FILED, Clerk of the Appellate Division, April 08, 2025, **A-000020-23**

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO. A-000020-23

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	On Appeal From a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Camden County
v.	:	
CHUCKY S. SCOTT A/K/A CHUCKY SCOTT	:	Indictment No. 18-02-00018-S
Defendant-Appellant.	:	Sat Below:
	:	Hon. John Thomas Kelley, J.S.C., Hon. Francisco Dominguez, J.S.C., Hon. Christine S. Orlando, J.S.C. and Hon. Kurt Kramer, J.S.C.

REDACTED BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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Dated: April 8, 2025

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PRELIMINARY STATEMENT

Defendant-Appellant Chucky S. Scott appeals from two rulings denying motions to suppress evidence obtained unlawfully during a 2017 investigation that culminated in his guilty plea. First, the trial court denied Mr. Scott's motion to suppress cell phone location data. Second, the trial court denied Mr. Scott's motion to suppress evidence obtained from his cell phones after they were seized incident to arrest during an unrelated traffic stop. Both these rulings were error.

First, despite recognizing that a warrant is required to obtain cell phone location data under Article I, paragraph 7 of New Jersey Constitution, the trial court denied Mr. Scott's motion to suppress such data obtained without a warrant, finding that the New Jersey Constitution did not apply. The basis for that erroneous ruling was the trial court's determination that the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") was acting independently of state authorities—the New Jersey State Police ("NJSP") and the Camden High Intensity Drug Trafficking Areas Task Force ("HIDTA") (collectively, the "New Jersey Authorities")—at the time the ATF first obtained authorization to collect the cell phone location data. Examining the entire relationship between the New Jersey Authorities and the ATF, however, there is no dispute that during the period that Mr. Scott's cell phone was tracked, those authorities joined forces and pursued a combined investigation. Because the ATF was acting under color

of New Jersey law when the cell phone location data was used to track Mr. Scott, the protections of the New Jersey Constitution should have applied and Mr. Scott's cell phone location data should have been suppressed.

Second, the trial court erred when it denied Mr. Scott's motion to suppress evidence obtained from a subsequent search of Mr. Scott's cell phones. The seizure of Mr. Scott's cell phones violated both Article I, paragraph 7 of the New Jersey Constitution and the Fourth Amendment to the U.S. Constitution because of the State's unreasonable delay in securing a search warrant. After Mr. Scott was arrested on an unrelated warrant following a traffic stop in West Virginia, the NJSP inexplicably waited two months before collecting Mr. Scott's cell phones from West Virginia—and then another three weeks before securing a search warrant. During this time, Mr. Scott was not in custody; the continued seizure of his cell phones thus represented a substantial intrusion on his rights without a valid legal basis. The State's delay was unreasonable, unjustified, and in violation of the U.S. and New Jersey Constitutions.

For these reasons, evidence derived from Mr. Scott's cell phones should have been suppressed.

PROCEDURAL HISTORY

On February 6, 2018, a State grand jury returned Indictment No. 18-02-00018-S, charging Chucky S. Scott[1] with: first-degree racketeering, in violation of N.J.S.A. 2C:41-2c and 2C:41-2d (Count One); second-degree conspiracy, in violation of N.J.S.A. 2C:39-9i, 2C:58-4, 2C:39-5b, 2C:39-5f, 2C:39-3j, 2C:39-9d, 2C:39-9h, 2C:39-9g, 2C:21-25, 2C:5-2 (Count Two); first-degree leader of a firearms trafficking network, in violation of N.J.S.A. 2C:39-16 (Count Three); first-degree promoting organized street crime, in violation of N.J.S.A. 2C:33-30, 2C:39-3j, 2C:39-5b, 2C:39-5f, 2C:39-9d, 2C:39-9g, 2C:39-9h, 2C:39-9i, 2C:33-30; (Count Four); second-degree transporting firearms into the state for an unlawful sale or transfer, in violation of N.J.S.A. 2C:39-9i and 2C:2-6 (Count Five); eight counts of second-degree unlawful possession of a weapon, in violation of N.J.S.A. 2C:39-5b(1) (Counts Six, Eight, Nine, Seventeen, Eighteen, Nineteen, Twenty-Eight, and Twenty-Nine); four counts of fourth-degree unlawful disposition of a handgun, in violation of N.J.S.A. 2C:39-9d (Counts Seven, Eleven, Fifteen and Twenty-One); four counts of fourth-degree unlawful possession of a large capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3j and 2C:2-6 (Counts Ten, Fourteen, Twenty-Four and Thirty);

[1] Six co-defendants—Eduardo Caban, Anthony Hammond, Eric Moore, Tymere Jennings, Jamal Folk, and Darren Harville—were also charged in several counts of the indictment. Mr. Scott is the only party to this appeal.

four counts of fourth-degree manufacture, transport, disposition of a large capacity ammunition magazine, in violation of N.J.S.A. 2C:39-9h and 2C:2-6 (Counts Twelve, Sixteen, Twenty-Two and Thirty-Three); second-degree unlawful possession of a weapon, in violation of N.J.S.A. 2C:58-4 and 2C:39-5b (Count Thirteen); two counts of second-degree unlawful possession of an assault firearm, in violation of N.J.S.A. 2C:39-5f and 2C:2-6 (Counts Twenty-Three and Twenty-Seven); two counts of third-degree manufacture, transport, disposition of an assault firearm, in violation of N.J.S.A. 2C:39-9g and 2C:2-6 (Counts Twenty-Five and Thirty-One); fourth-degree manufacture, transport, disposition of a firearm, in violation of N.J.S.A. 2C:39-9d and 2C:2-6 (Count Thirty-Two); and two counts third-degree financial facilitation of criminal activity, in violation of N.J.S.A. 2C:21-25 and 2C:2-6 (Counts Thirty-Four and Thirty-Five). (Da 1-47.) [2]

Mr. Scott moved to suppress evidence obtained from his cell phones, arguing that they were seized unlawfully. He also moved to suppress statements

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[2] "Da" – appellant's appendix

"1T" – August 21, 2018 (motion to suppress)
"2T" – November 11, 2019 (motion to suppress)
"3T" – August 17, 2021 (motion to suppress hearing)
"4T" – September 16, 2021 (ruling from the bench)
"5T" – May 25, 2022 (motion on plea and sentence)
"6T" – September 20, 2022 (plea hearing)
"7T" – January 13, 2023 (sentencing hearing)

he made to a corporal. On August 21, 2018, the Hon. John Thomas Kelley, J.S.C., heard Mr. Scott's motion. (See generally 1T.) At the conclusion of the hearing, Judge Kelley granted in part and denied in part Mr. Scott's motion to suppress. Specifically, the court suppressed Mr. Scott's statement to the corporal but ruled that the seizure and search of Mr. Scott's cell phones was lawful. (1T at 210:3-10.)

On August 17, 2021, the Hon. Christine S. Orlando, J.S.C., conducted a hearing on Mr. Scott's motion to suppress location data obtained from his cell phone. (See generally 3T.) On September 16, 2021, Judge Orlando denied Mr. Scott's motion to suppress. (See 4T at 27:7-8; Da 49.)

On September 20, 2022, Mr. Scott appeared before the Hon. Kurt Kramer, J.S.C., and pled guilty to Counts One and Three, first-degree racketeering and first-degree leader of a firearms trafficking network, respectively. (6T at 35:3-24.) In exchange for his guilty plea, the State agreed to recommend at sentencing a 12-year sentence, subject to the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2, on Count One, and a consecutive 12-year sentence on Count Three. The State also agreed to dismiss the remaining charges in the indictment.

On January 13, 2023, Mr. Scott appeared before Judge Kramer for sentencing. The court sentenced Mr. Scott in accordance with the recommended

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sentence in the guilty plea. (7T at 10:9-20.) The requisite fines and penalties were imposed.

On September 8, 2023, an amended notice of appeal was filed as within time. (Da 68-72.)

STATEMENT OF FACTS

I. Motion to Suppress Cell Phone Location Data

Mr. Scott moved to suppress cell phone location data, which was seized without a warrant. Three witnesses testified at the motion hearing: Special Agent ("SA") Teresa Petit, Columbus Police Detective Jerry Orick, and New Jersey State Police Detective Sergeant ("Sgt.") Erik Hoffman. The following facts are derived from their testimony.

On April 3, 2017, SA Petit of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Columbus, Ohio field office began an investigation into a gun recovered in Camden, New Jersey, that had initially been purchased by Mr. Scott's co-defendant Anthony Hammond. (3T at 9:15-10-4; Da 73.) The following day, SA Petit contacted ATF SA William Campbell, in the Camden field office, about Mr. Hammond and the sales of firearms referenced in the ATF database. (3T at 11:2-11, 11:23-12:2; Da 73.) Speaking with SA Campbell, SA Petit "inquire[d] about the open case and offer[ed]

assistance . . . ." (Da 73.) On April 8, 2017, SA Petit again contacted SA Campbell after she learned of another sale tied to Mr. Hammond. (Id.)

In May 2017, the New Jersey Authorities began investigating another of Mr. Scott's co-defendants, Eduardo Caban, for distribution of narcotics. (3T at 70:10-71:9.) In early June, the investigation shifted its focus to possible weapons trafficking, and authorities conducted multiple controlled purchases of firearms from Mr. Caban using a police informant. (3T at 71:2-20, 90-91.)

At this time, the two strands of the investigation—Hammond's gun purchases in Ohio and the sales by Caban in New Jersey—began to merge. ATF SA Ryan Bell, located in Camden, learned that weapons purchased from Mr. Caban were originally supplied by Mr. Hammond in Ohio. (Da 73-74; 3T at 32:16-23.) And SA Petit traced additional firearms tied to Mr. Hammond to Camden. (Da 73-74.)

On June 14, 2017, SA Petit contacted SA Bell to discuss "proactive steps related to firearm trafficking by Hammond." (Id.; 3T at 33:23-34:2.) The next day, SA Bell informed SA Petit that two guns recovered in Camden and tied to Mr. Hammond "came from a controlled purchase by a [cooperating witness of the] HIDTA [Task Force] in Camden, NJ." (Da 74.) SA Petit informed SA Bell that she planned to seek video footage of Mr. Hammond's recent gun purchases in Ohio from the retailer. (Id.) Video footage showed Mr. Hammond

accompanied by another individual, whom SA Petit identified as Mr. Scott after matching a photo from an unrelated police report. (Id.)

After identifying Mr. Scott, SA Petit—working with Columbus Police Detective Jerry Orick—obtained an "exigent . . . ping" for Mr. Scott's cell phone from his provider, T-Mobile, on or around June 22, 2017. (3T at 50:6-11.) This was obtained without a warrant or any judicial process. Instead, SA Petit called T-Mobile, and it allowed SA Petit to track Mr. Scott's location. (3T at 51:13-14 54:1-21.) On June 23, 2017, Detective Orick obtained a court order for the application of a pen register device to Mr. Scott's phone, which allowed for tracking of his location and phone activity. (3T at 56:2-7, 56:20-58:11, Da 76-86.) [3]

Monitoring the location data from Mr. Scott's cell phone on June 23, 2017, SA Petit observed Mr. Scott and Mr. Hammond traveling toward Camden. (3T at 40:17-23; Da 74.) She informed local Camden law enforcement, seeking to have officers detain Mr. Scott on an arrest warrant for larceny issued by the Social Security Administration and on suspicion of weapons trafficking. (Da 74.) But local authorities in Camden were unable to locate Mr. Scott and Mr. Hammond, who returned to Columbus on June 24, 2017. (Id.)

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[3] The court order did not require a showing of probable cause. (Da 76-86.)

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On July 6, 2017, there was a conference call between the ATF in Columbus, including SA Petit, and the New Jersey Authorities in Camden to discuss the ongoing investigation into Messrs. Scott, Hammond and Caban. (3T at 25:6-14.) SA Petit coordinated with NJSP Sgt. Erik Hoffman. (Id.) Specifically, SA Petit discussed her "observations of both Mr. Hammond and Mr. Scott at the gun store together and the police report of them together . . . ." (3T at 25:15-23.) She also began sharing the "ping data" for their location. (3T at 22-23.)

On July 7, 2017, the New Jersey Authorities set up another controlled purchase from Mr. Caban in Camden. (3T at 98:16-24.) Mr. Scott was observed at Mr. Caban's house before and after the transaction. (3T at 98:25-99:3.) The NJSP attempted to arrest Mr. Scott but lost him during their undercover surveillance, which included additional use of the cell phone location tracking data authorized in Ohio. (3T at 99:4-101:6.)

Ruling from the bench, the trial court recognized that the ATF obtained the cell phone location data without a warrant or probable cause. (4T at 13:25-14:1.) Nevertheless, the court denied Mr. Scott's motion because it found that (a) New Jersey law did not apply to the seizure and (b) the seizure was legal under both Ohio and federal law. (4T at 14:8-9.)

The trial court acknowledged that the New Jersey Constitution "applies to the . . . agents of the state who act beyond the state's borders to obtain evidence in state criminal prosecutions." (4T at 14:10-13.) Thus, the trial court found, the "critical element" in determining whether New Jersey law applied to the seizure of Mr. Scott's cell phone location data was "whether an agency relationship exist[ed] between the [ATF] and [the New Jersey Authorities]." (4T at 14:21-15:1.) The trial court explained that this issue "require[d] an analysis of the entire relationship between the two government actors." (4T at 15:2-4.) And the "court should look at the actions taken by the officers involved and the process used to find and collect and seize the evidence." (4T at 15:4-7.) The trial court also explained that "[w]hen the overall purpose of the investigation is providing evidence for a state prosecution the federal agent can be deemed agent of the state." (4T at 15:7-10.) At the same time, the trial court found that "mere contact, awareness of the ongoing investigation or the exchange of information does not necessarily translate [in]to an agency relationship." (4T at 15:11-13.)

Applying that standard to the seizure of Mr. Scott's cell phone location data, the trial court found that the ATF was "conducting an independent investigation" into Mr. Hammond and Mr. Scott in Ohio when the ATF requested and obtained the warrantless cell phone location data related to Mr. Scott. (4T at 16:6-18:22.) The trial court found that "until July 6, 2017, no

agency relationship was developed [between the ATF and the New Jersey Authorities] . . . that would have required invoking the New Jersey Constitution." (4T at 19:15-22.)

The trial court found that the ATF "lawfully obtain[ed] [the cell phone location data] . . . according to federal and Ohio law at the time." (4T at 25:6-10.) It therefore denied Mr. Scott's motion to suppress.

II. Motion to Suppress Evidence Seized from Mr. Scott's Cell Phones

Mr. Scott also moved to suppress both the evidence seized from the search of his cell phones and his statements to police. The cell phones were seized without a warrant and were ultimately searched pursuant to a warrant. Two witnesses testified at the motion hearing: West Virginia State Trooper Corporal ("Cpl.") Erick McFarland and Wheeling Police Department Canine Officer Eric Burke. The following facts are derived from their testimony.

