

**REDACTED VERSION**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4033-23

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Mercer County.
v.	:	Indictment No. 21-05-00072-S
HENRY A. KIDD,	:	Sat Below:
a/k/a HENRY KIDD,	:	Hon. Janetta D. Marbrey, J.S.C., & Hon. Robert E. Lytle, J.S.C.
a/k/a HENRY KIDD, JR.,	:	
Defendant-Appellant.	:	
	:	

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**BRIEF ON BEHALF OF DEFENDANT-APPELLANT**

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JENNIFER N. SELLITTI  
Public Defender  
Office of the Public Defender  
Appellate Section  
31 Clinton Street, 9th Floor  
Newark, NJ 07101  
(973) 877-1200

ETHAN KISCH  
Assistant Deputy Public Defender  
Attorney ID: 349152020  
Of Counsel and on the Brief  
Ethan.Kisch@opd.nj.gov  
January 23, 2025

DEFENDANT IS CONFINED

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- Da – Appendix to Defendant-Appellant’s Brief
- Dca – Confidential Appendix to Defendant-Appellant’s Brief
- 1T – December 6, 2022, Suppression Transcript (Marbrey, J.S.C.)
- 2T – December 13, 2022, Suppression Transcript (Marbrey, J.S.C.)
- 3T – May 4, 2023, Suppression Transcript (Lytle, J.S.C.)
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<sup>1</sup> As described infra at 15, before the suppression hearing, the State chose to disclose only a redacted version of the warrant application rather than produce the full unredacted application to defense counsel. (3T46-8 to 12, 27-8 to 15)

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## **PROCEDURAL HISTORY**<sup>2</sup>

On May 14, 2021, a State grand jury returned Indictment Number 21-05-72-S, charging defendant Henry A. Kidd, Jr., and seven other individuals with offenses related to an alleged gun trafficking operation. (Da1-38) Kidd was charged with first-degree promoting organized street crime, N.J.S.A. 2C:33-30 (Count 2); first-degree unlawful weapon possession, N.J.S.A. 2C:39-5(b), 2C:39-5(j) (Count 26); second-degree conspiracy to unlawfully transport weapons and a large capacity ammunition magazine for sale, N.J.S.A. 2C:5-2, 2C:39-9(d), (h), (i) (Count 1); second-degree transportation of weapons into the State for unlawful sale or transfer, N.J.S.A. 2C:39-9(i), 2C:2-6 (Count 3); second-degree certain person to not possess a weapon, N.J.S.A. 2C:39-7(b) (Count 28); three counts of second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (Counts 4, 10, 16); two counts of fourth-degree manufacture, transport, and disposition of a weapon, N.J.S.A. 2C:39-9(d), 2C:2-6 (Counts 5 & 11); and fourth-degree unlawful possession of a large capacity ammunition magazine, N.J.S.A. 2C:39-3(j), 2C:2-6 (Count 17). (Ibid.)

Kidd filed two motions to suppress. The first challenged an October 29, 2020, GPS tracker warrant issued by the Honorable Janetta Marbrey, J.S.C.

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<sup>2</sup> This section recounts only the procedural history most relevant to Kidd's current appeal of his two suppression motions.

The motion was split between two judges. On May 4, 2023, the Honorable Robert E. Lytle, J.S.C., denied the first half of the suppression motion, holding that the GPS warrant application provided sufficient probable cause. (Da50; 3T43-24 to 56-24) Judge Lytle heard that part of the motion because Judge Marbrey had originally authorized the warrant. (3T46-13 to 25) On July 5, 2023, Judge Marbrey denied the remainder of the motion, holding that the State's failure to provide a return of the search warrant, as well as its failure to preserve the GPS tracker's historical location data, did not rise to the level of bad faith requiring suppression. (Da51-63)

Kidd's second suppression motion challenged his October 31, 2020, warrantless stop and arrest. On January 17, 2023, Judge Marbrey denied the motion, holding that police possessed probable cause for the arrest. (Da39-49)

On March 7, 2024, pursuant to a plea agreement (Da64-70), Kidd pleaded guilty to one count of second-degree transportation of weapons for unlawful sale or transfer, N.J.S.A. 2C:39-9(i). (5T7-1 to 40-16) In exchange for his plea, the State requested that the trial court dismiss the remainder of the counts and impose a 10-year sentence subject to the No Early Release Act (NERA). (Da64-70) On June 20, 2023, Judge Lytle sentenced Kidd to the recommended sentence. (6T12-21 to 21-10; Da71-74 (corrected JOC))

On August 22, 2024, Kidd filed a notice of appeal. (Da75-78)

## STATEMENT OF FACTS

The following facts are drawn from (1) New Jersey State Police Detective Kyle Feigley's October 29, 2020, warrant application (Dca1-14) and (2) Feigley's testimony at the December 6, 2022, suppression hearing before Judge Marbrey (1T4-2 to 66-5).

### **A. State Police use an informant to purchase weapons from Terrence Alford.**

In September of 2020, the New Jersey State Police initiated an investigation into Terrence Alford after receiving information that he was distributing weapons in the Trenton area. (1T5-25 to 6-7) Using an informant, State Police then set up a controlled purchase of weapons from Alford. (1T6-8 to 18) During the gun purchase from Alford, State Police observed the presence of defendant Henry Kidd and Javar Kidd,<sup>3</sup> though Feigley did not describe their respective roles at the suppression hearing. (1T6-19 to 25) The State also did not introduce testimony identifying the date of this purchase.

### **B. State Police observe Clark Bowens purchase a handgun and arrest him.**

On October 21, 2020, State Police officers set up surveillance near the Candlelight Lounge parking lot in Trenton. (1T7-1 to 25, 38-13 to 40-24)

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<sup>3</sup> To avoid confusion, the Statement of Facts refers to defendant-appellant Henry Kidd and Javar Kidd by their full names. The remainder of the brief refers to defendant-appellant Henry Kidd as "Kidd."

Detective Feigley was involved in this operation, but he testified that he “did not have direct eye of what was going on.” (1T33-7 to 14) At 12:30 p.m., Javar Kidd arrived in a silver BMW and got out of his car. (1T8-4 to 15) Henry Kidd then arrived in a gray Dodge Charger and exited. (1T8-16 to 9-9) Javar Kidd was seen “utilizing his cell phone” and pacing “look[ing] as if he was waiting for somebody.” (1T9-12 to 14) Henry Kidd sat down on a chair outside a barbershop next door to the Candlelight Lounge while Javar Kidd entered the barbershop. (1T9-16 to 23) Later, Javar Kidd exited the barbershop while still using his cell phone. (1T10-3 to 12) Javar Kidd and Henry Kidd then stood outside the barber shop talking. (1T10-13 to 17)

A short time later, a red sedan parked near the silver BMW and gray Charger. (1T10-9 to 12) Clark Bowens exited the red sedan and walked to the passenger side window of the gray Charger. (1T10-20 to 11-10) Bowens handed a white envelope to Stacey Kearse, who was seated in the gray Charger’s passenger seat. (1T11-11 to 21, 12-24 to 13-5) At this time, Javar Kidd and Henry Kidd “were in the same vicinity, they appeared to be talking” but “it was hard to tell who exactly they were all talking to[.]” (1T11-22 to 12-10) Javar Kidd then walked to the silver BMW, opened the rear trunk, and took out a black bag. (1T12-11 to 15) Kearse then exited the gray Charger and took the black bag from Javar. (1T12-17 to 13-9) She then took a black box out of

the gray Charger, placed it in the black bag, and handed the bag to Bowens. (Ibid.) Bowens then departed in the red sedan. (1T13-9 to 12) Javar Kidd and Henry Kidd had a quick conversation, Henry Kidd met with Kears, and then Kears placed the white envelope in the trunk of the silver BMW. (1T13-16 to 25) Kears left, Javar Kidd entered the barber shop, and Henry Kidd got into the gray Charger and left. (Ibid.)

Detective Feigley testified that he did not see all of what happened in the parking lot and relied on accounts from other officers. (1T33-7 to 14, 34-11 to 21) He also testified that State Police did not see Henry Kidd possess any firearm, the box, or any money. Nor did Henry Kidd have any hand-to-hand exchange with Bowens. (1T34-22 to 35-18) State Police later learned that the gray Charger was a rental car under the name Izel Shiver. (1T14-10 to 22)

After Bowens left the parking lot, Trenton Police stopped him and searched the red sedan; they found a handgun in its original box. (1T14-23 to 16-9, 33-15 to 20) Bowens was placed under arrest. (1T16-22 to 23) Records revealed that Shiver purchased the handgun the day before. (1T16-10 to 21) Police did not stop Javar Kidd or Henry Kidd when they left the parking lot or file criminal complaints against them. (1T40-25 to 41-9)

**C. On October 29, 2020, State Police obtain a warrant to install a GPS tracker on Henry Kidd's car.**

On October 29, 2020, Detective Feigley filed a certified application seeking a search warrant to install a GPS tracker on Henry Kidd's car. (Dca1-

14) [REDACTED]

[REDACTED]

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**D. From October 29 to 31, 2020, State Police install and use the GPS tracker to monitor the location of Henry Kidd’s car as it travels from New Jersey to South Carolina and back.**

Police installed the GPS tracker on Henry Kidd’s car later on October 29, 2020. (1T50-4 to 12) Detective Feigley testified that he did not know who installed the GPS tracker, when it was installed, or precisely where the car was located when it was installed. (1T46-4 to 48-19, 49-23 to 50-12) Once the GPS was affixed, the State Police monitored the car’s location using the tracker’s real-time data feed and logged historical location data. (1T48-20 to 49-4) At some point that day, the car left Trenton. (1T49-16 to 22)

The next day, October 30, 2020, the GPS tracker showed the car in South Carolina at Shooter’s Choice firearms distributor. (1T17-8 to 18-10) State Police then contacted the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and relayed ATF the GPS location information. (1T18-11 to

19-9, 51-13 to 16) State Police officers contacted ATF because, according to Feigley, “they had jurisdiction in that area which we did not.” (1T18-11 to 19-4) ATF agents obtained surveillance footage from Shooter’s Choice that showed Izel Shiver, Henry Kidd, and Javar Kidd at the gun store. (1T19-7 to 19, 51-3 to 12) ATF also learned that Shiver purchased three firearms. (1T19-20 to 20-3) At that point, Feigley testified, officers suspected that Shiver was “straw purchasing firearms for the Kidds.” (1T20-4 to 16)

State Police then used the GPS device to track the car to Palmetto State Armory, a second South Carolina firearms distributor. (1T20-17 to 24) After State Police alerted ATF, federal agents went to the store and observed Stacey Kearse, Henry Kidd, and Javar Kidd; Kearse purchased five firearms. (1T20-25 to 21-10) ATF agents and State Police officers, however, had no evidence that Kidd had exchanged money with Shiver or Kearse. (1T51-20 to 52-7) State Police then continued to use the GPS device to track the car as it headed back to New Jersey overnight. (1T21-21 to 22-8, 52-11 to 13)

Feigley testified that police failed to retain any of the GPS tracker’s historical location data detailing the car’s movements. (1T49-2 to 6) When the State Police tried to retrieve the data “through the company that is used, it doesn’t go back as far as needed and it wasn’t retained.” (1T49-7 to 15) According to Feigley, “it was an oversight.” (Ibid.)

**E. On October 31, 2020, State Police stop Henry Kidd's car in Trenton and arrest him without a warrant.**

The next day, October 31, 2020, State Police used the GPS to track the car to Trenton and began following it. (1T22-9 to 23-3, 53-21 to 54-1) Officers planned to arrest Henry Kidd if they came into contact with him. (1T52-14 to 53-11) The car pulled into a dead-end street and Detective Feigley, who was following in a police car, identified Henry Kidd and Javar Kidd in the vehicle. (1T54-2 to 16, 56-12 to 57-2) Feigley activated his overhead lights and the car pulled over. (1T23-4 to 21) According to Feigley, before the stop other officers “conducting the surveillance observed a cracked front windshield.” (1T23-22 to 24-24) However, Feigley did not see the crack. (1T57-3 to 10) Henry Kidd exited the passenger side of the vehicle and “immediately put his hands up and did not attempt to flee.” (1T25-1 to 8, 57-3 to 14) Javar Kidd fled on foot from the driver's side and was apprehended about ten minutes later. (1T25-9 to 19)

Police placed both men under arrest. (1T25-20 to 23, 57-11 to 14) According to Feigley, State Police “believe[d] we had probable cause” to arrest Henry Kidd “based off of the sale of the firearm to Clark Bowens” and “he was being placed under arrest for said sale of the firearm.” (1T25-24 to 26-4)

Police obtained a search warrant for the car and found eight firearms in the trunk “matching the eight firearms purchased the day prior by Izel Shiver and Stacey Kearse.” (1T26-12 to 23, 58-8 to 13)

**LEGAL ARGUMENT**

**POINT I**

**THE TRIAL COURT SHOULD HAVE SUPPRESSED THE FRUITS OF THE GPS TRACKER WARRANT. (Da50; Da51-63; 3T43-24 to 56-24)**

The GPS tracker warrant was the key to the State Police's investigation. But constitutional violations at each stage of the warrant process -- its application, authorization, and execution -- rendered the warrant invalid. First, the warrant application did not provide probable cause within its four corners. The application instead referenced only barebones allegations and vague hunches. Second, the warrant authorized the State Police to conduct physical searches outside of the Superior Court's jurisdiction. Our State Constitution empowers Superior Court judges to issue warrants to search property only within this State. Yet the warrant allowed the State Police to conduct a physical trespass search of Kidd's car outside New Jersey. Third, the State Police failed to retain or disclose any information about the warrant's execution -- including the data detailing the GPS tracker's historical locations. That failure amounted to bad faith that manifestly prejudiced Kidd's defense. Each of these errors -- independently and together -- require suppression of the fruits of the GPS tracker. U.S. Const. amends. IV, V, XIV; N.J. Const. art. I, ¶¶ 1, 7.

**A. The warrant application did not provide probable cause. (Da50; 3T43-24 to 56-24)**

The warrant application sought Judge Marbrey’s approval to install a physical GPS tracker on Kidd’s car and monitor it for up to 30 days. (Dca1-14) Judge Lytle held that the application provided probable cause that Kidd “was involved in the illegal purchase and sale of firearms and that a 2011 beige Chevy Equinox registered to him and which he operated was being used to facilitate the commission of criminal conduct.” (3T50-3 to 15) The application, however, included no direct evidence of criminal conduct by Kidd. Nor did it present corroborated evidence that Kidd’s car was directly involved in ongoing criminality. Because the application’s barebones allegations and vague hunches did not provide probable cause, the trial court should have ordered suppression. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

“Both the Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution provide in nearly identical language that ‘no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.’” State v. Marshall, 199 N.J. 602, 610 (2009) (quoting N.J. Const. art. I, ¶ 7). Thus, an “application for a warrant must satisfy the issuing authority that there is probable cause to believe that a crime has been committed, or is being committed, at a specific

location or that evidence of a crime is at the place sought to be searched.”

State v. Boone, 232 N.J. 417, 426 (2017) (quotation omitted).

“The ‘requirement for a search warrant is not a mere formality,’ and the showing necessary to secure one should be based ‘not merely on belief or suspicion, but on underlying facts or circumstances which would warrant a prudent man in believing that the law was being violated.’” Id. at 427 (quotation omitted) (cleaned up). “Probable cause requires more than a mere hunch or bare suspicion, but less than the legal evidence necessary to convict; it requires a well-grounded suspicion.” State v. Irelan, 375 N.J. Super. 100, 118 (App. Div. 2005) (citation omitted). “[P]robable cause is not established by a conclusory affidavit that does not provide a magistrate with sufficient facts to make an independent determination as to whether the warrant should issue.” State v. Novembrino, 105 N.J. 95, 109 (1987).

