SUPREME COURT OF NEW JERSEY
DOCKET NO.

APP. DIV.DOCKET NO. A-1602-24T1
INDICTMENT NO. 24-04-0392
CASE NO. 24000445

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Movant,	:	ON LEAVE TO APPEAL AN
v.	:	INTERLOCUTORY ORDER
		IN THE SUPERIOR COURT OF
SAMANTHA E. BONORA,	:	NEW JERSEY, LAW DIVISION
		(CRIMINAL), MONMOUTH
		COUNTY
Defendant-Respondent.	:	

SAT BELOW: Honorable Thomas W. Sumners, Jr. P.J.A.D
Honorable Kay Walcott-Henderson, J.A.D.

REDACTED BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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COUNTERSTATEMENT OF PROCEDURAL HISTORY AND FACTS[1]

The defendant, Samantha E. Bonora, currently stands before the lower court charged under Indictment Number 24-04-0392 with first-degree Aggravated Manslaughter, N.J.S.A. 2C:11-4 (Count One); second-degree Aggravated Assault, N.J.S.A. 2C:12-1(b)(1) (Counts Two and Three); and fourth-degree Assault By Auto, N.J.S.A. 2C:12-1(c)(2) (Counts Four and Five). Pa1-3; (T:4-15 to 4-20).[2] These charges arise from the January 13, 2024 collision between a Dodge RAM pick-up truck driven by the drug-impaired, 31-year-old defendant and a Jeep carrying three-year-old Kylie, her mother, younger brother, and aunt. (T:4-5 to 4-9).

For relevant facts, and consistent with well-settled law governing review of judicially-issued search warrants, see, e.g., State v. Missak, 476 N.J. Super. 302, 308 (App. Div. 2023), the State will rely upon the "four corners" of the affidavits of Officer Daniel Scherbinski of the Howell Township Police Department and Detective Brian Jados of the Monmouth County Prosecutor's Office submitted to the Honorable Henry P. Butehorn, J.S.C., along with the following highlights from those affidavits to provide sufficient context to the issues before this Court, see Pa7-15:

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1 In light of the interlocutory nature of the matter before the Court, and in order to avoid any unnecessary repetition, the State has combined its Counterstatement of Procedural History and its Counterstatement of Facts.

[redacted]

[redacted]

[2] T refers to Transcript of Suppression Motion Decision, October 23, 2024.

[redacted]

[redacted]” [redacted]

