SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

Criminal Division
Criminal Court Complex
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Mays Landing, N.J. 08330
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Not for Publication Without Approval of the Committee of Opinions

April 2, 2025

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Re: **State v. Marty Small and La'Quetta Small: Motion to Suppress Evidence Seized Pursuant to the March 30, 2024, Search Warrant of the Defendants' Cellphones.**
Ind. No. 24-09-2951

Dear Counselors:

INTRODUCTION

On September 17, 2024, an Atlantic County Grand Jury returned Indictment Number 24-09-2951-T, charging the Marty and La'Quetta Small (collectively, "Defendants") with second-degree endangering by abuse/neglect of a child (Count 1). Mr. Small was additionally charged with third-degree terroristic threats (Count 2) and third-degree aggravated assault (Count 3).

On December 19, 2024, Mr. Small, through counsel, filed the instant Motion to Suppress Evidence Seized Pursuant to the March 30, 2024, Search Warrant of the Defendant's Cellphone. Mrs. Small, through counsel, joined the instant motion on January 29, 2025. Counsel presented oral argument on the issue before the Court on March 14, 2025. The Court has considered all matters presented.

For the reasons set forth below, the Court has concluded that the Defendants have failed to show that the evidence obtained between December 1, 2023, to March 27, 2024, requires suppression. However, any evidence seized beyond the established timeframe is subject to redaction. As such, the Court has **GRANTED IN PART AND DENIED IN PART** the Defendants' Motion to Suppress Evidence Seized Pursuant to the March 30, 2024, Search Warrant of the Defendants' Cellphones for the reasons set forth herein.

PROCEDURAL HISTORY

On March 27, 2024, Detective Daniel Choe from the Atlantic County Prosecutor's Office ("ACPO") filed a Certification in Support of a Search Warrant with the Superior Court for the Defendants' home in Atlantic City, New Jersey.[1] On March 28, 2024,, law enforcement executed the Search Warrants of the Defendants' residence, vehicles, and office. During the execution of the search, law enforcement seized, among several other items, Mr. Small's blue Apple iPhone 13 Pro Max from the master bedroom and Mrs. Small's midnight blue Apple iPhone 15 Pro from Mrs. Small's Chevy Tahoe.[2]

Following the search, Detective Daniel Choe from ACPO filed a Certification in Support of a Search of the Defendants' Cellphones on March 30, 2024. The Court authorized the search of the Defendants' cellphones on March 30, 2024.[3]

STATEMENT OF FACTS[4]

I. FACTS ALLEGED IN THE CERTIFICATION

On January 22, 2024, [redacted], a [redacted] student attending [redacted] attended a school assembly concerning [redacted] Cert. at ¶¶3(cc)(1)-(2). At the conclusion of the assembly, [redacted] completed a written "exit ticket." Ibid. On the "exit ticket," [redacted] wrote [redacted] experienced "abuse" and asked to speak to a [redacted] Ibid. That same day, a [redacted] at the [redacted] spoke to [redacted] in the hallway where [redacted] disclosed that [redacted] was hit with a broom and passed out. Cert. at ¶3(cc)(3). [redacted] also stated [redacted] "dad is a big guy" and "[redacted] already spoke with Principal Chapman about some choices." Ibid.

On January 24, 2024, Division of Child Protection and Permanency ("DCPP") reported to the Defendants' home to speak with [redacted] in reference to a DCPP referral for allegations of

[1] BED-ATL-NA-SW-24-23(A-F)
[2] BD-ATL-2459-SW-24.
[3] BD-ATL-2459A-SW-24 and BD-ATL-2459B-SW-24.
[4] Statement of Facts derived from Detective Choe's Certification in Support of a Search Warrant BD-ATL-2459-SW-24 and BED-ATL-NA-SW-24-23(A-F).

physical abuse. Cert. at ¶3(a). The referral was submitted by [redacted] in [redacted] New Jersey. Cert. at ¶3(b). The referral provided information pertaining to physical abuse committed by the Defendants on their [redacted] to [redacted], during a [redacted] video appointment. Ibid.

DCPP stated [redacted] and [redacted] were interviewed, and both denied the allegations. DCPP stated when they arrived to speak with [redacted] both [redacted] parents were home and present during the interview. [redacted] denied disclosing abuse to anyone at the [redacted] stated the first person [redacted] disclosed to was the [redacted] at [redacted]. Cert. at ¶3(c).

Mrs. Small told DCPP that she was unaware that [redacted] made a disclosure to [redacted]. Cert. at ¶3(d). DCPP stated [redacted] said [redacted] made the allegations up because [redacted] was mad at [redacted] parents for taking [redacted] phone away and neither parent agrees with the relationship [redacted] has with [redacted]. DCPP stated that when [redacted] asked who [redacted] is, Mrs. Small interrupted the interview and told [redacted] not to provide [redacted] last name because she was not comfortable with providing another child's information to DCPP. Cert. at ¶3(e).

According to DCPP, Mrs. Small said that she knew DCPP would be reporting to her residence to speak with [redacted] because her "good friend" had told her about DCPPs involvement. Cert. at ¶3(f). Mrs. Small did not disclose the identity of her "good friend." Cert. at ¶3(g).

On January 25, 2024, investigators reported to [redacted] to interview [redacted]. [redacted] stated that [redacted] knew why the investigators were at the [redacted] to speak with [redacted]. Furthermore, [redacted] explained to the investigators that [redacted] made the allegations up because [redacted] was mad at [redacted] parents for not allowing [redacted] to go to a restaurant with [redacted] friend a few weeks ago and said no physical abuse occurred. Cert. at ¶3(h). [redacted] stated that the first person [redacted] spoke to about physical abuse was [redacted] three days ago. [redacted] further denied disclosing the physical abuse to anyone at school and did not know the identity of [redacted] mother's "good friend." Cert. at ¶¶3(i)-(j).

[redacted] was interviewed by detectives at the Atlantic County Prosecutor's Office ("ACPO"). [redacted] stated that [redacted] was being verbally, mentally, and physically abused by [redacted] parents. [redacted] stated that during the week of December 10, 2023, [redacted] witnessed over the video chat on different occasions how [redacted] father screamed at [redacted] and was physically abusive. Specifically, [redacted] reported that Mr. Small would choke [redacted] rip off [redacted] clothing, and noticed visible bruises on [redacted] body after the abuse incidents. Cert. at ¶3(k).

On January 30, 2024, investigators spoke to [redacted]. [redacted] stated that on January 23, 2024, [redacted] received a referral involving [redacted]. The initial intake was conducted via [redacted] reported that the Defendants requested [redacted] to be seen by a [redacted] because of "issues" with a [redacted] stated [redacted] remembered the Defendants being present with [redacted] during the completion of the initial questionnaire while in the kitchen area but left when it was time for the one-on-one interview. [redacted] remembered [redacted] taking [redacted] device with [redacted] to a bedroom for privacy and then disclosing physical abuse by [redacted] parents and [redacted] grandmother. [redacted] explained [redacted] disclosed [redacted] mother hitting [redacted]

with a broom, and grandmother shaking [redacted] stated the physical abuse incidents happened twice in December 2023 and sometime mid-January 2024. Cert. at ¶¶3(l)-(p).