Although “reviewing courts accord substantial deference to the discretionary determination resulting in the issuance of the search warrant,” this Court must “consider the totality of the circumstances and should sustain the validity of a search only if the finding of probable cause relies on adequate facts.” Boone, 232 N.J. at 427 (quotations omitted) (cleaned up). In short, “the issuance of the search warrant must be supported by substantial evidence[.]” Ibid. (quotation omitted) (cleaned up). Reviewing courts “owe no deference to

conclusions of law made by lower courts in suppression decisions, which [are] instead review[ed] de novo.” Id. at 426 (citation omitted).

Prior to the suppression hearing, the State chose to provide defense counsel with only a redacted version of the October 29, 2020, warrant application. (Dca2-14; 3T46-8 to 12) Paragraphs 10 and 11 were completely obscured. (Dca6-7) Although Judge Lytle reviewed both the redacted and unredacted versions of the warrants, he correctly held that he could not consider the undisclosed information underneath the redactions in determining whether the application had provided sufficient probable cause. (3T27-8 to 28-7) This Court, as well, must consider only the redacted application. State v. Turcotte, 239 N.J. Super. 285, 299 (App. Div. 1990).

Turning to the four corners of the October 29, 2020, redacted warrant application, the State’s offering boiled down to three categories of information over a handful of short paragraphs. (Dca5-9 ¶¶ 9, 12-18) None provided probable cause.

First, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Second, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] Because these three categories

of information did not amount to probable cause to place a GPS warrant on Kidd's car, suppression is required. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

**B. The warrant was void ab initio because it authorized a continuous physical trespass search of Kidd's car outside the Superior Court's jurisdiction. (Not raised below)**

The trial court's warrant authorized the State Police [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Consistent with the warrant's broad geographical scope, the State Police physically affixed the GPS tracker on Kidd's car and used it to continuously monitor the car's location as it traveled from New Jersey to South Carolina and back over three days. That continuous use of a GPS tracker, the United States Supreme Court has held, constituted an ongoing physical trespass search of Kidd's car. United States v. Jones, 565 U.S. 400, 404-10 & n.3, n.5 (2012). However, the State Constitution is clear that the Superior Court cannot authorize physical searches outside the State of New Jersey. N.J. Const. art. VI, § 3, ¶ 2. Therefore, because the trial court

authorized a continuous physical search of Kidd's car outside the Superior Court's jurisdiction, the warrant was invalid and suppression is required. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

In Jones, 565 U.S. 400, the United States Supreme Court held that the installation and use of a GPS tracker on a car constitutes a search that requires a warrant under the Fourth Amendment. Id. at 404-12. Writing for the Court, Justice Scalia explained that there are two independent bases to find that a Fourth Amendment search has occurred: the "common-law trespassory test" and the "reasonable-expectation-of-privacy test" first articulated in Katz v. United States, 389 U.S. 347 (1967). Jones, 565 U.S. at 409. The installation of a GPS tracker on a car to monitor its location, the Court held, constitutes an ongoing physical trespass search that requires a warrant. Id. at 404-05. And because police did not have a valid warrant in Jones, the Court suppressed the information gained from the GPS tracker. Id. at 413; see State v. Earls, 214 N.J. 564, 582-83 (2013) (summarizing Jones).

The Jones Court made clear that, so long as the GPS tracker is attached and monitoring the car's movements, a continuing physical trespass and search is taking place. 565 U.S. at 404-10 & n.3, n.5. As the Court explained, the police's affixing a GPS tracker to a car and continuously monitoring its location is akin to "a constable's concealing himself in the target's coach in

order to track its movements.” Id. at 404 n.3. The search continues while the constable -- or the GPS tracker -- is trespassing on the car and actively monitoring. In the end, where “the Government obtains information by physically intruding on a constitutionally protected area, such a search has undoubtedly occurred.” Ibid.<sup>5</sup>

As a constitutional matter, then, the State Police began their physical trespass and search in this case when they installed the GPS tracker on Kidd’s vehicle on October 29, 2020. The police’s trespass search continued uninterrupted as police tracked the car through multiple states down the east coast to South Carolina. Police then continued using the tracker to trace the car back to New Jersey, as it arrived in Trenton on October 31, 2020. In all, the State Police’s installed GPS tracker remained affixed to Kidd’s car and continuously monitored it for over a thousand miles over three days -- the vast majority of which took place outside New Jersey.

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<sup>5</sup> A GPS tracker’s physical intrusion distinguishes it from a wiretap. When the State affixed and continued to monitor the GPS tracker on Kidd’s car, “[t]he Government physically occupied private property for the purpose of obtaining information.” Jones, 565 U.S. at 404. For that reason, it satisfies the “common-law trespassory test.” Id. at 404-09. A wiretap, on the other hand, “involve[s] seizure of transitory intangible evidence,” State v. Ates, 217 N.J. 253, 272 (2014) (quotation omitted), so it is not a physical trespass and is instead subject to the reasonable expectations of privacy test, Jones, 565 U.S. at 411 (“Situations involving merely the transmission of electronic signals without trespass would remain subject to Katz analysis.”).

This broad search, however, violates our State Constitution’s strict jurisdictional limit that judges of the Superior Court can authorize physical searches within the State of New Jersey -- but not beyond it. N.J. Const. art. VI, § 3, ¶ 2 (“The Superior Court shall have original general jurisdiction throughout the State in all causes.”); R. 3:1-2 (“The writs and processes of the Superior Court may be directed anywhere within the jurisdiction of this State.”). That is, “[j]ust as a municipal court officer may not authorize a search outside the boundaries of that municipality, judges of the State Superior Court may only authorize the issuance of warrants within the territorial jurisdiction of that court.” Kevin G. Byrnes, N.J. Arrest, Search & Seizure § 8:4-2 (Gann 2024). “Thus, a Superior Court judge may not authorize a search outside the State of New Jersey.” Ibid. A challenge to jurisdiction raises a legal question that is reviewed de novo and is not subject to waiver. See State v. Robinson, 200 N.J. 1, 20 (2009); State v. Sylvia, 424 N.J. Super. 151, 156 (App. Div. 2012).

Here, Judge Marbrey plainly exceeded the jurisdiction of the Superior Court by authorizing what Jones made clear was a continuing physical search of Kidd’s car outside of the State. Therefore, under both Article I, Paragraph 7 of the New Jersey Constitution and the Fourth Amendment to the federal constitution, the GPS warrant was invalid and suppression is required.

New Jersey has a strong tradition of invalidating search warrants that exceeded the authorizing judge’s territorial authority. In Eleuteri v. Richman, 26 N.J. 506 (1958), State Police applied to a magistrate in the Chesterfield Township Municipal Court seeking search warrants for buildings in Bordentown and Mansfield Township. Id. at 507. Although the Supreme Court had not yet adopted the exclusionary rule and therefore did not order suppression, the Court agreed with the State’s concession that “the magistrate was without authority to issue a warrant for a search beyond the territorial jurisdiction of his court[.]” Id. at 508. So, the Supreme Court concluded, the “illegality [of the warrant] is clear.” Id. at 509. The same was true in State v. Bell, 166 N.J. Super. 143 (App. Div. 1979), in which the Appellate Division held that a search warrant issued for premises located in Union Beach by an Aberdeen Township municipal judge was “outside the territorial jurisdiction and exceed[ed] the authority of the issuing judge and, as such, [was] illegal and void.” Id. at 144. “In effect,” this Court held, “no warrant issued and the search of the premises constituted a warrantless search.” Ibid.

The federal courts likewise recognize that a federal warrant violates the Fourth Amendment if it authorizes a search outside of the authorizing judge’s territorial jurisdiction. The Fourth Amendment “must provide at a minimum the degree of protection it afforded when it was adopted.” Jones, 565 U.S. at

411; Atwater v. City of Lago Vista, 532 U.S. 318, 326-27 (2001). And “[t]he principle animating the common law at the time of the Fourth Amendment’s framing was clear: a warrant may travel only so far as the power of its issuing official.” United States v. Krueger, 809 F.3d 1109, 1123-26 (10th Cir. 2015) (Gorsuch, J., concurring); United States v. Henderson, 906 F.3d 1109, 1116-17 (9th Cir. 2018) (“The weight of authority is clear: a warrant purportedly authorizing a search beyond the jurisdiction of the issuing magistrate judge is void under the Fourth Amendment.”); Engleman v. Murray, 546 F.3d 944, 948-49 (8th Cir. 2008) (same). A parallel doctrine governed law enforcement officers: “At the time of the framing, it was understood that ‘when a warrant is received by an officer, he is bound to execute it,’ only ‘so far as the jurisdiction of the magistrate and himself extends.’” Henderson, 906 F.3d at 1116 (quoting 4 William Blackstone, Commentaries 291) (cleaned up); Engleman, 546 F.3d at 948-49 (“Under a historical understanding of the Fourth Amendment, the jurisdiction of the issuing judge and the executing officer is limited, and a warrant is not valid if an officer acts outside of that limited jurisdiction.”).

The trial court’s jurisdictional violation was not a mere “technical” violation of a statute or court rule. Cf. R. 3:5-7(g) (technical insufficiency or irregularity in a warrant, the procedures to obtain it, or in its execution does

not invalidate warrant); State v. Gadsden, 303 N.J. Super. 491, 503 (App. Div. 1997) (excusing violation of jurisdictional statute for municipal police).

Jurisdiction is a fundamental constitutional prerequisite to a judge's authority to act. Without jurisdiction, there can be no warrant. It is that simple. And because "the jurisdiction of the Superior Court is fixed by the Constitution," it "can be altered neither by rule of this Court nor by act of the Legislature."

O'Neill v. Vreeland, 6 N.J. 158, 165 (1951) (Vanderbilt, C.J., writing for the Court). It is worth noting that at least a dozen federal and state courts have held that even violations of jurisdictional statutes or court rules related to search warrants constitute constitutional violations -- not mere "technical" infractions. See, e.g., Henderson, 906 F.3d at 1115-17; United States v. Werdene, 883 F.3d 204, 212-14 (3d Cir. 2018); United States v. Horton, 863 F.3d 1041, 1048-49 (8th Cir. 2017); United States v. Master, 614 F.3d 236, 241 (6th Cir. 2010); United States v. Baker, 894 F.2d 1144, 1146-47 (10th Cir. 1990); State v. Frazier, 558 S.W.3d 145, 155-56 (Tenn. 2018); Sanchez v. State, 365 S.W.3d 681, 686 (Tex. Crim. App. 2012); State v. Rupnick, 125 P.3d 541, 551-52 (Kan. 2005); State v. Wilson, 618 N.W.2d 513, 519-20 (S.D. 2000); Commonwealth v. Shelton, 766 S.W.2d 628, 629-30 (Ky. 1989); Crayton v. State, 485 S.W.3d 488, 504-05 (Tex. App. 2016); State v. Dulaney, 997 N.E.2d 560, 568-69 (Ohio Ct. App. 2013); State v. Kirkland, 442 S.E.2d

491, 491-92 (Ga. Ct. App. 1994). In any event, here a constitutional provision was violated. So, rather than a mere technical misstep, Judge Marbrey's extraterritorial warrant violated the State Constitution's clear jurisdictional limit. N.J. Const. art. VI, § 3, ¶ 2; see also Byrnes, N.J. Arrest, Search & Seizure § 8:4-2 (Gann 2024).

Because Judge Marbrey lacked jurisdiction to authorize a physical search outside the State of New Jersey, the warrant was invalid and the fruits of the warrantless search must be suppressed. Then-Judge Gorsuch explained that “a warrant issued for a search or seizure beyond the territorial jurisdiction of a magistrate's powers under positive law was treated as no warrant at all -- as ultra vires and void ab initio to use some of the law's favorite Latin phrases -- as null and void without regard to potential questions of ‘harmlessness’ (such as, say, whether another judge in the appropriate jurisdiction would have issued the same warrant if asked).” Krueger, 809 F.3d at 1123 (Gorsuch, J., concurring). Our courts do not apply exceptions for good faith or reasonable mistakes of law, so suppression is required for all fruits of the warrantless search in this case. See State v. Carter, 247 N.J. 488, 529-32 (2021). Indeed, courts in multiple states have ordered suppression for similar jurisdictional breaches. See, e.g., Frazier, 558 S.W.3d at 156; Sanchez, 365 S.W.3d at 686; Rupnick, 125 P.3d at 552; Wilson, 618 N.W.2d at 519-20; Shelton, 766 S.W.2d

at 629-30; Crayton, 485 S.W.3d at 505; Kirkland, 442 S.E.2d at 491-92; State v. Davidson, 613 P.2d 564, 565-67 (Wash. Ct. App. 1980).

Ensuring the court did not violate its own constitutional jurisdiction is particularly important here because an ongoing GPS search is extremely intrusive -- both because it is a physical trespass and because of the sensitive information that can be collected. Our Supreme Court has warned that searches that yield location information “can provide an intimate picture of one’s daily life” and “involves a degree of intrusion that a reasonable person would not anticipate.” Earls, 214 N.J. at 586 (citing Jones, 565 U.S. at 429 (Alito, J., concurring)). Indeed, location information “can be far more revealing than acquiring toll billing, bank, or Internet subscriber records” because it “cuts across a broad range of personal ties with family, friends, political groups, health care providers, and others.” Id. at 586. Such tracking “function[s] as a substitute for 24/7 surveillance without police having to confront the limits of their resources.” Ibid. For that reason, courts are “obligated -- as ‘subtler and more far-reaching means of invading privacy have become available to the Government’ -- to ensure that the ‘progress of science’ does not erode Fourth Amendment protections.” Carpenter v. United States, 585 U.S. 296, 320 (2018) (quotation omitted) (cleaned up).

In the end, the trial court’s warrant permitting the State Police to effectuate a continuing physical trespass search of Kidd’s car hundreds of miles outside of the Superior Court’s jurisdictional limit violated both the Fourth Amendment and Article I, Paragraph 7 of our State Constitution. Without a valid warrant, the fruits of the warrantless GPS search must be suppressed. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

**C. The State’s failure to follow the required warrant procedures and retain any of the GPS tracker’s data amounted to bad faith and caused manifest prejudice. (Da51-63)**

After Judge Marbrey authorized the GPS warrant, the police retained no information about the warrant’s execution. Detective Feigley testified that the State Police have no record of when the GPS tracker was affixed, the location of the car when it was affixed, or who placed it on the car. (1T46-4 to 48-19, 49-23 to 50-12) Even worse, the State Police failed to retain critical evidence from the GPS tracker -- including the historical location data police purportedly relied upon and relayed to the ATF, as well as data that led to Kidd’s arrest. (1T17-8 to 21-10, 1T22-17 to 25-23, 48-20 to 51-16, 53-21 to 54-1) As the trial court observed, “there was no return of inventory or documents to the Court, nor provided to defense counsel, as the State has claimed that all of this evidence was ‘not preserved.’” (Da56) The State’s failure to keep any records related to placement of the GPS tracker on the car,

combined with its failure to retain any data from the GPS tracker, amounted to bad faith. And even if it did not meet that standard, the State Police's transgressions manifestly prejudiced Kidd. Either way, suppression is required. State v. M.B., 471 N.J. Super. 376, 382-83 (App. Div. 2022).

The State Police are part of the prosecution team and must preserve discoverable material. State v. Richardson, 452 N.J. Super. 124, 131-33 (App. Div. 2017). Under New Jersey's open-file discovery rules, the obligation to preserve relevant information is both automatic and continuing. State v. Scoles, 214 N.J. 236, 252-53 (2013); State v. W.B., 205 N.J. 588, 608 (2011); R. 3:13-3(a) (pre-indictment discovery); R. 3:13-3(b)(1), 3:9-1(a) (post-indictment discovery); R. 3:13-3(f) (continuing duty to disclose). Trial courts can enforce these obligations by "prohibit[ing] the party from introducing in evidence the material not disclosed[.]" R. 3:13-3(f).

