

MILWAUKEE MOTION PACKET

ALPR / TraX / “Signal Trace” and Guilt-by-Association Evidence

Model defense motions derived from the combined Milwaukee presentation

Drafting note: These are model forms, not case-specific filings. Replace all bracketed material, conform rule citations to the forum, and independently update/Shepardize or KeyCite authorities before filing. The forms preserve the arguments and authorities identified in the presentation.

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5. Motion to Exclude TraX / “Signal Trace” Location Opinions Under CRE/FRE 702 and Shreck/Daubert
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Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO COMPEL DISCOVERY AND PRESERVATION OF ALPR / FLOCK / TRAX / CSLI EVIDENCE		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Describe the alleged ALPR hit, Flock query, carrier-data acquisition, TraX or other mapping product, and the resulting stop, arrest, search, or warrant. Identify dates, agencies, vendors, officers, and any disclosed reports. State what has not yet been produced.]

II. Argument

A. The defense is entitled to the underlying inputs, not merely the government's finished map or summary.

Automated evidence is only as reliable as its inputs, operators, database entries, software settings, and legal process. The defense cannot meaningfully test probable cause, reasonable suspicion, authentication, expert reliability, or impeachment without the source material.

B. The Court should order production of ALPR materials.

The requested ALPR materials include original images; OCR reads and confidence scores; camera identification and location; hot-list source, date, and status; search/query logs; audit trails; retention

records; training; policies; error or validation materials; and records showing whether an officer visually verified the alert and compared make, model, color, or other vehicle characteristics.

C. The Court should order production of cellular and TraX materials.

The requested cellular materials include raw carrier records; warrants, subpoenas, court orders, or exigency documentation; carrier legends and keys; tower and sector data; antenna orientation information; software version and settings; validation studies; error rates; manuals; screenshots; exported reports; user-entered assumptions; and the identity and qualifications of each person who generated or interpreted a map.

D. Preservation should be ordered immediately.

Because vendor and agency retention periods may be limited, the Court should order preservation of all relevant logs, images, query histories, source records, metadata, and software-output files pending final disposition of the case.

III. Principal Authorities

Fed. R. Crim. P. 16 / applicable state discovery rule; *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

Requested Relief

Order the prosecution and investigating agencies to preserve and produce the materials identified above within [14] days, with a privilege log for anything withheld, and set a status hearing to address incomplete production.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO SUPPRESS WARRANTLESS HISTORICAL ALPR DATABASE SEARCH		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[State the number of ALPR detections, geographic scope, length of historical period searched, whether the search was targeted to defendant, whether a warrant existed, and how the historical query was used to identify, locate, stop, arrest, or obtain a warrant against defendant.]

II. Argument

A. A retrospective, network-wide reconstruction of movements is materially different from a single observation in public.

The defense does not contend that a single plate visible on a public roadway is categorically private. The challenged conduct is the government's retrospective query of a database aggregating numerous observations across time and location to reconstruct a person's movements.

B. Carpenter and Jones supply the constitutional analogy.

Carpenter recognizes that aggregated historical location information can implicate a reasonable expectation of privacy even though individual location points may have been exposed to third parties. *United States v. Jones* likewise cautions against prolonged technological tracking. A

historical ALPR query that reveals a detailed travel pattern can present the same aggregation concern.

C. Colorado law provides an additional basis under article II, section 7.

Where applicable, *People v. Tafoya*, 2021 CO 62, supports the proposition that prolonged technologically enhanced surveillance may constitute a search under the Colorado Constitution even when it observes conduct exposed to public view.

D. The fruits of an unconstitutional historical search must be suppressed.

If the Court finds the historical ALPR query was a search conducted without a warrant and without a recognized exception, the resulting evidence and derivative evidence should be suppressed.

III. Principal Authorities

Carpenter v. United States, 585 U.S. 296 (2018); *United States v. Jones*, 565 U.S. 400 (2012); *People v. Tafoya*, 2021 CO 62.