[redacted] then stated when [redacted] told [redacted] about mandatory reporting of the abuse to the State, [redacted] said [redacted] disclosed it already at [redacted] school. [redacted] advised [redacted] reported the disclosure by [redacted] to [redacted] supervisor, [redacted]. [redacted] then contacted DCPP the following morning as part of the mandatory reporting procedure. Cert. at ¶3(r).

Intake documents from [redacted] revealed a telephone number, home address, and email of Mrs. Small as [redacted] guardian. Moreover, the same contact information was found in [redacted] medical records from the [redacted] during [redacted] visit on January 16, 2024. Ibid.

On January 31, 2024, investigators again reported to [redacted] to interview [redacted] disclosed being physically abused by the Defendants on multiple occasions during the months of December 2023 and January 2024, while inside their residence. [redacted] stated Mr. Small called [redacted] into his "mancave" to talk. [redacted] then disclosed that [redacted] was sitting on a high bar stool when they started arguing, which escalated to Mr. Small punching [redacted] legs. [redacted] reported that [redacted] legs were bruised from this incident. Cert. at ¶¶3(s)-(u). On another occasion, [redacted] advised that [redacted] dad hit [redacted] across the face with the bristle end of a broom multiple times, because [redacted] refused to go out with since him since [redacted] hair was not done. Cert. at ¶3(v).

During the second interview, [redacted] stated that prior to [redacted] January 23rd disclosure to [redacted] during the [redacted] appointment, [redacted] disclosed the abuse to [redacted] stated that [redacted] believed [redacted] told Principal Chapman because not long after [redacted] asked [redacted] "how she was doing." Cert. at ¶¶3(w)-(x).

The Atlantic City Board of Education's District Policy #8462 sets forth procedures for school employees to follow when there is suspected abuse of a student in compliance with New Jersey law. Specifically, the Policy states that "employees, volunteers, or interns working in the school district shall immediately notify designated child welfare authorities of incidents of alleged missing, abused, and/or neglected children." Cert. at ¶¶3(y)-(z).

On Thursday, February 1, 2024, investigators met with Principal Chapman in reference to addressing the terms of a Memorandum of Understanding (MOU) regarding law enforcement's attempt to interview students in a criminal investigation. Principal Chapman understood the MOU. At the end of the interview, she was advised not to contact [redacted] parents because investigators wanted to speak with [redacted] Cert. at ¶3(aa).

On Thursday, February 1, 2024, investigators obtained a recorded statement from [redacted]. [redacted] stated [redacted] believed detectives were at [redacted] residence because of the situation with [redacted] Cert. at ¶3(bb).

[redacted] further stated that during the week of January 22, 2024, [redacted] training was held each day at the [redacted]. At the end of each session, each student was provided with an "exit ticket." On the front of the "exit ticket" three faces are present, happy,

sad, and neutral, [redacted] circled the neutral face. [redacted] wrote on the back of the sheet "abuse" and would like "counselor." Cert. at ¶¶3(cc)(1)-(2).

At approximately 10:00 AM [redacted] followed up with [redacted] and pulled [redacted] from [redacted] classroom to speak with [redacted] This was the first time [redacted] met with [redacted] and spoke with [redacted] for approximately 2-3 minutes in the hallway. [redacted] stated that it seemed like [redacted] wanted to talk and told [redacted] has been hit with a broom and passed out. [redacted] asked [redacted] if this was ongoing, and [redacted] replied "No." [redacted] told [redacted] dad is a big guy and [redacted] wanted to continue on with [redacted] life and that [redacted] had already spoke to Principal Chapman about "some choices." However, [redacted] did not know what [redacted] was referring to and did not tell [redacted] when the abuse occurred. Cert. at ¶3(cc)(3).

[redacted] then discussed the matter with Principal Chapman in person and advised her of what [redacted] had disclosed to [redacted]. Principal Chapman stated that [redacted] never mentioned the abuse to [redacted] and that [redacted] would report it to DCPP. However, there is no DCPP referral from Principal Chapman or anyone from the Atlantic City Board of Education reporting allegations of physical abuse by [redacted] parents. [redacted] explained that whoever reports to DCPP about the abuse must complete a form and email the form to the Atlantic City Superintendent's Office. [redacted] advised [redacted] did not write any reports because [redacted] spoke to Principal Chapman in person about the abuse and she told [redacted] she would report the matter to DCPP. Cert. at ¶¶3(cc)(4)-(6).

On February 2, 2024, investigators met with and spoke with DCPP worker, [redacted] stated [redacted] father, Mr. Small, spoke to [redacted] at least once over the phone and [redacted] was contacting [redacted] multiple times between January 31, 2024, to February 2, 2024. [redacted] provided Mr. Small's phone number to investigators. Cert. at ¶3(dd).

On February 8, 2024, investigators contacted DCPP worker [redacted] via telephone to follow up on the status of [redacted] Cert. at ¶3(ee).

[redacted] stated that on February 5, 2024, [redacted] and another DCPP worker, [redacted] reported to the [redacted] to speak with [redacted] [redacted] indicated that [redacted] never reported to the school on February 5. [redacted] then reported to [redacted] residence. After knocking on the front door, [redacted] answered the door and they asked if [redacted] parents were home. [redacted] told them no, they were at work, and [redacted] was the only one home. [redacted] asked if [redacted] could step outside to speak with [redacted] and [redacted] agreed. [redacted] noticed multiple surveillance cameras on the exterior of the residence. When [redacted] and [redacted] stepped outside to speak, two large black Chevy Tahoe vehicles drove down the residential street at a high rate of speed and parked at the residence. The Defendants both exited the vehicle and entered the residence. Cert. at ¶¶3(ee)(1)-(4).

On February 12, 2024, investigators obtained a recorded statement from [redacted] at [redacted] stated [redacted] reported to [redacted] approximately two weeks prior and told [redacted] that [redacted] received a card (the "exit ticket") from [redacted] The company that organized the [redacted] training kept the card and provided the card to [redacted] advised that [redacted] did not read the card. After [redacted] followed up with [redacted] reported to [redacted] stated [redacted] was not exactly sure of the conversation between [redacted] and [redacted] but [redacted] felt comfortable enough to let [redacted] go. [redacted] believed

that [redacted] was nervous because [redacted] name would be on the report and worried about how this was going to look. [redacted] and [redacted] then reported to Principal Chapman's office to tell her [redacted] disclosure. Cert. at ¶¶3(ff)-(gg).

This was the first of two meetings between Principal Chapman, [redacted] and [redacted] regarding the disclosure made by [redacted] wanted to be present with [redacted] when they met with Principal Chapman because [redacted] wanted to make sure someone else was present during the meeting. Once they reported to Principal Chapman, according to [redacted] it became a "mess." Cert. at ¶¶3(hh)-(ii).

Initially, [redacted] offered to call DCPP, with [redacted] support. However, Principal Chapman told them that she would make the call to DCPP. [redacted] explained that Principal Chapman made it seem as if she was going to make the call to DCPP right then and there as they were leaving her office. [redacted] also offered to call DCPP in which Principal Chapman, again, stated that she would make the call. Cert. at ¶3(jj).

In the second meeting, Principal Chapman told [redacted] and [redacted] that she had met and spoken with the parents of [redacted] at their residence. [redacted] stated that Principal Chapman advised that she spoke with the parents about [redacted] Principal Chapman spoke with the Defendants about the behavior of [redacted] and how intense the parents were about the [redacted] situation. [redacted] further explained Principal Chapman advised [redacted] and [redacted] how each parent would have to be able to balance each other out, meaning one parent would have to be the calm one. Cert. at ¶3(ll).