Due process likewise requires that the State disclose all evidence potentially favorable to a defendant. State v. Hyppolite, 236 N.J. 154, 165 (2018) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). "The prosecution's 'suppression of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.'" Id. (quoting Brady, 373 U.S. at 87) (cleaned up). And "repeated and flagrant derelictions" of discovery rules "may

require application of the sanction of preclusion.” State v. Burnett, 198 N.J. Super. 53, 61 (App. Div. 1984).

In addition to the open-file discovery and due process obligations to retain and disclose evidence, when the State has secured a search warrant, it has an independent “obligation to preserve evidence consistent with the strictures of the Fourth Amendment in cases it prosecutes criminally[.]” M.B., 471 N.J. Super. at 382-83. This obligation includes retaining information related to the execution of search warrants. “When a recording has been made” during a search, “it shall be retained by the executing law enforcement agency.” R. 3:5-6(a). And once the search is complete, “the executing law enforcement agency” must ensure that “the executed search warrant, inventory, and any other accompanying documents are included in the Judiciary’s computerized system within 14 days of execution.” R. 3:5-5(a).

“When evidence has been destroyed, the court must focus on (1) whether there was bad faith or connivance on the part of the government, (2) whether the evidence was sufficiently material to the defense, and (3) whether the defendant was prejudiced by the loss or destruction of the evidence.” M.B., 471 N.J. Super. at 382-83 (quotation omitted) (cleaned up). Bad faith sometimes takes the form of “a conscious effort to suppress exculpatory evidence.” State v. Serret, 198 N.J. Super. 21, 26 (App. Div. 1984) (quotation

omitted). But it can also take the form of “egregious carelessness” or “conspicuously bad, flagrant” conduct. State v. Carter, 185 N.J. Super. 576, 580-81 (App. Div. 1982); see State v. Zadroga, 255 N.J. 114, 135-37 (2023) (describing, in a different context, standard of whether “the State’s conduct reflected bad faith or inexcusable neglect”). Importantly, even if police conduct does not amount to bad faith, suppression is still required “where there is a showing of manifest prejudice or harm arising from the failure to preserve evidence.” M.B., 471 N.J. Super. at 383 (quotation omitted).

For example, in M.B., the Appellate Division found bad faith and manifest prejudice after the police failed to retain a recording of a telephonic TRO and search warrant application. Although police initially recorded the call in which a police officer and the domestic violence victim spoke to the municipal court judge, police subsequently deleted the recording “pursuant to the Lacey Township Police Department’s thirty-one-day record retention policy.” Id. at 380. On appeal, the defendant argued that the trial court should have suppressed the evidence seized as a result of the search warrant because there was no way for him to challenge whether the police followed the procedural requirements to obtain the warrant under the Domestic Violence Act. Based on the police’s failure to retain the phone call, the Appellate

Division found that the warrant was invalid, ordered suppression, and reversed the defendant's conviction. Id. at 379-86.

This Court explained that “the search warrant was invalid because the repeated procedural failures do not provide a reliable record to assure the Municipal Court judge properly authorized the warrant.” Id. at 382. The police's 31-day record retention policy and its application were “less than a good faith effort by the State to maintain its constitutional obligations.” Id. at 383 (“Lacey Township Police Department's retention policy provided no valid measure of the State's good faith obligation to preserve evidence it controlled in a criminal prosecution.”). Moreover, “regardless of bad faith,” this Court held that “the destruction of evidence manifestly prejudiced the defendant” and required reversal. Id. at 384. “Without any record of the telephonic TRO application to review,” this Court did “not have a sufficient factual basis by which to determine whether the municipal court judge properly issued the search warrant.” Id. at 384.

Here, the State Police's (in)actions more than meet the standard for suppression: (1) “bad faith” or its equivalent; (2) sufficiently material missing evidence; or, even with no bad faith or materiality, (3) manifest prejudice. M.B., 471 N.J. Super. at 382.

First, the State Police's failure to comply with the warrant's specific instruction amounted to bad faith. The warrant ordered that, [REDACTED]

[REDACTED] Yet the State Police did not retain, much less produce to Kidd, any of this critical historical location information.

(1T48-20 to 49-15) Defense counsel asked Feigley about the State's failure to retain any of this location information at the suppression hearing:

Defense counsel: So, it's not just a live fe[e]d [coming from the GPS tracker], there's historical information.

Detective Feigley: Correct.

Defense counsel: Did you retain that historical information?

Detective Feigley: No, we did not.

Defense counsel: Why did you not retain it?

Detective Feigley: Honestly, it was an oversight. We normally can go back and retrieve that information. When we tried to at that point, through the company that is used, it doesn't go back as far as we needed and it wasn't retained.

Defense counsel: So, you were unaware that there was an essential, an expiration date on the information.

Detective Feigley: Correct.

[1T49-8 to 15]

The State's error is really two distinct acts of carelessness. First, the State did not retain the GPS data on its own systems. Leaving it to a third-party to keep the State's information abandoned the State's own duty to ensure the data was safely preserved. And second, once the State decided to rely on the third-party, it failed to ensure that the private company would retain the data.

The trial court found "nothing" to "support the notion that this failure to retrieve the GPS data was done in bad faith." (Da62-63) But, in addition to violating the warrant's explicit text, the State's conduct was contrary to the State's own retention policy. For over a decade, Attorney General Directive 2011-1 has required that police retain relevant evidence for, at minimum, five years after conviction. Attorney General Guidelines for the Retention of Evidence § 5(b) (Jan. 6, 2011) (Directive 2011-1). Just like the police's errant 31-day retention policy in M.B., the State's conduct here "provided no valid measure of the State's good faith obligation to preserve evidence it controlled in a criminal prosecution." M.B., 471 N.J. Super. at 383-84 (citing earlier version of Directive 2011-1). No matter how the standard is articulated -- "bad faith," "egregious carelessness," or "inexcusable neglect" -- the State's conduct here meets it.

Second, there can be little debate that the missing evidence was material to the defense and prejudiced Kidd. Id. at 382-83. To be clear, even without bad faith and materiality, suppression is still required when “there is a showing of manifest prejudice or harm arising from the failure to preserve evidence.” Id. at 383 (quotation omitted). The trial court found no materiality or prejudice because the ATF later physically surveilled Kidd in South Carolina. (Da62-63) But this ignores that the missing location data set into motion the State’s entire case against Kidd. Detective Feigley testified that, based on the (now missing) data, the State Police contacted the ATF to set up surveillance at two firearm stores in South Carolina. (1T17-8 to 21-10, 48-20 to 51-16) The GPS also led to Kidd’s eventual car stop and arrest. (1T22-17 to 25-23, 53-21 to 54-1) And yet, we are left to rely on Feigley’s testimony because the underlying evidence -- the alleged GPS trail from New Jersey to South Carolina -- cannot be effectively challenged by Kidd because the State failed to retain the evidence. That location evidence was wide-ranging in both its volume and potential uses at trial. As Justice Sotomayor described in Jones, a GPS tracker “mak[es] available at a relatively low cost such a substantial quantum of intimate information about any person whom the government, in its unfettered discretion, chooses to track” that it “may alter the relationship between citizen and government in a way that is inimical to democratic society.” 565 U.S. at

416 (Sotomayor, J., concurring) (quotation omitted); see also Earls, 214 N.J. at 586-88 (similar).

On top of all that, because the police did not retain any information, there was no way to confirm whether the State Police followed the warrant procedures. For example, the warrant required that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But

Detective Feigley testified that he did not know who placed the GPS tracker on Kidd's car. (1T46-4 to 48-19, 49-23 to 50-12) In fact, the State does not keep any records at all: Feigley testified that the GPS devices are "secured at our station, but anyone has access to it in the station." (1T46-9 to 47-6) That is, when asked whether the State Police keeps any log or "record of when the GPS tracker would have been taken from the station," Feigley responded, "No." (Ibid.) As discussed above in Point I.B., the GPS also could not be installed before the warrant was authorized or while the car was outside New Jersey. But again, Feigley testified that he could not recall the time the tracker was installed and could only recall "[t]he general vicinity" in which it happened. (1T47-24 to 48-4, 49-23 to 50-12) Due to the State Police's failure to maintain

any of that information, Kidd had no way to effectively challenge the warrant's execution.

In sum, the State's failure to keep any records related to placement of the GPS tracker on the car, combined with its failure to retain any data from the GPS tracker, amounts to bad faith. And even if it does not meet that standard, Kidd was manifestly prejudiced by the State Police's lapses. Either way, suppression of all fruits of the GPS tracker is required. U.S. Const. amends. IV, V, XIV; N.J. Const. art. I, ¶¶ 1, 7.

## POINT II

**THE TRIAL COURT SHOULD HAVE SUPPRESSED THE FRUITS OF KIDD'S WARRANTLESS ARREST BECAUSE POLICE HAD NO PROBABLE CAUSE TO ARREST HIM. (Da39-49)**

After using the GPS tracker to monitor his location for three days, State Police stopped Kidd and arrested him in Trenton without a warrant. But at that point, there was not probable cause that Kidd had committed any crime. The trial court should have ordered suppression of all the fruits flowing from Kidd's warrantless arrest. Because it did not, reversal is required. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

“For probable cause to arrest, there must be probable cause to believe that a crime has been committed and that the person sought to be arrested

committed the offense.” State v. Chippero, 201 N.J. 14, 28 (2009) (quotation omitted). “The substance of all the definitions of probable cause is a reasonable ground for belief of guilt.” State v. Pineiro, 181 N.J. 13, 21 (2004) (quotation omitted). “That showing calls for more than a mere suspicion of guilt, but less evidence than is needed to convict at trial.” State v. Ingram, 230 N.J. 190, 213-14 (2017) (quotations omitted).

“Without a warrant, the State has the burden of proving the overall reasonableness of an arrest.” State v. Brown, 205 N.J. 133, 144 (2011). “The State must show by a preponderance of the evidence that the warrantless arrest was valid.” State v. Walker, 213 N.J. 281, 290 (2013) (citation omitted).

Here, the State argued that officers had the right to arrest Kidd based on his presence at the October 21, 2020, gun sale to Clark Bowens. (2T4-19 to 6-10) The State also argued that, even putting aside the Bowens sale, the police had reasonable suspicion to stop Kidd’s car based on the ATF’s observations at the South Carolina gun stores and the car’s cracked windshield. (2T6-11 to 7-17)

Judge Marbrey correctly held that the car’s cracked windshield did not provide a valid reason for the motor vehicle stop because Detective Feigley did not see the windshield prior to the stop. (Da44) Nevertheless, the court then ruled that officers had both reasonable suspicion to stop the car and probable

cause to arrest Kidd because “the arresting officers had knowledge that not only did the Defendant travel from South Carolina after the purchase of guns with his co-Defendant Javar Kidd, but also the arresting officers had knowledge that the Defendant was engaged in the sale of guns with M. Bowens.” (Da45, 47-48)

The trial court’s ruling, however, is contrary to the facts known to the officers at the time. In short, police did not have probable cause that Henry Kidd had committed a crime. The State Police and ATF had no proof that Kidd possessed or sold any guns, or that he possessed or exchanged any money. The State Police’s observations on October 21, 2020, showed other people taking suspicious actions -- Bowens, Kearse, and Javar Kidd. (See 1T10-9 to 13-25) But Detective Feigley testified that police did not see Henry Kidd possess any firearms, the gun box, or any money. (1T34-22 to 35-18) Kidd also did not have any hand-to-hand exchange with Bowens or anyone else. (Ibid.)

Nor did the ATF’s observations in South Carolina on October 30, 2020, directly implicate Kidd in any crimes. Surveillance footage from the first gun store showed Izel Shiver, Henry Kidd, and Javar Kidd at the store when Shiver purchased three firearms. (1T19-7 to 20-3, 51-3 to 12) Henry Kidd was at a second gun store with Stacey Kearse and Javar Kidd when Kearse purchased five firearms. (1T21-2 to 10) But again, there existed no evidence that Kidd

purchased any guns or that he exchanged guns or money with Shiver or Kears. (1T51-20 to 52-7)

All police had was a hunch -- but a hunch does not amount to probable cause. Even if the police suspected Kidd knew about crimes being committed by others -- Javar Kidd, Bowens, Kears, and Shiver -- his “[m]ere presence at or near the scene does not make one a participant in the crime, nor does the failure of a spectator to interfere make him/her a participant in the crime.” Model Jury Charges (Criminal), “Liability for Another’s Conduct (N.J.S.A. 2C:2-6)” (rev. June 7, 2021). Indeed, “[t]here must be particularized suspicion” for each individual police detain. State v. Kuhn, 213 N.J. Super. 275, 282 (App. Div. 1986) (citation omitted). Probable cause must be “particularized with respect to that person” and “[t]his requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another[.]” State v. Rivera, 276 N.J. Super. 346, 352 (App. Div. 1994) (quotation omitted). In other words, a “person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause[.]” Ibid. (quotation omitted); e.g., State v. Sims, 75 N.J. 337, 349 (1978) (“[E]ven presence in an automobile as a passenger will not necessarily implicate one in the illegal acts of the driver.”).

Ultimately, the police had no concrete evidence tying Kidd to a crime and the police's observations and hunches did not amount to probable cause. For that reason, the fruits of Kidd's warrantless arrest must be suppressed.<sup>6</sup> U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

**CONCLUSION**

For the reasons stated above, this Court should reverse the trial court's orders denying Kidd's suppression motions.

Respectfully submitted,

JENNIFER N. SELLITTI  
Public Defender  
Attorney for Defendant-Appellant

BY: /s/ *Ethan Kisch*

ETHAN KISCH  
Assistant Deputy Public Defender  
Attorney ID: 349152020

Dated: January 23, 2025

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<sup>6</sup> Because Kidd's warrantless arrest directly led to the impounding and search of the car pursuant to a warrant, all evidence taken from the car must be suppressed as fruit of the poisonous tree.

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# Superior Court of New Jersey

## APPELLATE DIVISION DOCKET NO. A-4033-23T4

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CRIMINAL ACTION

STATE OF NEW JERSEY, :  
 :  
 Plaintiff-Respondent, :  
 :  
 v. :  
 :  
 HENRY A. KIDD, : Sat Below:  
 a/k/a HENRY KIDD, : Hon. Janetta D. Marbrey, J.S.C., and  
 a/k/a HENRY KIDD, JR., : Hon. Robert E. Lytle, J.S.C.  
 :  
 Defendant-Appellant. :

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BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
ATTORNEY FOR PLAINTIFF-RESPONDENT  
STATE OF NEW JERSEY  
RICHARD J. HUGHES JUSTICE COMPLEX  
TRENTON, NEW JERSEY 08625

KAILI E. MATTHEWS – ATTORNEY NO. 306652019  
DEPUTY ATTORNEY GENERAL  
DIVISION OF CRIMINAL JUSTICE  
APPELLATE BUREAU  
P.O. BOX 086  
TRENTON, NEW JERSEY 08625  
(609) 376-2400  
MatthewsK@njdcj.org  
OF COUNSEL AND ON THE BRIEF

May 14, 2025

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- “Da” – Defendant’s appendix
- “Dca” – Defendant’s confidential appendix
- “1T” – Transcript of motion hearing on December 6, 2022
- “2T” – Transcript of motion hearing on December 13, 2022
- “3T” – Transcript of motion hearing on May 4, 2023
- “4T” – Transcript of motion hearing on May 5, 2023
- “5T” – Transcript of plea hearing on March 7, 2024
- “6T” – Transcript of sentencing hearing on June 20, 2024

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On May 14, 2021, under Indictment No. 21-05-00072-I, a State Grand Jury charged defendant, Henry Kidd, and seven other individuals<sup>1</sup> with gun trafficking-related offenses. Specifically, defendant was charged with second-degree conspiracy to unlawfully transport weapons and a large capacity ammunition magazine for sale, pursuant to N.J.S.A. 2C:5-5, N.J.S.A. 2C:39-9(d), (h), (i) (count one); first-degree promoting organized street crime pursuant to N.J.S.A. 2C:33-30 (count two); second-degree transportation of weapons into the State for unlawful sale or transfer, pursuant to N.J.S.A. 2C:39-9(i) and N.J.S.A. 2C:2-6 (count three); three counts of second-degree unlawful possession of a weapon pursuant to N.J.S.A. 2C:39-5(b) (counts four, ten, and sixteen); two counts of fourth-degree manufacture, transport, and disposition of a weapon pursuant to N.J.S.A. 2C:39-3(j), N.J.S.A. 2C:2-6 (counts five and eleven); fourth-degree unlawful possession of a large capacity ammunition magazine pursuant to N.J.S.A. 2C:39-3(j), N.J.S.A. 2C:2-6 (count seventeen); and second-degree certain persons to not possess a weapon, N.J.S.A. 2C:39-7(b) (count 28). (Da1 to 38).

