SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2672-18

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KENNETH D. DANIELS,

Defendant-Appellant.

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Submitted January 19, 2023 – Decided March 21, 2023

Before Judges Mayer, Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 16-04-0067.

Joseph E. Krakora, Public Defender, attorney for appellant (Laura B. Lasota, