in their homes will persistently record everything they say," EPIC warned the Justice Department. "By introducing 'always on' voice recording into ordinary consumer products such as computers, televisions and toys, companies are listening to consumers in their most private spaces.

"It is unreasonable to expect consumers to monitor their every word in front of their home electronics. It is also genuinely creepy."

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CNN's Lauren Leslie contributed to this report.

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