On July 9, 2017, Mr. Scott and a companion were traveling in a rental car in West Virginia when they were stopped for speeding by Cpl. McFarland. (1T at 9:20-10:5, 16:16-19, 21:6-8, 199:3-9.) Cpl. McFarland proceeded to search the car. He testified that the basis for his search, including the trunk, was "[t]he light odor of the marijuana that was in the vehicle." (1T at 24:5-24.)

During the search, Cpl. McFarland found and seized a black duffel bag in the trunk containing roughly $6,000. (1T at 201:4-11.) He also seized two

iPhones belonging to Mr. Scott that were located in the "center console areas of the car." (1T at 142:18-21.) Cpl. McFarland testified that he seized the phones even though it "wasn't immediately apparent" to him what was on the phones (1T at 112:22-24), and they were not themselves evidence of criminal conduct. (1T at 144:14-18.)

After allowing Mr. Scott's companion to leave the scene with the rental car, Cpl. McFarland took Mr. Scott back to the police station in custody, pursuant to the outstanding Social Security Administration warrant. (1T at 88:8-10, 112:5-7.)

During the detention of Mr. Scott, Cpl. McFarland "sought to obtain consent to search [Mr. Scott's] phone" but Mr. Scott refused. (1T at 202:4-6; 131:15-21.) Cpl. McFarland later testified that although he "could be mistaken," he "th[ought] [Mr. Scott] mentioned weapons or guns" related to his phones "at some point in time." (1T at 113:2-6.) At the police station, Mr. Scott asked to make a call on one of his seized cell phones, but Cpl. McFarland refused. (1T at 202:12-18.) Mr. Scott also asked Cpl. McFarland for certain phone numbers stored on his cell phones. Cpl. McFarland said he would look the numbers up for Mr. Scott, at which point Mr. Scott provided his passcodes, which Cpl. McFarland wrote down, before looking up the phone numbers for Mr. Scott. (1T at 64:13-18, 24-25.)

At around 8:10 pm that evening, while Mr. Scott was still detained, Cpl. McFarland spoke with SA Petit about the joint New Jersey-ATF investigation into Mr. Scott (1T at 152:16-24.) They spoke again the next day, July 10, 2017, before Mr. Scott was released from custody. (1T at 152:24-153:1-4.) [REDACTED]

[REDACTED] Mr. Scott was released the next day—but, despite the absence of a warrant and Cpl. McFarland's own admission that the cell phones were not evidence of criminal conduct, Mr. Scott was not permitted to retrieve his phones. (1T at 144:7-18.)

Both phones remained in storage in West Virginia until, as Cpl. McFarland testified, "a much later date", (1T at 133:1-13): September 8, 2017, when NJSP collected them. (1T at 126:18-23, 155:7-11.) At that point, the NJSP still had not sought or received a search warrant for the phones, nor any other basis for the NJSP to take possession of Mr. Scott's personal property. (1T at 155:12-21.)

[REDACTED]

The trial court denied Mr. Scott's motion to suppress evidence obtained from the seizure and search of his cell phones. First, the trial court concluded that West Virginia law applied because Cpl. McFarland was "clearly acting under the color of West Virginia law when he conducted the motor vehicle stop of Mr. Scott." (1T at 204:12-14). The trial court found there was no basis to apply New Jersey law because Cpl. McFarland was "unaware of any investigation conducted by New Jersey . . . at [the] time" of the traffic stop. (1T at 204:19-205:1).

As to the search of Mr. Scott's vehicle, the trial court found that there was probable cause to conduct a warrantless search based on Cpl. McFarland's detection of "a light odor of marijuana." (1T 206:1-4.) Additionally, the trial court found that the search and seizure of Mr. Scott's cell phones was justified as a search incident to a lawful arrest. (1T at 206:12-15.) The trial court found it "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (1T at 206:16-19.) The trial court found that because Mr. Scott "was arrested based upon a federal warrant for the crime of larceny, officers were reasonable to believe evidence . . . of that crime may be present in the vehicle." (1T at 206:22-207:4.) Therefore, the trial court held, the initial search and seizure of Mr. Scott's cell phones was lawful. (1T at 207:12-14.)

As to Mr. Scott's statements, the trial court found that Mr. Scott was in custody when he was being interrogated by Cpl. McFarland. (1T at 208:25-209-2.) As a result, the trial court suppressed all of Mr. Scott's statements, which included his cell phone passcode. (1T at 209:1-10.) Nevertheless, the trial court applied the doctrine of inevitable discovery, finding that officers would have (and did) obtain a warrant to search Mr. Scott's cell phones, albeit 11 weeks later. (1T at 209-10.) The trial court therefore denied Mr. Scott's motion to suppress evidence seized from his cell phones. (1T at 209:24-210:6.)

POINT I

THE TRIAL COURT ERRED IN DENYING MR. SCOTT'S MOTION TO SUPPRESS THE CELL PHONE LOCATION DATA (4T AT 27:7-8; DA 49)

The trial court erred by not applying New Jersey law to suppress the cell phone location data seized without a warrant from Mr. Scott's cell phone. The evidence presented at the motion hearing established that the ATF and New Jersey Authorities were conducting a joint investigation at the time Mr. Scott's cell phone location data was seized and used—without a warrant and unsupported by probable cause—to pursue a New Jersey investigation. New Jersey law therefore should have applied to the searches, and the warrantless seizure of location evidence from Mr. Scott's phone violated the New Jersey

Constitution. The trial court's order denying Mr. Scott's suppression motion should be reversed.

At the outset, it is indisputable that under New Jersey law, the seizing of an individual's cell phone location data without a warrant violates Article I, paragraph 7 of the New Jersey Constitution. See State v. Earls, 214 N.J. 564, 589 (2012); N.J. Const. Art. I, para 7. "[C]ell-phone records seized in violation of Article I, paragraph 7 . . . are subject to the exclusionary rule." State v. Manning, 240 N.J. 308, 332-33 (2020).

Moreover, the New Jersey Constitution unequivocally applies to "the conduct of the state's own agents or others acting under color of state law." State v. Mollica, 114 N.J. 329, 345 (1989). Agents of another jurisdiction act "under color of [New Jersey] law" where there is "cooperation or assistance" between them and New Jersey authorities "with respect to the seizure of evidence." Id. at 357.

To determine whether agents of another jurisdiction act under the color of New Jersey law, a trial court must examine "the entire relationship between the two sets of government actors." Id. at 354. A "formal agency relationship is not required." State v. Knight, 283 N.J. Super. 98, 116 (App. Div. 1995). In other words, "[d]iffering relationships and interactions may suffice," including "antecedent mutual planning, joint operations, cooperative investigations, or

mutual assistance." Mollica, 114 N.J. at 355. Further, "[i]t is immaterial whether a[n] [agent of another jurisdiction] originated the idea or joined in it while the search was in progress. So long as he was in it before the object of the search was completely accomplished, he must be deemed to have participated in it." Lustig v. United States, 338 U.S. 74, 79 (1949).

The trial court refused to apply New Jersey law because it found that there was "no agency relationship" between the New Jersey Authorities and the ATF when the latter "obtained the court order [for the cell phone data] from the Ohio judge" on June 23, 2017. (4T at 19:20-25) (emphasis added). This finding was legal error.

In making its determination, the trial court failed to take into consideration "the entire relationship," Mollica, 114 N.J. at 354, between the ATF and the New Jersey Authorities, prematurely cutting off the analysis at the start of the search and ignoring that, by July 6 at the latest, there was a joint investigation. (4T at 19:15-22.)

With respect to whether there are "joint operations, cooperative investigations, or mutual assistance" that trigger the protections of the New Jersey Constitution, Mollica, 114 N.J. at 355, "[i]t is immaterial" who "originated the [search]." Lustig, 338 U.S. at 79 (emphasis added). Rather, what matters is whether those activities took place "before the object of the search

was completely accomplished." Id. (emphasis added). Put another way, "the standard does not take a solely ex ante perspective"; thus, a "critical issue is the point in time when the object of the search has been completed." U.S. v. Knoll, 16 F.3d 1313, 1320 (2d Cir. 1994) (emphasis added); see also 1 W. LaFave, Search & Seizure, a Treatise on the Fourth Amendment § 1.8(b) (6th ed. 2024) ("It is not essential that the [relevant state] official be involved in the endeavor at the very outset[.]").

For example, State v. Johnson involved a drug investigation by federal Drug Enforcement Agency ("DEA") agents and local authorities. There, the DEA agents—with no local authorities present—trespassed on defendants' property, using what they observed to later obtain a search warrant. 879 P.2d 984 (Wash. Ct. App. 1994). Relying in part on our Supreme Court's decision in Mollica, the Court of Appeals for Washington held that the DEA agents' trespass violated state constitutional protections, which applied because there was "cooperation or assistance" from local authorities during the investigation into defendants. Id. at 989 (quoting Mollica, 114 N.J. at 357). Examining the entire relationship, the court relied in part on local authorities' involvement after the violative trespass, including in "execut[ing] the [search] warrant" and taking evidence from the search and one of the defendants into local custody. Id. at

990. The court therefore held that the state constitutional protections applied and the evidence should have been suppressed. Id. at 993-94.

Here, the trial court failed to properly examine the "entire relationship," Mollica 114 N.J. at 354, between the ATF and the New Jersey Authorities through the end of the search and seizure of Mr. Scott's cell phone location data.

After the ATF learned about Mr. Hammond's connection to New Jersey, on June 15, 2017, it is incontrovertible that, in early July, the ATF and the New Jersey Authorities formally joined forces to investigate Mr. Scott and his alleged co-conspirators for weapons trafficking—the basis for Mr. Scott's guilty plea. (See 4T at 19:15-22; see also 3T at 21:24-22-1.) On July 6, 2017, the ATF had a conference call with the New Jersey Authorities to discuss the ongoing investigation. (3T at 25:1-10.) SA Petit testified that, at this time, she shared her own investigative findings and "started to provide [the New Jersey Authorities] with the ping data related to . . . the location of Mr. Scott." (3T at 25:11-23.) The trial court properly recognized that at this point there was an agency relationship between the ATF and the New Jersey Authorities. (4T at 19:15-22.)

Thereafter, the New Jersey Authorities set up another controlled firearms purchase from Mr. Caban, where Mr. Scott was observed. (3T at 98:16-99:3.) Further, the NJSP conducted undercover surveillance on Mr. Scott and the other targets using the cell phone location data authorized in Ohio. (3T at 100:7-10.)

Here, as in Johnson, despite occurring after the ATF obtained the initial evidence from the cell phone location data, the two investigations ultimately merged into one. And the search was not "completely accomplished," Lustig, 338 at 79, when the ATF initially obtained the authorization to collect the data. To the contrary, the search merely began then; it was ongoing through July 9 when Mr. Scott was detained in West Virginia and his cell phones seized. See supra at 11.

By cutting off its analysis on the date that the ATF obtained the cell phone data authorizations, the trial court ignored the crucial period showing that there was "cooperation [and] assistance of [New Jersey] state officers with respect to the seizure of [the] evidence." Mollica, 114 N.J. at 357.

Indeed, the trial court even recognized that the "court should look at the actions taken by the officers involved and the process used to find and collect and seize the evidence." (4T at 15:4-7.) But it failed to properly apply this principle. The seizure of Mr. Scott's cell phone location data occurred not just when the ATF obtained the authorization but continued through the seizure of Mr. Scott's cell phones on July 9—after the authorities had combined their investigation.

Because the New Jersey Authorities "had a hand" in the search and seizure of the cell phone data, the trial court erred by failing to apply New Jersey's

constitutional protections and denying Mr. Scott's motion to suppress. See Knight, 283 N.J. Super. at 117. Reversal of the trial court's order denying suppression is required.

POINT II

THE TRIAL COURT ERRED IN DENYING MR. SCOTT'S MOTION TO SUPPRESS EVIDENCE OBTAINED FROM A SEARCH OF MR. SCOTT'S CELL PHONES (1T AT 210:3-10, DA 48)

There was a delay of more than 80 days between when Cpl. McFarland seized Mr. Scott's cell phones and the NJSP secured a search warrant. This unjustified and unreasonable delay violated Article I, paragraph 7 of the New Jersey Constitution and the Fourth Amendment to the U.S. Constitution.[4] U.S. Const. Amend. IV; N.J. Const. Art. I, para. 7. The trial court therefore should have suppressed evidence obtained from the search of Mr. Scott's cell phones.

---

[4] New Jersey law applies to the extended—and unconstitutional—seizure of Mr. Scott's cell phones because Mr. Scott is challenging the State's unreasonable delay in seeking a warrant. To the extent that Cpl. McFarland's conduct is relevant, the New Jersey Constitution applies to him as well because he was acting as an agent of New Jersey by retaining custody of Mr. Scott's cell phones for use in the New Jersey investigation. See Mollica, 114 N.J. at 357. Cpl. McFarland testified that he did not have any reason believe that Mr. Scott's cell phones contained evidence of a crime when he seized them. (See 1T at 143:15-145:2.) The only reason for him to retain custody was that he learned about the joint New Jersey-ATF investigation into Mr. Scott. (1T at 152:16-153:4.) He held them so that the NJSP could come collect them purportedly as evidence in their investigation into Mr. Scott. (1T at 126:18-23, 155:7-11.)

"The Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution protect citizens against unreasonable searches and seizures." State v. Moore, 181 N.J. 40, 44 (2004). The New Jersey Constitution encompasses the protections of the Fourth Amendment to the U.S. Constitution and also "affords a higher level of protection." State v. Boone, 232 N.J. 417, 426 (2017); State v. Johnson, 193 N.J. 528 (2008).

Even a seizure lawful at its inception can nevertheless be unconstitutional if "its manner of execution unreasonably infringes possessory interests protected by the . . . prohibition on 'unreasonable seizures.'" United States v. Jacobson, 466 U.S. 109, 124 (1984). Such an infringement occurs where "the police act with unreasonable delay in securing a warrant." United States v. Mitchell, 565 F.3d 1347, 1350 (11th Cir. 2009).

"The reasonableness of the delay is determined 'in light of all the facts and circumstances,' and 'on a case-by-case basis.'" Id. (quoting United States v. Mayomi, 873 F.2d 1049, 1054 n.6 (7th Cir. 1989)). A court must balance the "nature and quality of the intrusion on the individual's [privacy] interests against the importance of the governmental interests alleged to justify the intrusion." United States v. Place, 462 U.S. 696, 703 (1983).

Here, Cpl. McFarland seized Mr. Scott's cell phones during the traffic stop in West Virginia on July 9, 2017. (1T at 9:20-10:5, 16:16-19, 21:6-8, 199:3-

9.) [redacted] The following day, Mr. Scott was released—without his cell phones. (1T at 152:24-153:1-4.) [redacted]

This "unreasonable delay" violated Mr. Scott's Fourth Amendment rights. Mitchell, 565 F.3d at 1350 (citation and internal quotation marks omitted).