Defendant filed a motion to suppress challenging his October 31, 2020

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<sup>1</sup> To the State's knowledge, none of the co-defendants listed in the indictment have filed an appeal of their convictions or sentences.

warrantless stop and arrest. (Da39 to 48); see generally (1T). On January 23, 2023, the Honorable Janetta D. Marbrey, J.S.C., denied the motion, holding that police had probable cause to arrest defendant. (Da39, 47 to 48). Defendant also filed a motion to suppress challenging Judge Marbrey's grant of the October 29, 2020 GPS warrant. (Da50 to 63). After Judge Marbrey had authorized the warrant, the Honorable Robert E. Lytle, J.S.C., considered the issuing judge's probable-cause determination in conjunction with the motion to suppress. (Da50, 53 to 54). On May 4, 2023, Judge Lytle found there was sufficient probable cause to authorize the warrant, and thus denied defendant's motion in part. (Da50, 53 to 54); (3T50-3 to 57-23). Judge Marbrey then heard the remainder of the motion as to whether the warrant or the State's actions in executing it were unreasonable, and on July 5, 2023, rejected defendant's claims in this regard as well. (Da51 to 63); see generally (4T).

On March 7, 2024, defendant pleaded guilty to second degree-transportation of weapons for unlawful sale or transfer, N.J.S.A. 2C:39-9(i) (count three). (Da64 to 70); see generally (5T). In exchange for his guilty plea, the State agreed to dismiss the remaining counts and recommend that the judge sentence defendant to ten years imprisonment, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. (Da64 to 70); (5T7-6 to 13).

On June 20, 2024, Judge Lytle sentenced defendant pursuant to the plea

agreement to ten years imprisonment, subject to NERA and dismissed the remaining counts. (Da71 to 74); (6T12-21 to 21-10). Defendant filed a Notice of Appeal on October 30, 2023. (Da27 to 30).

COUNTERSTATEMENT OF FACTS

A. The investigation of the drug trafficking operation.

In September 2020, the New Jersey State Police (NJSP) Crime Suppression Central Unit (CSCU) was investigating Terrance Alford based on suspicion that he was distributing weapons in and around Trenton. (Dca5 to 6); (1T5-25 to 6-7). Through a cooperating, confidential witness (CW), NJSP set up a controlled purchase from Alford. (Dca6); (1T6-10 to 22).

To conduct a controlled purchase, the CW, at the direction of law enforcement, contacts the target under investigation to arrange for the sale of contraband. (Dca6). The CW is provided funds and is sent to conduct the sale, while officers conduct surveillance of the CW during the buy and their travel to and from the location. (Dca6). After the sale is completed, the CW meets with police to turn over the contraband, the on-body recording device, and any leftover currency. (Dca6).<sup>2</sup>

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<sup>2</sup> The specific details of the controlled sale were redacted from the warrant to protect the identity of the confidential witness. Judge Lytle ruled that there was no reason to believe this sale did not proceed as in the manner described in the warrant. (3T50-21 to 25).

While conducting surveillance of the controlled purchase with the CW here, CSCU saw defendant, who was driving, and Alford arrive in a beige 2011 Chevrolet Equinox registered in the State of Alabama to defendant. (Dca3, 6). The CSCU continued conducting surveillance of the vehicle after it left the controlled purchase location and saw it make “common counter-surveillance technique[s] used by individuals involved in criminal activity in an attempt to identify possible law enforcement in the area,” such as abruptly turning left without a signal at red lights. (Dca7). The vehicle then double parked, at which point Alford exited the car and looked up and down the street “an unusual amount of times as if he was scanning the area in an attempt to identify law enforcement in the area.” (Da7). Detective Kyle Feigley (the lead detective in the investigation) certified that this is also a common counter-surveillance technique weapons distributors use to identify undercover police surveillance units in the area. (Dca7).

To ensure the investigation was not compromised by this counter-surveillance, the CSCU terminated its surveillance of the Chevrolet until later that afternoon when defendant was seen driving the vehicle again with Alford in the passenger seat. (Dca7). The Chevrolet made a right turn and accelerated quickly before it abruptly turned into a gas station, where Alford again exited the vehicle and looked around to see if law enforcement was following the

vehicle. (Dca7). After Alford got back into the vehicle, it left the gas station where it continued to employ counter-surveillance, such as making abrupt turns down one-way streets and pulling over without parking and idling. (Dca7 to 8). The police surveillance was again terminated to avoid compromising the investigation. (Dca8).

During the investigation, the CSCU learned defendant was transporting firearms from South Carolina to Trenton using multiple vehicles, including the Chevrolet, which he used to facilitate firearms transactions before departing Trenton a short time after. (Dca8, 9). CSCU also saw defendant using the Chevrolet in connection with the weapons trafficking operation and frequently employing counter-surveillance, which made it difficult for police to maintain physical surveillance while remaining covert during their investigation of the weapons trafficking operation. (Dca8).

At this point of the investigation, police sought a warrant to install a GPS device on the Chevrolet. (Dca8). In his certification<sup>3</sup>, Detective Feigley explained that where defendant was obtaining the weapons and where he met with co-conspirators could not be obtained through physical surveillance alone. (Dca10). Placing the GPS on the Chevrolet would assist in the investigation by

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<sup>3</sup> The following information is from the certification in support of the second GPS warrant because the first warrant was not executed.

revealing the following: the vehicle's location as it traveled in and around New Jersey; when it traveled out of state and returned to New Jersey; and when it was driven, to what locations, and by which routes. (Dca11). The GPS could also assist law enforcement in the following areas: determining when physical surveillance of the car was feasible and safe to do so; in the identification of other individuals involved in the operation; and in determining the locations defendant used during the weapons trafficking operation. (Dca11). Feigley also certified that this information would assist in defining the overall scope of the operation and in gathering sufficient evidence to prosecute its members. (Dca11). Judge Marbrey authorized the first warrant application to place a GPS on the Chevrolet on October 16, 2020, but the CSCU was unable to install it before the Chevrolet left Trenton. (Dca8); (1T44-21 to 25).

In its investigation, police identified locations defendant and the other co-conspirators frequented, and learned through a confidential informant that defendant would be in the Trenton area on the morning of October 21, 2020. (1T7-1 to 22); (Da52). Based on this information, police set up surveillance at around noon near North Warren Street and Passaic Street. (1T7-1 to 25).

At approximately 12:30 p.m., Detective Feigley and the CSCU saw Javar

Kidd<sup>4</sup> arrive in a silver BMW and exit the vehicle. (1T8-4 to 8). Javar was known to Feigley both from the current investigation, as well as dealing with him in past investigations. (1T8-9 to 15). The CSCU also saw defendant arrive in a gray Dodge Charger, park near the BMW, and exit the vehicle as well. (1T8-18 to 23). Feigley was also familiar with defendant based on the current investigation. (1T8-21 to 9-2).

After the pair exited their respective vehicles, Javar began using a cell phone, pacing, and looking around as if he was waiting for somebody. (1T9-10 to 14). Defendant then sat down in front of a nearby barber shop while Javar entered the shop, but police could not see inside. (1T9-16 to 10-10). Javar exited the barber shop and was still using the phone. A short time later, a red sedan arrived and parked near the BMW and the Charger. (1T10-9 to 12).

A black male, later identified as Clark Bowens, exited the red sedan, and walked over to defendant and Javar. (1T10-20 to 11-10); (Da52). Bowens handed over a white envelope—which police believed contained money—to an individual seated in the passenger seat of the Charger; police later identified the passenger as Stacey Kearse and learned she was dating defendant. (1T11-13 to 13-5; 1T21-11 to 20). Javar then walked over and opened the trunk of the BMW

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<sup>4</sup> Because defendant and Javar Kidd share a surname, the State will refer to Javar Kidd by his first name for the clarity and convenience of the Court.

and removed a black bag. Kearsse exited the Charger, took the black bag, returned to the Charger, and removed a black box, which he then placed into the bag before handing the bag back to Bowens. (1T12-17 to 13-9). Bowens took the bag and drove away with it in the red sedan. (1T13-9 to 12).

Defendant and Javar had a brief conversation before Javar re-entered the barber shop. Defendant then took the white envelope that Kearsse was holding, placed it in the trunk of the BMW, and drove away in the Charger. (1T13-16 to 25). Police followed the Charger and the red sedan until they took divergent routes, at which point the police continued to follow the red sedan and stopped following defendant in his Charger. (1T14-1 to 9). Police checked the Charger's license plate, and learned it was an Enterprise vehicle rented by Izel Shiver who police knew to be an associate of defendant and Javar. (1T14-10 to 22).

Meanwhile, Trenton Police continued to follow Bowens until they executed a stop and search of his vehicle. (1T14-23 to 15-12). During the search, police found a nine-millimeter handgun in its packaging. (1T15-14 to 16-9). A trace of the firearm revealed Izel Shiver had purchased the weapon the day before. (1T16-18).<sup>5</sup> Bowens was subsequently arrested. (1T16-22 to 23). Defendant and Javar Kidd were not immediately arrested because police were

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<sup>5</sup> Detective Feigley testified that when a firearms trace is run, it reveals when, where, and who the firearm was purchased from. (1T16-13 16).

still investigating them to determine “all the pieces and players within the weapons trafficking organization.” (1T16-24 to 7).

During the week of October 25, 2020, CSCU learned from a confidential source that defendant would be in the Trenton area with additional firearms from South Carolina that week. (Dca8). Detective Feigley certified that this confidential source provided reliable information in the past that had led to multiple arrests. (Dca8). On October 29, 2020, a license-plate reader system alerted CSCU that defendant’s Chevrolet had arrived in Trenton. (Dca8). The CSCU believed it was transporting firearms from South Carolina. (Dca8).

CSCU detectives saw defendant driving the vehicle in Trenton with an unknown black female as a passenger. (Dca8 to 9). The vehicle was again engaging in counter-surveillance, such as turning without a signal, making abrupt turns, and failing to stop at stop signs. (Dca9). The detectives also saw defendant looking around frequently and appearing to scan the area for possible law enforcement. The physical surveillance was again terminated to avoid compromising the investigation. (Dca9). When surveillance of the Chevrolet resumed a short time later, similar counter-surveillance techniques were again being used, and surveillance was terminated. (Dca9).

On October 29, 2020, CSCU applied for another search warrant that would authorize placement of a GPS device on the Chevrolet for continuous

tracking for thirty days. (Dca11); (1T45-19 to 46-2; 3T45-10 to 25); see generally (Dca2 to 14). Judge Marbrey granted the State's application the same day and the GPS device was successfully installed on the car. (3T45-1 to 7). Detective Feigley testified that the GPS provides both a live feed of the vehicle's location as well as historical data of the vehicle's location. (1T48-22 to 49-4).<sup>6</sup>

On October 30, 2020, the GPS on defendant's Chevrolet revealed that it was in West Columbia, South Carolina. (1T17-8 to 12; 3T45-2 to 7); (Da52). Specifically, the vehicle was at "Shooter's Choice," a firearms distributor. (1T17-16 to 17; 3T45-9 to 12); (Da52). CSCU then contacted the federal Bureau of Alcohol, Tobacco, and Firearms (ATF) for South Carolina to assist in the surveillance and investigation. (1T18-13 to 19-4; 3T45-7 to 9); (Da52).

ATF obtained the surveillance footage from Shooter's Choice which showed Izel Shiver at the store with defendant and Javar. (3T45-9 to 14); (Da52). ATF also learned Shiver purchased three firearms at Shooters Choice. (3T45-9 to 14); (Da52). ATF notified Detective Feigley in New Jersey about their findings. (1T18-24 to 19-9; 1T19-23 to 25).

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<sup>6</sup> Typically, law enforcement would retrieve and retain the historical data, but when CSCU attempted to retrieve the information, the company storing the data did not keep the data dating that far back. (1T49-5 to 12). The detective testified the investigators were not aware there would be an expiration on the length of time the data would be stored. (1T49-13 to 15).

Detective Feigley determined that Shiver was “straw purchasing” firearms for defendant and Javar. (1T20-4 to 8); (Da52). The detective explained that straw purchasing is when an individual, who lacks a criminal record (e.g., Shiver), legally obtains firearms under the guise they are for him, but then gives them to someone else in exchange for compensation. (1T20-11 to 16).

Defendant’s vehicle was also tracked to Palmetto State Armory, another firearms distributor in South Carolina, where Kears purchased five additional firearms. (1T20-17 to 24; 1T21-6 to 10; 3T45-9 to 14); (Da52). ATF was on scene to personally observe Kears purchase the firearms with defendant and Javar present. (1T20-25 to 21-5); (Da52). The GPS then tracked the Chevrolet returning north to New Jersey. (1T22-1 to 6; 3T45-15 to 19); (Da52).

B. The stop and arrest of defendant.

The following morning, October 31, 2020, CSCU set up surveillance in Trenton and saw defendant’s Chevrolet enter New Jersey. (1T22-9 to 22); (Da52 to 53). Through visual surveillance, police confirmed Javar was driving the vehicle and defendant was the passenger. (3T45-19 to 21).

Detective Feigley was in an unmarked car when he saw the Chevrolet turn onto Kersey Alley,<sup>7</sup> which Feigley followed. (1T23-6 to 10). Kersey Alley is a

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<sup>7</sup> Portions of the transcript incorrectly state “Kelsey Alley,” but the street is Kersey Alley. See (1T54-2 to 5; 1T56-16 to 19).

short, dead-end street, where the rear entrance of Javar's residence was located. (1T23-13 to 15). Prior to initiating the stop, members of CSCU noticed a crack on the center of the vehicle's front windshield. When the Chevrolet was parked, but still running on the left side of the road, Feigley activated his police lights and conducted a motor vehicle stop. (1T23-18 to 25); (Da52 to 53). At that time, both Javar and defendant were placed under arrest. (1T25-12 to 23; 3T45-24 to 25); (Da53). Detective Feigley testified he believed there was probable cause to arrest defendant for the sale of a firearm to Bowens. (1T26-1 to 4).

Police secured the Chevrolet and towed it to a NJSP secured-lot facility, where the car would be stored while police applied for a search warrant. (1T26-14 to 18; 3T45-25 to 46-3). After the warrant was granted, police searched the vehicle and found eight firearms in the trunk, matching the eight firearms Shiver and Kearse purchased in South Carolina the day before. (1T26-16 to 23; 3T45-25 to 46-3); (Da53).