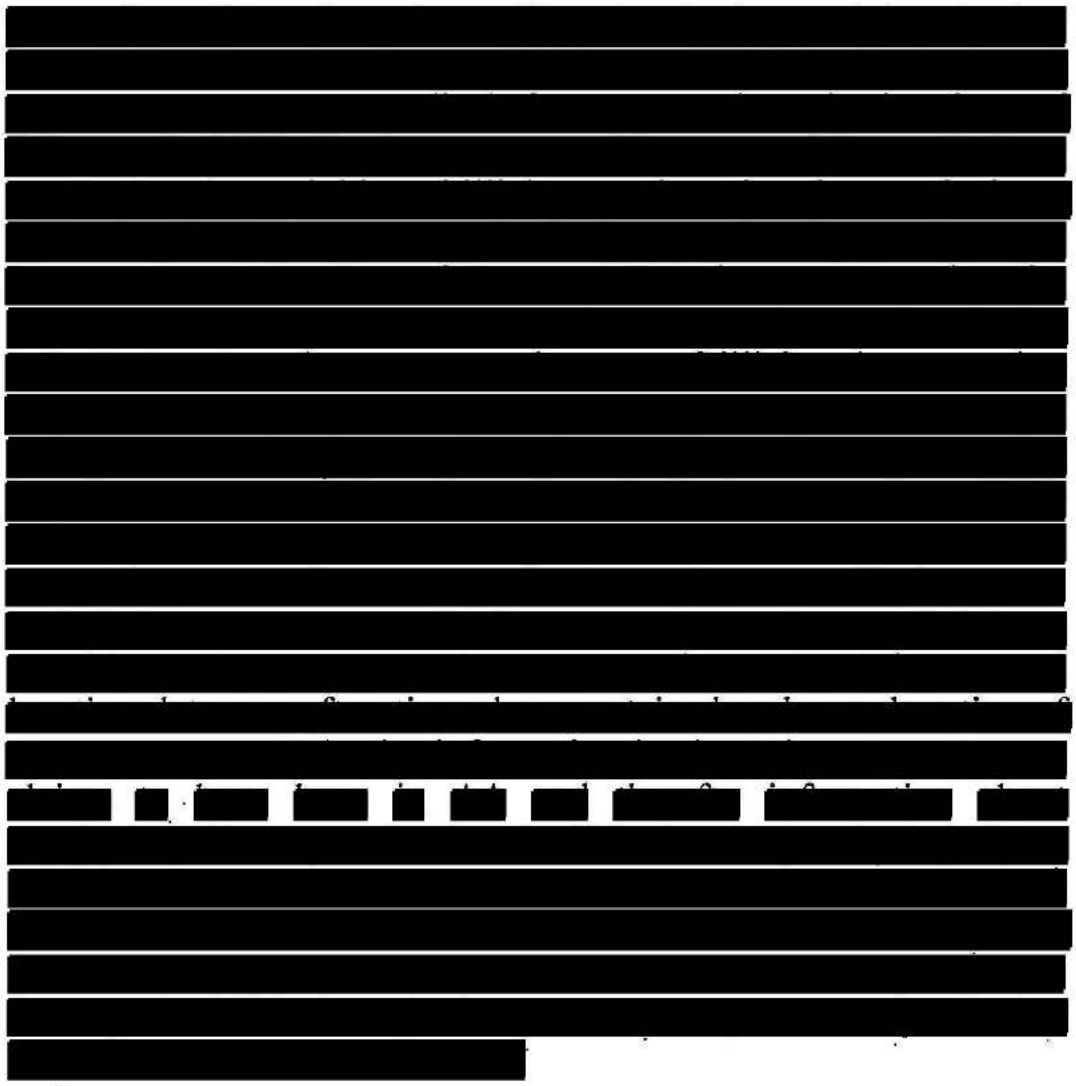
[redacted]

3 The State obtained defendant's medical records by way of a search warrant

[redacted]

granted by the Honorable Paul X. Escandon, J.S.C., on February 23, 2024, which was executed on February 26, 2024 -- seven days and ten days after the grant of the warrant at issue here. See Pa46.

[4] [redacted]



[redacted]

Pa20-21.

Judge Butehorn found that Officer Scherbinski's affidavit set forth a well-grounded reason to believe that the requested cell phone data would provide needed information with regard to defendant's drug use to enable a more comprehensive analysis of defendant's blood test results. Pa23-25.

On September 20, 2024, defendant filed a motion seeking the suppression of the data extracted from her cellular telephone pursuant to the

search warrant authorized by Judge Butehorn. (T:4-20 to 4-21). The State opposed defendant's motion. (T:4-1 to 4-2). After hearing oral argument, the Honorable Joseph W. Oxley, J.S.C., reserved decision. (T:4-2 to 4-4).

On October 23, 2024, Judge Oxley rendered his decision, denying defendant's motion to suppress:

> The affidavits were extremely detailed and provided solid connections between the events of defendant's car crash, defendant's alleged drug history and the grounds for the search. Evidence found on defendant's phone related to defendant's drug usage going directly to the aggravated manslaughter.
>
> Furthermore, probable cause exists to support the idea that defendant's history of drug use was facilitated by the use of defendant's cell phone.
>
> Specifically, with regards to the affidavit and the request, this Court does take specific note of the fact that the prosecution was not looking for the search of every aspect of the phone going back in perpetuity, but they were specifically seeking that time frame within the period of January 1st, 202[0] and January 13th, 2024. They did look at that narrow area. They did by virtue of what was in the affidavit narrow the information and the scope that they were seeking to review. Under all of the facts and circumstances, I do find that that narrowing, and certainly the other information that was contained in the affidavit, was sufficient to justify the issuance of the warrant and the deference to the discretion of Judge Butehorn's decision.

(T:4-22 to 6-24).