[redacted] then stated when DCPP reported to [redacted] they told [redacted] that no report was made to DCPP by anyone at the school on behalf of [redacted] did not follow up with Principal Chapman to find out why she never made the call to DCPP because [redacted] was advised not to by DCPP. Cert. at ¶3(mm)-(nn).

Based on the foregoing, investigators believed Principal Chapman arranged to meet with the Defendants and inform them that [redacted] had disclosed they were physically abusing [redacted] ather than reporting to DCPP. Cert. at ¶3(oo).

An open public records search was conducted for Principal Chapman. The search revealed a telephone facility number which was confirmed from reports of her assistance in a child abuse investigation when she was the Vice Principal at Pleasantville High School. Cert. at ¶3(pp).

On February 16, 2024, the Court approved the following: (1) Communications Information Order for toll records in reference to all outgoing and incoming calls and text message communication to and from Verizon Wireless telephone facility (the above-referenced telephone number revealed during the open public records search) from December 1, 2023, and February 13, 2024; and (2) Search Warrant (BED-ATL-NA3-SW-24) for video surveillance of recordings from outside of the Small residence. Cert. at ¶3(qq).

Review of video footage from January 22, 2024, revealed a Black BMW registered to Principal Chapman parked in front of the Defendants' residence. Mrs. Small exited her residence and entered the front passenger side of the vehicle. Thereafter, Mr. Small arrived at his

residence. Principal Chapman then lowered the driver side window. The driver then opened the driver's side door. Mr. Small then entered the rear driver's side back seat. Mrs. Small then left the vehicle and the BMW drove away from the residence. Cert. at ¶¶3(rr)(i)-(v).

It was further revealed that on January 31, 2024, Mr. Small contacted Principal Chapman 23 times. This was the same day investigators interviewed [redacted] Cert. at ¶3(ss).

On February 26, 2024, via Grand Jury Subpoena, video surveillance from the [redacted] was obtained. Later, a review of the recording, specifically the interior cameras aimed at the main entrance of the school from January 31, 2024, revealed that a dark SUV drove over the curb and onto the concrete walkway, parking feet away from the [redacted] entrance. Mr. Small is then observed walking across the front of the SUV holding what appears to be a cellular device. Mr. Small held the device near his ear while he continued to walk toward the main entrance. Cert. at ¶¶3(tt)(i)-(uu).

On March 15, 2024, Verizon Wireless produced records in response to the Communications Information Order. Upon review, the information revealed over 100 telephone calls (outgoing and incoming) as well as text messages between Principal Chapman and the Defendants' numbers. Additionally, on January 22, 2024, there was an outgoing call made from Principal Chapman to Mrs. Small—the same day [redacted] disclosed the abuse to a school official, to include Principal Chapman. Cert. at ¶¶3(vv)(a)-(b).

On March 19, 2024, the Court approved Search Warrants of the person of Principal Chapman, the premises of [redacted] specifically, the office of Principal Chapman, and Principal Chapman's vehicle for electronic devices. Law enforcement executed the Search Warrants and seized an Apple iPhone, a Samsung cellphone, and Apple iWatch from Principal Chapman. On March 20, 2024, law enforcement executed the Search Warrants. Cert. at ¶¶3(xx)-(aaa). An initial review of Principal Chapman's iPhone revealed text messages exchanged with the Defendants discussing the investigation of [redacted] abuse allegations. Cert. at ¶¶3(bbb)-(ccc).

On March 27, 2024, search warrants were approved for the persons of Mr. and Mrs. Small, their residence and vehicles, and the office of the Superintendent of Atlantic City Schools. Cert. at ¶¶3(ddd)-(eee).

Law enforcement executed the search on March 28, 2024. Cert. at ¶3(fff). During the search of the residence for any electronics, a blue Apple iPhone 13 Pro Max was located on the bed in the master bedroom belonging to Mr. Small. Additionally, a midnight blue Apple iPhone 15 Pro was found in the Chevy Tahoe.[5] Cert. at ¶3(hhh).

[5] The March 30, 2024, Certification indicates that Mrs. Small's midnight blue Apple iPhone was found in her vehicle. However, the State's inventory form indicates that the midnight blue Apple iPhone was found on her person and a black Apple iPhone with a cracked casing/screen was recovered from the vehicle's glove compartment.

II. THE MARCH 27, 2024, SEARCH WARRANT

The Court authorized the search of the Defendants' cellphones pursuant to Search Warrants BD-ATL-2459A-SW-24 and BD-ATL-2459B-SW-24 on March 30, 2024. The Search Warrants authorized law enforcement to search and seize:

> Any and all electronic information with regards to the above investigation stored either on the wireless phone or any removable media/storage devices located within, in relation to [the alleged crimes], more specifically, stored electronic information on the device—including, but not limited to: emails, all stored contact numbers, stored incoming and outgoing calls, stored incoming and outgoing text/image messages, [etc.], and any stored digital evidence [of] the above mentioned crimes. Any and all electronic information pertaining to passwords and/or encryption relating to computer software, and/or any related device.
>
> Id.

ARGUMENTS OF THE PARTIES

I. MARTY SMALL

A. Defense's Argument

The Defense asserts that the Search Warrants to search and seize the Defendants' cellphones were unconstitutional and unsupported by sufficient probable cause. Thus, the Defense urges this Court to suppress the evidence seized pursuant to the March 30, 2024, Search Warrant of the Defendants' Cellphones. The Defense argues (1) recusal by the court is warranted pursuant to R. 1:12-1(g); (2) the search warrant is overbroad because it fails to include a temporal limitation in violation of State v. Missak; (3) the material facts asserted in the Certification fail to establish a nexus between the alleged crimes and the Defendants' phones; and (4) the asserted facts in the Certification establish an intentional or reckless disregard for the truth warranting a Franks hearing.

1. Recusal By the Court Is Warranted, Pursuant To R. 1:12-1(G).

The Defense asserts that pursuant to R. 1:12-1(g), the Court should recuse itself from hearing and deciding the issues raised in this motion. The Defense contends this case is similar to State v. McCann, 391 N.J. Super. 542 (2007). In McCann, a municipal court judge signed a warrant authorizing a search of the Defendants' home, whom he had previously represented. Id. 544-45. The defendant filed a motion to suppress evidence, which was granted by the trial court. The State appealed. Id. at 543. Relying upon R. 1:12-1(g), the Appellate Division determined the circumstances raised "an appearance of partiality" and held the municipal court judge should have recused himself from the warrant application proceedings. Id. at 554.

The Defense argues that similar to McCann, here there exists an objectively reasonable appearance of partiality on the Court's part, strictly for purposes of the present motion. The Defense asserts that the Court authorized the Search Warrant on March 30, 2024, and in doing so, the Court has already made determinations regarding staleness and veracity of probable cause

in the supporting Certification . The Defense's motion seeks to challenge both aspects as deficient.

2. The Search Warrant is Overbroad Because it Fails to Set Forth a Temporal Limitation and Does Not Specify the Things to be Seized in Violation of State V. Missak.

The Defense argues that the Warrant here, as it did in Missak, allowed officers to seize all data from the Defendant's phone, including data that may have existed days, weeks, months, and even years before the alleged crimes occurred without any probable cause showing. The Defense asserts that the State shows that they were aware of Missak in the CDW for Principal Chapman's phone which did include a specific timeframe.