Mr. Scott had a "substantial" possessory interest in his cell phones. Mitchell, 565 F.3d at 1351. As the U.S. Supreme Court recognized in Riley v. California, "[t]he sum of an individual's private life can be reconstructed" through the contents of a cell phone. 573 U.S. 373, 394 (2014). Any seizure, therefore, is "substantial" interference with an individual's possessory interest. Id. at 393; see also United States v. Grills, No. 18-CR-228 (JPS), 2019 WL 5587328, at *7 (E.D. Wis. Oct. 30, 2019) (holding that defendant had "strong possessory interest in his phone" given the "business, personal, and financial information" it contained); Cf. United States v. Williams, No. CR-18-01695-005 (TUC) (JAS) (EJM), 2022 WL 2195351, at *13 (D. Ariz. May 10, 2022) (computer "is the digital equivalent of its owner's home, capable of holding a

universe of private information")[5]; Mitchell, 565 F.3d at 1351 (holding that seizure of computer hard drive was "significant interference" with defendant's possessory interest because it likely "contain[ed]. . . non-contraband information of exceptional value"); United States v. Fife, 356 F.Supp.3d 790 (N.D. Iowa 2019) (holding same).

Despite the heightened intrusion, the State waited more than two and a half months (more than 80 days) before obtaining a search warrant for Mr. Scott's cell phones. Courts have granted motions to suppress where the delay was significantly shorter—especially where, as here, defendant's possessory interest was substantial. See United States v. Navarro, No. CR 18-02106 (TUC) (JAS) (EJM), 2019 WL 3877699, at *15 (D. Ariz. July 12, 2019) (suppressing cell phone where government waited 49 days before obtaining warrant after realizing it belonged to defendant); Grills, 2019 WL 5587328, at *6 (suppressing evidence from cell phone where government waited 55 days from initial seizure to obtain a warrant); Mitchell, 565 F.3d at 1349 (suppressing evidence from computer hard drive where government waited 21 days); United States v. Uu, 293 F.Supp.3d 1209, 1214-17 (D. Haw. 2017) (suppressing evidence from backpack where there was a 20-day delay).

[5] In accordance with Rule 1:36-3, all unpublished decisions cited herein are included in the appendix. No contrary opinions have been identified.

The delay here was especially egregious because Mr. Scott—who never consented to the search—was not in custody for essentially all of this period; he would have been free to use his property during the intervening time but for the lawless retention of his property. (3T 202:4-6.)[6] See Williams, 2022 WL 2195351, at *13 ("[Defendant's] possessory interest is strengthened by the fact that [he] was released from custody the day after he was arrested and his phone seized[.]"); Uu, 293 F.Supp.3d at 1214 (finding "substantial" "interference" where defendant "was not in custody . . . nor did he consent to the search" during period where property was seized but before government obtained warrant).

The State's interest here is minimal. Cpl. McFarland admitted that he had no reason to believe that Mr. Scott's cell phones contained evidence of any crime when he initially seized them. (See 1T at 143:15-145:2.) That seizure of the cell phones was done incident to Mr. Scott's arrest on an unrelated warrant—and not on account of any particularized suspicion vis-à-vis the cell phones themselves. (Id.) This "key factor" cuts decisively against the State here. See United States v. Burgard, 675 F.3d 1029, 1033 (7th Cir. 2012) (noting that "a key factor in our analysis is the strength of the state's basis for the seizure"); United States v. Place, 462 U.S. 696, 709 (1983) (holding that 90-minute detention of luggage

[6] The trial court suppressed all statements that Mr. Scott gave to Cpl. McFarland as a Miranda violation. (See 1T at 207:15-209:10.)

without probable cause or reasonable suspicion "precludes the conclusion that the seizure was reasonable").

Further, there was no basis for the delay in seeking a warrant for Mr. Scott's cell phones. In other words, all of the information used in the search warrant was available to law enforcement on the day of the initial seizure. Thus, there was simply no reason why local law enforcement could not have promptly sought the warrant here.

The State's delay infringed Mr. Scott's possessory interest in his cell phones, undermined the efficiency of the criminal justice process, and was therefore unconstitutional. The evidence should be suppressed. See State v. Novembrino, 105 N.J. 95, 159 (1987) (court must apply exclusionary rule where seizure violates N.J. Constitution). Reversal of the trial court's order denying Mr. Scott's motion to suppress the evidence obtained from the cell phones is required.

CONCLUSION

For the aforementioned reasons, the trial court's decisions denying Mr. Scott's motions to suppress evidence obtained from his cell phones and cell phone location data should be reversed and the evidence should be suppressed; his sentence should be vacated; and the proceedings should be remanded.

Respectfully submitted,

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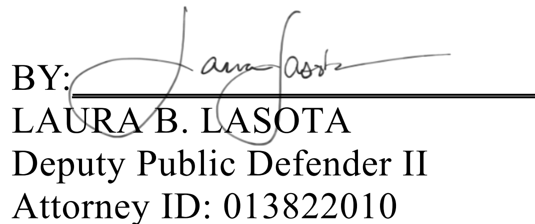

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Dated: April 8, 2025

FILED, Clerk of the Appellate Division, April 30, 2025, **A-000020-23**

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO. A-000020-23

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	On Appeal From a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Camden County
CHUCKY S. SCOTT A/K/A CHUCKY SCOTT	:	Indictment No. 18-02-00018-S
	:	
Defendant-Appellant.		Sat Below:
	:	Hon. John Thomas Kelley, J.S.C.,
	:	Hon. Francisco Dominguez, J.S.C., Hon. Christine S. Orlando, J.S.C.
	:	and Hon. Kurt Kramer, J.S.C.

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DEFENDANT IS CONFINED

FILED, Clerk of the Appellate Division, April 30, 2025, A-000020-23

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Legal Brief

Point 1

The judge made an error of law when she applied Ohio's good-faith exclusionary rule in this court case.

Precedent Case: **State v. Evers, 175 N.J. 355;815 A.2d 432;2003 N.J. Lexis 29**

New Jersey Supreme Court case ***Evers*** states to invoke the protections of the 4th Amendment and its New Jersey counterpart, Article 1 paragraph 7 defendant must show that a reasonable or legitimate expectation of privacy was trampled by government authorities.

United States Supreme Court Case (**Carpenter v. United States**) decided that to obtain cell-site and GPS location data officers require a search warrant based on probable cause. The trial court in my case has already ruled that there was in fact a violation of the new precedent set by the ***Carpenter*** decision. The issue the court took up was what states' exclusionary rule will apply in this case. The answer is clear and expounded on in the ***Evers*** case.

Evers starts off by stating "Ordinarily, this state's exclusionary rule will not be invoked to bar otherwise reliable and relevant evidence gather by law enforcement of another state over which New Jersey has no control or authority over, ***when those officers act in conformity with the federal constitution.*** In my case specifically while at the time the orders did comply federal law, the ***Carpenter*** case determined that the types of order utilized in my case did not meet 4th amendment constitutional standards and that there was in fact a legitimate expectation of privacy in the CSLI data which subjects the evidence gained from the court orders to the exclusionary rule.

State v. Evers (2003) NJ Supreme Court specifically states "The securing of evidence in violation of the 4th Amendment in another state would require New Jersey pursuant to the Supremacy Clause to apply the exclusionary rule as though the evidence had been wrongly obtained here. It further states "Also, it is clear that evidence obtained in another state in violation of the US Constitution is subject to the same rule of exclusion that would apply if the evidence had been obtained in the forum state." New Jersey being the forum state in this case means that New Jersey rule of exclusion applies.

(U.S Const. Art. VI. Cl. 2 see also Mapp supra 367. US at 651. 81. S Ct. at 1689-90. 6 L. Ed. 2d at 1087; Elkins supra. 364 U.S at 221-22. 80. S. Ct at 1446. 4 L. Ed 2d at 1679-80.)

When interpreted correctly the judge in this instance was supposed to apply New Jersey's exclusionary rule to the evidence admitted by this court and apply it as though the evidence had been obtain by officers of this state. Therefore the good-faith exception which does not apply to New Jersey jurisprudence as stated by State v. Novembrino New Jersey Supreme Court case (New Jersey courts declining to adopt the good-faith exception to the exclusionary rule.) should have not been used.

My case distinguishes from that of *Mollica* and *Minter* where the federal officers were acting in conformity with federal law because U.S v Carpenter determined that there was a reasonable expectation of privacy in cell site location data which consequently makes the court orders that were relied on by federal officers not meet the probable cause standard of the Fourth Amendment of the United States Constitution.

State v. Mollica 114 NJ 329.347.554 A 2d 1315 (1989)

State v. Minter 116 NJ 269.561.570 A2d (1989)

Point 2

The judge erred when he failed to suppress cell phone search warrant that utilized "illegally obtained statements" from interrogation that the judge himself previously ruled was unconstitutionally obtained.

The judge erroneously denied the fruit of the poisonous tree and applied the inevitability doctrine to the cellphone evidence because the search warrant affidavit relied on statements gained from an illegal interrogation in violation of the 5th and 6th Amendments of the United States Constitution. Consequently making the search warrant itself the fruit of the poisonous tree.

Point 3

The judge should have suppressed the cell phone passcodes and derivative evidence gain threw exploitation of the passcodes to conduct the search of the cell phone.

The judge ruled that the entire interrogation was done improperly and without the protections of Miranda and the presence of counsel and ordered the statements suppressed. Yet he failed to suppress the derivative evidence gained from use of the statements and passcodes. Specifically the search warrant affidavit and the passcode was used from the interrogation therefore making all subsequent evidence the fruit of the poisonous tree which should have been suppressed.

X Chuey Scott
2/4/25

FILED, Clerk of the Appellate Division, September 25, 2025, **A-000020-23**

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-00020-23T3

CRIMINAL ACTION

STATE OF NEW JERSEY, :

Plaintiff-Respondent, :

v. :

CHUCKY S. SCOTT,
A/K/A CHUCKY SCOTT, :

Defendant-Appellant.

On Appeal from a Final Judgment of Conviction of the Superior Court of New Jersey, Law Division, Camden County.

Sat Below:
Hon. John Thomas Kelley, J.S.C.
Hon. Francisco Dominguez, J.S.C.
Hon. Christine S. Orlando, J.S.C.
Hon. Kurt E. Kramer, J.S.C.

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September 25, 2025

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PRELIMINARY STATEMENT

Defendant is not entitled to a reversal of his convictions. The two arguments he raises on appeal are without merit because they contravene well established New Jersey Supreme Court precedent.

First, the motion court properly determined that the New Jersey Constitution did not apply to the conduct of ATF agents who sought and obtained defendant's cell-site information location from an Ohio state court judge. The ATF agents were conducting an independent federal investigation at the time they sought and obtained such information, and they did not seek such information to assist in a New Jersey investigation or prosecution. In fact, they were not even aware that offers in New Jersey were conducting a related state investigation at the time.

Defendant mistakenly argues that an agency relationship developed during the period when ATF was tracking his cell-phone location. But there is no evidence to support defendant's claim that ATF and New Jersey authorities "joined forces and pursued a combined investigation" at any time. Rather, substantial credible evidence in the record confirms and corroborates the motion court's finding that federal and state agencies merely started exchanging information about their respective independent investigations while ATF was still getting defendant's cell-site information location. That is significant

because, under well established New Jersey Supreme Court law, the mere exchange of information does not establish agency or serve to bring the conduct of federal agents under the color of state law. The motion court thus properly analyzed the admissibility of defendant's cell-site information location by resorting to federal law and Ohio law, and properly determined that the evidence was admissible under those constitutional standards.

Second, defendant waived his right to argue for suppression of evidence obtained from a search of his cell phones based on his newly minted allegation that the State unreasonably delayed in seeking a warrant to search those phones. Defendant never raised this issue in the Law Division before entering an unconditional guilty plea, so the issue is not cognizable on appeal. Our court rules require defendants to litigate constitutional issues by filing motions to suppress in the Law Division; such issues cannot be litigated for the first time in the Appellate Division. And where, as here, a defendant enters an unconditional guilty plea without raising an issue in the Law Division, thereby depriving the State of an opportunity to present relevant evidence in the Law Division, the issue must be deemed waived.

COUNTER-STATEMENT OF PROCEDURAL HISTORY

On February 6, 2016, a State Grand Jury returned Indictment No. 18-02-00018-S, charging defendant, Chucky Scott, with a total of thirty-five counts: first-degree racketeering, contrary to N.J.S.A. 2C:41-2c and N.J.S.A. 2C:41-2d (Count One); second-degree conspiracy, contrary to N.J.S.A. 2C:5-2 (Count Two); first-degree leader of a firearms trafficking network, contrary to N.J.S.A. 2C:39-16 (Count Three); first-degree promoting organized street crime, contrary to N.J.S.A. 2C:33-30 (Count Four); second-degree transporting firearms into this State for an unlawful sale or transfer, contrary to N.J.S.A. 2C:39-9i and N.J.S.A. 2C:2-6 (Count Five); nine counts of second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b and N.J.S.A. 2C:2-6 (Counts Six, Eight, Nine, Thirteen, Seventeen, Eighteen, Nineteen, Twenty-Eight, and Twenty-Nine); four counts of fourth-degree unlawful disposition of a handgun, contrary to N.J.S.A. 2C:39-9d and N.J.S.A. 2C:2-6 (Counts Seven, Eleven, Fifteen, and Twenty-One); five counts of fourth-degree unlawful possession of a large-capacity ammunition magazine, contrary to N.J.S.A. 2C:39-3j and N.J.S.A. 2C:2-6 (Counts Ten, Fourteen, Twenty, Twenty-Four, and Thirty); five counts of fourth-degree manufacture, transport, disposition of a large-capacity ammunition magazine, contrary to N.J.S.A. 2C:39-9h and N.J.S.A. 2C:2-6 (Counts Twelve, Sixteen, Twenty-Two, Twenty-Six, and Thirty-Three); two

counts of second-degree unlawful possession of an assault firearm, contrary to N.J.S.A. 2C:39-5f and N.J.S.A. 2C:2-6 (Counts Twenty-Three and Twenty-Seven); two counts of third-degree manufacture, transport, disposition of an assault firearm, contrary to N.J.S.A. 2C:39-9g and N.J.S.A. 2C:2-6 (Counts Twenty-Five and Thirty-One); fourth-degree manufacture, transport, disposition of a firearm, contrary to N.J.S.A. 2C:39-9d and N.J.S.A. 2C:2-6 (Count Thirty-Two); and two counts of third-degree financial facilitation of criminal activity, contrary to N.J.S.A. 2C:21-25 and N.J.S.A. 2C:2-6 (Counts Thirty-Four and Thirty-Five).[1] (Da1 to 47).[2]

On March 26, 2018, defendant joined in codefendant Folk's motion to suppress physical evidence and phone records, including "texts, call records, location history, photos, search history, etc." (Pa1 to 2). Defendant also filed a

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[1] Codefendants Eduardo Caban, Anthony Hammond, Eric Moore, Tymere Jennings, Jamal Folk, a/k/a "Ibraheem Abdullah," and Darren Harville were also charged in various counts of the indictment. (Da1 to 47). The codefendants are not involved in this appeal.

[2] Da refers to defendant's appendix.
Pa refers to the State's appendix.
1T refers to transcript dated August 21, 2018.
2T refers to transcript dated November 11, 2019.
3T refers to transcript dated August 17, 2021.
4T refers to transcript dated September 16, 2021.
5T refers to transcript dated May 25, 2022.
6T refers to transcript dated September 20, 2022.
7T refers to transcript dated January 13, 2023.

separate motion to suppress physical evidence seized during the stop of his car. (Pa2).