Defendant thereafter filed a Motion for Leave to File an Interlocutory Appeal with the Superior Court, Appellate Division, which was denied. Pa26. She thereafter filed a motion with this Court, which was granted and

"summarily remanded to the ... Appellate Division for consideration on the merits." Pa26-27. The Appellate Division's consideration on the merits resulted in the conclusion that "the search warrant violates our federal and state constitutional protections against unreasonable searches and seizures," specifically because the,

> application did not provide probable cause to search defendant's cell phone for information or data to support the charge of aggravated manslaughter – that defendant was reckless and indifferent to human life by her impaired driving – and is overbroad by covering a four-year search span and violations of any state criminal law.

Pa49.

The appellate court found support for this lack-of-probable-cause conclusion in State v. Missak, 476 N.J. Super. 302 (App. Div. 2023), a case that, in fact, bears little identity to the case before it and which has routinely been misconstrued by our lower courts – as done here – to hold cell phone search warrants to a stringency that outstrips that long-applied to the search of homes. Pa47-48. While the appellate court acknowledged "[t]he same" Fourth Amendment "standard applies to a search warrant to obtain information from a cell phone," see Pa41, its factually- and legally-flawed review of the warrant application at issue belies this claim. Pa44-49.

The State now moves for the grant leave to appeal to enable this Court to review and reverse the appellate court's flawed suppression of evidence. The

State is confident that unlike the appellate court, this Court would not discount the opinion of an expert – one that dovetails with scientific facts recognized by this Court and the U.S. Supreme Court – simply because the yet-to-be-retained expert is "unnamed" in the affidavit. Pa45. Unlike the appellate court, this Court would not be so frightened by a four-year search period that it would find the affidavit "overbroad" for not containing a "reasonable indication ... why the search covered this length of time" when the affidavit does so and supports that reasonable indication with facts, see Pa14-15, 46-47.

Unlike the appellate court, this Court would be able to see that the ubiquity of cell phones recognized by Riley v. California, 573 U.S. 373, 385 (2014), only serves to lend support to the officer's linkage of drug distribution and cell phones; this Court would not approach such reasonable facts and inferences with unnecessary and unsupported skepticism. Pa14-15; 45-46. Unlike the appellate court, this Court would not be so focused on imposing suppression that it would rely upon statements made by defendant at oral argument about evidence located post-warrant, and therefore beyond the four-corners of the affidavit at issue, to replace a probable cause determination its own evaluation of the necessity and "reliab[ility]" of cell phone data when compared to the State's other evidence. Pa46. Free from the missteps of the appellate court, this Court should affirm the denial of suppression.

LEGAL ARGUMENT

POINT I

LEAVE TO APPEAL SHOULD BE GRANTED TO REVIEW AND CORRECT THE IMPROPER GRANT OF SUPPRESSION [Pa28-49].

In Riley, 573 U.S. at 403, the United States Supreme Court answered the "simple" question "of what police must do before searching a cell phone" as follows: "get a warrant." Prior to searching this defendant's cell phone, law enforcement heeded this advice. They did exactly what the Framers of the U.S. Constitution – and the authors of the "nearly identical" provision of the New Jersey Constitution – intended. State v. Feliciano, 224 N.J. 351, 366 (2016).

Officer Scherbinski presented evidence compiled by law enforcement to "a neutral and detached magistrate," who, relieved from the "competitive enterprise of ferreting out crime" that plagues law enforcement, reviewed the evidence, and drew from it "the usual inferences which reasonable men draw from evidence." Riley, 573 U.S. at 381-82; State v. Marshall, 199 N.J. 602, 612 (2009) (quoting Johnson v. United States, 333 U.S. 10, 13-14 (1948)). Judge Butehorn's initial review (and Judge Oxley's post-motion) resulted in the conclusion that the constitutionality-mandated probable cause requirement for the issuance of a search warrant was met.

In coming to the opposite conclusion, the Appellate Division did not

correct an error by the lower court. It created error, irreparably injuring the prosecution by depriving the State's expert of the full panoply of information needed to render an opinion on the defendant's impairment at the time of the collision that can withstand the scrutiny of cross-examination. See R. 2:2-2(b) (authorizing the grant of leave to appeal by this Court from interlocutory orders "when necessary to prevent irreparable injury"). This Court has found irreparable injury present in circumstances such as these – the suppression of evidence vital to a criminal prosecution. See State v. Davis, 104 N.J. 490, 493 (1986); State v. Bruzzese, 94 N.J. 210, 215-16 (1983). For the reasons and authorities herein, the Court should similarly find here.