Furthermore, the Defense asserts that there was simply no limitation as to the type of data subject to seizure, nor did the Search Warrant provide any guidance to the executing officers for them to know what could be seized and what was off limits. Therefore, the Defense contends that the application for this warrant suffers from the same constitutional infirmity as Missak in that State sought an "extensive search warrant for all the data and information on the seized cellular phone." State v. Missak, 476 N.J. Super. 302, 322-23 (App. Div. 2023).

3. The Material Facts in the Certification Fail to Establish a Nexus Between the Alleged Crimes and the Defendants' Phone.

The Defense submits that even if the Court accepts that the Certification establishes probable cause that a crime was committed, there was no probable cause put forth by the State that evidence of that crime would be found specifically on the Defendant's cellphone, provides no nexus between any alleged abuse of [redacted] nor does it identify what kind of evidence the Defendants' cellphones were used in furtherance of any alleged child abuse. The Defense points to one reference in the Certification that evidence of criminality could be found on the Defendants' phones, "[b]ased upon my training, experience, and the investigation to date, I have probable cause to believe that items of evidentiary value, in particular any electronic data . . . to support evidence of the crimes . . . (Defense Ex. A p. 26 ¶4).

Furthermore, the Defense asserts that there are no material facts contained in the Certification to support even reasonable suspicion, let alone probable cause, that Defendants' cellphones contained evidence of any abuse against [redacted] and the only conceivable evidence as to the conspiracy is contained in two paragraphs of the Certification, ¶3(ss) and ¶3(vv). The Defense, therefore, argues that the State used the number of contacts between the Defendants' phones and Principal Chapman's phone alone, without more, to support a finding of probable cause.

Lastly, the Defense argues that the Certification recklessly misrepresents the truth in referencing "over 100" communications between the Defendants and Principal Chapman because the issuing judge is left to speculate as to exactly how many times the Defendants' phones were in contact with any of the other devices. Instead, the Defense contends, the State relied heavily on one alleged in-person meeting on January 22, 2024, to support its probable cause, a meeting

that had no connection whatsoever to the Defendants' cellphones. Therefore, the Defense urges suppression of evidence seized from the cellphones to the extent the Certification establishes probable cause for any conspiracy, it occurred in-person on January 22, and not over the phone.

4. The Material Facts Asserted in the Certification Establish an Intentional or Reckless Disregard for the Truth and Warrant a Franks Hearing.

Lastly, the Defense argues that there can be no dispute the State relied heavily upon the number of contacts between the phones of the Defendants and Principal Chapman to support its probable cause to search the Defendants' home for "electronic communication devices." The Defense notes that the State alleges that a "Communications Information Order" received by Verizon Wireless for Principal Days revealed "over 100" telephone calls and/or text messages between her phone and Defendants' from December 1, 2023, through February 13, 2024. According to the Defense, the truth is that data confirms that the detective who authored the Certification was aware that from December 1, 2023, to February 13, 2024, the number of phone contacts between the Defendants and Principal Chapman were about half the amount listed in his Certification, and about a quarter of the amount listed in in the Certification between January 22-31, 2024. The Defense contends that those dates are critical because January 22 is the alleged date that [redacted] first disclosed the abuse to school officials. Further, by January 31 authorities were aware of the disclosure and DCPP had already started interviews. The Defense asserts, instead, the issuing judge was left to believe that the Defendants' phones had been in contact with Principal Chapman's phone over 100 times, when the State knew otherwise. Therefore, the Defense submits that this is a reckless disregard for the truth on the part of the detective who authored the Certification.

As to the one "suspect" call between the Mrs. Small and Principal Chapman on January 22, 2024, the Defense asserts that the call lasted less than one minute and it is unclear whether the two even spoke, let alone discussed anything in furtherance of an alleged conspiracy. The Defense argues that the State provided no indication as to where any of the over 100 toll records originated from, were directed to, or took place.

Therefore, the Defense submits that representing only the quantity of contacts without providing any information regarding the known pre-existing relationship between the parties to those communications further establishes a reckless disregard of the truth in the Certification, and therefore, misleading by omission. The Defense contends that the Certification omitted that Principal Chapman and the Defendants have been close family friends for years, the Small children refer to her as "aunty," and she is the campaign manager for the Defendant.

Furthermore, the Defense contends that the State cherry picks when to provide further context to the issuing judge only when it believes the context will help its application, and as a result, the Search Warrant for the Defendants' cellphones, at minimum, requires a Franks hearing.

B. State's Argument

In opposition of the Defendant's motion to suppress evidence obtained pursuant to the search warrant of the Defendant's cellphone, the State argues (1) court recusal is not required; (2) there was more than ample probable cause to support the search of the Defendant's cellphone and the Warrant did not violate Missak; and (3) the Certification does not establish intentional or reckless disregard for the truth for averring over 100 calls were made between the Defendant, Mrs. Small, and Principal Chapman.

1. Court Recusal is not Required.

The State argues that Court recusal is not required just because the Court granted the Search Warrant in this case and there is no evidence of bias, partiality, or impropriety which might preclude a fair and unbiased hearing and judgment.

The State points to Defense's reliance on State v. McCann, 91 N.J. Super. 542 (App. Div. 2007) and State v. McCabe, 201 N.J. 34 (2010) asserting that the cases are factually inapposite. In McCann, the State represents that the judge who issued the Search Warrant for the appellant's house knew him for decades and was considered by appellate to be "his family attorney." 391 N.J. Super. 544-45. The State asserts that this was a clear situation where recusal was required because the judge had been "attorney of record or counsel for a party" to the action pending before the judge. Id. at 550. The State argues that there is no evidence that the Court knew the Defendant on a personal level or represented him as a practicing attorney.

Additionally, the State contends in McCabe, the part-time municipal court judge who presided over the appellant's traffic ticket matter was an adversary to appellant's attorney in a pending, unrelated probate case. 201 N.J. at 38. The State submits that the Court does not have any open, unresolved cases against the Jacobs and Barbone law firm, which represents the Defendant, nor any unresolved, unrelated cases against any law firm involved in this case, for that matter, as in McCabe.

The State further cites to DeNike v. Cupo, 196 N.J. 502, 517 (2008) in which the New Jersey Supreme Court offered guidance on recusal and state the question if "would a reasonable, fully informed person have doubts about judge's impartiality," and State v. Marshall, 148 N.J. 89 (1997) in which the court found that "it is improper for a court to recuse itself unless the factual bases for its disqualification are shown by the movant to be true or are already known by the court." Id. at 276. Therefore, the State contends that there is simply no evidence to call into question the Court's impartiality from the lone fact that the Court reviewed and granted the warrants, and thus, the Court should deny the Defense's motion for recusal.

2. Not Only Was There Probable Cause to Search Defendant's Cellphone, but the Warrant Did Not Violate Missak.

The State maintains that the instant case is factually distinguishable from Missak, and the Warrant is supported by ample probable cause. The State submits that the Missak court ruled the certification lacked facts establishing text messages, calls, GPS data, or other data created or existing prior to the defendant's alleged crimes for which the detective expressly sought the

search warrant only to prove the identity of the perpetrator. The State, in contrast, notes that the instant case concerns a broad investigation over a span of months, involving multiple suspects, multiple different types of evidence, and multiple crimes at issue.