C. The two motions to suppress.

The first motion challenged the motor vehicle stop and defendant's arrest on the morning of October 31, 2020. Defendant alleged police lacked both reasonable suspicion for the car stop and probable cause for his arrest. The second motion challenged the probable-cause determination for, and the execution of, the GPS search warrant on the Chevrolet. (Da39 to 50; 51 to 63).

Judge Marbrey decided that the two suppression motions would be resolved separately. She would address the warrantless car stop, while Judge Lytle would address defendant's probable cause challenge to the GPS warrant (since she had authorized that warrant). After the probable cause challenge was ruled on, Judge Marbrey would rule on defendant's challenge as to the reasonableness of the warrant's execution. (Da53 to 54).

1. The hearing on the warrantless car stop and defendant's arrest.

At an evidentiary hearing before Judge Marbrey, Detective Feigley (who had submitted the certification in support of the GPS warrant), testified that he had been a sworn officer with NJSP for seven years and a detective with CSCU for over four years. (1T4-18 to 22). Feigley testified he attended criminal investigation school, as well as training in the academy, and various other specialty trainings for narcotics and weapons investigations. (1T4-25 to 5-3).

Detective Feigley was the lead detective for the investigation and worked with a task force comprised of NJSP, Trenton Police Department, and Hamilton Police Department. (1T5-7 to 12; 1T7-14 to 17). He testified that as lead detective he was the primary affiant, responsible for all decision making in the investigation, and familiar with all aspects of the investigation. (1T5-15 to 21).

On January 17, 2023, Judge Marbrey denied defendant's motion to suppress, finding law enforcement had reasonable suspicion to stop defendant's

vehicle based on their observations on October 21, 2020, October 30, 2020, and the information provided to them by way of the investigation. (Da39, 45). The judge also found police had probable cause to arrest defendant “as officers had a well-grounded suspicion that a crime was being committed.” (Da48). Specifically, law enforcement had knowledge of defendant’s travel from South Carolina after purchasing guns and his participation in the weapons transaction with Bowens. (Da48). Judge Marbrey rejected defendant’s argument that he was “merely present” during the firearms transaction, finding the argument insufficient, “as it is not mere coincidences that the Defendant was present at the time of the purchase of the weapons as well as the Defendant was present at the time of the sale.” (Da48).

2. The hearing on the GPS warrant.

As for defendant’s motion challenging the validity of the search warrant, Judge Lytle heard arguments and ruled on the warrant’s probable cause. Judge Lytle found that, based on the totality of the circumstance outlined in the search warrant application, the search warrant was properly authorized. (3T50-3 to 57-23); (Da53 to 54). Specifically, Judge Lytle found there was probable cause to believe defendant was involved in the illegal purchase and sale of firearms, and that the Chevrolet registered to him, which he operated, was being used to facilitate the commission of that criminal conduct. (3T50-3 to 12). Judge Lytle

relied on the information contained within the search warrant application and Detective Feigley's affidavit therein.

Judge Lytle found "the most important fact" was the CW's controlled purchase with Alford. (3T51-10 to 13). The warrant outlined how Alford arrived in the Chevrolet to conduct the transaction while defendant was driving it, and how a reasonable inference could be made from the warrant application explaining how these purchases typically happen and that defendant was involved in the transaction that day. (3T51-14 to 23).

Detective Feigley's application also detailed the counter-surveillance techniques defendant used after leaving where the weapons were purchased. And it described how, at times, surveillance had to be terminated because counter-surveillance could have put the targets on notice of the investigation and impact the State's ability to continue the investigation. (3T51-24 to 52-13).

The warrant application further revealed that defendant was involved in the transportation of firearms from South Carolina to Trenton and that he utilized multiple vehicles including rentals to transport the firearms. (3T52-14 to 18). This information was corroborated by other information within the warrant application, including information provided by the confidential source who had provided reliable information in the past that led to numerous arrests. (3T53-6 to 15).

The confidential source also informed police that defendant would be in Trenton with additional firearms from South Carolina. (3T53-16 to 18). On October 29, 2020, a license-plate reader revealed that the Chevrolet was in the Trenton area on that day, and detectives later found it there. (3T53-16 to 23). Defendant was operating the vehicle with an unknown female. (3T53-23 to 25). He again engaged in counter-surveillance, which was detailed in the warrant. (3T53-25 to 54-4). These tactics included driving down a one-way street to either avoid surveillance or to help uncover any potential surveillance of the vehicle. (3T53-4 to 6). Judge Lytle found that, even though defendant was not involved in any illegal activities on the day the warrant was authorized, the vehicle's counter-surveillance corroborated the earlier information and showed that the vehicle was continuing to be used in connection with criminal activity. (3T54-7 to 22).

After Judge Lytle determined there was sufficient probable cause in the search warrant, Judge Marbrey decided the remainder of defendant's motion to suppress regarding the warrant and heard arguments as to whether the search warrant was unreasonable. See generally (4T); (Da53 to 54). Defendant specifically argued that the State was required to return the search warrant and to establish who installed the GPS tracker, at what time, and where the vehicle was located when it was installed; however, the data was not preserved so this

information was unavailable. (Da56).

On July 5, 2023, Judge Marbrey denied the remainder of the motion to suppress. (Da51 to 63). She found that Detective Feigley's testimony and a police report made clear that the GPS device was installed on the Chevrolet in Trenton by another law enforcement agent, who notified Feigley that it was successfully installed, and therefore, the procedures were not "fundamentally compromised" so as to warrant suppression." (Da59). She also found that the technical errors that occurred here (i.e. not returning the search warrant) were ministerial acts and not a basis to invalidate a valid search warrant. (Da61). Finally, Judge Marbrey found the State's failure to be able to secure the GPS data information was not made in bad faith, was not material to his defense, and defendant was not prejudice by not having this data. (Da62 to 63).

On March 7, 2024, defendant pleaded guilty to count three (second-degree transporting weapons into the state for the unlawful sale). At his guilty plea, defendant admitted that, on October 30-31, 2020, he drove from South Carolina to Trenton, New Jersey, while knowingly transporting eight firearms into New Jersey for the purpose of unlawfully selling or disposing of these firearms. (5T21-15 to 22-5). Following this factual basis, the judge accepted defendant's guilty plea. (5T22-9 to 24). This appeal follows.

LEGAL ARGUMENT

POINT I

THE GPS SEARCH WARRANT WAS VALID.

The police obtained a GPS warrant to track the continuous location of a vehicle registered to defendant based on law enforcement's observations and information learned pursuant to their ongoing investigation that defendant's vehicle was being used to facilitate a weapons trafficking operation in New Jersey. Police suspected defendant and others were transporting weapons from out-of-state into New Jersey for their subsequent illegal sale and transfer. The scope of the warrant was limited to the continuous location of the vehicle within the United States. The GPS data would be transmitted and viewed by detectives in New Jersey, the state where police applied for the warrant, and where defendant was trafficking illegal firearms. Defendant fails to show how the warrant lacked probable cause when police observed him engage in such criminal activity in New Jersey, nor demonstrates how his constitutional rights were violated when police obtained a GPS warrant to track his vehicle's location in accordance with established precedent.

A. Sufficient probable cause supported the GPS warrant.

The search warrant to install a GPS tracker onto the Chevrolet registered to defendant was properly found to be supported by sufficient probable cause.

Under the totality of the circumstances, police had well-grounded reasons to believe that defendant's Chevrolet was continually engaged in and was being used to facilitate weapons trafficking in New Jersey. Defendant attempts to convert the proper analysis from a focus on the location to be searched and items to be seized, into erroneously requiring police to allege circumstances of his direct conduct and substantive guilt. This Court should accord deference to the motion judge's finding of probable cause and reject defendant's arguments.

Search warrants are presumed valid, and defendant bears the burden of demonstrating the warrant was issued without probable cause or that the search was otherwise unreasonable. State v. Sullivan, 169 N.J. 204, 211 (2001); see also State v. Boone, 232 N.J. 417, 427 (2017); State v. Evers, 175 N.J. 355, 381 (2003). The probable-cause standard requires a court to “make a practical, common-sense determination whether, given all the circumstances,” there is probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is in the place sought to be searched. State v. Marshall, 199 N.J. 602, 610 (2009).

Probable cause “eludes precise definition.” Sullivan, 169 N.J. at 210. It is “less than legal evidence necessary to convict though more than mere naked suspicion.” Id. at 210-11. And it is “consistently characterized . . . as a common-sense, practical standard for determining the validity of a search

warrant.” State v. Novembrino, 105 N.J. 95, 120 (1987); see also Illinois v. Gates, 462 U.S. 213, 231 (1983) (defining probable cause as “practical, nontechnical conception”). The standard is met when police have “a well-grounded suspicion that a crime has been or is being committed.” Sullivan, 169 N.J. at 211(internal quotation omitted); see also State v. Demeter, 124 N.J. 374, 380-81 (holding probable cause requires showing of a “fair probability” criminal activity is taking place).

In making the probable-cause determination, courts consider “the ‘four corners’ of the affidavit and the ‘totality of circumstances’ presented in that affidavit to determine the sufficiency of information offered in support of the warrant.” Evers, 175 N.J. at 380. Limiting consideration to the four corners of the affidavit before the issuing judge “assures that the magistrate was in a position to adequately perform the constitutional function of providing independent judicial review prior to executive intrusions on individual privacy.” Marshall, 199 N.J. at 611.

Reviewing courts should pay substantial deference to judicial findings of probable cause in search-warrant applications. State v. Andrews, 243 N.J. 447, 464 (2020). Review of a warrant’s adequacy “is guided by the flexible nature of probable cause and by the deference shown to issuing courts that apply that doctrine.” Sullivan, 169 N.J. at 217. And “warrant applications ‘should be read

sensibly rather than hypercritically and should be deemed legally sufficient so long as they contain[] factual assertions which would lead a prudent [person] to believe that a crime [has] been committed and that evidence . . . of the crime [is] at the place sought to be searched.” Ibid. (alterations in original) (quoting State v. Laws, 50 N.J. 159, 173 (1967)). Finally, “an appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court’s decision so long as those findings are supported by sufficient credible evidence in the record.” Elders, 192 N.J. at 243.

Applying these principles, Judge Lytle correctly upheld the probable-cause determination for the GPS warrant. The application clearly described the facts and circumstances that led law enforcement to believe the Chevrolet, registered to and operated by defendant, was being used to facilitate illegal weapons trafficking. These facts included the following: defendant driving Alford to the September controlled purchase; defendant’s subsequent counter-surveillance maneuvers while driving away afterwards; law enforcement’s observations during the investigation that the vehicle was used to facilitate illegal weapons transactions; defendant’s continued counter-surveillance while using the vehicle; and information from a reliable, confidential source and CSCU’s subsequent corroboration and observations of defendant’s presence in Trenton the week of October 25, 2020.

An aggregate review of these facts establishes probable cause for police to believe defendant's vehicle was being used to facilitate criminal activity, including the unlawful possession and transfer of firearms as well as the conspiracy to commit such. Thus, there was sufficient probable cause supporting the search warrant and there is no basis to disturb the ruling below.

Contrary to defendant's suggestion, the circumstances establishing the vehicle's use in facilitating suspected criminal activity is not based on "criminal conduct by other people," nor were they presented as only "conclusory allegations without any sourcing or evidence," or based solely on a confidential source's "uncorroborated" information. (Db15 to 16, 17, 18). Rather, as described above, the warrant application thoroughly and specifically defined when, where, and how the vehicle was being used in furtherance of the weapons trafficking operation. These details, and reasonable inferences drawn from them, cultivate the basis for probable cause to continually monitor the vehicle's location and obtain the location information for it.

Notably, "the Fourth Amendment protects people, not places." Katz v. United States, 389 U.S. 347, 351 (1967). But this warrant did not seek to search defendant's person or his specific location. Instead, it sought the Chevrolet's locations as the vehicle was an instrumentality of the crimes and conducting physical surveillance of it continued to threaten compromising the active

investigation given the counter-surveillance.

A probable-cause-to-search analysis is focused on the place to be searched—compared to probable cause to arrest which is focused on the person. See State v. Chippero, 201 N.J. 14, 29 (2009). Indeed, the scope of a lawful search is defined by the object of the search and place in which there is probable cause to believe that it may be found. Marshall, 199 N.J. at 611. When a judge is authorizing a warrant, the analysis focuses on whether “there is probable cause to believe that a crime has been committed, or is being committed, at a specific location. Thus, analysis of a search warrant must assess the connection of the item sought to be seized 1) to the crime being investigated, and 2) to the location to be searched as its likely present location.” Ibid.; Chippero, 201 N.J. at 29.

Here, a review of the GPS warrant unequivocally establishes that the Chevrolet is the subject of the warrant, not defendant. While defendant is inherently linked to the car as its registered owner, the GPS warrant also described how defendant’s conduct was part and parcel of the suspicious circumstances giving rise to probable cause supporting the warrant—including the counter-surveillance measures he took on various dates while driving the Chevrolet.

Thus—although defendant is ostensibly linked to his car as the registered owner and his actions furthered the basis for probable cause—police were not

obligated to “directly implicate [defendant] in criminal activity,” (Db16), within the four corners of the warrant that sought to search the location of the Chevrolet, and not defendant himself. Still, the totality of the circumstances as described in the warrant established that defendant was more than a mere innocent bystander during the criminal activities described in the warrant.

The police officers’ observations and information learned during the investigation, as well as their training and experience, allow for more than bare conjecture. See State v. Stovall, 170 N.J. 346, 363 (2002) (“It is fundamental to a totality of the circumstances analysis of whether reasonable suspicion exists that courts may consider the experience and knowledge of law enforcement officers.”). Rather they serve as the basis for the officers to draw reasonable inferences therefrom—not only as to the vehicle's use as an instrumentality of the crimes—but also defendant's involvement based on his conduct. Law enforcement (1) saw defendant drive the Chevrolet to the location of the September 2020 controlled transaction; (2) saw him engage in counter-surveillance with Alford, who was the target of the investigation at that point; (3) saw him driving the vehicle on multiple other occasions and engage in counter-surveillance; (4) discovered he was involved in the transportation of the firearms from South Carolina to New Jersey and used the Chevrolet to do so; (5) saw him drive to and from, and engage with individuals at the October 21,

2020 illegal firearms transaction with Bowens; (6) learned that on October 25, 2020—days before the GPS tracker was authorized—he would be in Trenton with additional firearms from South Carolina and that police were able to corroborate this information through a license-plate reader and seeing him engage in more counter-surveillance; and (7) used the information the investigation uncovered, along with their training and experience, to determine there was a well-grounded suspicion that defendant was involved in criminal activity and was using the Chevrolet to conduct the illegal weapons sales under investigation. Contrary to defendant’s claim, the totality of these circumstances sufficiently established defendant was not merely in the presence of others who happened to be engaging in criminal activity, but inextricably involved in it.

Defendant’s argument discounts these facts within the warrant and mistakenly relies on the accomplice liability model jury charge. (Db16); Model Jury Charge (Criminal), “Liability for Another’s Conduct (N.J.S.A. 2C:2-6” (rev. June 7, 2021). Although mere presence might not be sufficient to establish an individual’s guilt beyond a reasonable doubt, presence at the location under investigation or when a search warrant is being executed can establish probable cause that a defendant was involved in the suspected criminal activity, which is an entirely different analysis than what is required for accomplice liability to attach for purposes of trial. See State v. Mann, 203 N.J. 328, 339-340 (2010)

(upholding search of the defendant who was parked next to known drug dealer’s car that police had valid warrant to search); compare State v. Bivins, 435 N.J. Super. 519, 528 (2014) (determining the defendant “was spatially . . . ‘beyond the immediate vicinity of the premises to be searched’” when seated in vehicle parked five or six houses away from the house being searched pursuant to search warrant, was not seen in or fleeing house, or was not connected to any incriminating evidence found within house search).

