

COUNTY COURT, SUMMIT, STATE OF COLORADO
501 North Park Avenue
PO Box 269
Breckenridge, CO 80204

Plaintiff:
State of Colorado

v.

Defendant:
Evan Hannibal

Attorney for Defendant:
Jason Flores-Williams
1851 Bassett St. 509
Denver, CO 80202
Reg. No. #49702
303-514-4524
JFW@JFWLAW.NET

▲ COURT USE ONLY ▲

Case Number:
2020M000142

**MOTION TO SUPPRESS ALL EVIDENCE OBTAINED BY
COLORADO AVALANCE INFORMATION CENTER**

COMES NOW Evan Hannibal, by and through counsel, and respectfully moves that this Court issue an order excluding all statements, videos, and evidence obtained from the Colorado Avalanche Information Center (CAIC”) on the following grounds:

INTRODUCTION

The Colorado Backcountry is a community bound together by reverence for the power of *The Mountain*. Experts like Tyler DeWitt and Evan Hannibal earn certifications in avalanche science and mitigation, while the cold wild itself teaches them caution, contemplation, and collaboration. The two mountaineers weren’t just snowboarding above the Eisenhower Tunnel

on March 25, 2020—but practicing the respect and responsibility that can only be learned by engaging in a natural world much bigger than ourselves.

They over-complied with every avalanche safeguard and precaution, calling 911 within moments of the avalanche’s natural release. They teamed with the Summit County Sheriff to first ensure that no one had been injured, then to assess the data for purposes of prevention and education. The Sheriff told them that they had broken no laws and that he appreciated their professionalism, saving man hours and resources with their cooperation. The Sheriff took statements from them without advising them of their rights, but they were working together in the spirit of the mountain community.

The Colorado Avalanche Information Center contacted Mr. Hannibal the next day, requesting the Go Pro of the avalanche.¹ He gave it to them, thinking that CAIC was a research group that had nothing to do with law enforcement. The State Agency then disclosed it and other evidence to the Summit County District Attorney.

The instant Motion posits that CAIC had a duty to inform the two mountaineers that the evidence it collected was going to be used in the prosecution against them: a prosecution seeking more than \$168,000 dollars in criminal liability and restitution.

LAW AND ARGUMENT

It is well settled that, “[i]f a person is an agent of the police for purposes of criminal investigation, evidence obtained from an unlawful, privately conducted search must be suppressed. This rule prevents police authorities from circumventing constitutional requirements

Its enabling act states that its purpose is “to promote safety by reducing the impact of avalanches on recreation, industry, and transportation in the state through a program of avalanche forecasting and education.” C.R.S. §24-33-116(1). www.avalanche.state.co.us.

by directing a third party to perform a search that would be improper if conducted by the police.” *People v. Holmberg*, 992 P.2d 705, 708 (Colo.App. 1999) (citations omitted).

The Defendant concedes that “non-law enforcement government actors come within the purview of the Fourth Amendment only when their searches of individuals have no other purpose but to aid law enforcement investigatory or administrative functions.” *Id.* (citations omitted). The Defendant further acknowledges that the “fact that the person conducting a search might have intended to assist law enforcement does not transform him or her into a law enforcement agent so long as he or she had a legitimate independent motivation for engaging in the challenged conduct.” *Id.* (citations omitted).

Defendants can only infer CAIC’s motivations from its actions, which were to: (1) get the video from Mr. Hannibal; (2) turn it over to law enforcement; (3) fail to follow up in any way, i.e. view the video, obtain a narrative, inquire about what they saw, which precautions were taken, wind direction, equipment used, aspect: there was no subsequent contact whatsoever, let alone the inquiries part and parcel of scientific research methodology.

The Colorado Avalanche Information Center’s motives may have been in the best spirit of data sharing, but there is no way to ascertain this without a substantive hearing. Mr. Hannibal and Mr. DeWitt have a right to know if the collaborative ethics that they practice in their daily lives was exploited, while the Backcountry community needs to know if CAIC is not an ally in their efforts to improve best avalanche practices, but merely as an extension of law enforcement. This is a posture that needs to be clarified *for all parties*, because if CAIC is seen as a revolving door to police and prosecutor, then there will be a chilling effect unless it institutes Fourth and Fifth Amendment safeguards. An undesirable outcome as everyone’s goal is increased safety and education with regard to one of nature’s most uncontrollable and wild forces.

WHEREFORE, the Defendant requests that the Court order that all statements, videos, and evidence obtained from the Colorado Avalanche Information Center (CAIC”) be excluded from trial.

Dated: December 2, 2020

Respectfully Submitted,

s/Jason Flores-Williams
Jason Flores-Williams
1851 Bassett St
Denver, CO 80202
Reg. No. #49702
303-514-4524
JFW@JFWLAW.NET

CERTIFICATE OF SERVICE

I hereby certify that this document was filed via the Colorado Courts e-filing system causing a copy to be served upon all current parties of record on this date of December 2, 2020.

s/Jason Flores-Williams
1851 Bassett St.
Denver, CO 80202
303-514-4524
JFW@JFWLAW.NET