The State contends that after considering the messages and calls established from the search of Principal Chapman's cellphone which revealed the Defendants used their cellphone to contact Principal Chapman on multiple occasions about the investigation, video evidence of all three Defendants meeting in Principal Chapman's SUV the day after [redacted] disclosed abuse to a school staff member. Video evidence reveals Mr. Small using his phone to contact his co-defendant when descending on the high school where [redacted] was undergoing the interview with ACPO. According to the State, the Defendants knew what was happening demonstrated by video evidence of the Defendants swooping on the scene just as DCPP was about to interview [redacted] alone. The Certification used this information to establish probable cause that the Defendants' cellphones contained relevant, probative data, and further such data contained evidence of the crimes for which he expressly sought the search warrant. The State asserts that all of these factors explain why the Certification sought a search warrant for all data for the Defendants' cellphones, especially coupled with the principles of forensic science, which is important to understand why extracting all data is imperative for an accurate result.

Furthermore, the State notes that principles of forensic science dictate cellphone data are intertwined and must be reviewed completely to conduct a proper cellphone forensic analysis. After a thorough recitation of applicable forensic principles, the State argues that due to the interconnectedness of the device's databases, folders, and files, a digital forensic examiner cannot merely extract one particular portion of the data such as phone logs or text messages, without extracting the entirety of the data. The State asserts that Principal Chapman's Verizon call detail records demonstrated that she communicated with the Defendants repeatedly. However, the call records captured only voice calls and text messages. The State emphasizes that the records provided none of the additional information generated through the process of forensic extraction, which are contained solely in the device's data. The State therefore submits that there was probable cause to obtain this relevant and additional information, and all data had to be searched because of the interconnectedness of the data and how electronic devices operate.

According to the State, the Defendants argue that the Search Warrant impermissibly authorized a search of all data. The Defendants' contention that only restricted searches should have been completed on the cellphone overlooks the fact that if only a limited search of the data was done, detectives would have failed to locate all relevant evidence authorized by the warrant.

The State contends that even if the Search Warrant was overbroad, the proper remedy is redaction of the timeframe of any records for which probable cause was lacking.

3. The Certification does not Establish Intentional or Reckless Disregard for the Truth.

The State asserts that the Certification does not establish intentional or reckless disregard for the truth in averring over 100 calls were made between the Defendants and Principal Chapman nor material omission in stating the trio were political allies, to warrant a Franks hearing.

According to the State, there was no omission of material information or intentional falsehoods in the Certification when the detective stated that there were over 100 calls found between Principal Chapman and the Defendants because Principal Chapman's call detail records revealed approximately 68 calls and message with Mr. Small between December 1, 2023, and February 13, 2024, and approximately 70 calls and messages with Mrs. Small between those same dates. Thus, totaling over 100 contacts.

Similarly, the State argues that omitting that the Defendants and Principal Chapman were long time friends or political allies is not a deliberate omission of material information going to probable cause. According to the State, there was enough other evidence showing Defendants' communications were nefarious at times allowing the inference that these were not simply innocent communications. The State asserts that these communications were not innocent business or friendly contacts, but rather, a collective mission of three people in power to protect each other, toward the truth, and get ahead of any law enforcement investigation. Therefore, the State submits that a Franks hearing should be denied.

C. Defense's Reply Argument

In its reply brief dated February 7, 2025, the Defense notes to recent unpublished Appellate Division decisions that are further instructive for the court in evaluating the ruling in Missak.

First, the Defense cites to State v. Saal, No. A-2024-22 (App. Div. December 9, 2024). The Defense notes that Saal involved a search warrant for a defendant's cellphone that was upheld because the State included a temporal limitation, consistent with Missak. Second, the Defense cites to State v. Summers, No. A-1578-22 (App. Div. December 31, 2024) in which the court struck down all evidence obtained from an overbroad search warrant.[6]

The Defense argues that the Search Warrants permitted unfettered and unrestricted access to search the Defendants' phones for any and all information—both before and after any crimes alleged by the State in the Certification and is the same fatal constitutional flaw that existed in Missak and Summers.

Furthermore, the Defense takes issue with the State's argument citing principles of forensic science. The Defense argues that it is now axiomatic that expert testimony is required, and the State offers no expert testimony or evidence in response to explain how or why it could not retrieve data from a cellphone with a temporal or subject matter limitation.

Lastly, the Defense points to the State's failure to cite a case where the court applied the doctrine of severability, and therefore, suppression is the only proper remedy in this case. The Defense submits that any other remedy would directly undercut the purpose behind exclusion, which is punitive in nature designed to guard against the State trampling over well-established

[6] The Defense's submissions include unpublished opinions, Summers and Saal, counsel complied with all requirements under N.J. Ct. R. 1:36-3 ("[n]o published opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel").

Fourth Amendment and New Jersey Constitution protections, regardless of status within the community.

II. LA'QUETTA SMALL

A. Defense's Argument

The Defense joins Mr. Small's motion to suppress the evidence seized from the Defendant's devices in a brief dated January 29, 2025. The Defense incorporates all co-defendant's arguments. Additionally, the Defense asserts that the Search Warrants must be suppressed because the warrant application did not set forth facts supporting a finding of probable cause for the issuance of any search of both Defendants' cellphones.

The Defense argues that the prima facie elements of the charge of child abuse do not involve the use of cellphones or electronic communications and the application's attempt to rely upon the DCPP worker's report that the Defendant was warned by a "good friend" is not sufficient probable cause. The Defense reasons that the application does not provide how the Defendant knew or how her "good friend" told her about the DCPP involvement, and the statement itself is not evidence of criminal activity.

Next, the Defense submits that the application indicated that the police learned of Mrs. Small's cellphone number from [redacted] intake documents and [redacted]. The Defense asserts, based upon these statements, it is clear that neither defendant's cellphone numbers were obtained during the court of or the result of any specific criminal event, action, or statement relating to or providing evidence of the misconduct/conspiracy/obstruction charges.

Furthermore, the Defense argues that the application asserts that the [redacted] who [redacted] had allegedly spoke about the abuse, met with Principal Chapman on two occasions to report the abuse. The Defense submits that whether or not Principal Chapman reported the abuse cannot be used to establish probable cause to search the Defendants' cellphones.

The Defense next emphasizes that the police did not have any evidence of Principal Chapman using her cellphone in a criminal manner because she met and spoke with the Defendants at their residence. The Defense reasons that the meeting occurred in person and such assertion completely negates any connection between Principal Chapman, these allegations, and the Defendants' use of their cellphones. Therefore, the Defense asserts that the unsupported statement by the police do not provide any independent probable that the Defendants' cellphones contained evidence of criminal activity.

Additionally, the Defense submits that the statements in relation to the information obtained from the Communications Information Order of Principal Chapman's phone does not provide any evidence of wrongdoing by the Defendants.

Lastly, the Defense maintains that the police did not offer the court any evidence establishing probable cause that the Defendants' cellphones contained evidence of the alleged crimes was provided by the communications obtained as a result of the search of Principal Chapman and none of the cited texts in the Certification are evidence of any criminal activity.

The Defense submits that texting people you know is not sufficient probable cause that the Defendants' cellphones contained evidence of illegal activity.

Overall, the Defense argues that even viewing the application under the totality of the circumstances, none of the allegations support probable cause.