Indeed, police are authorized to search all persons already present at a location pursuant to a search warrant if the location is continuously used to facilitate criminal activity and additional facts exist that suggest the person is likely to be a party to the unlawful activity. See State in Interest of L.Q., 236 N.J. Super. 464, 472 (1989) (holding “a warrant to search premises used for the continuing retail sale of [narcotics] may authorize the search of all persons already present or arriving if the search is conducted at a time when sales ordinarily take place” and provided there are additional factors that suggest the person “is likely to be a party to the unlawful activity”). As described, the facts in this warrant clearly detail that defendant was not only present at the time when the suspected criminal activity was occurring, but the investigation revealed he was an active participant in the suspected criminal activity and did so through his use of the Chevrolet that was the subject of the warrant.

Another flaw with defendant's claim is that the purpose of jury instructions is to serve as "a roadmap to guide the jury" at trial, State v. Randolph, 441 N.J. 533, 558 (2015), and to assist the jury's determination of a defendant's substantive guilt beyond a reasonable doubt. The language chosen in drafting jury instructions for that purpose is thus not determinative and should not deter a court from employing a totality of the circumstances analysis to determine if there was probable cause supporting a search warrant applied for during an ongoing investigation. Here, under the totality of the circumstances, there was probable cause for police to suspect defendant was directly involved in the criminal activity, not a passive bystander.

To be clear, the circumstances undergirding the probable cause in this search warrant encompass more than the information the confidential source provided about defendant's whereabouts the week of October 25, 2020. Indeed, the information the confidential source provided does not serve as the sole basis for the search warrant. Rather, it is law enforcement's corroboration of that information, to the extent practicable, through their observations and investigation efforts on October 29, 2020, in conjunction with the information observed and learned throughout the entire investigation up to then—including the September controlled purchase, the October 21, 2020, transaction with Bowens, and defendant's continued engagement of counter-surveillance tactics

over the course of the investigation.

While the confidential source's provided information was not the sole basis establishing probable cause, information from informants may nevertheless constitute a basis for probable cause. State v. Smith, 155 N.J. 83, 92 (1998). Reliability is probative of veracity and may be established through past instances of reliability. Id. at 93-94. The weight given to past instances of reliability varies with the circumstances of each case. Id. at 94. The reliability of the information is further established when, like here, police corroborate some, or all, of that information. And that information and subsequent corroboration served as one of several circumstances the motion court reviewed.

Accordingly, defendant's piecemealed dissection of individual facts in the warrant disregards the well-established totality of the circumstances analysis that is pivotal in determining if probable cause supports a search warrant. When the facts contained within the instant search warrant are taken together, they patently establish sufficient probable cause to authorize the warrant. Thus, the motion judges' findings of probable cause are amply supported by the record and should be affirmed.

B. The GPS warrant validly authorized tracking the Chevrolet's location within the United States.

Judge Marbrey had the authority to authorize a warrant to track defendant's vehicle's location within the United States via GPS, as the

detectives reviewing the data were receiving it within the jurisdiction of the Superior Court of New Jersey. Given the transient, intangible nature of GPS tracking data and the inherently mobile nature of vehicles, investigators cannot be expected to obtain multiple warrants for the same vehicle by predicting which other states the vehicle may travel to. Therefore, this Court should reject defendant's belated argument challenging the alleged technical irregularity of the search warrant's geographical scope.

Before addressing the merits of defendant's claim, this Court should find it waived on appeal. Defendant's argument below only addressed whether the warrant had probable cause or was unreasonable. His claim did not question if the authorizing judge had jurisdiction to authorize a warrant permitting police to install and receive data from the GPS device on the Chevrolet within the geographical limits of the United States. By failing to raise this issue before the motion judge, defendant deprived the court of developing arguments, and thus it should be deemed waived. Green Knight Capital, LLC v. Calderon, 469 N.J. Super. 390, 396 (App. Div. 2021); see also R. 3:5-7(b) ("If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion."); R. 3:5-7(c) ("If material facts [regarding a motion to suppress] are disputed, testimony thereon shall be taken in open court.").

Nevertheless, Judge Marbrey's imposed geographical limitation within the United States was appropriate. "Generally, the exclusionary rule applies only to evidence obtained in violation of the Fourth Amendment to the United States Constitution or Article I, Paragraph 7 of the New Jersey Constitution." State v. Nguyen, 419 N.J. Super. 413, 428 (App. Div. 2011). But defendant fails to establish his rights were violated under either the federal or State constitutions. He instead relies on a case holding that police are required to obtain a warrant to install a GPS on a vehicle, which they did here. Defendant's belated argument essentially centers on an alleged jurisdictional violation, which is technical in nature and does not trigger the exclusionary rule. See R. 3:5-7(g) ("In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.").

At the outset, the GPS warrant validly permitted the continuous transmission of the vehicle's location within the geographical limits of the United States to New Jersey officers who accessed the transmitted location data within New Jersey. (Dca16, 17). Allowing officers to intercept the car's location, even if it traveled out-of-state, is permissible; just as allowing the interception of conversations, even if the parties are out-of-state, is permissible.

See State v. Ates, 217 N.J. 253, 257 (2014).

The rationale in State v. Ates supports the validity and scope of the warrant at bar. 217 N.J. 253. The New Jersey Supreme Court in Ates declined to suppress conversations that were intercepted pursuant to a valid search warrant when the callers were out-of-state. Id. at 257. Ates challenged the constitutionality of the Wiretap Act, N.J.S.A. 2A:156A-1 et seq., asserting “it permits New Jersey law enforcement[t] officials to exceed their jurisdiction and intercept phone calls from out of state individuals who have no connection to New Jersey.” Id. at 263 (internal quotations omitted) (alteration in original). Ates argued that just as New Jersey officials are required to enlist the aid of another state to search an out-of-state home, they should seek a wiretap order to monitor phone calls between residents of other states from a judge in those states. Id. at 263-64.

The Court in Ates held that there was a nexus to New Jersey because the “listening post” was in New Jersey and before a judge can enter a wiretap order, probable cause must be found (1) that a listed, serious offense under New Jersey law has been, is being, or will be committed, and (2) that communications about the criminal activity in New Jersey may be obtained through the interception. Id. at 268-296 (citing N.J.S.A. 2A:156A-10(a)-(b), -12(h)). The Court also rejected Ates’s analogy to the search of a home which would require a search

warrant from a judge in the state where the residence is located because a wiretap “involve[s the] seizure of transitory intangible evidence.” Id. at 272. Accordingly, the Court in Ates held that given the “inherent mobility of the modern cell phone,” officers need only seek a warrant in the jurisdiction where the “point of interception” is—in other words, the site where an officer is located when an interception is made.” Id. at 272-73.

The transmittal of a vehicle’s location is analogous to an intercepted call; thus, the rationale in Ates should be applied to GPS tracker warrants. In fact, the GPS device stores the vehicle’s location into its memory which officers in New Jersey then access through wireless telephone technology. See (Dca17). Thus, the transmittal of the vehicle’s location via the GPS tracker involves the seizure of transitory intangible evidence, and a search warrant authorized by a judge from the jurisdiction where the point of interception is located satisfies the warrant requirement.

This is a “rational approach” as, given the inherent mobility of vehicles, it would be impractical, if not impossible, in some instances for law enforcement to track a vehicle’s movements and investigate certain crimes—such as the transportation of weapons into the State for unlawful sale or transfer under N.J.S.A. 2C:39-3(i)—if agents could only rely on orders issued in the state where the vehicle was located contemporaneous to the transmittal of its location.

See Ates, 219 N.J. at 257. “Under that type of scheme, a court order would lose its force as soon as a target crossed state lines” in his vehicle. Ibid.

Further, the distinction between transitory, intangible evidence and physical, tangible evidence also “presents real, practical concerns,” such as how officers could lawfully ascertain a vehicle’s location. See id. at 272. Under defendant’s argument, these concerns would only be met with unreasonable results or solutions, such as expecting law enforcement to obtain multiple warrants for the same vehicle in advance. See ibid. It would import a duty of clairvoyance onto officers to predetermine every location the vehicle is expected to travel and obtain warrants in those states prior to installing the GPS on the vehicle. This creates a “Catch-22,” as the purpose of most GPS warrants is to investigate where a vehicle is traveling. But vehicles, like cell phones, by their very nature, are “inherent[ly] mobil[e]” which would “defeat even the most responsible efforts to monitor [them.]” See ibid. And no legitimate privacy interest would be enhanced if police had to seek GPS search warrants from every jurisdiction where a target might be expected to travel as the probable-cause determination would not change from jurisdiction to jurisdiction.

Indeed, defendant’s attempt to distinguish wiretaps from transmissions of GPS data falls short because he fails to recognize the distinction between transitory intangible evidence and physical tangible evidence. (Db24 n.5). The

physical occupation of private property under a trespassory test is the standard used to determine whether a “search” occurred when a tracking device, such as GPS, is installed. See United States v. Jones, 565 U.S. 400, 404-05 (2012). In other words, a finding of “physical intrusion” does not per se bar law enforcement’s ability to conduct the search; rather, Jones mandates that law enforcement first obtain a search warrant based on probable cause to physically occupy the private property and obtain information—in this case, installing a GPS device to track the movements of defendant’s car.

For this reason, defendant’s allusion that the Jones ruling triggers the exclusionary rule in this case, is misplaced. 565 U.S. 400 (2012). At the outset, the facts of this case comply with the ruling in Jones. In Jones, police installed a GPS on the defendant’s wife’s car without a valid warrant. Id. at 403. The United States Supreme Court ruled that installation of a GPS on a vehicle constitutes a search under the Fourth Amendment and therefore, to install one, requires a warrant. Id. at 403-404. The Court’s analysis grappled with whether the installation of a tracking device was a “search,” and did not determine the limitations or the permissible scope of such devices. But here, police obtained a valid search warrant prior to installing the GPS, thus complying with Jones.

Nevertheless, defendant fails to establish any factual or legal basis to explain how his privacy rights were violated when a New Jersey judge reviewed

a GPS warrant for his vehicle. Particularly considering privacy rights protect people and not places. See Katz, 389 U.S. at 351.

The exclusionary rule requires suppression of any evidence recovered during an unreasonable search. State v. Gioe, 401 N.J. Super. 331, 339 (App. Div. 2008). The rule is designed to prevent, rather than repair, by removing any incentive for police to disregard a civilian's Fourth Amendment rights. State v. Hamlett, 449 N.J. Super. 159, 175-76 (App. Div. 2017).

Yet “courts do not apply the exclusionary rule indiscriminately.” Id. 449 at 176. Only evidence obtained in violation of a defendant's constitutional rights will be excluded. Ibid. “[S]o long as the objectives underlying the warrant requirement remain intact, slight departures from strict compliance with the rules will not invalidate a search.” Ibid.

But defendant fails to articulate how his constitutional rights were violated. Instead, he alleges “a constitutional provision was violated,” (Db29); however, the provision in question is not one that enumerates rights unto him, rather, it empowers “original general jurisdiction throughout the State in all causes” to Superior Court judges, including Judge Marbrey. N.J. Const. art VI, §3, ¶ 2. This provision is interpreted to presume that the Superior Court judges have jurisdiction in all causes unless the Legislature has specifically reserved jurisdiction to a court of limited jurisdiction. See DSC of Newark Enters. v. S.

Plainfield Borough, 17 N.J. Tax 510, 514 (Tax 1997) (citing Borawich v. Barba, 7 N.J. 393, 409-10 (1951)). Defendant does not allege the Legislature reserved jurisdiction to another court in this case.

Still, he fails to establish a nexus between the judge’s alleged violation of her constitutional powers and how it infringed on his rights. Absent such nexus, the alleged violation is, at best, a technical irregularity. See R. 3:5-7(g).

Indeed, New Jersey “courts have been reluctant to invalidate search warrants based on confusion over jurisdiction or other issues that do not implicate probable cause or the neutrality of the issuing judge.” State v. Broom-Smith, 406 N.J. Super. 228, 238-39 (App. Div. 2009), aff’d, 201 N.J. 229 (2010); see also Hamlett, 449 N.J. Super. at 178. “In other words, so long as the objectives underlying the warrant requirement remain intact, slight departures from strict compliance with the rules will not invalidate a search.” Id. at 176.

As in Hamlett, if there was a violation of Judge Marbrey’s jurisdictional limits here, defendant has failed to prove it is more than a technical infirmity. Indeed, having a New Jersey judge authorize a search warrant for a New Jersey investigation, even if raised below, would seemingly not have changed the warrant’s validity because such a technical error, does not infringe on defendant's rights and thus, does not impact the search warrant’s validity.

In terms of remedy, Rule 3:5-7(g) provides, “[i]n the absence of bad faith,

no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant . . . or in its execution.” See also R. 7:5-2(e) (same). This is particularly true where a statute imposes restrictions exceeding what the Fourth Amendment requires. Cf. Virginia v. Moore, 553 U.S. 164, 174 (2008) (holding violation of statute imposing restrictions on police arrest power, exceeding what the Fourth Amendment demands, does not require suppression).

New Jersey courts differ from federal courts in that our courts recognize jurisdictional violations as technical violations that do not warrant invalidating a search warrant. For example, in Broom-Smith, the New Jersey Supreme Court upheld a search warrant, issued by a municipal judge, outside of his territorial jurisdiction. 201 N.J. at 233, 236-37. In Nguyen, this Court determined a search occurring outside of the police’s jurisdictional limits did not require suppression. 419 N.J. Super. at 428-29. And in Hamlett, a municipal judge authorized a search warrant that contravened the procedures prescribed in Broom-Smith and a cross-assignment order. 449 N.J. Super. at 175. This Court found the violation was technical and that defendant’s rights were not violated. Id. at 178. The panel further concluded the officer did not act in bad faith or with a deliberate disregard for the law, and thus, upheld the search warrant. Ibid.

Thus, even if this Court were to find the authorizing judge only had

jurisdiction to issue a warrant that stopped at New Jersey's borders, such an oversight would amount to a technical error—and has nothing to do with the judge's probable-cause determination which is fully supported by the record. But, for the reasons described above—namely, that the detectives' point of interception was located in New Jersey where the warrant was authorized—Judge Marbrey properly authorized the warrant to continuously track the vehicle within the United States. Suppression is not required for a non-constitutional violation and thus the validity of the search warrant should be affirmed.

C. Alleged violation of court rules that do not infringe on defendant's constitutional rights are not a basis for suppression.

As in Point I.B., supra, a violation of a court rule or statute does not warrant suppression. Suppression is inappropriate absent a showing that defendant's constitutional rights were violated. But the alleged procedural missteps defendant raises are minor technical deficiencies at best that do not infringe on defendant's privacy rights. Thus, this Court should affirm Judge Marbrey's finding that the search warrant was valid.

Defendant raises three claims that certain “warrant procedures” were not followed involving (1) installation of the GPS on defendant's vehicle, (2) the return of the warrant, and (3) lost GPS coordinates. Failure to comport with the procedures and court rules regarding these claims does not undermine the probable cause finding within the four corners of the search warrant.

First, defendant asserts he is entitled to suppression over the disclosure of who affixed the GPS and when. But the testimony and judge's findings below establish that an officer successfully installed the GPS on the Chevrolet on October 29, 2020. Detective Feigley's testimony established that only law enforcement officers had access to the GPS trackers that were stored in a secure place at the police station. He also testified that on October 29, 2020, CSCU applied for the warrant and conducted visual surveillance of the vehicle until the warrant was approved and the GPS could be installed the same day. (1T46-13 to 21; 1T47-14 to 16; 1T50-13 to 19).