On August 21, 2018, following an evidentiary hearing, the Honorable John Thomas Kelley, J.S.C., suppressed defendant's statements to police but denied defendant's motion to suppress evidence seized from defendant's car and evidence recovered from defendant's cell phones. (1T210-3 to 10).

In May 2019, defendant filed a motion to suppress evidence seized from his cell phones due to an alleged violation of Franks v. Delaware, 438 U.S. 154 (1978). On November 4, 2019, the Honorable Francisco Dominguez, J.S.C., heard and denied defendant's motion. (2T).

On January 15, 2020, defendant filed a motion to suppress cell-site location information. (Pa3). On August 17, 2021, the Honorable Christine S. Orlando, J.S.C., conducted a hearing on defendant's motion, (3T), and on September 16, 2021, Judge Orlando denied defendant's motion. (4T27-7 to 8; Da49).

On September 20, 2022, defendant appeared before the Honorable Kurt E. Kramer, J.S.C., and pleaded guilty to Counts One and Three in accordance with a negotiated plea agreement. (6T; Da50 to 55). In exchange for defendant's guilty plea, the State agreed to recommend a sentence of twelve years in prison, subject to the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2, on Count

One, and a consecutive twelve-year sentence on Count Two. The State also agreed to dismiss all remaining counts at sentencing. (6T; Da50 to 55).

On January 13, 2023, Judge Kramer sentenced defendant in accordance with the plea agreement as follows: on Count One (first-degree racketeering), to twelve years in prison, with an 85% period of parole ineligibility under NERA; and on Count Three (first-degree leader of a firearms trafficking network), to a consecutive term of twelve years, flat. The court also imposed all mandatory fines and penalties. All remaining counts were dismissed. (7T7-25 to 14-12; Da56 to 63).

Defendant's Amended Notice of Appeal was filed as within time on September 8, 2023. (Da64 to 72).

COUNTER-STATEMENT OF FACTS

A. Facts Relevant to Defendant's Motion to Suppress Cell-Site Location Information and Call-Detail Records

In April 2017, Special Agent Teresa Petit of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") was working in the Columbus, Ohio field office of the ATF when she searched various law-enforcement databases and became aware that a gun had recently been recovered by police in Camden, New Jersey. (3T5-7 to 10-4; 3T37-24 to 38-5). She also learned that the gun had been purchased in Ohio by someone named Anthony Hammond only 134 days before it had been recovered by police in Camden. (3T9-15 to 10-4; 3T11-

12 to 22). The short period of time between the date the gun was purchased and the date it was recovered by law enforcement triggered suspicion that Hammond purchased the gun for purposes of diverting it for criminal use. (3T5-7 to 10-4).

Special Agent Petit started investigating Hammond, and she found out that Hammond's name appeared on several multiple-sales reports. (3T10-5 to 19). Those reports indicated that on numerous occasions, Hammond had purchased more than two firearms from the same gun dealer within a five-day period. (3T10-5 to 19). The reports also indicated that Hammond repeatedly bought the same types of firearms, which aroused further suspicion. (3T10-19 to 23).

Special Agent Petit performed a deconfliction query, to find out if Hammond was already under investigation by ATF or any other agency. (3T10-24 to 11-6). She learned that although there were no other active investigations involving Hammond, an ATF agent from the Camden field office had submitted an intelligence-based investigative report concerning the gun that had been purchased by Hammond and recovered in Camden. (3T11-7 to 11; 3T11-23 to 12-20; 3T26-13 to 15; 3T31-14 to 32-11). Special Agent Petit did not have any contact with state or local law-enforcement agencies in New Jersey, or the New Jersey State Police, concerning her investigation of Hammond at this time. (3T12-21 to 24; 3T31-8 to 10).

In May and early June 2017, Special Agent Petit's investigation revealed

that Hammond was continuing to buy firearms via multiple-sales transactions. (3T12-25 to 13-9; 3T38-2 to 39-1). Her investigation also revealed that Hammond had purchased about 35 firearms in total. (3T13-10 to 15).

Special Agent Petit obtained surveillance videos from a gun store where Hammond bought guns on multiple occasions. (3T13-16 to 14-21). She then reviewed the videos and realized that another person always accompanied Hammond during his gun purchases. (3T13-16 to 14-5; 3T35-20 to 36-17). At first, Special Agent Petit did not know the identity of the other person, but further investigation revealed that the other person was defendant. (3T13-16 to 14-25; 3T35-20 to 36-17; 3T42-13 to 45-6). The evidence suggested to Special Agent Petit that Hammond was merely a "straw purchaser," and that defendant was directing Hammond to purchase guns. (3T36-4 to 11).

Special Agent Petit learned of defendant's identity when she asked Detective Jerry Orick an ATF Task Force Officer from the Columbus Division of Police, to access the Columbus Division of Police Reporting System. (3T14-6 to 10; 3T47-5 to 49-25). Detective Orick conducted a query and found a Columbus police report in which Hammond and defendant were identified as victims of a burglary that had been reported in December 2016. (3T14-10 to 16; 3T49-10 to 20). The report indicated that defendant's Columbus home had been burglarized, and that firearms owned by Hammond had been stolen from the

home. (3T14-16 to 25; 3T49-10 to 20). Special Agent Petit and Detective Orick reviewed the burglary report on June 21, 2017, obtained a photograph of defendant from the Ohio Bureau of Motor Vehicles database, and realized that defendant was the same person who was with Hammond on the surveillance videos. (3T14-19 to 25; 3T17-7 to 9; 3T42-13 to 45-6; 3T49-10 to 20).

After learning this information, Special Agent Petit spoke with Special Agent Ryan Bell from ATF's Camden field office. (3T15-1 to 6; 3T26-13 to 15; 3T32-12 to 15). He advised her that a task force in New Jersey was conducting a narcotics investigation, and that some firearms purchased by Hammond had been recovered during that investigation. (3T15-7 to 16; 3T31-2 to 7; 3T32-16 to 35-2; 3T60-23 to 61-21). As before, however, Special Agent Petit did not have any contact with state or local law-enforcement agencies in New Jersey, or the New Jersey State Police, at that time. (3T15-17 to 22; 3T31-8 to 10).

When Special Agent Petit learned of defendant's identity, she also found out that defendant was from New Jersey, that there was a federal warrant for defendant's arrest, and that Hammond had purchased four firearms within the previous 24 hours. (3T15-23 to 16-8; 3T16-14 to 22; 3T63-23 to 64-3). Given those additional facts, coupled with the previously gathered information concerning Hammond and defendant's firearm trafficking, ATF made an

investigative decision to try to track Hammond and defendant through an "exigent cell phone ping," using the cell-phone numbers referenced in the police report for the burglary. (3T16-9 to 17-2; 3T35-3 to 40-5; 3T45-17 to 22; 3T50-1 to 55-22; 3T64-14 to 65-9; 3T65-21 to 67-3).

On June 22, 2017, the day after ATF learned of defendant's identity, Officer Orick submitted requests for exigent pings to the cellphone service providers that were providing cellphone service to defendant and Hammond; those providers authorized exigent pings that same day. (3T17-3 to 18-24; 3T30-21 to 31-2; 3T50-1 to 55-22; 3T63-4 to 64-10).

On July 23, 2017, Detective Orick submitted applications for the installation and use of pen register devices for defendant's cell phone and Hammond's cell phone. (3T18-3 to 13; 3T30-21 to 31-2; 3T56-2 to 60-13). A judge of the Court of Common Pleas in Ohio signed orders granting the applications the same day. (3T18-3 to 13; 3T30-21 to 31-2; 3T56-2 to 59-10).

Afterwards, Detective Orick served the applications and orders on the cellphone service providers that were providing cellphone service to defendant and Hammond. (3T59-22 to 24). Those providers, in turn, provided Detective Orick with GPS information related to the phones. (3T59-25 to 60-2). The New Jersey State Police was not involved in the application for exigent pings and pen register devices. In fact, Detective Orick did not have any contact with

anyone from the New Jersey State Police at that time. (3T55-23 to 56-1; 3T60-3 to 13).

ATF started receiving ping data concerning the location of Hammond's phone and defendant's phone late on the night of June 22, 2017. (3T18-1 to 10). The data revealed that Hammond and defendant were on a highway, traveling east from Ohio toward New Jersey through Pennsylvania. (3T18-25 to 19-10). By that time, Special Agent Petit and Detective Orick had seen defendant and Hammond driving a particular vehicle on the gun-store surveillance videos they had reviewed, so they contacted local law enforcement in the Camden area and asked them to be on the lookout for that vehicle. They said they suspected that the vehicle was occupied by two people, including a wanted fugitive, who were transporting firearms into New Jersey. (3T19-11 to 20-4; 3T27-1 to 30-21).

Special Agent Petit did not recall whether she and Detective Orick spoke with a specific officer that night or merely relayed the BOLO information to radio dispatch. (3T20-5 to 14). She and Detective Orick did recall, however, that they did not contact the New Jersey State Police at that time. (3T20-15 to 18; 3T31-8 to 10; 3T60-10 to 22).

Hammond and defendant were not stopped by law enforcement that night. (3T20-23 to 21-2 3T65-10 to 15; 3T81-1 to 4). The GPS pings indicated that they went to Camden, and then returned to Columbus, Ohio on June 24. (3T20-

19 to 21-6; 3T23-13 to 21; 3T65-10 to 13). Afterwards, ATF continued to get information concerning defendant's and Hammond's firearms purchases, continued to surveil defendant and Hammond, and received authorization to install a GPS tracking device on Hammond's vehicle. (3T21-7 to 20; 3T22-16 to 23-25; 3T40-17 to 41-17).

While ATF was conducting their federal investigation, Detective-Seargeant First Class Erik Hoffman of the New Jersey State Police was conducting an independent state investigation into a person named Eduardo Caban and his associates. (3T68-21 to 71-1). Initially, Caban was the target of a narcotics investigation, but in early June 2017, when an informant said he could purchase firearms from Caban, the focus of the investigation shifted to a weapons investigation. (3T71-2 to 74-6; 3T81-9 to 82-6).

The New Jersey State Police arranged several controlled gun buys between the informant and Caban in June 2017. (3T71-21 to 75-3). On June 3, 2017, the informant bought two firearms, and then an additional firearm later that same week. (3T74-14 to 75-3; 3T82-7 to 9; 3T90-22 to 91-10). Later in the month, the informant purchased three more firearms. (3T74-20 to 24; 3T78-9 to 15; 3T90-22 to 91-10). All the guns were brand-new, were still in their original cases, and had serial numbers. (3T75-22 to 25). The New Jersey State Police traced the guns bought by the informant by entering identifying data,

including serial numbers, into a law-enforcement database, and they learned that most of the guns had recently been purchased by Hammond in various gun stores in the Columbus, Ohio area. (3T75-4 to 76-13; 3T78-9 to 19; 3T82-7 to 84-12).

Sergeant Hoffman was not previously familiar with the name Anthony Hammond. But after he learned that Hammond had purchased most of the guns obtained from Caban, ATF Special Agent Ryan Bell informed him that Hammond was the subject of an ongoing investigation in Ohio. (3T76-14 to 77-11; 3T84-13 to 86-1; 3T91-11 to 94-17). Still, Sergeant Hoffman did not speak with anyone from Ohio, or become aware of defendant until July 6, 2017, when interested stakeholders from ATF and the New Jersey State Police, including Special Agent Petit and Sergeant Hoffman, participated in a conference call to discuss their respective investigations.[3] (3T22-4 to 15; 3T24-1 to 25-10; 3T40-9 to 16; 3T77-12 to 78-8; 3T86-12 to 95-20).

During that conference call, Special Agent Petit was told that the New Jersey State Police had an open investigation that had started out as a narcotics investigation before expanding into a weapons-trafficking investigation. She also learned how guns purchased by Hammond were recovered by law

[3] Judge Orlando found that the meeting took place on July 6. The judge noted that although Sergeant Hoffman was unclear as to the exact date of the meeting, Special Agent Petit "testified very clearly" that the meeting occurred on July 6. (4T19-9 to 14).

enforcement in New Jersey: the HIDTA task force was buying guns from Eduardo Caban, and most of the guns had been traced to Hammond. (3T22-4 to 15; 3T24-1 to 25-10; 3T26-6 to 25; 3T40-9 to 16).

Following the conference call on July 6, 2017, Special Agent Petit began sharing information with Sergeant Hoffman. (3T25-11 to 14). That information included the observations of Hammond and defendant at gun stores in Ohio, the police report referencing Hammond and defendant, and ping data from the phones owned by Hammond and defendant. (3T25-15 to 23; 3T97-10 to 98-15).

Before the conference call, Sergeant Hoffman did not know that Hammond and defendant had traveled to Camden on June 23, 2017. (3T78-24 to 80-25). He did not even know that ATF had requested ping information for defendant's phone and Hammond's phone. (3T80-9 to 25). And although he had been aware of a June 23 alert to be on a lookout for a vehicle suspected of being used in firearms trafficking, he did not know that the alert had any bearing on a New Jersey State Police investigation. (3T78-24 to 80-25).

On July 7, 2017, the New Jersey State Police had the informant make two more controlled buys from Caban: the first was for one gun and the second was for two guns. (3T98-16 to 24; 3T104-21 to 106-21). Sergeant Hoffman was conducting surveillance at that time, and he saw defendant enter and leave Caban's residence. (3T98-25 to 99-3; 3T106-13 to 22). The plan was to stop

defendant's car and arrest him after the second controlled buy, but defendant got away because surveillance personnel lost sight of his car in traffic. (3T99-4 to 104-14).

B. Denial of Defendant's Motion to Suppress Cell-Site Location Information and Call-Detail Records

At the hearing on the motion to suppress cell-site location information and call-detail records, three witnesses testified for the State: Special Agent Petit; Detective Orick; and Sergeant Hoffman. (3T). Judge Orlando assessed the testimony and demeanor of all three witnesses and found that all three presented "credible and reliable testimony." (4T5-26 to 7-4).

Judge Orlando found that "[b]oth the exigent ping request and pen register were acquired lawfully at the time under both federal and Ohio law," but "contrary to the existing law in New Jersey at the time." (4T14-1 to 7). The judge thus recognized that the fate of defendant's motion to suppress rested on whether New Jersey or Ohio law applied. (4T114-8 to 9). On this question, the judge explained that under State v. Evers, 175 N.J. 355 (2003), the New Jersey Constitution applies only to "the conduct of state officials" and "agents of the state who act beyond the state's borders to obtain evidence in state criminal prosecutions." (4T14-9 to 14). Conversely, the judge recognized, the New Jersey Constitution does not control the conduct of federal officers and officers of other states "operating in a foreign jurisdiction." (4T14-14 to 17).

Judge Orlando observed that "[f]ederal officers act in various states under federal jurisdictional powers pursuant to federal authorities and standards, and as a result, are treated as officers from another jurisdiction." (4T14-17 to 21). The judge also noted that in determining whether conduct by officers from a foreign jurisdiction should be analyzed under New Jersey law, "[t]he critical element" is whether an agency relationship existed between those officers and New Jersey law-enforcement officers. (4T14-21 to 15-1). That determination "requires an analysis of the entire relationship between the two government actors," (4T15-2 to 4), including "the actions taken by the officers involved and the processes used to find and collect and seize the evidence." (4T15-4 to 7).

