SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0595-22

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

PAULA MORENO-FUENTES,

Defendant-Respondent.

Submitted March 13, 2023 – Decided May 2, 2023

Before Judges Haas and Gooden Brown.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 19-06-0717.

Esther Suarez, Hudson County Prosecutor, attorney for appellant (Angela Halverson, Assistant Prosecutor, on the brief).

Law Offices of Michael Peter Rubas, LLC, attorneys for respondent (Michael P. Rubas, on the brief).

PER CURIAM

By leave granted, the State appeals from the September 16, 2022 Law Division order granting defendant Paula Moreno-Fuentes's motion to suppress evidence seized pursuant to a search warrant. Defendant's cell phone was seized during the execution of a search warrant for her home. The warrant was issued after defendant's then-fifteen-year-old daughter, J.C.,[1] disclosed to law enforcement that she was sexually abused on a weekly basis by Jonathan Fuentes, defendant's husband and J.C.'s stepfather. After defendant's cell phone was seized, a Communications Data Warrant (CDW) was issued authorizing law enforcement to search defendant's phone for information related to the sexual abuse allegations. Fuentes was subsequently indicted and charged in connection with the allegations. Defendant was charged in the same indictment with child endangerment predicated on allegations that she was aware of the sexual abuse and failed to report the allegations to law enforcement.

On appeal, the State raises the following points for our consideration:

> POINT I
>
> THIS ISSUE IS NOT RIPE FOR CONSIDERATION, AS NO EVIDENCE HAS YET BEEN TURNED OVER TO THE COURT OR APPELLANT.

[1] We use initials to protect the privacy of the victim and the confidentiality of these proceedings. R. 1:38-3(c)(9).

POINT II

THE TRIAL COURT ACCORDED NO DEFERENCE TO THE PROBABLE CAUSE FINDINGS OF TWO SUPERIOR COURT JUDGES.

POINT III

DEFENDANT HAS NOT MET HER BURDEN OF SHOWING THAT THE SEARCH WARRANT AND/OR CDW WERE NOT BASED ON PROBABLE CAUSE OR THAT THE SEARCH WAS OTHERWISE UNREASONABLE.

> A. THE REASONABLE PROBABILITIES FLOWING FROM THE EVIDENCE IN THE SEARCH WARRANT AND CDW ARE FURTHER SUPPORTED BY DEFENDANT'S STATUS AS A CO-CONSPIRATOR.

POINT IV

DEFENDANT'S CELL PHONE WAS LAWFULLY SEARCHED PURSUANT TO A COURT-AUTHORIZED CDW AND SUPPRESSION IS UNDULY PUNITIVE.

POINT V

THE SEIZURE OF DEFENDANT'S PHONE WOULD HAVE BEEN JUSTIFIED WITHOUT A WARRANT.

> A. AS [THE SPECIAL VICTIMS UNIT] HAD AN OBJECTIVELY REASONABLE BELIEF THAT DEFENDANT'S PHONE CONTAINED EVIDENCE OF A CRIME, THEY WERE PERMITTED TO SEIZE THE PHONE PENDING A CDW.

B. THE SEIZURE OF DEFENDANT'S PHONE WAS JUSTIFIED BY EXCEPTIONS TO THE WARRANT REQUIREMENT.

Because we agree defendant's cell phone was lawfully seized pursuant to a valid search warrant and subject to search pursuant to a duly issued CDW, we reverse the September 16, 2022 order granting defendant's suppression motion and remand for further proceedings.

I.

The January 14, 2019 affidavit submitted in support of the search warrant application at issue was prepared by Hudson County Prosecutor's Office (HCPO) Detective Allison Dixon, a member of the HCPO Special Victims Unit (SVU). In the affidavit, after setting forth her educational and experiential background in law enforcement, which included involvement "in hundreds of sexual assault investigations," Dixon recounted at length the details of the investigation of the sexual abuse allegations made by J.C.

The investigation began on June 20, 2018, when the SVU was notified by a Division of Child Protection and Permanency caseworker that J.C. had disclosed to her therapist that Fuentes had sexually abused her since she was fourteen years old. The sexual abuse was described as Fuentes "touch[ing] her breasts and digitally penetrat[ing] her vagina" as well as "perform[ing] oral sex

on each other." J.C. reportedly told defendant, "who never reported it to the police" and instead "kicked [J.C.] out of the house" where defendant continued to reside with Fuentes.