Second, defendant cites to Rule 3:5-5(a) about the return of a search warrant following its execution. But minor deficiencies in technical procedures do not trigger the exclusionary rule. Indeed, this Court has held the failure to file a return of a search warrant does not invalidate an otherwise proper search warrant. See State v. Parsons, 83 N.J. Super. 430, 445-46 (App. Div. 1964) (holding return of search warrant is ministerial affecting officer's protection under the warrant). Thus, the failure to return the warrant also does not trigger the exclusionary rule.

Third, the lost GPS coordinate data is a circumstance that exists outside of the four corners of the search warrant. Defendant has failed to demonstrate, and the motion judge rejected the argument, that the lost data was based on bad

faith on the part of law enforcement. To meet the bad faith standard for the destruction of evidence, the court must examine the following three factors to determine whether a due process violation has occurred when there has been either suppression, loss, or destruction of physical evidence in a criminal trial: (1) whether there was bad faith or connivance on the part of the government, (2) whether the evidence suppressed, lost or destroyed was sufficiently material to the defense, and (3) whether defendant was prejudiced by the loss or destruction of the evidence. State v. Hollander, 201 N.J. Super. 453, 479 (App. Div. 1985). Bad faith and substantial materiality to the defense are fact-sensitive and the burden to prove both is squarely upon defendant. State v. Ciba-Geigy Corp., 222 N.J. Super. 343 (App. Div. 1988). Bad faith cannot be proven where the State destroys evidence in the ordinary course of business and such destruction is not part of a connivance. Hollander, 201 N.J. Super. at 479-80 (holding consumption of the blood stains in a series of blood typing tests that resulted in a laboratory report with exculpatory conclusions was deemed not to have occurred in bad faith); see also State v. Peterkin, 226 N.J. Super. 25, 42-43 (App. Div. 1988) (finding gross negligence, such as failure to preserve photographic array, does not amount to bad faith where proofs at pretrial hearings revealed no evil intent or purpose to destroy the evidence—even though officer who failed to preserve the evidence later engaged in surreptitious course of conduct to

conceal his error).

Sufficient materiality is defined as evidence with a critical exculpatory value that was apparent before its destruction, is expected to play a significant role in the suspect's defense, and is unable to be comparably duplicated by other evidence. Hollander, 201 N.J. Super. at 479-80. For example, the destruction of a spent Molotov cocktail by fire department personnel before defendant could independently test its contents for an accelerant or lack thereof was deemed non-material and non-prejudicial to the defense since nothing suggested that the bottle content was exculpatory, and the defendant profited from a spoliation inference that the State had destroyed the evidence because it did not benefit the prosecution. State v. Serret, 198 N.J. Super. 21, 27-28 (App. Div. 1984). Additionally, the destruction of blood stain evidence that was inconclusive for any blood type was not exculpatory, and thus not sufficiently material to the defense for a dismissal of the indictment. Hollander, 201 N.J. Super. at 479-80.

Here, defendant cannot meet his burden of showing bad faith, because the failure to retain the GPS coordinates was inadvertent. Detective Feigley testified he attempted to retrieve the data from the company that maintains the GPS coordinates, but the data was no longer available because it was beyond the company's retention period. Nor was this evidence exculpatory to defendant. Defendant's vehicle was observed in Trenton on October 29, 2020, when the

GPS was affixed to the vehicle. Detectives further observed the vehicle leave Trenton on October 30, 2020. The ATF agents' visual surveillance and supporting surveillance video of the gun stores in South Carolina, put defendant, Javar, and the Chevrolet in South Carolina on October 30, 2020.

And not only has defendant failed to show how the GPS coordinates were exculpatory, he also cannot demonstrate how he was prejudiced by the inability to examine this evidence to satisfy the bad-faith standard. Indeed, the State lost its ability to present corroborating evidence of any ATF and CSCU officers' testimony about their personal observations. Nevertheless, defendant is not prejudiced, as he was not charged with offenses requiring the GPS coordinates data as proofs.

Further, in addition to the cases described Point I.B., supra, consider State v. Gadsen, 303 N.J. Super. 491 (App. Div. 1997). Police arrested Gadsen outside their jurisdiction in violation of N.J.S.A. 40A:14-152. Ibid. Gadsen claimed this violated his constitutional rights against unreasonable searches and seizures, and thus suppression was appropriate. Ibid. This Court held that when police arrested him outside their jurisdiction, it amounted to a mere procedural violation and was not one of constitutional magnitude. Thus, the Court determined the evidence seized during Gadsen's arrest, and the arrest itself, were not suppressible. Ibid.

Gadsen and the cases described in Point I.B., supra, clearly establish suppression would be inappropriate because of NJSP's inability to preserve the GPS coordinates, failure to return the warrant, or lack of disclosure regarding identifying the officer who affixed the GPS. Perhaps, at best, they amounted to court rule violations, but were clearly not of constitutional magnitude to trigger the exclusionary rule.

In sum, determining if the fruits searched and seized during the execution of a search warrant should be suppressed is based on an examination of the four corners of the warrant prior to its execution. Technical violations that occurred after the warrant's execution do not diminish probable cause that supported the warrant. For these reasons, this Court should uphold the motion judges' rulings denying defendant's motion to suppress the fruits of the search warrant.

## POINT II

### LAW ENFORCEMENT HAD PROBABLE CAUSE TO ARREST DEFENDANT.

Detective Feigley's testimony firmly established police articulated probable cause to suspect defendant was engaged in weapons trafficking activity. Defendant's arrest was thus lawful. Accordingly, Judge Marbrey's denial of defendant's motion to suppress should be affirmed.

Appellate review of a motion judge's findings is deferential and "exceedingly narrow." State v. Locurto, 157 N.J. 463, 470 (1999). Courts must

give “great deference” to the motion judge’s factual findings. State v. Barrow, 408 N.J. Super. 509, 516 (App. Div. 2009). After all, the motion judge’s factual and credibility findings are “often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” Locurto, 157 N.J. at 474. Thus, courts “are obliged to uphold the motion judge’s factual findings” supported by the record and should only review legal conclusions de novo. State v. Gonzales, 227 N.J. 77, 101 (2016); see also State v. Hubbard, 222 N.J. 249, 263 (2015).

An appellate court also must not “engage in an independent assessment of the evidence as if it were the court of first instance.” Locurto, 157 N.J. at 471. Once the reviewing court is satisfied the judge’s findings were based on sufficient credible evidence in the record, “its task is complete and it should not disturb the result.” Ibid. This is true even if the case is “a close one” or the appellate court may have reached a different conclusion were it independently deciding the case. Ibid. As the Supreme Court has frequently reaffirmed, “[a] trial court’s findings should be disturbed only if they are so clearly mistaken ‘that the interests of justice demand intervention and correction.’” State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). Only if the appellate court is “thoroughly satisfied” that the trial court erred and made a decision that was “so plainly unwarranted” may it step in and

“make its own findings and conclusions.” Johnson, 42 N.J. at 162.

Here, after carefully weighing the testimony before her, Judge Marbrey denied defendant’s motion to suppress. She determined Detective Feigley and the CSCU, “had a well-grounded suspicion that a crime had been committed,” because they “had knowledge that not only did the [d]efendant travel from South Carolina after the purchase of the guns with his co-[d]efendant Javar Kidd, but also the arresting officers had knowledge that the [d]efendant was engaged in the guns with M[r]. Bowens.” (Da48). She also found defendant was not “merely present” during the weapons transaction with Bowens, nor was it a “mere coincidence that the Defendant was present at the time of purchase of the weapons as well as the Defendant was present at the time of the sale.” (Da48).

A warrantless arrest in a public place is valid if supported by probable cause. State v. Brown, 205 N.J. at 144, 145 (2011). “Probable cause exists if at the time of the police action there is a well grounded suspicion that a crime has been or is being committed.” State v. Dangerfield, 171 N.J. 446, 456 (2002). And even if it occurred outside the arresting officer’s presence. Brown, 205 N.J. at 145. “That showing calls for more than a mere suspicion of guilt but less evidence than is needed to convict at trial.” State v. Pinson, 461 N.J. 536, 549 (2019). “The substance of all the definitions of probable cause is a reasonable ground for belief of guilt.” State v. Moore, 181 N.J. 40, 46 (2004).

The Court should employ a totality of the circumstances test when evaluating if there was probable cause to arrest. Ibid. “The flexible, practical totality of the circumstances standard has been adopted because probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully reduced to a neat set of legal rules.” Dangerfield, 171 N.J. at 456 (citation omitted). The factors include the officers’ “common and specialized experience,” and the reasonableness of the police’s actions “in light of the specific reasonable inferences which [they are] entitled to draw from the facts in light of [their]experience.” Ibid. (internal quotations omitted).

Detective Feigley was credible, had firsthand knowledge of the incidents at issue, and as lead detective, was aware of other officers’ firsthand observations. He answered questions directly and consistently on direct and cross-examination and was candid about any gaps in his recollection or in collection and retention of evidence. Judge Marbrey’s determinations thus rested squarely on her ability to observe the testifying witness and judge his credibility. Her careful analysis was based on sufficient credible evidence in the record, is entitled to substantial deference, and should be upheld on appeal.

Judge Marbrey properly ruled CSCU’s observations and information learned of defendant during the course of the investigation, and specifically on

October 21 and 30, 2020, justified defendant's arrest. Generally, an officer's personal observations are regarded as highly reliable and are sufficient to establish probable cause. See State v. O'Neal, 190 N.J. 601, 613-14 (2007); N.J.S.A. 53:2-1 (empowering state police "to make arrests without warrant for violations of the law committed in their presence"). And even in the absence of a clearly identifiable manifestation of a criminal offense, probable cause can still be established with additional "fact finding" by the arresting officer. State v. Pinero, 181 N.J. 13, 27-29 (2004).

Thus, recognition of the officer's experience and knowledge is a crucial component of the court's review. Id. at 22. "In determining whether an officer acted reasonably in the circumstances[,] due weight must be given 'to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.'" State v. Kearney, 183 N.J. Super. 13, 18 (App. Div. 1981) (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). Even though behavior may seem unsuspecting to an ordinary citizen, "the officer's experience may indicate that some investigation is in order." State v. Sheffield, 62 N.J. 441, 446 (1973).

[P]olice officers are trained in the prevention and detection of crime. Events which would go unnoticed by a layman oftentimes serve as an indication to the trained eye that something amiss might be taking place or is about to take place. The police would be derelict in their duties if they did not investigate such events.

[State v. Davis, 104 N.J. 490, 504 (1986).]

Here, Detective Feigley's testimony establishes that law enforcement had a reasonable, well-grounded suspicion defendant committed a crime. The totality of the circumstances sufficiently established defendant was participating in the weapons-trafficking operation, particularly given the CSCU's observations of defendant at the October 21, 2020, weapons transaction with Bowens, and the ATF agent's observations of defendant purchasing weapons in South Carolina at two firearm distributors with co-conspirators.

Defendant erroneously elevates what is necessary to establish probable cause to a standard more analogous for finding him guilty beyond a reasonable doubt. But while probable cause is more than a mere suspicion, it is less than what is needed to convict. Brown, 205 N.J. at 144. All police needed was a well-grounded suspicion of criminal activity. See State v. Basil, 202 N.J. 570, 585 (2010). Police did not need direct evidence of defendant's participation in the weapons-trafficking operation beyond a reasonable doubt, which is essentially what he is asserting. See *ibid.*

Categorizing law enforcement's observations and learned information as simply, coincidental presence at the scene of two separate instances of weapons crimes being actively committed disregards the clear testimony and facts developed below as to defendant's involvement. Moreover, Judge Marbrey rejected the argument that defendant's presence was coincidental.

Nevertheless, the fact that purely innocent connotations can be ascribed to a person's actions does not mean that an officer cannot base a finding of probable cause on those actions so long as a reasonable person would find the actions are consistent with guilt. See State v. Citarella, 154 N.J. 272, 279-80 (1998) (concluding same in reasonable suspicion context). Detective Feigley and the CSCU detectives had a well-grounded suspicion that defendant was involved in a weapons trafficking operation.

An officer with Detective Feigley's training and experience would view the facts and the rational inferences drawn from them, and suspect defendant was an active participant based on his presence at the September controlled purchase, the October 21, sale with Bowens, the October 30, illicit purchase in South Carolina, and his repeated performance of engaging in counter-surveillance maneuvers over the course of the investigation. Feigley explained the basis for his suspicions by relying on specific facts gathered during the investigation and his personal observations of defendant's conduct.

This credible articulation of specific facts and circumstances, drawn from rational inferences given Detective Feigley's wealth of experience in investigations of this nature, more than meets the level of objective justification necessary to establish probable cause to arrest defendant. Judge Marbrey thus appropriately found police had probable cause to arrest defendant.

CONCLUSION

Based on the foregoing, the State urges this Court to affirm the denial defendant's motions to suppress, and his conviction.

Respectfully submitted,

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
ATTORNEY FOR PLAINTIFF-RESPONDENT

BY: s/ *Kaili E. Matthews*

Kaili E. Matthews  
Deputy Attorney General  
MatthewsK@njdcj.org

KAILI E. MATTHEWS — ATTORNEY NO. 306652019  
DEPUTY ATTORNEY GENERAL  
DIVISION OF CRIMINAL JUSTICE  
APPELLATE BUREAU

OF COUNSEL AND ON THE BRIEF

DATED: May 14, 2024

**REDACTED VERSION**



**PHIL MURPHY**  
*Governor*

**TAHESHA WAY**  
*Lt. Governor*

**State of New Jersey**  
**OFFICE OF THE PUBLIC DEFENDER**  
**Appellate Section**  
**ALISON PERRONE**  
Deputy Public Defender  
31 Clinton Street, 9th Floor, P.O. Box 46003  
Newark, New Jersey 07101  
Tel. 973-877-1200 · Fax 973-877-1239

**JENNIFER N. SELLITTI**  
*Public Defender*

May 26, 2025

**ETHAN KISCH**  
Assistant Deputy Public Defender  
Attorney ID: 349152020  
Of Counsel and on the Brief

**LETTER-BRIEF IN REPLY ON BEHALF OF  
DEFENDANT-APPELLANT HENRY A. KIDD**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4033-23

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HENRY A. KIDD,  
a/k/a HENRY KIDD,  
a/k/a HENRY KIDD, JR.,

Defendant-Petitioner.

Criminal Action

On Appeal from a Judgment of  
Conviction in the Superior Court of New  
Jersey, Law Division, Mercer County

Ind. No. 21-05-00072-S

Sat Below:

Hon. Janetta D. Marbrey, J.S.C.  
Hon. Robert E. Lytle, J.S.C.

Defendant is Confined

Your Honors:

This letter-brief in reply is submitted in lieu of a formal brief. R. 2:6-2(b).

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**PROCEDURAL HISTORY AND STATEMENT OF FACTS**

Defendant-Appellant Henry A. Kidd relies on the procedural history and statement of facts from his January 23, 2025, brief. (Db3-11)<sup>1</sup>

**LEGAL ARGUMENT**

In response to the State’s May 14, 2025, response brief (Sb), Mr. Kidd relies on the legal arguments detailed in his brief (Db12-44) and adds the following arguments in reply.

**REPLY POINT I**

**THE FRUITS OF THE GPS TRACKER  
WARRANT MUST BE SUPPRESSED. (Db12-40;  
Sb18-43)**

In Point I of his brief, Kidd argues that constitutional violations at each stage of the warrant process -- its application, authorization, and execution -- rendered the GPS tracker warrant invalid and requires suppression of all fruits. (Db12-40) The State responds by sidestepping Kidd’s arguments and the key cases that support them.