B. State's Argument

The State incorporates all of its arguments in their response brief to Mr. Small's motion to suppress. The State further argues that ACPO had probable cause to search Mrs. Small's cellphone due to direct evidence of electronic communications between all three defendants immediately following [redacted] disclosure of abuse and for months, concerning ACPO and DCPP investigations.

The State asserts that once [redacted] disclosed a course of conduct of abuse, that followed were instances of defendant and her co-defendant communicating via phone and organizing meet ups to discuss [redacted] disclosures and the law enforcement response to investigating [redacted] disclosures, in an attempt to stop the collateral damage to their political careers. The State maintains that Principal Chapman's cellphone data revealed Mrs. Small used her cellphone to contact her co-defendants on multiple occasions about the investigation. that the Defense is taking a naïve and ignorant view of these communications in saying they only show the Defendants knew each other. The State contends that it is action a pattern of the Defendants protecting each other and because something happened, and the Defendants knew that and had to find a way to squelch it and they used their cellphones as a way to communication and facilitate their plans.

Lastly, the State submits that the Defense does not have standing to challenge suppression of Mr. Small's cellphone because Mrs. Small does not have a reasonable expectation of privacy in her husband's cellphone.

APPLICABLE LAW & ANALYSIS

I. RECUSAL

An independent and honorable judiciary is indispensable in our society. DeNike v. Cupo, 196 N.J. 502, 514-15 (2008)(citing Canon 1 of the Code of Judicial Conduct). In furtherance of that goal, judges should observe a high standard of conduct to preserve the integrity and independence of the judiciary. Id. Judges should act at all times in a manner that promotes public confidence and avoid both impropriety and the appearance of impropriety. Id.

R. 1:12-1 and R. 1:12-2 provide for recusal on the court's own motion or upon the motion of any party. R. 1:12-1 states that:

> "The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge:
> (a) is by blood or marriage the second cousin of or is more closely related to any party to the action;

(b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;
(c) has been attorney of record or counsel in the action;
(d) has given an opinion upon a matter in question in the action;
(e) is interested in the event of the action;
(f) has discussed or negotiated his or her post-retirement employment with any party, attorney or law firm involved in the matter; or
(g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

R. 1:12-2 provides that, "[a]ny party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." R. 1:12-2 permits a party to move to disqualify a judge from hearing a matter. Motions for recusal should be made before the judge presiding over the matter. State v. McCabe, 201 N.J. 34, 45 (2010). Courts should evaluate requests for recusal in light of whether a reasonable, fully informed person would have doubts about the judge's impartiality. DeNike v. Cupo, 196 N.J. at 517. The disposition of such motions is entrusted to the sound discretion of the judge presiding over the matter. State v. McCabe, 201 N.J. at 45 (citing Panitch v. Panitch, 339 N.J. Super. 63, 66 (App. Div. 2001). The decision of the presiding judge whether or not to recuse himself is subject to an abuse of discretion standard upon review. Id.

It is with the utmost respect for the mandate requiring judges to act in a manner that promotes public confidence and avoid both impropriety and the appearance of impropriety that the court considers a party's application. DeNike v. Cupo, 196 N.J. at 514-15 (2008)(citing Canon 1 of the Code of Judicial Conduct). Further, in State v. Salentre, 275 N.J. Super. 410, 421(App. Div. 1994), the trial court properly denied a recusal motion because, "there was no showing that the trial judge had any personal or private interest apart from the fulfilment of his judicial duties."

Pursuant to an Order dated March 19, 2025, the Court denied the Defendants' Motion for Recusal for the reasons set forth on the record on March 14, 2025.

II. THE CERTIFICATION SETS FORTH ADEQUATE PROBABLE CAUSE TO SUPPORT THE COURT'S FINDING OF PROBABLE CAUSE TO SEARCH THE DEFENDANTS' DEVICES.

"[T]he Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution provide . . . 'no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.'" State v. Marshall, 199 N.J. 602, 610 (quoting N.J. Const. art. I, para. 7). "As technological advances introduce '[s]ubtler and more far-reaching means of" privacy invasion, the judiciary is obligated "to ensure that [advance] does not erode Fourth Amendment protections.'" State v. Missak, 476 N.J. Super. 302, 316 (2023 (citing Carpenter v. United States, 585 U.S. 296, 320 (2018) (first alteration in original)).

"[S]ubstantial deference must be paid by a reviewing court to the determination of the judge who has made a finding of probable cause to issue a warrant." State v. Evers, 175 N.J. 355, 381 (2003). Any "[d]oubt as to the validity of the warrant 'should ordinarily be resolved by sustaining the search.'" State v. Keyes, 184 N.J. 541, 554 (2005) (quoting State v. Jones, 179 N.J. 377, 389 (2004)). "[W]hen the adequacy of the facts offered to show probable cause . . . appears to be marginal, the doubt should ordinarily be resolved by sustaining the search." State v. Kasabucki, 52 N.J. 110, 116 (1968) (first citing United States v. Ventresca, 380 U.S. 102, 109 (1965); and then State v. Mark, 46 N.J. 262, 273 (1966)). However, "[c]ourts [must] consider the 'totality of the circumstances' and should sustain the validity of a search only if the finding of probable cause relies on adequate facts." State v. Boone, 232 N.J. 417, 427 (2017) (quoting Jones, 179 N.J. at 388-89).

A search executed pursuant to a warrant enjoys the presumption of validity. State v. Bivins, 226 N.J. 1, 11 (2016); State v. Marshall, 199 N.J. 602, 612 (2009). The defendant bears the burden of challenging the search and must "prove 'that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" Jones, 179 N.J. at 388 (quoting State v. Valencia, 93 N.J. 126, 133 (1983)).

Here, the Court found probable cause to issue the Search Warrants on March 30, 2024. As such, substantial deference must be paid to the Court's prior determination of probable cause. Having considered the totality of the circumstances, the Court's determination relied on adequate facts set forth in the Certification. Specifically, that evidence of alleged child abuse and related crimes would be found on the electronic devices in light of the evidence from Principal Chapman's Verizon Wireless toll records, reports from school employees with knowledge of [redacted] reported abuse, and the two meetings between the Defendants and Principal Chapman after [redacted]reported the abuse. The facts in the Certification overwhelmingly establish probable cause to believe that the communications and other electronic data from the cellphones would reveal evidence of child abuse by the Defendants.

In its brief, the Defense argues that there was no probable cause to search the Defendants' cellphone. However, the Certification sets forth adequate facts from which a reasonable inference could be drawn that the Defendants' cellphones that were within their possession and control would contain evidence related to the criminal activity under investigation, namely frequent telephonic and digital contact among the Defendants and Principal Chapman.

III. THE SEARCH WARRANTS FAIL TO ALIGN WITH THE PRINCIPLES SET FOR IN MISSAK.

The particularity requirement mandates "the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended." Marshall, 199 N.J. at 611 (quoting (Steele v. United States, 267 U.S. 498, 503 (1925)). The use of open-ended, general warrants has been condemned as "the worst instrument of arbitrary power," Boyd v. United States, 116 U.S. 616, 625 (1886) (internal quotation omitted, and "was a motivating factor behind the Declaration of Independence," Berger v. New York, 388 U.S. 41, 58 (1967). A search warrant affidavit "must be based on sufficient specific information to enable a prudent, neutral judicial officer to make an independent determination that there is probable cause to

believe that a search would yield evidence of past or present criminal activity." Keyes, 184 N.J. at 553.

