

Pohland and Particularity - Warrants in the Digital Age
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The Alaska Court of Appeals recently withdrew part of an important opinion on the scope of warrants in the digital age, leaving less guidance as to what degree of particularity is required for a valid search warrant.

This past November the Court issued a decision in *State v. Pohland*, in which troopers searched the house of a woman suspected of business and financial crimes, during which they seized the personal laptop of the woman's roommate. The Court held that the troopers did not have probable cause to believe that the roommate's personal laptop contained evidence of the other woman's crimes. In addition, the Court of Appeals explained that the search warrant failed to satisfy the constitutional requirement of particularity.

Whenever a judge issues a warrant under the Fourth Amendment to the US Constitution, the warrant must describe the place to be searched and items to be searched for in sufficient detail to ensure that law enforcement limits its search only to those items which may lead to evidence of the crime for which they have probable cause. One of the reasons it is so important to keep the searches narrow is that if police search you for evidence of one crime during the execution of a valid warrant but find evidence of a different kind, they can use the new evidence against you.

The particularity provision is of increased importance today, as all of us put more and more data about our lives in a single location: our computers, be they laptops, desktops, phones, or the cloud. Think about it this way: think about what room in your house has the most confidential information about your life? Now compare that to the information you have about yourself on your phone: photographs, contacts information for everyone you know, a list of your interests and hobbies, medical apps, financial history, and on and on. As we concentrate more and more information about ourselves in easily searchable locations, it becomes much simpler for law enforcement to avoid the particularity requirement in the constitution.

Courts have struggled with crafting warrants in the digital age that are not so broad as to give law enforcement every detail of our lives with the stroke of a signature on a warrant application. The initial decision in *Pohland* addressed this problem, noting that the blanket warrant to search all electronic devices looked a lot like "the sort of general warrant that the Fourth Amendment was designed to guard against."

In the new *Pohland* decision issued last week, the Court of Appeals still ruled for the defendant, but removed the finding that the warrant in that case failed the particularity requirement. While the opinion continues to include some general language about overbroad warrants, it gives lower courts less guidance when judges are asked to evaluate the sufficiency of a warrant directed at electronic devices.