Requested Relief

Suppress the historical ALPR-query results and all evidence derived from them, or alternatively conduct an evidentiary hearing requiring the prosecution to establish the scope, duration, database architecture, and legal authority for the query.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO SUPPRESS STOP BASED ON UNVERIFIED OR STALE ALPR ALERT		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Describe the alert, source list, age of entry, alleged stolen/wanted status, what the officer saw before the stop, whether the plate was visually confirmed, and any mismatch in make/model/color.]

II. Argument

A. An automated alert is information to investigate, not self-proving reasonable suspicion.

Reasonable suspicion must rest on particularized, reliable facts. An ALPR alert may be erroneous because of OCR misreads, stale hot-list entries, mistaken database records, plate cloning, or mismatch between the alert and the observed vehicle.

B. Known error risks make verification important.

Where law-enforcement training or policy recognizes false hits, failure to visually verify the plate and compare readily observable vehicle characteristics materially weakens the objective basis for a stop.

C. The prosecution bears the burden of establishing the lawful basis for the seizure.

At the suppression hearing the prosecution should be required to prove the actual alert, source database, date and status of the underlying entry, officer verification steps, and the facts known before activation of emergency equipment or other seizure.

III. Principal Authorities

Green v. City & County of San Francisco, 751 F.3d 1039 (9th Cir. 2014); Terry v. Ohio, 392 U.S. 1 (1968).

Requested Relief

Suppress evidence obtained from the stop and its fruits because the seizure was unsupported by reasonable suspicion; alternatively order an evidentiary hearing and production of the alert, hot-list entry, camera image, and relevant policy/training records.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO SUPPRESS UNLAWFULLY ACQUIRED CELL-SITE / LOCATION DATA		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Describe the carrier records obtained, relevant date range, whether they are historical CSLI or another form of location information, the legal process used, and how the records were used in a TraX or similar map.]

II. Argument

A. The Court should identify exactly what location data the government obtained.

The label 'cell-site data' can conceal important differences in precision, duration, and collection method. The defense requests findings on the type of records, time span, number of events, carrier, and legal process.

B. Substantial historical CSLI ordinarily requires a warrant supported by probable cause.

Under *Carpenter*, acquisition of substantial historical CSLI is generally a Fourth Amendment search. A subpoena, generalized court order, or after-the-fact visualization does not substitute for a constitutionally sufficient warrant where *Carpenter* applies.

C. A derivative TraX map cannot cure an unlawful acquisition.

If raw carrier records were unlawfully acquired, later importation into TraX, Accurint, or any other mapping platform does not attenuate or sanitize the constitutional violation.

III. Principal Authorities

Carpenter v. United States, 585 U.S. 296 (2018).

Requested Relief

Suppress the unlawfully acquired location records, all maps or opinions generated from them, and derivative evidence; alternatively conduct a suppression hearing on the exact process used to obtain the records.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO EXCLUDE TRAX / “SIGNAL TRACE” LOCATION OPINIONS UNDER CRE/FRE 702 AND SHRECK/DAUBERT		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify the proposed witness, software/product, map, claimed conclusion, disclosed methodology, software version, and whether raw carrier records have been produced.]

II. Argument

A. The proponent must establish reliability before the jury sees a technological location opinion.

A polished map is not itself a methodology. The proponent must establish qualified interpretation, sufficient data, reliable principles and methods, and reliable application to the facts.

B. The Court should require disclosure and testing of the actual methodology used.

The hearing should address software version; source data; tower and sector assumptions; antenna orientation; range assumptions; geocoding; any interpolation; user-entered parameters; validation studies; known or potential error; peer review; manuals; and whether the system purports to identify a phone's actual location or merely a network connection.

C. The opinion should not overstate what cell-site records prove.

Historical carrier records may show that a device communicated through a sector or tower; they do not automatically establish a precise handset location, the identity of the person holding the phone, or a precise route. Any opinion exceeding the demonstrated capabilities of the data and method should be excluded under Rule 702 and Rule 403.

D. A reliability hearing is required before admission.

The Court should conduct the reliability determination outside the jury's presence and prohibit any reference to the map or software until admissibility is established.

III. Principal Authorities

People v. Shreck, 22 P.3d 68 (Colo. 2001); CRE 702; FRE 702; Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); presentation reference: People v. Christopher Russell Jones, Larimer County No. 22CR196 (persuasive trial-level material).