Judge Orlando acknowledged that if the "overall purpose" of a federal agent's investigation is to obtain evidence for a state prosecution, the federal agent may be deemed an agent of the state under State v. Minter, 116 N.J. 259 (1989). (4T15-7 to 10). But the judge cautioned that under State v. Mollica, 114 N.J. 329 (1989), "mere contact, awareness of the ongoing investigation or the exchange of information does not necessarily translate to an agency relationship." (4T15-11 to 14).

Judge Orlando then discussed the facts of Mollica, where the FBI was conducting an independent investigation and obtained information in a manner that was lawful under federal law but not New Jersey law. (4T15-14 to 22). The

judge explained that although the FBI agents in Mollica had acted in a manner that violated New Jersey's constitutional protections against unreasonable searches and seizures, those protections "did not apply to the actions of federal officers acting independently and pursuant to federal law." (4T15-22 to 16-5).

Analogizing the facts of Mollica to the facts of this case, Judge Orlando found that, like the FBI in Mollica, ATF was "conducting an independent investigation" that "centered around Anthony Hammond," and that New Jersey state authorities were not investigating Hammond when the ATF investigation began. (4T16-6 to 19; 4T25-19 to 23). The judge further found that (a) ATF was acting "independently to investigate Hammond from the beginning of April 2017," (b) ATF did not communicate with New Jersey law-enforcement officers until July 6, 2017, and (c) Sergeant Hoffman did not find out about defendant until then. (4T18-23 to 19-20; 4T26-3 to 4). The judge analyzed the "entire relationship" between ATF and New Jersey law-enforcement officers, and ultimately concluded that "no agency relationship was developed with New Jersey that would have required invoking the New Jersey Constitution." (4T15-2 to 7; 4T19-20 to 22; 4T26-4 to 5). Rather, "ATF agents were acting in accordance with federal and Ohio state law when they obtained the court order from the Ohio judge." (4T19-23 to 25). The judge was thus convinced that Ohio law applied in determining whether the motion to suppress should be

granted. (4T19-25 to 20-2; 4T26-4 to 7).

Judge Orlando explained that under Ohio law and federal law in existence at the time, citizens had no reasonable expectation of privacy in cell-site location information obtained from a wireless carrier. (4T20-3 to 21-4). The judge further ruled that although police are no longer permitted to obtain such information without a warrant supported by probable cause, under Carpenter v. United States, 518 U.S. 296 (2018), application of the exclusionary rule would be inappropriate because the ATF agents reasonably relied in good faith on the law in existence at the time. (4T21-4 to 27-8).

C. Facts Relevant to Defendant's Motion to Suppress Contents of His Cell Phones

On July 9, 2017, at about 2:00 p.m.. Corporal Erick M. McFarland of the West Virginia State Police stopped defendant for speeding on an interstate highway. (1T5-14 to 15-9; 1T28-20 to 21; 1T75-1 to 76-10; 1T85-17 to 21; 1T149-23 to 151-20). When he approached defendant's vehicle, a Chrysler 300 sedan, he detected a "light odor of marijuana in the vehicle." (1T15-11 to 16-10; 1T28-21). He also noticed a female front-seat passenger. (1T16-16 to 19).

After asking defendant to move his car to a safer location, Corporal McFarland asked defendant to step out of the vehicle. (1T15-11 to 17-19). Defendant complied and sat in the front passenger seat of Corporal McFarland's police car. (1T17-16 to 18-14). Corporal McFarland then ran defendant's

license and found out that it was suspended, and that defendant had a prior conviction for driving while suspended. (1T18-15 to 19-1; 1T28-23). He also learned that defendant was wanted by the Social Security Administration for larceny, that there was a warrant for his arrest, and that he was considered armed and dangerous. (1T19-1 to 9; 1T112-5 to 7).

Defendant initially claimed that Corporal McFarland's information was inaccurate, and that he was not the person McFarland was describing. Corporal McFarland responded by asking dispatch to send him a photograph of the person in the law-enforcement database. (1T19-10 to 20-9). McFarland then showed the photo to defendant, who admitted it was a photo of himself. (1T19-22 to 23).

When asked where he was coming from and where he was going, defendant said that he and the female passenger had driven to New Jersey to visit college friends, that he had also visited family, and that they were now on their way back to Columbus, where they lived. (1T21-1 to 5). But Corporal McFarland already knew that defendant's car had been rented from the Detroit airport, so he did not find defendant's information to be credible. (1T21-6 to 13; 1T28-21 to 22; 1T86-21 to 87-13; 1T159-5 to 11).

After confirming that defendant had a warrant for his arrest and was considered armed and dangerous, Corporal McFarland performed a pat-down

frisk for weapons, placed defendant in handcuffs, directed the female passenger to step out of the Chrysler, and conducted a brief probable-cause automobile search of that vehicle, due to the odor of marijuana and a concern for possible weapons. (1T23-5 to 24-14; 1T87-17 to 100-9). In the trunk, Corporal McFarland found a black duffel bag with about $6,000 and some of defendant's personal possessions. (1T24-18 to 25-9; 1T65-21 to 24; 1T108-8 to 115-6; 1T141-23 to 143-4). Defendant later said that the money in the bag was his. (1T24-25 to 25-4). Also found in the car were two cell phones that belonged to defendant and one cell phone that belonged to the female passenger. (1T25-10 to 15; 1T63-11 to 20; 1T100-10 to 16 1T108-8 to 115-6; 1T141-23 to 145-9; 1T153-8 to 154-12; 1T156-12 to 157-21).

After searching the car, Corporal McFarland called for a canine unit to further investigate his suspicion of possible narcotics trafficking. (1T26-16 to 27-11). Corporal Eric Burke of the Wheeling Police Department and his canine partner, Ammo, responded to the call, and when Corporal Burke walked Ammo around defendant's car, Ammo alerted to presence of narcotics at the left rear corner of the car. (1T135-3 to 141-22; 1T161-2 to 184-5). The female passenger subsequently told Corporal Burke that other people who smelled of marijuana had been inside the car. (1T168-23 to 170-1; 1T181-6 to 182-6).

During the course of the stop, Corporal McFarland asked defendant for

consent to search his phones, but defendant declined. (1T66-11 to 71-16; 1T100-17 to 101-22; 1T131-15 to 21). Later, however, at police headquarters, defendant asked to get contact information that was stored in the phones. (1T64-9 to 18; 1T116-25 to 117-5). Corporal McFarlane said he could not return the phones to defendant, but he offered to get the information if defendant provided his passcodes for the phones. (1T64-9 to 18; 1T117-6 to 126-14). When defendant provided his passcodes, Corporal McFarlane accessed the phones and got the information defendant wanted. (1T64-13 to 23; 1T66-8 to 10; 1T67-17 to 19; 1T126-15 to 127-8; 1T131-15 to 132-1). Corporal McFarland also wrote the passcodes on pieces of tape and affixed the tape to the phones. (1T64-24 to 65-2; 1T108-8 to 19; 1T147-20 to 23).

Corporal McFarland did not apply for a search warrant for the phones because he was told that ATF was going to come get the phones and apply for a search warrant. (1T65-3 to 14; 1T108-8 to 110-8; 1T132-2 to 133-21; 1T151-21 to 153-4). ATF, however, never did pick up the phones, and the New Jersey State Police wound up retrieving them on September 8, 2017. (1T65-15 to 20; 1T132-2 to 12; 1T153-5 to 7; 1T155-2 to 156-11).

D. Denial of Defendant's Motion to Suppress Contents of His Cell Phones

Judge Kelley found Corporal McFarland and Corporal Burke to be credible witnesses. (1T200-2 to 16). The judge made factual findings that were

consistent with their testimony, (1T199-2 to 203-1), and the judge further found that Corporal McFarland is a "trained investigator who "did his job well." (1T200-6 to 9).

Judge Kelley recognized that Corporal McFarland was acting under the color of West Virginia law when he conducted the stop and search in this case, and that the corporal was unaware of any investigation conducted by New Jersey law enforcement. Accordingly, the judge applied West Virginia law to determine the lawfulness of the stop and search of defendant's vehicle. (1T203-1 to 205-1).

Judge Kelley found that Corporal McFarland lawfully stopped defendant for speeding and had probable cause to search the car based on the odor of marijuana and the alert from the drug-detection dog. (1T205-2 to 206-11). The judge also found that the search was justified under the search-incident-to-arrest exception to the warrant requirement. (1T206-12 to 207-12).

Judge Kelley next addressed the admissibility of defendant's statements to police. The judge suppressed the statements after finding that defendant was in custody and was subjected to interrogation without being informed of his Miranda rights. (1T207-15 to 209-10). Nonetheless, the judge was satisfied that the officers would have obtained and in fact did obtain a Communications Data Warrant (CDW) for the phones, and that law enforcement would have

inevitably discovered all the information in the phones by virtue of the CDW. (1T209-11 to 210-9).

E. Defendant's Factual Basis

As a factual basis for his guilty plea to first-degree racketeering and first-degree leader of a narcotics trafficking network, defendant admitted that, between April 2016 and July 9, 2017, he and at least six other people were involved in a weapons trafficking enterprise. (5T27-8 to 12). Defendant also admitted that, in furtherance of that enterprise, he directed someone in Ohio (referred to as a straw purchaser in the factual basis) to buy brand-new weapons for him from sporting-goods stores in Ohio and armslist.com. (5T27-13 to 17). He also admitted that he gave the straw purchaser money to buy the firearms for him. (5T27-18 to 20).

After the firearms were purchased, defendant photographed the guns and determined what price he could sell them for in New Jersey. (5T27-21 to 28-2). Photos of the guns and their prices were then sent to multiple people in New Jersey known as middlemen, who were responsible for finding buyers for the guns. (5T28-4 to 11). Defendant would pay these middlemen for helping him find buyers for the firearms, or he would allow them to take some of the profits from the sale of the firearms. (5T28-12 to 16).

After the straw purchaser bought the weapons, and after the middlemen

found buyers for the weapons, defendant would travel to Camden, New Jersey, with the weapons, for the purpose of selling the weapons. (5T28-17 to 21). The prices for the weapons were higher than the typical cost. (5T28-22 to 25).

Defendant agreed that, by bringing the weapons from Ohio to New Jersey, and by selling them at a high price, he was affecting trade or commerce in the State of New Jersey. (5T29-1 to 5). He also agreed that he engaged in this conduct on at least two occasions. (5T29-6 to 8). He also agreed that, during the 18-plus months the enterprise was in operation, he brought at least nine firearms from Ohio to Camden, where they were ultimately sold to a New Jersey State Police operating unit. (5T29-9 to 14).

Regarding Count Three, defendant admitted that, between April 2016 and July 2017, he entered into an agreement with at least two other people to sell weapons. (5T30-3 to 7). He also admitted that although he did not have "any specific title" within the conspiracy, he acted as the leader and "organized everything." (5T30-8 to 11; 5T31-13 to 32-1). As the leader, he organized the obtaining of weapons that would be sold in Camden and set prices for the weapons. (5T30-12 to 18). That meant he could and would refuse to sell weapons below a certain price. (5T30-19 to 31-15).

LEGAL ARGUMENT

POINT I

THE MOTION COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS CELL-SITE LOCATION INFORMATION LAWFULLY OBTAINED BY ATF AGENTS IN ACCORDANCE WITH OHIO LAW AND IN FURTHERANCE OF AN INDEPENDENT FEDERAL INVESTIGATION.

There is more than sufficient credible evidence in the record supporting the factual findings underlying the motion court's conclusion that ATF and the New Jersey State Police were conducting independent investigations, and that the two agencies did not have an agency relationship that would require ATF to comply with the New Jersey Constitution while obtaining cell-site location information from an Ohio judge. This Court should not overturn factual findings by a lower court where, as here, they are amply supported by sufficient credible evidence in the record, and this Court is thus bound to affirm.

The New Jersey Supreme Court has long recognized that when a foreign law-enforcement agency obtains evidence under legal standards that are less protective than New Jersey's, the evidence will nonetheless be admissible in a New Jersey court, so long as the evidence was obtained during an independent investigation, in accordance with the standards of the foreign jurisdiction, and no agency relationship existed between the two jurisdictions with respect to the collection of the evidence for the crime at issue. State v. Mollica, 114 N.J. 329,

345-58 (1989); accord State v. Evers, 175 N.J. 355 (2003); State v. Knight, 145 N.J. 233, 259 (1996).[4] This legal principle is commonly referred to as the "silver-platter doctrine." Mollica, 114 N.J. at 346-47.

In discussing the silver-platter doctrine, the New Jersey Supreme Court has stated: "With regard to law-enforcement activities, a state constitution ordinarily governs only the conduct of the state's own agents or others acting under color of state law." Id. at 345. But a state constitution cannot be applied to federal officers exercising only the lawful authority of the United States. Nor can it be applied to officers of another state "exercising only the lawful authority of that state." Ibid.

The underlying rationale for the silver-platter doctrine is a recognition that "protections afforded by the constitution of a sovereign entity control the actions only of the agents of that sovereign entity." Id. at 347. A state constitution thus governs only the law-enforcement activities of "the state's own agents or others who are acting under color of state law." Id. at 345.

[4] In this appeal, defendant makes no claim that law enforcement violated federal law or Ohio law in obtaining his cell-cite location information from an Ohio judge. He only claims he was deprived of his rights under the New Jersey Constitution if New Jersey law were to apply. See State v. Earls, 214 N.J. 564 (2012), and State v. Manning, 240 N.J. 308 (2020).

As the New Jersey Supreme Court explained in Evers, "[n]o purpose would be served by applying New Jersey's constitutional standards to people and places over which the sovereign power of the state has no power or control." 175 N.J. at 371. Indeed, Article I, Paragraph 7 of our State Constitution protects the rights of people within New Jersey from unreasonable searches and seizures by state officials and agents, but its jurisdictional power does not extend to those who "act beyond the state's borders" unless they are "agents of the state" seeking to procure evidence "for criminal prosecutions in our courts." Ibid.

The same principle "explains why the conduct of ordinary citizens acting only in their capacity as private individuals will not trigger the constitutional protections that would otherwise apply if the identical acts were undertaken by government agents exercising governmental authority." Id. at 347. Just as a state's constitution "will not be invoked to control the conduct of its private citizens," a state constitution does not control the conduct of federal law-enforcement officers, law-enforcement officers from other states, and law-enforcement officers from foreign countries. Id. at 347-53.

Because the New Jersey Constitution provides broader protections than the United States Constitution and the constitutions of other states in a variety of contexts, New Jersey courts must always remember that the New Jersey Constitution has "inherent jurisdictional limitations." Id. at 352-53. And

because of those limitations, "application of the state constitution to the officers of another jurisdiction would disserve the principles of federalism and comity, without properly advancing legitimate state interests." Id. at 353.