Even in the context of a cellular phone search, a valid warrant requires "probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is at the place sought to be searched." State v. Sullivan, 169 N.J. 204, 210 (2001); see also State v. Chippero, 201 N.J. 14, 28 (2009) (citation omitted) (explaining there must be "substantial evidence" supporting a court's probable cause determination that the items sought are in fact seizable by virtue of being connected with criminal activity, and . . . the items will be found in the place to be searched"). "Probable cause for the issuance of a search warrant requires 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" Chippero, 201 N.J. at 28 (quoting United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993)).

"[T]he probable cause determination must be . . . based on the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony before the issuing judge that is recorded contemporaneously." Marshall, 199 N.J. at 611 (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)). This is because "the scope of a lawful search is defined by the object of the search and the places in which there is probable cause to believe it may be found." Ibid. (quoting Maryland v. Garrison, 480 U.S. 79, 84 (1987)).

Recently, in Missak, the Appellate Division emphasized that the burden is on the State to show the warrant application established probable cause for a search of the contents of defendant's phone. 476 N.J. Super. at 317. There, the State "established probable cause to believe the phone found in the defendant's possession contained some evidence of the crimes charged" because the offenses at issue involved the use of defendant's cellphone allegedly to solicit a sexual encounter with an individual he believed to be a fourteen-year-old girl. Id. at 320. The search warrant authorized the search of a phone's:

> Stored electronic data, encrypted or password protected files/data, the assigned cellular number, cellular billing number, address book/contact(s) information, all recent call, duration of said calls, any Internet access information, incoming and outgoing text messages, text message content, any stored pictures, stored video, calendar information, Global Positioning System (GPS) date, memory or Secure Digital Memory cards (SD cards) and any other stored information on said mobile device that will assist in the continuation of this investigation.
>
> [Id. at 311.]

The Appellate Division acknowledged that "[d[iscerning where evidence of a crime may be found on a cellular phone is a function of complex technology . . ." Id. at 319. There, the Court confined its analysis to "the four corners of [the Special Agent's] certification and applied fundamental tenets of constitutional law to the validity of the warrant to decide the issue presented." Ibid. The certification "supported the request for a warrant to search the phone's entire contents, information, and data by claiming that access was necessary to demonstrate defendant *possessed and used the phone 'around the time' the phone was employed* in the commission of the alleged crimes." Id. at 321 [emphasis added]. The Court found, however, the

certification did not provide sufficient facts supporting the expansive search warrant because there were no facts "establishing probable cause for an examination of data and other information . . . that either predate[d]" the alleged commission of the crimes or "[did] not constitute of his use of the phone 'around the time' the crimes were committed." Id. at 321-22.

The Missak Court noted the voluminous amount of private information that is stored on a cellular phone. See, e.g., Carpenter, 585 U.S. at 320 (noting the judiciary is obligated "to ensure that [technological advance] does not erode Fourth Amendment protections"); United States v. Stabile, 633 F.3d 219, 241 n. 16 (3d Cir. 2011) (alteration in original (quoting United States v. Comprehensive Drug Testing, 621 F.3d 1162, 1178 (9th Cir. 2010) (Callahan, J., concurring in part and dissenting in part)) (explaining "[a] measured approach based on the facts of a particular case is especially warranted in the case of computer-related technology, which is constantly and quickly evolving"); Facebook, Inc. v. State, 471 N.J. Super. 430, 464 (App. Div. 2022) (quoting State v. Earls, 214 N.J. 564, 588 (2013)) (noting out law "evolve[s] . . . in response to changes in technology"); People v. Hughes, 958 N.W.2d 98, 111-21 (Mich. 2020) (citation omitted) (discussing the numerous and complex legal issues implicated by a search of electronic data, including the permissible scope of a warrant for electronic data; explaining the propriety of an officer's "search of seized digital data" requires consideration of "whether the forensic steps of the search process were reasonably directed at uncovering the evidence specified in the search warrant"; and detailing factors that should be considered in determining whether the search was reasonably directed at uncovering evidence specified in a warrant).

In an unpublished opinion provided by the Defense dated February 7, 2025, the Defense shows that the Appellate Division relied on Missak to suppress evidence obtained from an overbroad cellphone warrant, rejecting the argument of severability. State v. Summers, No. A-1578-22 (App. Div. Dec. 31, 2024). [7]The case involved a homicide investigation. Id. at 2. The search warrant authorized "any and all electronically stored" contained in the defendant's cellphone. Id. at 5. The Court noted the complexity of the digital legal landscape "presented by data contained in cellular phones, the manner in which such data may be searched and retrieved, and the constitutional issues presented by law enforcement's efforts to traverse the landscape in search of evidence." Missak, 476 N.J. Super. at 319. And, irrespective of the fact that the affidavit in support of the warrant application "described in sufficient detail how cellphones are used and how [a search of the cellphone] can result in data which is relevant to a criminal investigation," the warrant itself must identify the location on the phone where data and information possibly stored on defendant's phone may be found based on the probable cause established in the search warrant affidavit." Marshall, 199 N.J. at 611 (stating "the description of where to find the information sought by the warrant] is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended"). Ultimately, the Court there found that the warrant was not supported by probable cause for the authorized and expansive search of defendant's phone and data because law enforcement knew the timeframe of the victim's murder and had surveillance footage of defendant leaving the victim's residence using his cellphone. Therefore, the Court reasoned that with this information, law enforcement officers and the court had, at minimum, the facts necessary to properly limit the temporal scope of the warrant. Summers, at 20.

[7] The Court references Summers in line with Defense's submissions in accordance with R. 1:36-3.

In the present matter, the Defense urges this Court find that the Search Warrants fail for lack of probable cause and overbreadth based upon the holding in Missak. The Court agrees that the Search Warrants failed to limit the search to encompass the dates of the alleged crimes. A search of the cellphones' entire history is beyond the scope of the probable cause established to connect the possession and use of the cellphones and the Defendants contact and communication with themselves and with Principal Chapman. The probable cause established in the Certification shows that the events that resulted in child endangerment and aggravated assault of [redacted] and the Defendants' contacts in person and digitally with each other and Principal Chapman occurred within a discernible timeframe. As such, the attempt to acquire information from the devices outside that timeframe exceeded the particularity and specificity requirements of Missak. The search and seizure of the Defendants' cellphones should have been limited to approximately the first alleged incident of child abuse beginning on or after December 1, 2023, through March 27, 2024, when the Defendants' and Principal Chapman's digital communications connected to the devices related to the incidents ended.

In Missak, the stated purpose of the search was to demonstrate that the defendant possessed the phone and used the phone around the time the device was employed to contact the 14-year-old girl. In Summers, the defendant was charged with murder and law enforcement knew the timeframe of the victim's murder and had surveillance footage of defendant leaving the victim's residence using his cellphone. Both cases consist of crimes that are limited to a defined point in time. Similarly, the Defendants' crimes are limited to a defined point in time, when the abuse began through the end of the investigation of DCPP and ACPO. As such, redaction or severability is the appropriate remedy for the reasons set forth in the section below.

IV. SUPPRESSION OF ALL OF THE EVIDENCE SEIZED IN INAPPROPRIATE, SEVERABILTY AND REDACTION PRINCIPLES GUIDE THE COURT'S FINDING.