Requested Relief

Exclude the proposed TraX/'Signal Trace' map and related opinions; alternatively limit testimony to scientifically and technically supportable propositions demonstrated at a pretrial reliability hearing.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION FOR FRANKS HEARING AND SUPPRESSION BASED ON MATERIAL TECHNOLOGICAL MISSTATEMENTS OR OMISSIONS		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Quote the warrant-affidavit statements concerning ALPR, CSLI, TraX, mapping, or other technology. Identify the alleged false statement or omission and attach the contradictory source material where available.]

II. Argument

A. Franks applies when a warrant affidavit materially misstates or omits facts with the required culpable state of mind.

The defense makes the required substantial preliminary showing by identifying specific technological assertions that were false, misleading, or materially incomplete and by explaining why the challenged information was necessary to probable cause.

B. Technological shorthand can become materially misleading.

Examples include saying an ALPR 'proved' defendant was driving when it identified only a plate; saying TraX 'placed' a phone at a precise address when the records showed only a tower/sector

connection; omitting a low-confidence OCR read; omitting mismatch in make/model/color; omitting stale hot-list status; omitting known accuracy limits; or omitting alternate locations consistent with the data.

C. The Court should excise false statements and add material omissions.

At the hearing, the Court should reconstruct the affidavit by removing materially false statements and including material omitted facts. If probable cause then fails, the warrant and fruits must be suppressed.

III. Principal Authorities

Franks v. Delaware, 438 U.S. 154 (1978).

Requested Relief

Grant a Franks hearing; order disclosure of the underlying technological records and drafting history necessary for the hearing; and, after the hearing, suppress evidence obtained under a warrant lacking probable cause once corrected.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION IN LIMINE TO PROHIBIT OVERSTATEMENT OF ALPR / CELL-SITE / MAPPING EVIDENCE		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify the statements the prosecution or witnesses have made or are expected to make, such as 'the computer found defendant,' 'the phone was at the scene,' or 'ALPR proved defendant was driving.']

II. Argument

A. The Court should require precise descriptions of what each technology actually establishes.

Terms like 'located,' 'tracked,' 'proved,' and 'identified' can mislead jurors when the underlying technology establishes only a plate observation, a network connection, a database match, or an analyst's interpretation.

B. Rule 403 requires exclusion of technologically authoritative but unsupported phrasing.

Computer-generated displays can carry an aura of precision. The danger of unfair prejudice and confusion is substantial when a witness converts probabilistic or inferential data into a categorical conclusion.

C. Identity must be proved separately.

A plate read does not by itself identify a rider. A phone record does not by itself identify the person holding the phone. The prosecution should be prohibited from collapsing device or vehicle evidence into personal identity without independent admissible proof.

III. Principal Authorities

FRE/CRE 401, 403, 702.

Requested Relief

Enter an order prohibiting witnesses and counsel from describing ALPR, CSLI, TraX, or similar evidence more definitively than the foundation established permits, and require advance proffer of demonstratives and proposed expert conclusions.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION IN LIMINE TO EXCLUDE GANG OR MOTORCYCLE-CLUB AFFILIATION EVIDENCE		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify every anticipated item of affiliation evidence: club name, membership, association, photographs, patches, colors, tattoos, terminology, police labels, alleged hierarchy, prior events, or other status evidence. State the charged offenses and whether affiliation is an element.]

II. Argument

A. The prosecution must identify a non-propensity purpose and a case-specific nexus.

The defense does not contend that all association evidence is categorically inadmissible. The prosecution must identify what consequential fact a particular item tends to prove and how that item is linked to the charged conduct of this defendant. Generalized references to 'context,' 'motive,' 'identity,' or 'relationship' are insufficient.

B. Irvin requires exclusion when slight probative value is overwhelmed by guilt-by-association prejudice.

United States v. Irvin is especially instructive where motorcycle-club or gang imagery invites jurors to infer dangerous character or criminal propensity. The prosecution may not use status, patches, clothing, tattoos, or reputation as a bridge from association to guilt.