The New Jersey Supreme Court has recognized that our state's "constitutional goals" are not "compromised" by a "search and seizure conducted by officers of another jurisdiction." Ibid. That is because our exclusionary rule exists to "deter unlawful police conduct," and to vindicate the impairment of state constitutional rights, but those values are not "genuinely threatened" when officers from another jurisdiction act independently, "under the authority and in conformity with the law of their own jurisdiction." Id. at 354. See Evers, 175 N.J. at 376 (noting that when law-enforcement officers from another jurisdiction seize "otherwise reliable and relevant evidence" in conformity with the Federal Constitution, "[t]he prospect of deterrence is more remote, as is the judicial taint from acceptance of the evidence," if New Jersey officers "have not profited from their own wrongdoing") (internal quotation marks omitted).

As the Mollica Court explained, "it does not offend the constitutional principles of a forum jurisdiction to allow the transfer of evidence from the officers of another jurisdiction to those of the forum when the evidence has been obtained lawfully by the former without any assistance by the latter." Id. at 353.

Indeed, "no purpose of deterrence relating to the conduct of state officials is frustrated" in such contexts, "because it is only the conduct of another jurisdiction's officials that is involved." Id. at 354. See Evers, 175 N.J. at 376 ("Ordinarily, this state's exclusionary rule will not be invoked to bar otherwise reliable and relevant evidence gathered by law enforcement officers of another jurisdiction over which our state has no control or authority, when those officers act in conformity with the Federal Constitution.")

When New Jersey prosecutors and police seek to use evidence obtained by federal law-enforcement officers, or officers from another state, our state constitution will apply only if an agency relationship exists between the two sovereigns with respect to the search and seizure of the evidence at issue. Id. at 349, 355-56. And, in deciding whether an agency relationship existed, a court should examine "the entire relationship between the two sets of government actors no matter how obvious or obscure, plain or subtle, brief or prolonged their interactions may be." Id. at 355. A court should also examine "[t]he reasons and the motives for making any search . . . as well the actions taken by the respective officers and the process used to find, select, and seize the evidence." Id. at 355-56.

In this regard, "antecedent mutual planning, joint operations, cooperative investigations, or mutual assistance between [the two jurisdictions] may

sufficiently establish agency and serve to bring the conduct of the [foreign] agents under the color of state law." Id. at 356. But "mere contact, awareness of ongoing investigations, or the exchange of information may not transmute the relationship into one of agency." Ibid. (emphasis added).

Ultimately, a determination concerning the existence or non-existence of an agency relationship between law-enforcement entities "will always pose a fact-sensitive exploration that is influenced greatly by the surrounding circumstances." Id. at 357; accord Knight, 145 N.J. at 259 ("Resolving the agency issue entails a fact-sensitive inquiry."). For that reason, factual findings underlying a trial court's opinion regarding the existence or non-existence of an agency relationship are entitled to deference and may not be overturned on appeal if supported by sufficient credible evidence in the record. State v. Johnson, 42 N.J. 146, 162 (1964).

In Mollica, the Federal Bureau of Investigation ("FBI") received several anonymous telephone calls advising that a particular person (Ferrone) had recently operated an illegal bookmaking enterprise from rooms occupied in a New Jersey hotel. Id. at 335. The anonymous caller also stated that Ferrone had made telephone calls from his hotel rooms to bookmakers, and to various sports lines and weather services to obtain the latest point spreads and weather conditions. Ibid. After getting this information, the FBI started "an independent

investigation" and, without a warrant, obtained telephone toll records for the rooms Ferrone occupied during the period of his stay at the hotel. Ibid. Those toll records confirmed the information provided by the anonymous informant, who later told the FBI that Ferrone had been assisted by another person (Mollica), who occupied a different suite of rooms in the same hotel. Ibid.

Shortly after getting the telephone toll records, the FBI turned them over to the New Jersey State Police. Id. at 335-36. The New Jersey State Police then used the toll records to get a warrant to search the hotel rooms occupied by Ferrone and Mollica. Id. at 336. That search revealed paraphernalia and equipment used in bookmaking operations, and both defendants were arrested on charges of promoting gambling and possession of gambling records. Ibid.

Ferrone and Mollica moved to suppress evidence, complaining that seizure of their telephone toll records without a warrant violated their state constitutional rights, and that the search warrants were defective because they were based on the illegally obtained toll records. Ibid. The trial court agreed, ruling that (a) hotel telephone toll call billing records relating to an occupant's use of a hotel-room telephone were protected under the New Jersey Constitution from unreasonable searches and seizures, and (b) suppression was required even though the FBI, in getting the toll billing records, had "acted independently of the State Police and in conformity with federal law." Ibid.

This Court affirmed the trial court's decision in an unpublished opinion, id. at 336-37, but the New Jersey Supreme Court granted the State's motion for leave to appeal and reversed. Although the New Jersey Supreme Court agreed that telephone toll billing records from a hotel room are constitutionally protected under our state constitution and may not be seized without a warrant, id. at 340-45, the Court explained that the telephone toll records in Mollica were "obtained by federal agents exercising federal authority in a manner that was in conformity with federal standards and consistent with federal procedures." Id. at 354. The Court further observed that "[o]nce seized legally, no legal prohibition barred the interjurisdictional transfer of this evidence." Ibid. The Court even equated the FBI's transfer of telephone toll records to a transfer of evidence from a private citizen, which does not "implicate constitutional limitations." Id. at 355.

The Mollica Court was satisfied that the trial court had "examined the actual relationship between the federal and state police officers in terms of the initial search and seizure of the hotel telephone toll records," and that "its factual findings supported a conclusion that the federal officers were not agents of the New Jersey State Police." Id. at 357. The Court also stated that if there was in fact "an insufficient connection between the respective officers," the State was permitted to use the seized evidence in its criminal prosecution of defendants.

Ibid. Nonetheless, because "the relationship between the federal officers and the State Police was not sufficiently developed or examined to ascertain whether the federal officers were acting 'under color of state law,' the Court remanded the matter so that the trial court could reconsider its findings in light of the Court's opinion, and "determine anew the issues of intergovernmental cooperation, agency and state action either on the existing or a supplemental record." Id. at 357, 358.

In State v. Minter, 116 N.J. 269 (1989), federal agents conducted an investigation in accordance with federal wiretap law and intercepted a telephone call that would have been admissible in a federal court proceeding. Id. at 271, 274-75. The federal agents, however, did not follow procedures demanded of state agents under New Jersey's wiretap law. Id. at 271, 275-76. The New Jersey Supreme Court recognized that a state agent's failure to comply with state law would result in the exclusion of the evidence in a state prosecution, id. at 278-79, but the Court also recognized that, "absent participation by State officers . . . , no principles or policies of the exclusionary rule would call for the categorical exclusion from state court proceedings of wiretap evidence that has been obtained by federal officers in accordance with federal law but not state wiretap requirements." Id. at 280.

In Evers, the New Jersey Supreme Court held that our state's exclusionary rule should not be invoked where a New Jersey law-enforcement officer secured a warrant to search a home by relying in part on information that a California officer obtained from a Virigina corporation in accordance with a California search warrant. Id. at 364-66, 371, 374-80. The Court explained that "[o]ur State Constitution has no ability to influence the behavior of a California officer who does not even know that New Jersey has an interest in a matter he is investigating." Id. at 371. Also, the Court observed that "[n]one of New Jersey's interests ordinarily advanced by the exclusionary rule would be vindicated . . . by suppressing evidence "gathered out-of-state" absent any "allegation of insolence in office by New Jersey law enforcement authorities," or any suggestion that a New Jersey officer "played any role in, or indeed, had any knowledge of, the issuance of the California warrant . . . ." Id. at 379-80.

The Evers Court concluded that applying the exclusionary rule in such circumstances "would advance none of its purposes – deterrence, judicial integrity, and imposing a cost on illicit behavior – and would disserve the process of doing justice in this state by preventing the introduction of reliable and relevant evidence in a criminal prosecution." Id. at 379-80. The State could thus use the evidence without offending "the integrity of our judicial process." Id. at 380.

Here, Judge Orlando discussed Mollica, Minter, and Evers extensively while examining the "entire relationship between the two sets of government actors." Id. at 355. Ultimately, the judge concluded that no agency relationship existed because ATF's investigation was independent. That conclusion was based on factual findings that are entitled to deference because they are well supported by sufficient credible evidence in the record. See Johnson, 42 N.J. at 162. Indeed, the record makes clear that the New Jersey State Police did not direct, request, recommend, or participate in the ATF application for GPS ping data and pen registers. The record is equally clear that ATF requested ping information for their own federal investigation, not to gather evidence for a New Jersey state prosecution. Also, the factual record shows no "antecedent mutual planning, joint operations, cooperative investigations, or mutual assistance between federal and state officers . . . [to] establish agency and serve to bring the conduct of the federal agents under the color of state law." Mollica, 114 N.J. at 356.

The mere fact that the ATF and the New Jersey State Police had a conference call to discuss their respective investigations, and shared information with each other, including GPS-ping information, does not change the result. As Mollica instructs, "mere contact, awareness of ongoing investigations, or the

exchange of information may not transmute the relationship into one of exigency." Ibid. (emphasis added)

Defendant mistakenly asserts that Judge Orlando found that ATF and New Jersey state authorities developed an "agency relationship" and started pursuing a "combined investigation" as of July 6. (See Db1; Db10-11; Db19). But the judge made no such findings. The judge merely pointed out that ATF did not start communicating with New Jersey authorities, to discuss their independent investigations, until July 6. The judge did not find that the federal and state investigations morphed into a joint investigation as of July 6, or that an agency relationship existed as of July 6. In fact, there would have been no basis in the record for either finding. The most that can be said is that ATF and New Jersey law-enforcement officers had a conference call on July 6 and started exchanging information at that time. But again, multi-agency contact and exchange of information is not enough to trigger a finding of agency under Mollica. See 119 N.J. at 356.

Defendant also complains that the trial court failed to consider "the entire relationship" between ATF and New Jersey authorities, "prematurely cutting off the analysis at the start of the search and ignoring that, by July 6 at the latest, there was a joint investigation." (Db17). But that criticism is similarly unfounded. Judge Orlando expressly referenced the need to consider "the entire

relationship" between the federal and state agencies, (4T15-2 to 7), and the judge never suggested she was "cutting off the analysis at the start of the search." In fact, the record makes clear that the judge did consider "the entire relationship," not just the relationship that existed when ATF first requested the ping data, and ultimately found there was no joint investigation even after July 6. (4T15-2 to 7; 4T19-20 to 22; 4T26-4 to 5).

To be sure, if state law-enforcement officers actively "participate in a search" initiated by a foreign agency "before the object of the search [is] completely accomplished," an agency relationship may be found to exist. Lustig v. United States, 338 U.S. 74, 79 (1949) (plurality opinion). And a finding of agency under such circumstances will trigger application of the state constitution regardless of whether state officers "originated the idea or joined in it while the search was in progress." Ibid.

But here, New Jersey law enforcement officers did not "participate" in ATF's request for exigent pings and pen registers. Indeed, New Jersey officers did not ask or direct ATF to get cell-site location information ("CSLI") for defendant. Nor did New Jersey officers help ATF prepare applications for CSLI. In fact, New Jersey officers were unaware that ATF had requested CSLI until after the fact, and they did not even know that ATF was investigating defendant, or that defendant was connected to their state investigation, until two days before

defendant's arrest. Also, ATF requested CSLI for defendant and Hammond to further an independent federal investigation, not to obtain evidence for a state prosecution. See Evers, 175 N.J. at 371 (noting that New Jersey Constitution applies to "agents of the state who act beyond the state's borders in procuring evidence for criminal prosecutions in our courts," but not to officers of foreign jurisdictions who act in furtherance of their own independent investigations).

And although ATF started sharing CSLI with New Jersey law enforcement while such information was still being received by ATF, the passive receipt of such evidence by New Jersey officers did not mean that New Jersey officers "had a hand" in the search. Again, under Lustig, active participation is required. See Lustig, 338 U.S. at 78-79 (noting that the "crux" of the silver-platter doctrine is that a law-enforcement officer will be deemed to have participated in a search if that officer "had a hand in it," but not if evidence is "secured" by officers from a foreign law-enforcement agency and merely "turned over . . . on a silver platter").

Any alternative result would mean that no New Jersey law-enforcement officers could even passively receive information from a foreign law-enforcement agency conducting an independent but still-ongoing search without first ensuring that the already-commenced search satisfied New Jersey law. That is simply not required. See Minter, 116 N.J. at 285 (noting that "[m]any

independent federal investigations conducted in good faith and in accordance with federal law will produce untainted evidence of criminal activity in New Jersey," and "[i]t would be regressive and serve no interests of our citizens to preclude the use of such evidence in a state criminal proceeding").

Defendant is essentially asking this Court to hold for the first time that if foreign law-enforcement officers merely provide New Jersey officers with information obtained from an ongoing search in another jurisdiction, they become agents of New Jersey acting under color of New Jersey law. But such a holding would contravene binding precedent from Lustig, Mollica, Minter, and Evers, with dire consequences. It would mean, for example, that if officers from another state were to conduct a wiretap in that other state, and learn about a past, present, or future crime in New Jersey while the wiretap was still active, they could not disclose such information to New Jersey authorities for use in a New Jersey state prosecution unless New Jersey authorities first ensured that the foreign wiretap would satisfy New Jersey wiretap laws if conducted in New Jersey. This would be unnecessary and unreasonable.

Instead of focusing on Mollica and other New Jersey Supreme Court cases, defendant primarily relies on the out-of-state intermediate court opinion in State v. Johnson, 879 P.2d 984 (Wash. Ct. App. 1994), but that reliance is misplaced. In Johnson, the United States Drug Enforcement Administration

("DEA") received information from an informant concerning a marijuana grow operation, and two DEA agents commenced their investigation by speaking to a local law-enforcement officer to confirm the information provided by the informant. Id. at 987. The local officer then accompanied the DEA agents to the subject property, where all three gathered intelligence. Ibid. On two other occasions, local law enforcement took aerial photographs of the property, at the request of the DEA, and then turned the photographs over to the DEA. Ibid. Later, the DEA agents trespassed onto the property, smelled marijuana as they approached a barn on the property, heard machinery they associated with a potential grow operation, and used a thermal imaging device to get readings corroborating their suspicions. Ibid. The DEA agents then applied for a search warrant, which was granted, and the warrant was executed by multiple state and local officers working in tandem with the DEA. Ibid. Some of the seized evidence was turned over to local authorities, who also took custody of the defendant himself upon arrest. Ibid.

Based on these unique facts, the Court of Appeals of Washington was satisfied that the DEA agents and local law-enforcement officers "were cooperating to an extent sufficient to trigger state constitutional protection." Id. at 990. In reaching this conclusion, the Johnson court characterized the contacts

between state and federal authorities as "substantial" and "extensive." Id. at 989-90.

Notably, the Johnson panel made clear that its decision was compelled by the particular facts of the case, and took pains to distinguish State v. Gwinner, 796 P.2d 728 (Wash. Ct. App. 1990), which held that the mere "transfer of information by telephone" does not establish an "agency" relationship. Id. at 989. The panel also cautioned that absent a showing of agency, "evidence that is lawfully obtained by federal officers pursuant to federal law is admissible in . . . courts of this state even if the . . . State Constitution would have required exclusion of evidence obtained in a similar manner by state officials." Id. at 988.