On the same date, J.C. provided a sworn recorded statement to Dixon. J.C. described various sex acts Fuentes performed on her, including fondling her breasts and buttocks, exposing his penis to her, masturbating in front of her, touching and digitally penetrating her vagina, performing oral sex on her and requesting that she reciprocate, taking sexually explicit photos of her on his cell phone, photographing lewd acts on his cell phone involving her, and showing her pornography on his cell phone. J.C. also described distinctive features of Fuentes's genitalia.

According to J.C., the abuse began when she was in the eighth grade with "Fuentes putting his hands down her shirt and touching her 'boobs' . . . for about [ten] to [fifteen] minutes." J.C. stated that when she told defendant about the incident, defendant confronted Fuentes, "who called [J.C.] a liar." She recounted that the sexual abuse continued "multiple times a week until she moved in with her [paternal] uncle" around the end of 2017.

J.C. explained that because defendant did not believe her, defendant arranged for J.C. and Fuentes to take polygraph exams, which J.C. was told she

failed and Fuentes passed. J.C. stated defendant then "told her whole family," including her paternal uncle, "that [J.C.] was lying." A few months later, she disclosed the abuse to her therapist, who reported it to the police.

On June 21, 2018, J.C.'s paternal uncle provided a sworn statement to Dixon. He confirmed that defendant kicked J.C. out of the house the day before Thanksgiving in 2017, so J.C. moved in with him and her biological father. Although J.C. disclosed some of the sexual incidents to him, he did not contact the police because he believed "[defendant] had started the process." He also confirmed that defendant had informed him that Fuentes had passed a polygraph exam.

During the course of the investigation, defendant's attorney turned over to Dixon "eighty[-]two pages of photocopied journal entries" presumably provided to him by defendant. As a result, on August 24, 2018, J.C. provided a second sworn statement to Dixon during which she identified the journal entries as hers. J.C. explained that defendant knew where J.C. kept her journal and "would read her journal entries every day." J.C. also stated that her journal entries about the sexual abuse were "missing." J.C. added that "there was also a lot of stuff on her cell[]phone," but defendant "ha[d] had her cell[]phone since she was kicked out" of the house. Although defendant's attorney was subsequently asked to

provide the original journal entries, no details about the sexual abuse allegations were contained in the documents that were turned over.

After SVU learned that relevant information may be contained on J.C.'s school laptop, J.C. was asked to come to SVU with her laptop for a third interview. During the interview, J.C. stated that after she disclosed the sexual abuse, defendant had taken her laptop for a few days. J.C. also stated that defendant had her passwords for both her cell phone and her laptop. According to J.C., after defendant took her laptop, she told J.C.'s paternal uncle that J.C. "was looking up 'Dr. Phil episodes about molestation,'" but J.C. denied ever "look[ing] up anything related to being sexually assaulted." A subsequent forensic analysis of J.C.'s laptop "yield[ed] no internet search history or other information pertaining to the case."

Given J.C.'s account that defendant had previously confiscated her cell phone, defendant's attorney was asked to turn over J.C.'s cell phone. Upon receipt, a forensic extraction revealed multiple videos of evidential value, including one video in which Fuentes recorded J.C.'s nude body while she was showering and another video in which J.C. commented about Fuentes recording her in her underwear. After Dixon reviewed the cell phone extractions, J.C. returned to the SVU for a fourth interview during which J.C. told Dixon that she

took the videos "because [Fuentes] 'told' her to take them." J.C. also indicated there were other sexually explicit videos that were missing from her cell phone.

Based on the information gathered during the investigation, Dixon requested a search warrant for defendant's and Fuentes's shared residence, as well as Fuentes's person. The warrant sought all "cellular telephones and paper products," including diaries, and any other evidence of the crimes of aggravated sexual assault, aggravated criminal sexual contact, sexual assault, child endangerment, and other crimes. Dixon believed that "stored pictures, stored videos, communications and files" found on the cell phones in the home "may contain corroborating evidence" of the specified crimes as well as "information leading to the identity of any person or persons involved."

After reviewing Dixon's affidavit, a Superior Court Judge issued the requested search warrant on January 14, 2019. During the execution of the warrant, four cell phones were seized at the residence. According to the written inventory of the property seized during the search, one of the cell phones was "recovered from a blue purse in the living room." On April 1, 2019, Dixon submitted another affidavit in support of a CDW application for each of the four seized cell phones.