C. Rule 404 bars propensity by indirection.

The government cannot do indirectly what Rule 404 forbids directly by introducing affiliation evidence to suggest that because defendant belongs to, associates with, or resembles members of a disfavored group, defendant likely committed the charged offense.

D. Dawson supplies a constitutional backstop when association is offered as character assassination.

Protected association or expression may not be introduced merely to portray a defendant as hateful, dangerous, or undesirable where it lacks a legitimate case-specific evidentiary connection.

E. An item-by-item pretrial proffer is necessary.

The Court should require the prosecution to identify each proposed item, its specific purpose, the admissible fact connecting it to the charged conduct, and why the probative value is not substantially outweighed by unfair prejudice.

III. Principal Authorities

United States v. Irvin, 87 F.3d 860 (7th Cir. 1996); Dawson v. Delaware, 503 U.S. 159 (1992); United States v. Butler, 71 F.3d 243 (7th Cir. 1995) (distinguish where direct factual link exists); People v. Albarran, 149 Cal. App. 4th 214 (2007).

Requested Relief

Exclude all gang or motorcycle-club affiliation evidence absent a specific pretrial ruling establishing relevance, a direct case-specific nexus, a proper non-propensity purpose, and Rule 403 admissibility. Prohibit use of the words 'gang' or equivalent inflammatory labels before the Court rules outside the jury's presence.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO EXCLUDE OR LIMIT POLICE “GANG EXPERT” TESTIMONY UNDER RULE 702		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify the proposed officer/expert, opinions disclosed, claimed methodology, databases or hearsay sources relied upon, and whether the same officer investigated the case.]

II. Argument

A. Experience alone is not a substitute for a reliable methodology.

The prosecution must show how the witness distinguishes membership from friendship, family relationship, neighborhood contact, attendance at events, social-media contact, clothing, motorcycle ownership, or other innocent association. The expert must identify objective criteria and explain how they were reliably applied.

B. The Court should require the basis for every opinion.

The prosecution should disclose source documents, field interview cards, database entries, social-media captures, reports, informant material, photographs, and other data used to form each opinion.

Undisclosed hearsay cannot be converted into admissible proof merely by being placed in an expert's file.

C. Dual-role case-agent testimony presents special dangers.

When the investigating officer also appears as an expert, the jury may give investigative assertions an undeserved aura of specialized reliability. The Court should prohibit case-agent narration disguised as expert opinion, vouching, and summary of unseen investigative files.

D. Generalized background must be separated from case-specific accusation.

Even if limited background testimony is admissible, the expert should not opine that this defendant committed crimes, had criminal intent, or belonged to a criminal conspiracy based on group labels or case-specific hearsay.

III. Principal Authorities

FRE 702 / CRE 702; United States v. Hankey, 203 F.3d 1160 (9th Cir. 2000); United States v. Dukagjini, 326 F.3d 45 (2d Cir. 2003).

Requested Relief

Exclude the proposed gang-expert testimony. Alternatively, conduct a pretrial Rule 702 hearing, bar dual-role case-agent testimony, require strict separation of lay and expert testimony, prohibit hearsay narration and vouching, and limit any admitted opinions to reliable methodology properly applied.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO PRECLUDE EXPERT TRANSMISSION OF TESTIMONIAL HEARSAY UNDER CRAWFORD AND SMITH		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify the anticipated out-of-court statements, reports, interviews, database assertions, officer statements, or informant claims the expert is expected to convey, and whether the declarants will testify.]

II. Argument

A. An expert may not serve as a conduit for testimonial hearsay.

The Confrontation Clause is implicated when an expert conveys an absent declarant's statement to the jury and the statement supports the expert's opinion only if the jury accepts the statement as true.

B. Calling the statement 'basis evidence' does not avoid confrontation.

Smith v. Arizona rejects the notion that an out-of-court assertion is automatically admitted for a non-hearsay purpose simply because an expert invokes it as a basis. If the opinion depends on the assertion being true, the truth of that assertion matters.