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<sup>1</sup> The following abbreviations are used:

Db -- Defendant-Appellant’s January 23, 2025, Brief

Sb -- The State’s May 14, 2025, Response Brief

Da -- Appendix to Defendant-Appellant’s Brief

Dca -- Confidential Appendix to Defendant-Appellant’s Brief

**A. The four corners of the warrant application did not amount to probable cause for a GPS tracker warrant. (Db13-22; Sb18-28)**

As State’s warrant application included just eight paragraphs of substantive allegations. (Dca5-9 ¶¶ 9, 12-18) Section I.A. of Kidd’s brief reviews each paragraph and shows that the application’s offerings fell into three categories of unsatisfactory information -- (1) [REDACTED] [REDACTED] (Db15-17; see Dca5-9 ¶¶ 9, 12-13); (2) [REDACTED] (Db17-18; see Dca8 ¶¶ 14, 18); and (3) [REDACTED] [REDACTED] [REDACTED] (Db18-21; see Dca8-9 ¶¶ 16-17). Taken together, these scant offerings did not get close to providing probable cause. (Db15-22)

In response, the State argues that this Court must focus its inquiry on whether there was probable cause to place a GPS tracker on the car -- not whether the application provided enough to specifically implicate Kidd in any crimes. (Sb22-24) But this concession makes the State’s job even harder here because an examination of the application’s text reveals that there is even less information tying the car to criminality. The State contends that Kidd “discounts the[ ] facts within the warrant” application. (Sb25) But Kidd’s brief went through the application paragraph-by-paragraph and detailed that the paragraphs that mention the car rely exclusively on [REDACTED]

[REDACTED]

[REDACTED] (Db15-21) Indeed, it is telling that the State does not include a single citation to the application's text in its argument section. Taken together, these three categories of information fell far short of probable cause to place a GPS tracker on the Equinox.

The State also fails to address several points raised by Kidd. The State does not dispute that the information concerning [REDACTED] [REDACTED] was nearly two months stale by the time Judge Marbrey reviewed the application. (Db16-17; see Dca5-9 ¶¶ 9, 12-13) Nor does the State dispute that the application provided only conclusory allegations that the police "discovered" [REDACTED] [REDACTED] and "believed" [REDACTED] (Db17-18; see Dca8-9 ¶¶ 14, 18) The State also does not address [REDACTED] [REDACTED] [REDACTED]. (Db19-21)

In the end, the information included in the warrant application's four corners did not amount to probable cause to place a GPS tracker on Kidd's car, so suppression is required.

**B. The warrant was invalid on its face because it authorized a physical trespass search outside the Superior Court’s jurisdiction. (Db22-31; Sb28-38)**

Kidd makes a straightforward argument in Section I.B. of his brief.

(Db22-31) The Superior Court warrant authorized the State Police to [REDACTED]

[REDACTED]

[REDACTED]

(Dca15-16) Consistent with the warrant’s broad geographical scope, police physically affixed the GPS tracker on Kidd’s car and used it to continuously monitor the car as it traveled from New Jersey to South Carolina and back over three days. United States v. Jones held that this type of continuous use of a GPS tracker attached to a car constitutes an ongoing physical trespass search wherever the car is located. 565 U.S. 400, 404-10 & n.3, n.5 (2012). But the State Constitution is clear that the Superior Court cannot authorize physical searches outside the State of New Jersey. N.J. Const. art. VI, § 3, ¶ 2. So, Kidd contends, because the trial court authorized a physical search of his car outside the Superior Court’s jurisdiction, the warrant was invalid and suppression of all fruits is required. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7. The State makes several arguments in response. But none squarely addresses the core of Kidd’s argument.

First, as a threshold matter, the State says that this argument is waived. (Sb29) But the State ignores that a “challenge to jurisdiction raises a legal question that is reviewed de novo and is not subject to waiver.” (Db25 (citing State v. Robinson, 200 N.J. 1, 20 (2009); State v. Sylvia, 424 N.J. Super. 151, 156 (App. Div. 2012)). For that reason, this Court has plenary review. Ibid.

Second, the State contends that State v. Ates, 217 N.J. 253 (2014), controls the outcome here. (Sb31-32) But a closer look at Ates reveals that it actually supports Kidd’s jurisdictional argument. As Kidd describes (Db24 n.5), Ates drew a clear distinction between a non-physical digital wiretap search of an intangible phone call and a physical search of a tangible object. 217 N.J. at 271-73. Because a wiretap is a “seizure of transitory intangible evidence,” Ates held that the location of the “listening post” at which the police eavesdrop on the intercepted conversation is the location of the search. Ibid. Put another way, because a modern wiretap does not involve the police breaking into a suspect’s house and physically planting a listening bug on his phone, the police’s listening post is where the search takes place.

The State points to the fact that the police here monitored the car’s location using the GPS tracker’s transmission of real-time data and the device’s stored historical location log. (Sb29-34) This transmission, the State contends, means Ates controls. But that overlooks the fact that the car’s

location was only being transmitted because the police were utilizing the GPS tracker they physically attached to Kidd's car. This is where Jones, 565 U.S. 400, makes all the difference. As Kidd explains (Db23-24), Jones makes clear that, under the Fourth Amendment's "common-law trespassory test," so long as the GPS tracker is affixed to the car and monitoring its movements, a continuing physical trespass and search is taking place. 565 U.S. at 404-10 & n.3, n.5; cf. id. at 411 ("Situations involving merely the transmission of electronic signals without trespass would remain subject to Katz analysis" -- not the trespass test). That means the State Police were physically trespassing on and searching Kidd's car the entire time the tracker was attached -- including while the car was hundreds of miles outside the State. In short, Ates simply confirms that a search of "transitory intangible evidence" takes place at the listening post. 217 N.J. at 271-73. Jones, on the other hand, holds that a physical search of tangible property occurs wherever the property is located when being searched. 565 U.S. at 404-10 & n.3, n.5.

The State misconstrues the import of Jones and argues that because the police here obtained a warrant and complied with its terms, that is the end of the inquiry. (Sb34) But Kidd has never disputed that the Superior Court issued a warrant that stretched outside New Jersey. Kidd's point is instead that the warrant itself must be issued consistent with the federal and state constitutions.

And here, the court issued a warrant that, by its terms, permitted the police to physically trespass and search Kidd's car hundreds of miles outside of the court's explicit jurisdictional boundary set by the State Constitution. N.J. Const. art. VI, § 3, ¶ 2; R. 3:1-2; see also Kevin G. Byrnes, N.J. Arrest, Search & Seizure § 8:4-2 (Gann 2024) (“[A] Superior Court judge may not authorize a search outside the State of New Jersey.”).

The State's untenable position would permit a Judge of the Superior Court to authorize a search of a home in another state -- for instance, a suspect's apartment 3,000 miles away in California. As the State seems to concede (Sb31-32), such a warrant would be unlawful on its face.

On that point, the State wholly ignores that our courts have long held, indeed stretching back to the Weintraub Court, that extraterritorial warrants are facially invalid. (Db26 (citing Eleuteri v. Richman, 26 N.J. 506 (1958), and State v. Bell, 166 N.J. Super. 143 (App. Div. 1979))) As this Court recognized in Bell, if a judge issues a search warrant that stretches “outside the [court's] territorial jurisdiction,” this “exceeds the authority of the issuing judge” and the warrant is thus “illegal and void.” 166 N.J. Super. at 143. “In effect, no warrant issued and the search . . . constituted a warrantless search.” Ibid. The Supreme Court recognized the same in Eleuteri, 26 N.J. at 507-09 (holding that

an extraterritorial warrant’s “illegality is clear”). The State does not debate, much less acknowledge, these longstanding precedents.

The State also fails to address substantively the several federal courts of appeals that have recognized that “a warrant purportedly authorizing a search beyond the jurisdiction of the issuing magistrate judge is void under the Fourth Amendment.” United States v. Henderson, 906 F.3d 1109, 1116-17 (9th Cir. 2018); (Db26-27 (citing, among others, Henderson, 906 F.3d at 1116-17, United States v. Krueger, 809 F.3d 1109, 1123-26 (10th Cir. 2015) (Gorsuch, J., concurring), and Engleman v. Murray, 546 F.3d 944, 948-49 (8th Cir. 2008))) The State responds that “New Jersey courts differ from federal courts in that our courts recognize jurisdictional violations as technical violations that do not warrant invalidating a search warrant.” (Sb36-37 (referencing R. 3:5-7(g) and R. 7:5-2(e))) But a violation of the judge’s constitutional jurisdiction can never be a mere technical error. Without jurisdiction, there can be no valid warrant. (Db27-30) As Chief Justice Vanderbilt put it, “the jurisdiction of the Superior Court is fixed by the Constitution and can be altered neither by rule of this Court nor by act of the Legislature.” O’Neill v. Vreeland, 6 N.J. 158, 165 (1951). In addition to Eleuteri, 26 N.J. at 507-09, and Bell, 166 N.J. Super. at 143, Kidd raises no less than 13 federal and sister-state cases on this exact point. (Db28-30) The State grapples with none.

For all that, the State still contends that “defendant fails to articulate how his constitutional rights were violated.” (Sb35) The answer is simple: the police executed a search pursuant to a facially invalid warrant -- in other words, the police conducted a warrantless search. (Db29-30) A warrantless search is “presumptively invalid as contrary to the United States and the New Jersey Constitutions,” State v. Smart, 473 N.J. Super. 87, 95 (App. Div. 2022), aff’d, 253 N.J. 156 (2023) (quotation omitted), and is “permissible only if justified by one of the few specifically established and well-delineated exceptions to the warrant requirement,” State v. Witt, 223 N.J. 409, 422 (2015) (quotation omitted). Notably, to justify the search here, the State offers no warrant exception and relies only on the existence of the (invalid) warrant.

Last, the State turns to policy arguments and says that it would be too impractical for New Jersey police to obtain a GPS tracker warrant in each state in which a suspect’s car is traveling. (Sb29, 32-33) But the State ignores two easy solutions. First, the police could have physically followed the car. Indeed, our Supreme Court has acknowledged that police have the choice to devote resources to traditional in-person surveillance techniques if they do not want to undergo the rigors of obtaining lawful warrants. See State v. Earls, 214 N.J. 564, 586 (2013) (explaining that obtaining a warrant to use “a tracking device . . . can function as a substitute for 24/7 surveillance without police having to

confront the limits of their resources”). Alternatively, if the police did not want to use an old-fashioned tail, the State could have worked with the federal government on this interstate investigation to obtain a federal GPS warrant covering the entire country. See Fed. R. Crim. P. 41(b)(4) (empowering federal judges to “authorize use of [a GPS tracker] device to track the movement of a person or property located within the district, outside the district, or both”). In fact, New Jersey prosecutors are already required to “notify and consult with” federal and sister-state law enforcement agencies that might have “an interest in a target of the investigation or the premises to be searched[.]” Attorney General, Directive Requiring Approval of Search Warrant Applications, Executions of Search Warrants, and Procedures to Coordinate Investigative Activities Conducted by Multiple Law Enforcement Agencies (Aug. 8, 2001) (Directive 2002-2); see In re A.G. Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 487 (2021) (“Attorney General directives relating to the administration of law enforcement have the force of law.” (quotation omitted)).

In short, the Superior Court cannot authorize physical searches of property located outside the State’s borders. N.J. Const. art. VI, § 3, ¶ 2; see R. 3:1-2; Byrnes § 8:4-2. The warrant here did just that. Because this constitutional transgression rendered the warrant facially invalid, suppression of all fruits is required. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

**C. The State’s discovery violations more than met the standard for suppression. (Db31-40; Sb38-43)**

In Section I.C. of his brief, Kidd argues that the State’s failure to keep any records related to the GPS tracker -- most importantly, the historical location data -- amounted to bad faith, manifestly prejudiced Kidd, and requires suppression. (Db31-40). The State responds that “suppression would be inappropriate because of NJSP’s inability to preserve the GPS coordinates, failure to return the warrant, or lack of disclosure regarding identifying the officer who affixed the GPS. Perhaps, at best, they amounted to court rule violations, but were clearly not of constitutional magnitude to trigger the exclusionary rule.” (Sb43, 38-39)

But our Court Rules are only half of the applicable law. Two regimes governed the State’s obligation to disclose evidence to Kidd pretrial. (Db32-34) The first is our discovery rules -- including R. 3:13-3(b), R. 3:13-3(f), and R. 3:9-1(a) -- which provided Kidd the right to broad discovery post-indictment. State v. Hernandez, 225 N.J. 451, 461-62 (2016). Together, the Rules mandate the disclosure of exculpatory information “and all other information relevant to a legitimate defense[.]” Id. at 466 n.5; see N.J.R.E. 401. Such discovery, whether inculpatory or exculpatory, must be turned over so that defense counsel “may intelligently advise as to the defense and properly prepare for trial.” State v. Cook, 43 N.J. 560, 569 (1965). The State

appears to concede that it violated these discovery rules (Sb43, 38-39), and Rule 3:13-3(f) empowered the trial court to suppress the undisclosed material.

But even putting all that aside, the State overlooks the Due Process and Fourth Amendment constitutional protections (Db32-35), that “guarantee criminal defendants a meaningful opportunity to present a complete defense.” State v. Smith, 224 N.J. 36, 48 (2016); State v. M.B., 471 N.J. Super. 376, 382-83 (App. Div. 2022). The State’s rule-by-rule argument runs contrary to the well-established principle courts should consider the State’s non-disclosures “collectively, not item by item.” Kyles v. Whitley, 514 U.S. 419, 436 (1995).

Indeed, the State does not address M.B., 471 N.J. Super. at 382-83. In that recent decision, this Court made clear that, in addition to the open-file discovery and due process obligations to retain and disclose evidence, when the State has secured a search warrant, it has an independent “obligation to preserve evidence consistent with the strictures of the Fourth Amendment in cases it prosecutes criminally[.]” Id. at 382-83.

As Kidd describes in his brief (Db35-40), the State Police’s mistakes more than meet the standard for suppression. U.S. Const. amends. IV, V, XIV; N.J. Const. art. I, ¶¶ 1, 7.

**REPLY POINT II**

**THE FRUITS OF KIDD’S WARRANTLESS ARREST MUST BE SUPPRESSED BECAUSE POLICE HAD NO PROBABLE CAUSE TO ARREST HIM. (Db40-44; Sb43-49)**

In Point II of his brief, Kidd argues that the police did not have probable cause to arrest Kidd without a warrant, and so the fruits flowing from that arrest must be suppressed. (Db40-44) The State replies that “[t]he totality of the circumstances sufficiently established defendant was participating in the weapons-trafficking operation, particularly given the CSCU’s observations of defendant at the October 21, 2020, weapons transaction with Bowens, and the ATF agent’s observations of defendant purchasing weapons in South Carolina at two firearm distributors with co-conspirators.” (Sb48)

But the facts to support that argument are scant. As Kidd describes (Db42-43), all the police knew at the time was that Kidd was present while Bowens sold a gun on October 21, 2020, and that Kidd was at two gun stores in South Carolina while other individuals purchased guns. The State does not point to any other evidence.

The facts remain that the police had no concrete evidence tying Kidd to a crime and the police’s observations and hunches did not amount to probable cause. Thus, the trial court should have suppressed the fruits of the car search.

U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

**CONCLUSION**

For the reasons set forth here and in Mr. Kidd's January 23, 2025, brief, this Court should reverse his convictions.

Respectfully submitted,

JENNIFER N. SELLITTI  
Public Defender

BY: */s/ Ethan Kisch*  
ETHAN KISCH  
Assistant Deputy Public Defender  
Attorney No. 349152020

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