"A search based on a properly obtained warrant is presumed valid." State v. Sullivan, 169 N.J. 204, 211 (2001); State v. Valencia, 93 N.J. 126, 133 (1983). Reviewing courts should "accord substantial deference to the discretionary determination resulting in the issuance of the warrant." Sullivan, 169 N.J. at 211; State v. Marshall, 123 N.J. 1, 72 (1993), cert. denied, 507 U.S. 929 (1993). Any doubt as to the validity of a search warrant "should ordinarily be resolved by sustaining the search." State v. Keyes, 184 N.J. 541, 554 (2005); State v. Kasabucki, 52 N.J. 110, 116 (1968); Missak, 476 N.J. Super. at 317. This is true even "'[w]hen the adequacy of the facts offered to show probable cause ... appears to be marginal." Missak, 476 N.J. Super. at 317

(quoting Kasabucki, 52 N.J. at 116).

The burden to establish a warrant's invalidity rests with the defendant challenging it. State v. Keyes, 184 N.J. 541, 554 (2005); State v. Jones, 179 N.J. 377, 388 (2004); Valencia, 93 N.J. at 133. The defendant must "prove that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable." Ibid.

A valid warrant must be supported by "probable cause to believe ... evidence of a crime is at the place to be searched." Sullivan, 169 N.J. at 210-11; State v. Evers, 175 N.J. 355, 381 (2003). Probable cause is "a fluid concept" "elud[ing] precise definition" and not "defin[able] with scientific precision." State v. Chippero, 201 N.J. 14, 26 (2009) (quoting Sullivan, 169 N.J. at 210); State v. Basil, 202 N.J. 570, 585 (2010) (quoting Evers, 175 N.J. at 381). Probable cause "turn[s] on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.'" Basil, 202 N.J. at 585 (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983); Sullivan, 169 N.J. at 211); Chippero, 201 N.J. at 27-28 (quoting United States v. Jones, 994 F.2d 1051, 1056 (3rd Cir. 1993)).

Nonetheless, "it is safe to say that a police officer has probable cause" "for the issuance of a search warrant" where there exists "'a fair probability that contraband or evidence of a crime will be found in a particular place.'"

Ibid. This determination requires "a court ... look to the totality of the circumstances" as "viewed ... 'from the standpoint of an objectively reasonable police officer.'" Chippero, 201 N.J. at 27; Basil, 202 N.J. at 585 (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)).

In Missak, 476 N.J. Super. at 310, 321-22, the Appellate Division found this standard – probable cause to believe evidence of a crime would be located where permission to search was sought, i.e., "all information contained within [the cell phone]" – not met where the facts contained in the supporting affidavit established only that defendant used two messaging applications and the text messaging on two specific days in December to commit the sexually-motivated crimes. In so finding, the court noted it was undisputed the warrant "established probable cause permitting a search of the phone's contents and data limited to the text communications between the defendant and [undercover officer] allegedly exchanged through the Kik and Skout applications on December 8 and 9, 2021, and any alleged phone communications between defendant and the [undercover officer] on those two days." Id. at 320.

However, the Missak court could not find probable cause for "the expansive search warrant for all the data and information on the seized phone." Id. at 322. Significant to the court was that the search warrant allowed for the

seizure of data "that either predates defendant's alleged commission of the crimes or does not constitute evidence of his use of the phone 'around the time' the crimes were committed;" for this data, the sole support was the affiant's representation that "individuals 'may' seek to alter ... files to disguise what they contain." Id. at 320-21.

While it is true that, like in Missak, the defendant's criminal conduct here occurred at a discrete time and date, the similarities end there. Officer Scherbinski's affidavit established probable cause to believe evidence relevant to establishing an element of defendant's criminal conduct – the recklessness and indifference to human life occasioned by her impaired driving, see N.J.S.A. 2C:11-4; State v. Bogus, 223 N.J. Super. 409, 418 (App. Div.), certif. denied, 111 N.J. 567 (1988) – could be found in locations beyond the call logs for the date and time of the collision.