In the affidavit, Dixon reiterated her educational and experiential background, the details of the investigation as recited in her first affidavit, and the fact that the execution of the prior search warrant resulted in the seizure of the four cell phones. Dixon averred that Fuentes was observed utilizing one of the cell phones, but the other three cell phones were not being utilized by anyone. The affidavit sought authorization to search the cell phones for evidence of the specified crimes, "such as records of communications, location information, text messages, e-mails, photographs and recordings," and other information "connect[ing] suspects, witnesses and victims to each other." Dixon attested that in her experience, "individuals use the text messaging features on their [cell phones] to communicate with each other" and that "[a] review of those text messages w[ould] reveal the nature of those communications and, most probably," evidence of the specified "criminal activity." On April 1, 2019, based on Dixon's affidavit, a different Superior Court Judge issued a CDW authorizing the search of each of the four cell phones. However, execution of the CDWs was stayed pending further order of the court.

On June 26, 2019, a Hudson County Grand Jury returned a five-count indictment. In the first four counts, Fuentes was charged with first-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(3); first-degree

aggravated sexual assault, N.J.S.A. 2C:14-2(a)(2)(c); third-degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a); and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1). In the fifth count, defendant was charged with second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(2).

After defendant and Fuentes claimed that privileged attorney-client communications were stored on the cell phones, on March 10, 2020, the trial court entered a consent order permitting the Bergen County Prosecutor's Office (BCPO) to perform a forensic search of the four seized cell phones and provide the contents to defendant's and Fuentes's respective attorneys for their review. The attorneys would then redact all privileged information, create a privilege log of the redacted information, and provide the State with a redacted copy of the contents of the cell phones as well as the privilege log. Any disputes by the State would be addressed by the court. According to the State, because the privilege log has not been completed, it has had no access to the contents of the seized cell phones.

On June 12, 2022, defendant moved to "suppress any and all evidence derived from the . . . seizure and subsequent search of [her] personal cell[]phone," identified as the "[b]lack Apple iPhone 7" seized from the blue

purse in the living room of her home. Following oral argument, on September 16, 2022, the motion judge issued an order and accompanying written opinion granting defendant's motion. The judge concluded Dixon's affidavit did not establish "a sufficient nexus" among "[d]efendant, th[e] cell[]phone, and the crime allegedly committed" to support a finding of "probable cause that could allow for the seizure and subsequent search of [d]efendant's personal cell phone." Relying on State v. Boone, 232 N.J. 417 (2017), a case involving a search warrant for a suspected drug dealer's apartment, the judge determined defendant's cell phone was "not seizable" because the affidavit did not establish how it was "connected with the criminal activity."

The judge explained:

> The [a]ffidavit only alleges that [d]efendant possessed J.C.'s cell[]phone and laptop computer. Defendant was made aware of sexual assault allegation[s] by J.C., but the [a]ffidavit does not claim that [d]efendant used her cell[]phone to communicate about the sexual assault. Nor does the [a]ffidavit state that any information related to the sexual assault was stored on [d]efendant's cell[]phone. No one had overheard or saw [d]efendant communicating about the sexual assault allegations over the phone, nor is there evidence that [d]efendant researched anything pertaining to the assault. . . . In fact, [d]efendant's cell[]phone was not mentioned at all. That [d]efendant was informed of the sexual abuse and the claim that people often communicate about these matters over the phone . . . are not sufficient to establish

> probable cause. Mere speculation of cell phone use concerning the sexual assault is simply not enough.

According to the judge, "[d]ue to the invalid seizure of [d]efendant's cell phone, the evidence obtained from [d]efendant's personal cell[]phone [was] inadmissible." The judge explained that because "the initial warrant for seizure of all cell phones was unsupported by probable cause, any information obtained from the CDW [was] fruit of the poisonous tree." The judge also independently invalidated the CDW because the "[a]ffidavit d[id] not claim that [d]efendant used the phone to communicate about the alleged assault" and contained "no facts to support that [d]efendant used [her] cell phone in connection with th[e] alleged misconduct." This appeal followed.

II.

"Our constitutional jurisprudence has a preference for searches conducted with warrants." State v. Evers, 175 N.J. 355, 381 (2003). "[A] search executed pursuant to a warrant is presumed to be valid and . . . a defendant challenging its validity has the burden to prove 'that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" State v. Jones, 179 N.J. 377, 388 (2004) (quoting State v. Valencia, 93 N.J. 126, 133 (1983)). "Accordingly, courts 'accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant,'"

and any "[d]oubt as to the validity of the warrant '"should ordinarily be resolved by sustaining the search."'" State v. Keyes, 184 N.J. 541, 554 (2005) (first alteration in original) (quoting Jones, 179 N.J. at 388-89).

In State v. Kasabucki, 52 N.J. 110 (1968), our Supreme Court underscored the limited role of reviewing courts when evaluating a challenge to a search warrant. There, the Court determined that "[o]nce [a] judge has made a finding of probable cause on the proof submitted and issued the search warrant, a reviewing court, especially a trial court, should pay substantial deference to [that] determination." Id. at 117 (emphasis added). The Kasabucki Court observed that "another trial judge of equal jurisdiction should regard as binding the decision of his brother that probable cause had been sufficiently shown to support a warrant, unless there was clearly no justification for that conclusion." Ibid. Thus, "after-the-fact scrutiny of the sufficiency of an affidavit should not take the form of a de novo review" because "[a] grudging or negative attitude by reviewing courts is repugnant to the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." State v. Sheehan, 217 N.J. Super. 20, 27 (App. Div. 1987) (citations omitted).

In evaluating the facts constituting probable cause for the issuance of a search warrant, "[t]he facts should not be reviewed from the vantage point of

twenty-twenty hindsight by interpreting the supporting affidavit in a hypertechnical, rather than a commonsense manner." Ibid. Instead, "[p]robable cause for the issuance of a search warrant requires 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993)). Stated differently, probable cause has been described as a "'common-sense, practical standard' dealing with 'probabilities' and the 'practical considerations of everyday life,'" and is generally understood to mean "less than legal evidence necessary to convict though more than mere naked suspicion." Evers, 175 N.J. at 381 (first quoting State v. Sullivan, 169 N.J. 204, 211 (2001); and then quoting State v. Mark, 46 N.J. 262, 271 (1966)).

To determine whether there is probable cause in a search warrant application, "[o]ur analysis begins with a review of 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." Id. at 380 (citing Illinois v. Gates, 462 U.S. 213, 230-31 (1983)). Indeed, we must "consider the totality of the circumstances when assessing the reasonable probabilities that flow from the evidence submitted in support of a warrant application." Chippero, 201 N.J. at 27.

Applying these principles, we are convinced the judge erred in granting defendant's suppression motion. By disregarding the probable cause determinations of two Superior Court judges, "the motion judge ignored the Supreme Court's advice that the preference for police to resort to a warrant requires that 'in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.'" State v. Jones, 308 N.J. Super. 15, 32 (App. Div. 1998) (quoting United States v. Ventresca, 380 U.S. 102, 106 (1965)).

Applying Boone, the motion judge found there was an insufficient "nexus amounting to probable cause that could allow for the seizure and subsequent search of [d]efendant's personal cell phone." In Boone, police surveilled the defendant for two months and observed him "engage in drug-related activities." 232 N.J. at 422. In the ensuing search warrant application, police asserted that the "'investigation reveal[ed] that [the defendant was] distributing [c]ontrolled [d]angerous [s]ubstances'" from his residence. Id. at 423. However, the criminal activities described in the warrant application included observations of the defendant "retriev[ing] a duffel bag from an unoccupied vehicle," which he "did not bring . . . into" his apartment building, and "what appeared to be a hand-to-hand drug transaction" between the defendant and another individual. Id. at 422.

Among other things, the application sought to search "Unit 4A . . . identified as [the defendant's] apartment" but failed to "note that the building was a thirty-unit apartment building" or "provide any details about Unit 4A or how police knew [the defendant] was a tenant in that unit." Ibid. "Police executed the search warrant . . . and found between one-half and five ounces of cocaine and an illegal handgun in Unit 4A." Id. at 423. After the defendant was indicted for drug and gun possession related charges, he "sought to suppress the evidence . . . on the ground that the search warrant lacked a factual basis to establish probable cause to search his apartment." Ibid. In reversing the trial and this court's decisions denying the defendant's suppression motion, our Supreme Court determined that "there was nothing in the affidavit to indicate where [the defendant] lived, how police knew which apartment was his, or how the apartment was connected to his drug dealing." Id. at 430.

The Court explained that "the State's warrant application did not include specific evidence as to why a judge should issue a search warrant for a specific apartment unit," but merely "listed [the defendant's] apartment unit as the targeted property in a conclusory manner, without any evidential basis as to how they knew that specific unit in a thirty-unit building contained contraband." Id. at 430-31. Because the suspicious behavior that the defendant engaged in during

the investigation was not tethered to his apartment unit, the Court stated that the officers' observations "may [have] be[en] sufficient to issue a warrant to arrest [the defendant]; however, there was nothing in the affidavit to indicate . . . how the apartment was connected to his drug dealing." Id. at 430. The Court "emphasize[d] that judges issuing search warrants must scrutinize the warrant application and tie specific evidence to the persons, property, or items the State seeks to search." Id. at 431. "Without that specificity and connection to the facts, the application must fail." Ibid.

Here, the parties do not dispute that the application provided sufficient specificity and connection to search Fuentes and the residence he shared with defendant. The crux of the dispute is the item the State sought to search – defendant's personal cell phone – and whether there was a sufficient nexus between the illegal activities alleged and defendant's cell phone. Unlike the motion judge, we are satisfied that Dixon's affidavit established a sufficient nexus to support the seizure and subsequent search of defendant's cell phone.

In the affidavit, Dixon recounted her interviews with J.C. which referenced multiple communications by defendant regarding the sexual assault allegations. Presumably, defendant communicated with the polygrapher about the allegations so that the examiner could formulate questions when

administering the exams. Defendant also advised J.C.'s family members that J.C. "was lying." Given the "practical considerations of everyday life on which reasonable and prudent [people] . . . act," Evers, 175 N.J. at 381 (quoting Sullivan, 169 N.J. at 211), there is a "'fair probability'" that defendant's communications occurred by cell phone. Sullivan, 169 N.J. at 212 (quoting Gates, 462 U.S. at 238). Indeed, as our Supreme Court has recognized, "cell[]phone use has become an indispensable part of modern life" and "[p]eople buy cell phones to communicate with others." State v. Earls, 214 N.J. 564, 586-87 (2013).

The judge's implication that eyewitness corroboration of defendant using her cell phone to communicate about the allegations was a prerequisite to a finding of probable cause to seize and search the cell phone was overly restrictive. In Sullivan, the Court held "[t]he fact that the police were unable to observe [an] informant enter" a specific apartment to conduct a controlled drug purchase "itself d[id] not prevent a finding of probable cause" to search the apartment. 169 N.J. at 216. "Rather, the inability of the police in that regard is one factor to be considered by the issuing judge under the totality-of-circumstances test." Ibid. Similarly, here, the fact that no one overheard or saw

defendant communicating about the allegations on her cell phone was just one factor to consider under the totality-of-the-circumstances test.

To that end, in ruling that Dixon's affidavit failed to "provid[e] information that gives rise to probable cause th[at d]efendant's wrongdoing might be found on her cell[]phone," the judge failed to consider "the 'totality of circumstances' presented" within the four corners of the affidavit. Evers, 175 N.J. at 380 (citing Gates, 462 U.S. at 230-31). In so doing, the judge did not consider defendant's reported history of controlling and disposing of potential evidence of Fuentes' crimes. Dixon's affidavit specifically documented defendant's control over J.C.'s laptop, cell phone, and journal, in which J.C. reported making entries about the sexual assaults. Yet, when defendant provided the journal to Dixon through her attorney, "none of the journal entries, original or copies, contain[ed] details about the sexual assault[s]." Similarly, after defendant turned over J.C.'s cell phone to Dixon, J.C. identified two sexually explicit videos on her phone but stated that "there were other[videos]" missing. As to J.C.'s laptop, a forensic analysis "yield[ed] no internet search history or other information pertaining to the case" despite defendant telling J.C.'s paternal uncle that "[J.C.] was looking up 'Dr. Phil episodes about molestation.'"