C. Case-specific gang facts must be proved by admissible witnesses and evidence.

An expert may not tell the jury that non-testifying officers, informants, database compilers, or interviewees said defendant was a member, committed prior acts, held a rank, followed a rule, or participated in a conspiracy unless the statements independently satisfy the rules of evidence and the Confrontation Clause.

III. Principal Authorities

Crawford v. Washington, 541 U.S. 36 (2004); United States v. Mejia, 545 F.3d 179 (2d Cir. 2008); United States v. Garcia, 793 F.3d 1194 (10th Cir. 2015); Smith v. Arizona, 602 U.S. 779 (2024); People v. Sanchez, 63 Cal. 4th 665 (2016).

Requested Relief

Preclude the expert from relating testimonial hearsay or case-specific out-of-court assertions for their truth; require a pretrial proffer identifying every intended basis statement and declarant; and instruct the prosecution that case-specific facts must be established through admissible evidence.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION IN LIMINE TO EXCLUDE TATTOOS, PATCHES, COLORS, VESTS, PHOTOGRAPHS, AND SIMILAR SYMBOL EVIDENCE		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[List each tattoo, patch, vest, color, photograph, motorcycle image, insignia, slogan, or symbol the prosecution may offer, and identify the proposed interpretation.]

II. Argument

A. Symbol evidence requires proof of meaning, attribution, and relevance.

The prosecution should be required to establish who created or selected the symbol, what it meant at the relevant time and place, whether the meaning is disputed, and how that meaning proves a consequential fact in this case.

B. The impermissible chain is symbol to membership to propensity to guilt.

Where the real force of the evidence is that a symbol suggests defendant belongs to a feared group and therefore is more likely to have committed the charged crime, the evidence is propensity evidence and should be excluded.

C. Rule 403 prejudice is unusually high.

Tattoos, colors, vests, demonic imagery, weapons imagery, or club insignia can trigger emotional reactions unrelated to the charged conduct. When the factual nexus is weak, the danger of unfair prejudice substantially outweighs any probative value.

III. Principal Authorities

United States v. Irvin, 87 F.3d 860 (7th Cir. 1996); United States v. Thomas, 321 F.3d 627 (7th Cir. 2003); United States v. Suggs, 374 F.3d 508 (7th Cir. 2004).

Requested Relief

Exclude the identified symbol evidence absent a pretrial item-by-item showing of authentic meaning, attribution, case-specific relevance, and Rule 403 admissibility. Prohibit the prosecution from displaying such imagery during opening statement before the Court rules.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION IN LIMINE TO EXCLUDE OR LIMIT SOCIAL-MEDIA POSTS, PHOTOS, VIDEOS, AND MESSAGES		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify each account, post, photograph, video, message, repost, 'like,' caption, meme, music reference, or screenshot at issue, with date and source if known.]

II. Argument

A. Authentication must establish authorship or control, not merely appearance on a screen.

The prosecution must show that defendant authored, posted, controlled, adopted, or otherwise can fairly be attributed the content. Screenshots without metadata, native records, account identifiers, or chain of custody may be insufficient.

B. Context matters.

A photograph may be old; a post may be a joke, lyric, repost, quotation, or someone else's speech; a 'like' may not communicate the proposition asserted; and appearance in a group photograph does not establish criminal agreement or membership.

C. Hearsay and confrontation rules apply independently.

The prosecution must identify what each item is offered to prove and satisfy the hearsay rules. Statements of third parties cannot be admitted for their truth merely because they appear on defendant's page or device.

D. Rules 403 and 404 prohibit social-media character assassination.

Even authentic expression should be excluded when its principal effect is to depict defendant as violent, rebellious, dangerous, or affiliated with an unpopular group rather than to prove a disputed fact tied to the charged conduct.

III. Principal Authorities

FRE/CRE 901, 801-807, 401, 403, 404; Dawson v. Delaware, 503 U.S. 159 (1992).

Requested Relief

Exclude the identified social-media evidence, or alternatively require a pretrial evidentiary hearing and item-by-item ruling on authentication, hearsay, relevance, Rule 404, Rule 403, and any First Amendment concerns.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

MOTION TO COMPEL DISCOVERY CONCERNING GANG DATABASES AND POLICE INTELLIGENCE

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify the database, intelligence unit, field interview card, law-enforcement bulletin, fusion-center record, or other source that allegedly labels defendant or an organization as gang-related.]