As set forth in the affidavit, see Pa13-15, and as recognized by a wealth of precedent from this State and the United States Supreme Court, impairment at a specific time cannot be established by a toxicological sample alone. This Court recognized the limitations of toxicology two years ago in State v. Olenowski, 255 N.J. 529, 559-60 (2023). Following review of the Daubert hearing conducted by a court-appointed Special Adjudicator, the Olenowski Court accepted testimony attesting to the fact that a "toxicology exam does

not, by itself, establish that the driver has been impaired by usage." A toxicology test alone "does not measure the actual effect of a substance on the test subject, much less impairment." Id. at 597.

As the dissenting justice summarized from the testimony of a State's toxicologist, "data from a blood sample can be hard to interpret because of differences in individuals' metabolization rates and tolerance, and because different ingestion methods lead to different levels and rates of impairment." Id. at 620-21 (Pierre-Louis, J. dissenting) (emphasis added). See also Missouri v. McNeely, 569 U.S. 141, 152 (2013) (noting that for alcohol impairment "[m]ore precise calculations of the rate at which alcohol dissipates" through "the human body's natural metabolic processes," "depend on various individual characteristics (such as weight, gender, and alcohol tolerance) and the circumstances in which the alcohol was consumed"); State v. Mara, 253 N.J. Super. 204, 210 (App, Div. 1992) (approving of extrapolation of impairment calculations in criminal trials, as set forth in State v. Oriole, 243 N.J. Super. 688 (Law Div. 1990)).

In accepting defendant's efforts to negate the opinion of the forensic toxicologist consulted by the State because this expert is unnamed, the appellate court erred. Everything claimed by the expert is scientifically and legally indisputable. Leaving the expert unnamed does not change the validity

of the opinion or the support it provided to probable cause; it protected the State from potentially losing an unretained expert to defendant. See State v. Campione, 462 N.J. Super. 466, 506 (App. Div. 2020).

Officer Scherbinski's affidavit established a well-grounded basis to believe that information relevant to defendant's prior drug usage is evidence of the crimes being investigated – Aggravated Manslaughter and Driving While Intoxicated, see Pa14 – because it would provide data needed and used by experts to calculate important impairment variables, such as tolerance. Only with this data can an expert appropriately analyze a toxicology report and opine as to impairment at a specific date and time. Only with the totality of this information can an expert withstand cross-examination. It is through proving defendant's impairment that the State can establish the defendant was reckless and indifferent to human life at the time of the collision.

That this data can be found in defendant's phone was likewise well established by the presented affidavits. While the appellate court expressed skepticism as to the value of cell phone data – particularly when compared to self-reported data contained in treatment records for defendant not yet obtained at the time of the issuance of the warrant – law, common sense, and the officer's training and experience say otherwise. See United States v. Wiseman, 158 F.Supp.2d 1242, 1249 (D. Kan. 2001) ("Defendant asks the court to feign

ignorance of what has become common knowledge in the courts, i.e., that cellular telephones, complete with memory of numbers recently or frequently called, or their 'address books,' are a known tool of the drug trade"); United States v. Gholston, 993 F.Supp.2d 704, 719 (E.D. Mich. 2014) (compiling cases in which officers have similarly opined regarding the connection between cell phones and drug distribution); State v. Derry, 250 N.J. 611, 633 (2022); see also Riley, 573 U.S. at 385 (recognizing that cell phones "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy").

The affidavit appropriately established the affiant's experience, which correctly and unsurprisingly associated drug transactions with cell phone usage. By including within the ubiquity of cell phone usage the arranging of drug transactions, the affiant claimed nothing more than that which his training and experience informed and which is consistent with common sense and the law. It is the appellate court's unsupported skepticism and addition of an evidentiary gatekeeping role to warrant review, and not the affidavit, that fails.