Additionally, the judge did not consider Dixon's law enforcement experience and involvement "in hundreds of sexual assault investigations." Our Supreme Court has recognized that judges reviewing warrant applications for probable cause "should take into account the specialized experience and work-a-day knowledge of policemen." Kasabucki, 52 N.J. at 117; cf. Jones, 179 N.J. at 390 ("The experience that an officer submitting a supporting affidavit has in investigating and apprehending drug dealers constitutes another factor that a court should consider."). Dixon averred that in her experience, individuals use cell phones "to communicate with each other." Based on "[her] experience," Dixon believed that cell phones in the shared residence contained "communications" and other "corroborating evidence" of the specified crimes. While "the mere fact that an officer is experienced does not lower the quantum of evidence needed to establish probable cause[, a]n officer's experience is . . . useful in establishing probable cause if the officer uses the experience to infer that a suspect is engaged in criminal activity." State v. Smith, 155 N.J. 83, 99 (1998).

The State argues that "given the probable cause contained in the [s]earch [w]arrant [a]ffidavit, pertaining to both Fuentes and [d]efendant, it was reasonable to seize all 'cellular telephones' contained within the home," and the

judge's ruling that seizure of defendant's cell phone was beyond the scope of the search warrant was erroneous. The "scope" of a search pursuant to a warrant "is defined by the object of the investigation and the places in which there is probable cause to believe that it may be found." Sheehan, 217 N.J. Super. at 28 (citing State v. Reldan, 100 N.J. 187, 195 (1985)). Thus, "[a]n analysis of the reasonableness of . . . the areas searched, should focus upon whether the search in its totality was consistent with the object of the search." Reldan, 100 N.J. at 195. In such an analysis, the terms of the search warrant "must be strictly respected." State v. Bivins, 435 N.J. Super. 519, 524 (App. Div. 2014) (citing State v. Rockford, 213 N.J. 424, 441 (2013)).

Here, defendant's personal cell phone fell squarely within the scope of the warrant's plain language, and the judge erred by focusing on the fact that "[d]efendant's cell[]phone was not mentioned" in either the application or the warrant as an item to be seized. The object of the search was to uncover evidence to support the sexual assault and related charges against Fuentes and the child endangerment charge against defendant. The search warrant specifically authorized the seizure of "cellular telephones" uncovered "on the premises" where defendant and Fuentes lived and the seizure of "any other evidence of the crime[s]."

In Reldan, the Court rejected the defendant's challenge to a search warrant authorizing a search of his car for evidence of unrelated household burglaries that uncovered forensic evidence from "vacuuming [the floor] of the car" that linked him to two murders. 100 N.J. at 194-96. The Court concluded that the search did not exceed the scope of the warrant because the search warrant's language permitted the seizure of evidence relating to the burglaries as well as "'anything else of evidentiary value that a complete and thorough search might disclose.'" Id. at 196 (emphasis omitted). The Court explained that "the vacuum [search] could have been effective in retrieving small particles of jewelry that may have broken off" and "could appropriately have been used to uncover other evidence of the break and entries, such as soil particles, debris, paint chips and the like." Ibid.

In Jones, we held that a search warrant for writings establishing "a motive" for defendant to kill the victim permitted the seizure of the defendant's "unpublished 'novel,' essays and other miscellaneous writings" that "refer[red] to murder, rape, decapitation and torture" and "support[ed] an inference that [the] defendant was obsessed with" women with similar characteristics to the victim's. 308 N.J. Super. at 27-28. Addressing the breadth of the warrant, we concluded "[t]he warrant limited the searching officers' discretion because it

authorized only the seizure of writings that had a tendency to establish a motive, identity and a relationship between defendant and the victim." Id. at 34.

Here, by specifying "cellular telephones," the warrant was more specific and defined with more particularity the items to be seized than the warrants in Reldan and Jones. See State v. Muldowney, 60 N.J. 594, 600 (1972) (noting that a warrant is sufficiently definite if "the officer executing it can identify the property sought with reasonable certainty"). In sum, defendant's cell phone was lawfully seized pursuant to a valid search warrant. The information recovered from defendant's cell phone pursuant to the CDW is not subject to the exclusionary rule because the initial seizure was justified and the CDW was lawfully issued based on the same probable cause that supported the initial seizure of the cell phone. Based on our decision, we need not address the State's remaining arguments.[2]

The order appealed is reversed and the case is remanded for further proceedings. We do not retain jurisdiction.

[2] We reject out of hand the State's argument that the suppression of information recovered from defendant's cell phone "is not yet ripe for consideration" because the HCPO is still awaiting defense counsel's redaction of all privileged material and has not had access to the contents of defendant's phone.