II. Argument

A. The database label is not self-authenticating proof; it is evidence that itself requires testing.

A designation may be stale, subjective, derivative, unsupported, or based on circular reporting. The defense needs the underlying facts and criteria to test reliability, bias, and material misstatements.

B. The defense requests the complete designation history.

Production should include the actual entry; date created and modified; author; membership criteria; source documents; field interview cards; social-media captures; photographs; informant reports; audit history; purge/expiration rules; agency-sharing history; access logs; and records showing challenges, corrections, or deletions.

C. Brady, Giglio, and Rule 16 require disclosure of favorable reliability and impeachment information.

Records showing errors, inconsistent criteria, recantations, unreliable informants, mistaken identity, stale designations, or officer discipline may be material to suppression, impeachment, expert reliability, and trial.

III. Principal Authorities

Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Fed. R. Crim. P. 16 / applicable state rule; presentation background reference: Progeny v. City of Wichita materials.

Requested Relief

Order production of the complete database/intelligence materials described above, including audit and source records, and require preservation of historical versions of the entry. Require a privilege log for withheld materials and in camera review where necessary.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 		▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant		
Name: Address: Phone: Email:		Case Number: Div.: Court Rm:
MOTION TO SUPPRESS / FOR FRANKS RELIEF WHEN POLICE ACTION RELIED ON GANG-DATABASE INFORMATION		

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Describe the stop, search, arrest, or warrant and quote any affidavit/report language relying on a gang label. Identify why the designation was false, stale, unsupported, or materially incomplete.]

II. Argument

A. A gang-database designation cannot create reasonable suspicion or probable cause by label alone.

The government must establish the factual basis underlying the designation and its connection to the suspected offense. A bare intelligence label, without reliable supporting facts, is not a substitute for individualized suspicion.

B. Stale or unsupported designation information undermines the objective reasonableness of police action.

If the label was based on old photographs, association, field contacts, unreliable informants, or criteria untethered to criminal conduct, the Court should assess whether the remaining facts independently justified the seizure or search.

C. Franks applies when an affidavit presents the gang label as established fact while omitting material reliability problems.

If the affiant knew or recklessly disregarded that the designation was disputed, stale, unsupported, or based on materially weaker facts than the affidavit implied, a Franks hearing is warranted.

III. Principal Authorities

Franks v. Delaware, 438 U.S. 154 (1978); Brady v. Maryland, 373 U.S. 83 (1963); applicable Fourth Amendment reasonable-suspicion/probable-cause authorities.

Requested Relief

Suppress the stop/search/arrest evidence for lack of reasonable suspicion or probable cause, or alternatively grant a Franks hearing and order full disclosure of the source records supporting the gang designation.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

MOTION TO BIFURCATE GANG ENHANCEMENT OR GANG-RELATED ALLEGATION

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Identify the gang enhancement, special allegation, conspiracy allegation, sentencing factor, or other gang-related issue and explain which evidence would not otherwise be admissible to prove the underlying offense.]

II. Argument

A. Trying the gang allegation with the underlying offense creates a substantial risk of spillover prejudice.

Evidence admissible only to prove an enhancement or gang allegation may cause jurors to infer bad character or criminal propensity when deciding the underlying offense.

B. Bifurcation permits the jury to decide conduct before status.

A staged proceeding allows the jury first to determine whether the prosecution proved the charged act without exposure to inflammatory evidence whose principal relevance concerns a separate enhancement or special allegation.

C. Less restrictive remedies may be inadequate.

Where the expected gang evidence includes tattoos, patches, prior incidents, reputation, police intelligence, or expert background testimony, a limiting instruction may not realistically eliminate the risk that jurors will use status as proof of guilt.

III. Principal Authorities

FRE/CRE 403; applicable joinder/severance and bifurcation rules of the forum.