The facts of this case are vastly different from those in Johnson. Unlike Johnson, this case reveals none of the "antecedent mutual planning, joint operations, cooperative investigations, [and] mutual assistance between federal and state officers" that would "sufficiently establish agency and bring the conduct of the federal agents under the color of state law." See Mollica, 114 N.J. at 356. In fact, this case is much more akin to Gwinner than Johnson because, as in Gwinner, this case involves the mere sharing of information between federal and state law-enforcement agencies by telephone, without those agencies combining their investigative efforts into a joint investigation. See also

State v. Brown, 940 P.2d 546, 583-91 (Wash. 1997) (following Gwinner and distinguishing Johnson in death-penalty case)

In sum, Judge Orlando properly found no agency relationship between ATF agents and New Jersey law-enforcement authorities requiring invocation of the New Jersey Constitution with respect to the ATF's accumulation of defendant's cell-site location information. The judge reached this conclusion based on factual findings that are well supported by sufficient credible evidence in the record. Those factual findings are entitled to deference and should not be second-guessed by this Court. See Johnson, 42 N.J. at 162. Defendant's arguments should be rejected, and his convictions should be affirmed.

POINT II

DEFENDANT WAIVED HIS RIGHT TO ARGUE THAT THE CONTENTS OF HIS CELL PHONES MUST BE SUPPRESSED DUE TO THE ALLEGED UNTIMELINESS OF THE STATE'S APPLICATION FOR A WARRANT TO SEARCH THE PHONES.

Defendant made very specific arguments in support of his motion to suppress the contents of his cell phones. He is raising very different arguments for the first time on appeal: arguments that were not raised below and must be deemed waived in light of defendant's unconditional guilty plea. This Court should reject defendant's arguments wholesale. He is not permitted to raise new issues on appeal that he did not raise below. This Court should refuse to consider

issues raised for the first time on appeal because those issues were not properly developed and must be deemed waived.

In his brief to the trial court, defendant argued that the search of his vehicle and the seizure of his phones was unconstitutional because Corporal McFarland lacked probable cause or even a reasonable articulable suspicion that a search would reveal evidence of criminal wrongdoing. (Pa4 to 20). The State submitted a letter-brief in opposition to the specific points raised by defendant. (Pa21 to 50). The State also introduced testimony that was relevant to the issues raised by the defense, (1T4-9 to 184-14), and the trial court ultimately ruled on the merits of defendant's claims. (1T199-2 to 210-25).

On appeal, defendant is no longer arguing that Corporal McFarland searched his vehicle without probable cause and unlawfully seized his cell phones. Instead, defendant is now advancing a brand-new argument that was never raised below, i.e., whether there was too long of a delay between the time when Corporal McFarland seized his phones in West Virginia and the time when the New Jersey State Police obtained a warrant to search the phones in New Jersey. This new argument cannot be considered on appeal because it was not raised below and must be deemed waived.

It is well established that "a defendant who pleads guilty is prohibited from raising, on appeal, the contention that the State violated his constitutional

rights prior to the plea." State v. Knight, 183 N.J. 449, 470 (2005) (quoting State v. Crawley, 149 N.J. 310, 316 (1997)). There are only three exceptions to this waiver rule, none of which apply here. The first exception is provided for in R. 3:5-7(d), which permits a defendant to challenge on appeal an unlawful search and seizure of physical evidence after entering a guilty plea. Ibid. The second exception, provided for in R. 3:28-6(d), permits a post-guilty-plea appeal from an order denying entry into a pre-trial intervention program. Id. at 471. Lastly, if a defendant enters a conditional guilty plea under R. 3:9-3(f), the defendant may appeal those issues expressly preserved. Ibid.

Here, the second and third exceptions plainly do not apply. Defendant is not appealing from an order denying entry into PTI, and his plea was non-conditional. That leaves the first exception, which also does not apply because the rule does not allow a party to raise new search-and-seizure issues in an appeal following a guilty plea, but only previously raised search-and-seizure issues that were litigated below, developed on the record, and decided by the trial court.

The wording of the rule bears emphasis. R. 3:5-7(a) states that when a defendant believes he was the victim of an unlawful search and seizure, he may file a motion to suppress evidence and demand the return of his property: "On notice to the prosecutor . . . , a person claiming to be aggrieved by an unlawful

search and seizure and having reasonable grounds to believe that the evidence obtained may be used against him or her in a penal proceeding, may apply to the Superior Court in the county in which the matter is pending . . . to suppress the evidence and for the return of the property seized (1) without a warrant if the matter involves an indictable crime or (2) where the search warrant was issued by a Superior Court judge, even though the offense charged or to be charged may be within the jurisdiction of the municipal court. . . . ."

Further, R. 3:5-7(d) expressly states that a defendant can raise search-and-seizure issues on appeal, notwithstanding the entry of a guilty plea, but only if the issues were litigated via a motion to suppress in the Law Division: "Denial of a motion made pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a guilty plea." (Emphasis added).

Finally, R. 3:5-7(f) addresses the consequences of a failure to move to suppress: "If a timely motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the ground that such evidence was unlawfully obtained."

Because defendant did not file a motion to suppress based on the issue he is belatedly raising now, and because the State was thus deprived of an

opportunity to offer evidence relevant to this previously unraised issue in the Law Division, the issue does not fall under the umbrella of R. 3:5-7(d) and must instead be deemed waived under R. 3:5-7(f). See State v. Jenkins, 221 N.J. Super. 286, 292 (App. Div. 1987) (observing "[i]t is now well-established that constitutional claims, such as Fourth Amendment rights, may be waived unless properly and timely asserted"), certif. denied, 113 N.J. 343 (1988).

Defendant cites to no New Jersey cases to support his newly minted argument that an unreasonable delay in obtaining a warrant to search a cell phone renders the seizure of the phone unreasonable and triggers the exclusionary rule. The State's research has revealed no published New Jersey cases addressing this issue, and the only New Jersey case that appears on point is the unpublished Law Division decision in State v. Ellis, Ind. 23-12-1316-I, 2024 N.J. Super. Unpub. LEXIS 3039 (Law Div. Nov. 20, 2024).[5] (Pa51 to 61). In that case, a trial judge granted a motion to suppress evidence recovered from a defendant's cell phone where the State offered no evidence or explanation to justify a 230-day delay in seeking a motion to search that phone. Ibid.

The trial judge in Ellis discussed decisions from various federal and state courts holding that a seizure, although reasonable at its inception, may become

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[5] Pursuant to R. 1:36-3, the State represents that it is unaware of any other unpublished decisions in New Jersey addressing this issue.

unreasonable because of its duration. (Pa56 to 60). The judge noted, however, that there is “no bright line past which a delay becomes unreasonable,” and that the reasonableness of a delay is a “fact-sensitive task” that must be “determined in light of all the facts and circumstances, and on a case-by-case basis.” (Pa56) (internal quotations omitted). The judge in Ellis also referenced various factors that have been considered by federal and state courts in determining whether delays were reasonable or unreasonable, including: (a) the significance of the interference with the person’s possessory interest; (b) the duration of the delay; (c) whether the person consented to the seizure; (d) whether the person demanded return of the property; (e) the nature of the seized property; (f) the government’s legitimate interest in holding the property as evidence; (g) the nature and complexity of the investigation; (h) whether delays were attributable to other law-enforcement agencies; (i) the quality of the application for the warrant and the amount of time expected to complete same; (j) whether law enforcement had probable cause at the time of the seizure; (k) whether law enforcement offered the person an opportunity to copy data while the original was maintained, or offered to provide contact information and other data stored in the property; (l) whether the person’s ability to use the property was limited by incarceration or other incapacity; and (m) any other evidence proving or disproving law enforcement’s diligence in obtaining the warrant. (Pa56 to 60).

Here, the record is silent as to virtually all these factors, precisely because defendant did not move to suppress the contents of his phones due to delay between the seizure of the phones and the State's application for a warrant to search those phones. If defendant had moved to suppress the contents of his phones on that basis, the State would have had a full and fair opportunity to rebut defendant's arguments and introduce evidence concerning the factors discussed in Ellis, including the reasons for the delay, defendant's failure to ask that his phones be returned, and the fact that police offered to provide personal information and other data stored in the phones. See United States v. Stabile, 633 F.3d 219, 235-36 (3d Cir.) (where a three-month delay in securing a warrant to search a defendant's computer was not unreasonable, because the prosecution offered sound reasons for the delay, and defendant never demanded the return of the computer), cert. denied, 565 U.S. 942 (2011); see also United States v. Johns, 469 U.S. 478, 487 (1985) (finding that defendants who never sought return of their property could not argue that a delay in searching same adversely affected their Fourth Amendment rights).

Defendant nonetheless seeks to capitalize on deficiencies in the record by claiming that the record reveals no reasons justifying the delay in seeking a search warrant. But again, the record is deficient only because defendant chose

not to raise the issue below, and it would be a perverse injustice to allow the defense to benefit from deficiencies for which it is solely responsible.

Further, this Court should reject defendant's erroneous claim that he would have been "free to use" his phones if there had been no delay in seeking a warrant to search them. (See Db25). The phones were seized as evidence during a search incident to defendant's arrest, and the police found evidence of criminal activity on the phones after a Superior Court judge granted the State's application for a warrant to search them. As such, defendant was not prejudiced by the delay in seeking the search warrant. Regardless of the length of time between the seizure of the phones and the application for the search warrant, he had no right to get his phones back.

And although defendant also points to Corporal McFarland's candid admission that he did not know for a fact whether defendant's phones contained evidence of a crime at the time he seized them, (see Db25), that is of no moment. Police need not know that cell phones contain incriminating evidence before seizing them; rather, phones and other items of personal property may be seized on the basis of probable cause, pending application for search warrants. Segura v. United States, 468 U.S. 796, 806 (1984); United States v. Place, 462 U.S. 696, 701 (1983); State v. Marshall, 123 N.J. 1, 67-68 (1991).

In sum, this Court should not address whether content from defendant's phones should have been suppressed due to the State's alleged delay in seeking a warrant to search those phones. Defendant's decision not to raise this issue below constitutes a waiver of the issue and has deprived this Court of any opportunity for meaningful appellate review. Accordingly, defendant's arguments should be rejected, and his convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, the State urges this Court to affirm defendant's convictions and sentence.

Respectfully submitted,

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FILED, Clerk of the Appellate Division, November 06, 2025, **A-000020-23**

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO. A-000020-23

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	On Appeal From a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Camden County
CHUCKY S. SCOTT A/K/A CHUCKY SCOTT	:	Indictment No. 18-02-00018-S
Defendant-Appellant.	:	Sat Below:
	:	Hon. John Thomas Kelley, J.S.C., Hon. Francisco Dominguez, J.S.C., Hon. Christine S. Orlando, J.S.C.
	:	and Hon. Kurt Kramer, J.S.C.

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Dated: November 6, 2025

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Chucky S. Scott respectfully relies on the procedural history and statement of facts contained in his initial appellant brief, filed with this Court on April 8, 2025.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DENYING MR. SCOTT'S MOTION TO SUPPRESS CELL PHONE LOCATION DATA SEIZED AS PART OF A JOINT INVESTIGATION BETWEEN THE ATF AND NEW JERSEY AUTHORITIES

In its opposition brief, the State does not contest that the New Jersey Constitution applies to "the conduct of [individuals] acting under color of state law." State v. Mollica, 114 N.J. 329, 345 (1989). The State likewise does not disagree that agents of another jurisdiction act "under color of" New Jersey law when there are "joint operations, cooperative investigations, [or] mutual assistance" involving New Jersey law enforcement. Id. at 355–57. The State also does not contest that a court must examine "the entire relationship" between the foreign agents and state authorities in making its determination, including the "reasons and motives" for their actions and "the process used to find, select, and seize the evidence." Id. at 355-56. Finally, the State does not disagree that evidence derived from a warrantless seizure of an individual's cell phone

location data must be suppressed as a violation of Article I, paragraph 7 of the New Jersey Constitution. See State v. Earls, 214 N.J. 564, 589 (2012); State v. Manning, 240 N.J. 308, 332-33 (2020).

Instead, the State doubles down on the crucial error the trial court made in denying Mr. Scott's motion to suppress: concluding that there was no "agency relationship" between the ATF and state authorities, (4T at 19:20-22)[1]—i.e., that the ATF was not acting "under color of [New Jersey] law," see Mollica, 114 N.J. at 354—solely because the ATF independently "opened [an] investigation" into Mr. Scott and "obtained the court order from the Ohio judge" to access his cell phone data. [2] (4T at 19:24-25). In its opposition, the State echoes the trial court, arguing that because state authorities "did not direct, request, recommend, or participate in the ATF application for GPS ping data and pen registers" from Mr. Scott's cell phone, the New Jersey Constitution does not apply to the ATF agents. See (Rb 35 (emphasis added)); see also id. at 37 ("New Jersey law enforcement

[1] The same record citations used in Mr. Scott's initial appellate brief are used in this brief. Additionally, "Rb" is used to refer to the State's respondent brief, filed with this Court as within time on September 25, 2025. "Db" is used to refer to defendant-appellant's initial brief, filed with this Court on April 8, 2025.

[2] As explained in Mr. Scott's opening brief, on or around June 22, 2017, the ATF obtained exigent ping data for Mr. Scott's cell phone from the provider (T-Mobile) without a warrant or judicial process. See Db at 8. Then, on June 23, 2017, the ATF also obtained a court order—without probable cause—for the application of a pen register to Mr. Scott's phone, allowing authorities to track Mr. Scott's location and phone activity. Id.

officers did not 'participate' in ATF's request for exigent pings and pen registers. Indeed, New Jersey officers did not . . . help ATF prepare applications for [it].") (emphasis added)).

As Mr. Scott explained in his opening brief, however, the trial court failed to properly examine "the entire relationship," Mollica, 114, N.J. at 355, between the ATF and the New Jersey Authorities.[3] See (Db 17-20). The question is not whether there was an "agency relationship" between the ATF and the New Jersey Authorities merely at the time the ATF obtained authorization to access the cell phone data. Rather, the court must ask whether such a relationship developed at any point over the course of the entire investigatory period.

Lustig v. United States illustrates the principle. See 338 U.S. 74 (1949). There, state agents conducted a search of defendant's hotel room; the question was whether a federal agent "had a hand in it" such that the Fourth Amendment would apply and require suppression of the evidence.[4] Id. at 78. The Supreme Court said yes—even though the federal agent "did not request the search," and the state agents initiated it themselves. Id. (emphasis added). Rather, the federal agent only later came to the hotel room and examined the objects the state agents

[3] As in Mr. Scott's opening brief, this refers collectively to the New Jersey State Police and the Camden High Intensity Drug Trafficking Areas Task Force.