The court rejects the Defendants' argument that suppression is required because the warrant, by authorizing law enforcement to examine "all stored electronic data," was overbroad and unparticularized. Even if the warrant were overbroad, the evidence law enforcement agents seized falls well within the warrant's "fair territory." And, under the redaction or severability principle, "only those items encompassed in an overly broad description or an overly broad seizure" must be suppressed. Kevin G. Byrnes, N.J. Arrest, Search & Seizure § 7:3 (2024).

The Defendants' overbreadth argument relies on State v. Missak, 476 N.J. Super. 302, 299 (App. Div. 2023), which reversed a trial court's interlocutory order declining to quash a search warrant. Id. at 307. The Appellate Division held that the search warrant applicant's speculative statements failed to establish probable cause for an "expansive search warrant for all data and information on [a] seized cellular phone." Id. at 322. Specifically, the applicant's statement that individuals "may" hide evidence in disguised or altered files was not enough to establish probable for the unrestricted search requested. Id. at 320-21. The court also found fault with the warrant's unlimited timeframe, notwithstanding that the defendant allegedly committed the crimes of luring and attempted sexual assault on two specific days. Id. at 320, 321-22.

But the court agreed that the agent "established probable cause to believe the phone contained some evidence of the charged crimes." Id. at 320. And there was probable cause

supporting a limited search "of the phone's contents and data" for the texts and any phone calls between the defendant and the agent who posed as a child on the two days mentioned. Ibid.

The State in this case attempts, with its Certification from Detective Choe, to justify the kind of expansive search the Missak court found problematic. The State has presented sufficient facts to establish probable cause to believe evidence of a crime could be found in a time-limited search for texts, emails, or oral communications. And such a search would have produced the communications between the Defendants and Principal Chapman.

Supporting probable cause for that limited search, Det. Choe asserted that Defendants were using their cellphones to communicate with Principal Chapman in the days following the disclosure of abuse by [redacted] and throughout the investigation. There was a "fair probability," See Illinois v. Gates, 462 U.S. 213, 238 (1983), that Defendants' almost contemporaneous use of the cellphones related to the charged crimes following the disclosures by [redacted]

The redaction or severability principle "ensures that 'the suppression order will be commensurate with the deficiency of probable cause, and that the 'policy behind the exclusionary rule is served but not exalted.'" 2 Wayne R. LaFave, Search and Seizure § 3.7(d) (6th ed. 2024) (quoting People v. Hansen, 38 N.Y. 2d 17 (1975)). Our courts have applied these principles to a case involving a valid warrant where officers seized items beyond the warrant's scope, State v. Dye, 60 N.J. 518 (1972), and to a case involving an overbroad warrant where officers seized items in places the warrant identified with probable cause, State v. Burnett, 232 N.J. Super. 211 (App. Div. 1989).

In Dye, the Court accepted "the common sense judicial approach . . . that only to the extent that the interception includes irrelevant communications should it be deemed an unreasonable search and seizure." Id. at 540-41. The Court explained, "[W]here articles of personal property are seized pursuant to a valid warrant, and the seizure of some of them is illegal as beyond the scope of the warrant, those illegally taken may be suppressed . . . but those within the warrant do not become so tainted . . . ." Id. at 537.

In Burnett, the trial court issued a warrant to search various records of a dentist suspected of receiving kickbacks from union officials. The Appellate Division held that the warrant was overbroad as it permitted a search of records going back ten years. Id. at 216. The evidence establishing probable cause to believe the dentist was receiving kickbacks was of recent vintage and the affidavit supporting the warrant included no evidence of when the dentist started performing services for union members. Ibid. Following the redaction principle, the court rejected the "defendant's contention that the entire warrant should be suppressed because of its overly broad authorization to seize records encompassing the ten-year period." Ibid. Instead, the court held that the "[d]efendant's constitutional rights were amply protected by reducing the excessive period of ten years to a more reasonable period consistent with the facts set forth in the supporting affidavit," which was one year. Id. at 217.

Applying these principles to the Defendants' case, the State established probable cause to search for texts and other communications from approximately the first alleged instance of child abuse that is on or after December 1, 2023, and continuing through the conclusion of the investigation on or about March 27, 2024. Notably, the "over 100" communications were made

within that time. Based on Det. Choe's Certification, there is nothing unreasonable about searching and seizing defendant's texts around the time of the alleged crimes and in following communications among the suspects and others throughout the investigation.

The Search Warrants here survive as it did not authorize a general search for evidence of any crime. Rather, it alleged specific crimes; it identifies the kinds of items sought—including text messages; and it identified the various places to look within electronic devices,

In sum, any alleged overbreadth of the warrant does not require suppression of the text conversation found on defendant's cellphone. As such, the Court finds the proper remedy is redaction or severability of any evidence seized before December 1, 2023, and after March 27, 2024, from the Defendants' cellphones. To be the extent any party believes that the production of evidence seized between December 1, 2023, to March 27, 2024, discloses any information that is not relevant to the crimes such party may apply for a protective order or similar relief.

V. DEFENDANT IS NOT ENTITLED TO A FRANKS HEARING.

If the Defendant establishes that the warrant was issued on fictious or false statement, he is entitled to receive a hearing. Franks v. Delaware, 438 U.S. 154 (1978). Such a hearing can include the warrant and all fruits from that search if the Defendant establishes perjury, willful disregard for the truth, or false statement to be the basis of the warrant's probable cause. Franks, 438 U.S. 1154. However, a Franks hearing is not required when (1) there is adequate unchallenged information which establishes probable cause, Marshall, 123 N.J. 1, 72 (1991); (1) there is an absence of any preliminary findings of intentional falsehoods, State v. Martinez, 387 N.J. Super. 129, 140 (App. Div. 2006); and (3) there is no suggestion of official wrongdoing, State v. Broom-Smith, 406 N.J. Super. 228, 240-41 (App. Div. 2009).

Here, the Defendant maintained professional and personal relationships with the Principal Chapman. It does not appear that the inclusion of the nature of their relationship in the Certification would defeat a finding of probable cause. In fact, the inclusion of their relationship would likely show that the Defendant's Verizon Wireless records and the timing of the communications were intended to give her friends a "heads-up" about the allegations against them. Additionally, the number of calls asserted in the Certification as being "over 100" does not defeat a finding of probable cause as the communications between Principal Chapman and the Defendants were in contact with each other following [redacted] disclosures. In any event, the Defendants have not met the heavy burden under Franks to show that the issuance of the warrants was based wrong-doing by the State or were based in an inadequacy of probable cause that would require a hearing to determine the validity of the warrants.

CONCLUSION

Based on the submissions of the parties, the arguments of counsel, and the totality of the facts and circumstances the Court finds that the Search Warrants, which are presumptively valid, were issued upon more than adequate probable cause. Further, the Court find the search authorizing "any and all electronic data" is incompatible with the principles set forth in Missak. As such, the appropriate remedy is redaction or severability to limit the evidence seized from December 1, 2023, to March 27, 2024. Moreover, a Franks hearing is not supported by the record. Accordingly, the Court concludes that the Defendants' request to suppress the evidence seized pursuant to the March 30, 2024, Search Warrants are hereby **GRANTED IN PART AND DENIED IN PART** for the foregoing reasons. Further the Defendants' application for a Franks hearing is **DENIED**. The Court has prepared, entered, and attached an Order setting forth its decision.

Very truly yours,

Bernard E. DeLury, Jr., P.J.Cr.

BED/ep
Encl.