Requested Relief

Bifurcate trial of the gang enhancement or gang-related allegation from the underlying substantive counts. In the first phase, exclude evidence relevant solely to the bifurcated allegation.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Court: Court Address: 	▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF _____, Plaintiff v. Name: _____ Defendant	
Name: Address: Phone: Email:	Case Number: Div.: Court Rm:
ALTERNATIVE MOTION FOR LIMITING INSTRUCTION AND PRETRIAL ADMISSIBILITY PROTOCOL	

Defendant, through counsel, moves for the relief stated below. This motion is based on the Fourth, Fifth, Sixth, and Fourteenth Amendments as applicable; the corresponding provisions of the [Colorado Constitution / forum constitution]; the cited rules of evidence and criminal procedure; and the Court's inherent authority to conduct pretrial evidentiary hearings and prevent unfair prejudice.

I. Relevant Facts

[Use only if the Court declines complete exclusion. Identify the categories of gang/club or technology evidence the Court has ruled potentially admissible.]

II. Argument

A. The Court should require a pretrial proffer before any disputed evidence is mentioned before the jury.

No witness or attorney should use an inflammatory gang label, display a tattoo/patch image, discuss a database designation, or describe technological output in categorical terms until the Court has ruled on the particular item outside the jury's presence.

B. The jury should receive a contemporaneous limiting instruction.

If affiliation evidence is admitted for a specific purpose such as witness bias, relationship, or motive, the Court should tell jurors immediately that the evidence may be considered only for that identified purpose and not as proof of criminal character or propensity.

C. Expert roles and technological conclusions should be carefully limited.

The Court should distinguish lay testimony from expert opinion, bar expert hearsay narratives, prohibit categorical statements not supported by the methodology, and require witnesses to distinguish a vehicle or device observation from proof of the identity or conduct of a person.

D. Counsel should preserve objections without repeated prejudicial interruption.

The Court should deem pretrial objections preserved to the extent permitted by the forum while allowing renewed objections if the prosecution exceeds the scope of the ruling.

III. Principal Authorities

United States v. Abel, 469 U.S. 45 (1984); Dawson v. Delaware, 503 U.S. 159 (1992); FRE/CRE 403, 404, 702.

Requested Relief

Enter a pretrial protocol requiring item-by-item proffers outside the jury's presence, contemporaneous limiting instructions, strict separation of lay and expert testimony, and prohibition on propensity use of affiliation evidence or overstatement of technological evidence.

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[ADDRESS]

[PHONE]

[EMAIL]

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on [date], a true and correct copy of the foregoing was served on [prosecutor/counsel] by [method].

[Signature]

Appendix: Authorities Identified in the Presentation

United States v. Irvin, 87 F.3d 860 (7th Cir. 1996).

United States v. Butler, 71 F.3d 243 (7th Cir. 1995).

United States v. Abel, 469 U.S. 45 (1984).

Dawson v. Delaware, 503 U.S. 159 (1992).

United States v. Thomas, 321 F.3d 627 (7th Cir. 2003).

United States v. Suggs, 374 F.3d 508 (7th Cir. 2004).

United States v. Hankey, 203 F.3d 1160 (9th Cir. 2000).

United States v. Dukagjini, 326 F.3d 45 (2d Cir. 2003).

Crawford v. Washington, 541 U.S. 36 (2004).

United States v. Mejia, 545 F.3d 179 (2d Cir. 2008).

United States v. Garcia, 793 F.3d 1194 (10th Cir. 2015).

Smith v. Arizona, 602 U.S. 779 (2024).

People v. Sanchez, 63 Cal. 4th 665 (2016).

Brady v. Maryland, 373 U.S. 83 (1963).

Giglio v. United States, 405 U.S. 150 (1972).

Franks v. Delaware, 438 U.S. 154 (1978).

Carpenter v. United States, 585 U.S. 296 (2018).

United States v. Jones, 565 U.S. 400 (2012).

People v. Tafoya, 2021 CO 62.

Green v. City & County of San Francisco, 751 F.3d 1039 (9th Cir. 2014).

People v. Shreck, 22 P.3d 68 (Colo. 2001).

People v. Albarran, 149 Cal. App. 4th 214 (2007).