[4] Lustig was decided before the incorporation of the Fourth Amendment and its exclusionary rule against the States.

had uncovered. Id. As the Supreme Court held, what matters is whether the federal agent "share[d] . . . in the total enterprise of securing and selecting evidence." Id. at 79. In other words, "[i]t is immaterial whether a federal agent originated the idea or joined in it while the search was in progress. So long as he was in it before the object of the search was completely accomplished, he must be deemed to have participated in it." Id. (emphasis added); see also United States v. Knoll, 16 F.3d 1313, 1320 (2d Cir. 1994) (the "critical" moment "is the point in time when the object of the search has been completed"); 1 W. LaFave, Search & Seizure, a Treatise on the Fourth Amendment § 1.8(b) (6th ed. 2024) ("It is not essential that the [relevant state] official be involved in the endeavor at the very outset.") (cleaned up)).

Here, while the State is correct that the New Jersey Authorities—as in Lustig—"did not 'participate' in ATF's request for exigent pings and pen registers," (Rb 37 (emphasis added)), that is only the beginning of the story, as Lustig shows. The investigation into Mr. Scott continued and—crucially—so did the search and seizure of his cell phone data. In other words, the search was not completed when the ATF first obtained authorization for it. Rather, the ATF and the New Jersey Authorities continued to access and use data from Mr. Scott's cell phone through the date that he was arrested and his physical phones seized—well after the "agency relationship" developed.

Despite the State's attempt to minimize the relationship, starting with their July 6 conference call—at the latest—the ATF and New Jersey Authorities "combine[d] [their] investigation[]," as the ATF itself admitted. See (3T at 21:24-22:1). As part of that joint investigation, the ATF "started to provide [the New Jersey Authorities] with the [contemporaneous] ping data related to . . . the location of Mr. Scott." (3T at 25:11-23). For example, they used it to track Mr. Scott in connection with a controlled firearms purchase from his co-defendant, Mr. Caban. (3T at 98:16-99:3). And the New Jersey State Police conducted additional undercover surveillance on Mr. Scott using cell phone location data provided by the ATF. (3T at 100:7-10). In other words, the New Jersey Authorities got involved in the "process" of "select[ing] and seiz[ing] the evidence" from Mr. Scott by using the data being collected from his cell phone on a continuing basis. Mollica, 114 N.J. at 354-56. As in Lustig, the New Jersey Authorities were involved in the "critical examination" of the evidence obtained from the ongoing search. Lustig, 338 U.S. at 78.

Further, the "reasons and . . . motives" behind the ATF's cooperation with the New Jersey Authorities were clear. Mollica, 114 N.J. at 355. The ATF knew that Mr. Scott was being investigated by the New Jersey Authorities, and they provided cell phone data on Mr. Scott in furtherance of that investigation. See (3T at 25:11-23). As Sgt. Hoffman of the New Jersey State Police testified, the

ATF and the New Jersey Authorities "partnered up . . . to further th[e] case" against Mr. Scott. (3T at 93:25-94:2). Thus, the ATF had more than a "mere . . . awareness" of the New Jersey investigation into Mr. Scott. Mollica, 114 N.J. at 356. Rather, the ATF and the New Jersey Authorities were "act[ing] in tandem" in "gather[ing]" the evidence against Mr. Scott. State v. Minter, 116 N.J. 269, 284 (1989). The ATF "had a hand" in the New Jersey investigation and the New Jersey Authorities "had a hand" in the on-going search and seizure of Mr. Scott's cell phone data. State v. Knight, 283 N.J. Super. 98, 117 (App. Div. 1995) (further quotation omitted). Even though the ATF was the one that "originated" the search, because the agency relationship developed "while the search [of Mr. Scott] was in progress," the New Jersey Constitution applies. Lustig, 338 U.S. at 79. As in Lustig, the fact that the ATF "preceded" the New Jersey Authorities in initiating the search "does not negat[e] the legal significance" of the latter's "collaboration" in the search "before it had run its course." Id. at 78.

Contrary to the State's assertion otherwise, this outcome does not "contravene[] binding precedent." (Rb 39). It is fully consistent with the principles set forth in Lustig (in which the Court found a joint investigation), as well as Mollica, State v. Minter, 116 N.J. 269 (1989), and State v. Evers, 175 N.J. 355 (2003). The different outcomes in Mollica, Minter, and Evers stem from the fact that, as Mollica recognizes, this "inquiry . . . will always pose a fact-

sensitive exploration that is influenced greatly by surrounding circumstances." Mollica, 114 N.J. at 357.

In both Mollica and Evers, the searches in question were one-off events that concluded entirely before New Jersey state authorities got involved. In Evers, a sheriff in California obtained account information for an AOL user implicated in child pornography. Evers, 175 N.J. at 365. After discovering that the user was located in New Jersey, the sheriff sent the information to local authorities there. Id. at 366. And in Mollica, federal agents seized hotel telephone billing records from one defendant, passing that evidence to the New Jersey State Police before they knew of any local investigation into the several defendants. Mollica, 114 N.J. at 335-37.[5] Here, by contrast, the search and seizure were ongoing. See supra. There might not have been a joint investigation at the time that the ATF initially began its search and seizure of Mr. Scott's cell phone data—when it obtained authorization from the networks and then from the Ohio judge—but as discussed supra, the ATF continued to search and seize Mr. Scott's cell phone data. And unlike Mollica and Evers, here, the ATF knew there was an open investigation into Mr. Scott in New Jersey—that is precisely why they shared in the evidence collection and use.

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[5] The court in Mollica remanded the case for further consideration of the joint investigation question. See Mollica, 114 N.J. at 356.

In Minter, the court remanded the case because the "nature and purpose[]" of the investigation into defendant and the interaction between the local authorities and the federal DEA was not clear. Minter, 116 N.J. at 284. Specifically, the "record d[id] not fully develop the explanation why the [local authorities] worked with the [federal] DEA" or whether there was any "cooperative undertaking" between the two. Id. Here, of course, the reason that the ATF worked with the New Jersey Authorities was that they knew Mr. Scott was being investigated in that state.

Lastly, the State offers the promise of impending doom if this Court sides with Mr. Scott, worrying that it would be "unnecessary and unreasonable" if agents in another state "could not disclose" evidence obtained through a wiretap "to New Jersey authorities for use in a New Jersey state prosecution" unless it "would satisfy New Jersey wiretap laws if conducted in New Jersey." (Rb 39). The State's own subjective judgment about the utility of constitutional protections is irrelevant. If there is "cooperation or assistance" between those out-of-state agents and New Jersey law enforcement "with respect to the seizure of . . . evidence" or there are "joint operations, cooperative investigations, or mutual assistance," Mollica, 114 N.J. at 356, 358, then the protections of the New Jersey Constitution apply—full stop. There is no separate "reasonableness" or "necessity" analysis—as much as the State might want it to be so.

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POINT II

THE CONSTITUTIONALITY OF THE SEARCH AND SEIZURE OF MR. SCOTT'S CELL PHONES IS APPEALABLE AND THE TRIAL COURT ERRED BY REFUSING TO SUPPRESS EVIDENCE OBTAINED FROM THEM

A. R. 3:5-7 Allows for Appellate Review of the Denial of Mr. Scott's Motion to Suppress Evidence Obtained from a Search of his Cell Phones

The State's argument that this Court may not consider whether the State's seizure of Mr. Scott's cell phones after the July 9 traffic stop was unconstitutional is without merit.

R. 3:5-7 specifically preserves Mr. Scott's ability to contest the seizure of his cell phones on appeal. R. 3:5-7(a) provides that "a person claiming to be aggrieved by an unlawful search and seizure . . . may apply to the Superior Court . . . to suppress the evidence." The State does not contest that Mr. Scott moved to "suppress the contents of his cell phones" in the trial court. See (Rb 42); see also (1T at 210:3), (Da 48). R. 3:5-7(d) specifically preserves appealability where a defendant—like Mr. Scott here—ultimately pleads guilty, providing that "[d]enial of a motion made pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty." See R. 3:5-7(d).

The State contends that this Court should not consider Mr. Scott's argument that the State's search and seizure of his cell phones was unconstitutional because he is raising "different arguments" on appeal. (Rb 42). The State offers no case law in support of this proposition and instead simply notes that the "wording of the rule bears emphasis." Id. 44. But it is the State's position that ignores the plain terms of the rule. The State contends that because Mr. Scott "did not file a motion to suppress based on the issue he is . . . raising now," R. 3:5-7(d) bars Mr. Scott's argument on appeal. (Rb 45-46 (emphasis added)). But subsection (d) plainly does not include the State's qualifier that the motion to suppress must be "based on [the same] issue" for it to be saved for appeal. That Mr. Scott is challenging a different angle of the unconstitutional search and seizure of his cell phones on appeal does not change the fact that he is still appealing the denial of his motion to suppress, which R. 3:5-7(d) permits.

Courts do not require that the arguments—at the motion hearing and on appeal—be identical, provided that the "factual assertions" underlying the appeal were "sufficiently raised at the [suppression] hearing." See State v. Velez, 335 N.J. Super. 552, 556, 557-58 (App. Div. 2000); see also State v. Brown, 352 N.J. Super. 338 (App. Div. June 27, 2002) (considering separate argument on appeal because issues "under the Fourth Amendment [were] so inextricably intertwined" that "the interests of justice would not be served by [the Court's]

refusing to resolve the issue" on appeal). Here, during the hearing on Mr. Scott's suppression motion, Cpl. McFarland was questioned about his seizure of Mr. Scott's cell phones and the time period before authorities came to pick them up before securing a search warrant. See (1T at 126:18-23, 151-159). As set forth below, the facts in the record are more than sufficient to conclude that the search and seizure of Mr. Scott's cell phones was unconstitutional given the delay between the seizure itself and when the State obtained a warrant.

B. The Seizure of Mr. Scott's Cell Phones Was Unconstitutional

When the State finally gets to the merits, it has very little to say—which is not surprising given that the relevant factors cut decisively in favor of Mr. Scott. In State v. Ellis—which the State itself relies on—the court distilled three general factors to assess whether the delay in seeking a warrant violated a defendant's constitutional rights: (1) "the nature of the seized property"; (2) "the nature and extent of the interference"; and (3) "defendant's waiver or assertion of rights." State v. Ellis, No. IND. 23-12-1316-1, 2024 N.J. Super Unpub. LEXIS 3039, at *19 (Super. Ct. Law Div. Nov. 20, 2024).[6] Within factor (2), the Ellis court identified three additional sub-factors: (a) "the length of the delay"; (b) "whether law enforcement offered the defendant an opportunity to copy data while the original was retained"; (c) "whether the defendant's ability to use the

[6] This case is included in the State's Appendix at Pa 51-61.

property was limited by incarceration or other incapacity." Id. Balanced against the defendant's interests is the State's justification for delay. Id. at *29. Here, these factors—many of which are indisputable from the record—all favor suppression.

As to (1), the State does not contest that Mr. Scott's has a substantial possessory interest in his cell phones. As the court in Ellis recognized, "digital devices deserve special [constitutional] treatment because they store a wealth of private information." Ellis, 2024 N.J. Super Unpub. LEXIS 3039, at *20; see also People v. Meakens, 185 N.E.3d 746, 754-55 (Ill. App. Ct. 2021) (recognizing the "extraordinary difference between a cell phone and other potential objects of searches"); Riley v. California, 573 U.S. 373, 394-95 (2014) (finding heightened privacy interest in cell phone because "[t]he sum of an individual's [entire] private life can be reconstructed" by viewing its contents); United States v. Mitchell, 565 F.3d 1347, 1351 (11th Cir. 2009) (possessory interest in cell phone is "substantial").

With respect to (2), the "critical []factor" is the length of delay because "the longer the police take to seek a warrant, the greater the infringement on the person's possessory interest." Ellis, 2024 N.J. Super Unpub. LEXIS 3039, at *20 (cleaned up). As Mr. Scott showed in his opening brief, courts readily grant motions to suppress where the delays were well shorter than the 80-day delay

here. See (Db 24) (citing cases with delays of 20, 21, 49, and 55 days); see also United States v. Pratt, 915 F.3d 266, 273 (4th Cir. 2019) (holding that 31-day delay violated Fourth Amendment). Beyond the length of the delay, there is no indication that Cpl. McFarland allowed Mr. Scott to copy the data on his phone—nor how that could have even occurred in the circumstances here. And the record reflects that Mr. Scott was only briefly in custody after his phones were seized and was not incarcerated during the intervening time before the State obtained the warrant. See (1T at 154:4-9).

As to (3), Mr. Scott's interest in his cell phones was "undiminished": he "didn't consent to the seizure" or "voluntarily share the phone[s'] contents" and he "wasn't allowed to retain any of [his] phone[s'] files," Pratt, 915 F.3d at 272-73. See (1T at 202:4-6). Further, the fact that Mr. Scott might not have specifically requested the return of his cell phones does not "impl[y] a reduced possessory interest." Ellis, 2024 N.J. Super. Unpub. LEXIS 3039, at *29. As the court in Ellis explained, defendants "may believe protesting would be futile"; while they "silently lament their property's seizure," they might "have no idea they have a right to its return." Id.; see also People v. McGregory, 131 N.E.3d 1147, 1153, 1156 (Ill. App. Ct. 2019) (rejecting argument that defendant's failure to request property's return diminished his possessory interest); Meakens, 185 N.Ed.3d at 758 (even where "no clear evidence" defendant sought return, fact

that "iPhone was taken from [defendant's] person . . . strongly suggests his possessory interest").

On the other side of the ledger, with respect to the State's justification, the State does not contest that the "key factor" is the "strength of the state's basis for the seizure." United States v. Burgard, 675 F.3d 1029, 1033 (7th Cir. 2012). The State concedes—as it must—that Cpl. McFarland "candid[ly] admi[tted] that he did not know . . . whether defendant's phones contained evidence of a crime at the time he seized them." (Rb 49). Instead, the State engages in sleight of hand by pointing out that the initial search of the car in which Mr. Scott was riding and seizure of his cell phones was constitutional because of probable cause. Id. What the State does not say is that the trial court's determination about probable cause had nothing to do with any particularized suspicion regarding Mr. Scott's cell phones—let alone any suspicion related to the ultimate basis for retaining them or seeking a warrant to search them. The trial court found that there was probable cause to search the car in which Mr. Scott was riding—and initially seize his cell phones—because of the "light odor of marijuana" and a later "passive hit" by a drug dog. (1T at 206:1-11). But the trial court did not find that there was any individualized suspicion regarding the cell phones themselves or what was on them. When they were seized, Mr. Scott's cell phones

were "evidence of nothing" and there was little reason to retain them. Ellis, 2024 N.J. Super. Unpub. LEXIS 3039, at *16 n.1 (citation omitted).

CONCLUSION

For the aforementioned reasons, the trial court's decisions denying Mr. Scott's motions to suppress should be reversed and the evidence suppressed; his sentence vacated; and the proceedings remanded.

Respectfully submitted,

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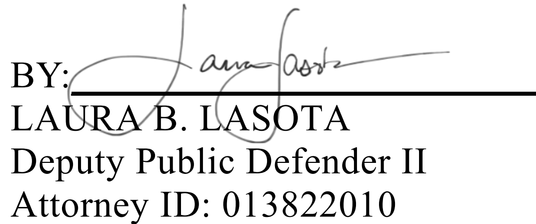

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Dated: November 6, 2025