Officer Scherbinski's knowledge was appropriately supported and supplemented by Detective Jados's technological expertise, which assisted in identifying the 13 specified pieces of data in defendant's cell phone in which drug purchasing related information could be located, i.e., calendars, call logs,

applications, emails, video and photo files, etc. Pa4-6, 17-24. This specificity further distinguished the warrant here from the "general search of the phone" warrant rejected by Missak, 476 N.J. Super. at 307.[5]

The affidavits provided here combined to provide sufficient probable cause to support a search of defendant's cell phone for data beyond the date and time of the collision. The date parameters requested encompassed defendant's documented drug use history uncovered during the State's investigation. The start date was one-month prior to defendant's first arrest for possession of a controlled dangerous substance. The four-year time period covered defendant's second drug-related arrest, her attempts at drug treatment, and ended with her suspected impaired driving on the date of the collision. See Pa13-15. These facts serve as the very "reasonable indication" as to "this length of time" the appellate court appeared unable to find, and wholly

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[5] In the absence of information contained in the supporting affidavit in Missak, which contained only suggestions and generalities, "amici submit[ted] numerous articles and literature pointing to the complexity of the digital landscape presented by data contained in cellular phones [and] the manner in which such data may be searched and retrieved." Missak, 476 N.J. Super. at 319. This allowed the Missak amici to "argue law enforcement possess the forensic tools necessary to conduct precise searches of data such that a court might, and should, precisely ... require searches of only the data for which probable cause to be established." Id. at 321 n.7. The affidavit of Detective Jados, a forensic expert and law enforcement officer, the "bulk" of whose "work focuses upon the collection, acquisition, processing, and review of electronic devices and/or the information and data contained thereon in a forensically controlled environment," established the contrary is true.

supported and continue to support the warrant's issuance. Pa46.

The warrant authorized a search well grounded in both law and the facts contained in the supporting affidavits, which established probable cause that evidence relevant to defendant's prior drug usage, and therefore relevant to establishing the mental-state elements of Aggravated Manslaughter, could be found in the locations in her cell phone for the time period identified and approved. Unlike in Missak, there was a factually-grounded basis for the State's request, and for approval of that request. This Court can and should come to this same conclusion and do what the lower court could not: affirm.

Because the Missak court found the "fatal flaw in the warrant" was the absence of sufficient probable cause, it did "not need to reach" "defendant's argument the warrant should be reversed because it violates the federal and state constitutional requirement that warrants must state with particularity the place to be searched." Missak, 476 N.J. Super. at 311, 322-23. The Missak court nonetheless offered the following comment:

> The warrant is very particular – it allows a search without limitation of all the phone's contents, information, and data. It therefore satisfies the "mandat[e] that [a] warrant specifically describe the search location so that an officer can reasonably 'ascertain and identify the place intended' to be searched, as authorized by the magistrate's probable cause finding."

Id. at 322 (citations omitted). It is to this finding alone that Missak provides any guidance. Pa48-49.

"The particularity requirement is uncomplicated." Marshall, 199 N.J. at 611. Added to the Bill of Rights by the Framers "to prevent [the] 'wide-ranging, exploratory searches'" conducted by the Crown and reviled by the colonists, it "general[ly] mandates that a warrant sufficiently describe the place to be searched so 'that the officer with a search warrant can with reasonable effort ascertain and identify the place intended.'" State v. Feliciano, 224 N.J. 351, 366 (2016) (quoting Marshall, 199 N.J. at 611; Maryland v. Garrison, 480 U.S. 79, 84 (1987)). "By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications." Marshall, 199 N.J. at 611 (quoting Garrison, 480 U.S. at 84; United States v. Ross, 456 U.S. 798, 824 (1982)); see also Ross, 456 U.S. at 824 ("Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase").

"To be sufficiently particular ... , a warrant must satisfy three requirements:" 1) it "must identify the specific offense for which the police have established probable cause;" 2) it "must describe the place to be searched;" and, 3) it "must specify the items to be seized by their relation to

designated crimes." United States v. Ulbricht, 858 F.3d 71, 99 (2d Cir.), cert. denied, 585 U.S. 1033 (2018) (quoting United States v. Galpin, 720 F.3d 436, 445 (2d Cir. 2013)). These requirements are to be applied "with practical accuracy rather than absolute precision." United States v. Tompkins, 118 F.4th 280, 287 (2d Cir. 2024); see also United States v. Blakeney, 949 F.3d 851, 862 (4th Cir. 2020) ("When it comes to particularity, we construe search warrants in a 'commonsense and realistic' manner, avoiding a 'hypertechnical' reading of their terms"); United States v. Bradley, 644 F.3d 1213, 1259 (11th Cir. 2011) (the particularity "requirement does not necessitate technical perfection; instead it is applied with 'a practical margin of flexibility'").

Even though modern-day cell phones are "minicomputers that also happen to have the capacity to be used as a telephone," see Riley, 573 U.S. at 393, this "focus on practical accuracy, as opposed to technical precision ... extends to warrants authorizing the search of electronic devices." Tompkins, 118 F.4th at 287-88. "The Fourth Amendment does not require a perfect description of the data to be searched and seized." Ulbricht, 858 F.3d at 100. "The Fourth Amendment does not prohibit law enforcement from seizing ... electronic devices that are likely to contain evidence of a crime simply because that evidence is likely intermingled with other non-criminal and private information." United States v. Ray, 541 F.Supp.3d 355, 394 (S.D.N.Y. 2021).

"[I]t is precisely because computer files can be intermingled and encrypted that the computer is a useful criminal tool." Ibid. (citations omitted).

"[D]igital information is 'not maintained, like files in a file cabinet, in discrete locations,' but instead is often 'fragmented' on a storage device, potentially across physical locations.'" Tompkins, 118 F.4th at 287; see also Pa17-22. The particularity requirement, like the searches it authorizes, necessarily can be broad enough to address this reality:

> Search warrants covering digital data may contain 'some ambiguity ... so long as law enforcement agents have done the best that could reasonably be expected under the circumstances, have acquired all the descriptive facts which a reasonable investigation could be expected to cover, and have insured that all those facts were included in the warrant.

Ulbricht, 858 F.3d at 100 (quoting Galpin, 720 F.3d at 446); United States v. Ivey, 91 F.4th 915, 917-18 (8th Cir. 2023) ("Evidence of the offense could have been found anywhere in the phone, and 'a warrant need not be more specific than knowledge allows").

The particularity requirement does not mandate that a search of an electronic device for data be conducted in a manner different from a search of a home for paper records: "Since a search of a computer is 'akin to [a search of] a residence ... , searches of computers may sometimes need to be as broad as searches of residences pursuant to warrants." Ulbricht, 858 F.3d at 100; United States v. Richards, 659 F.3d 527, 538-39 (6th Cir.). cert. denied, 566

U.S. 1043 (2012). It is well recognized that "[w]hen a search requires review of a large collection of items, such as papers, 'it is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized.'" United States v. Williams, 592 F.3d 511, 519-20 (4th Cir.), cert. denied, 562 U.S. 1044 (2010) (quoting Andresen v. Maryland, 427 U.S. 463, 482 (1976)). So too for "electronic data," which "may entai[l] the exposure of records that are not the objects of the search to at least superficial examination in order to identify and seize those records that are." Ray, 541 F.Supp.3d at 394 (quoting Ulbricht, 858 F.3d at 100). "[A] search warrant does not necessarily lack particularity simply because it is broad." Ulbricht, 858 F.3d at 100. Broadness does not "necessarily turn[] a search warrant into a prohibited general warrant." Ibid.

Even if one could characterize the warrant here, with its 13 identified items of data to be seized and the locations in which this data could be located on defendant's cell phone, as broad, it cannot be said to lack in particularity. In identifying the specific data to be located and where it could be located, and limiting the seizure to only that data relevant to the Aggravated Manslaughter under investigation, the warrant here provided significantly more particularized details than the sufficiently-particular warrant in Missak, which allowed for "a search without limitation of all the phone's contents,

information, and data." Missak, 476 N.J. Super. at 322. The search warrant here bears no identity to the generalized warrants so hated by the Founders. The search warrant here did not run afoul of the particularity requirement of the Fourth Amendment, or New Jersey's similar constitutional protections.

Should this Court take the opportunity requested by defendant below to address the particularity mandates of warrants in the context of searches of cellular telephones, this Court should be guided by the course already set by federal courts and hold cell phones search warrants to nothing more or less than the standards long-established and applied to the most-venerated of private locations – one's home, see Payton v. New York, 445 U.S. 573, 596-97 (1980). Richards, 659 F.3d at 538-40; Ulbricht, 858 F.3d at 99-100.

CONCLUSION

The State respectfully request this Court grant leave to appeal.

Respectfully Submitted,

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MD/mc
Date: September 8, 2025
c Steven E. Nelson, Esq.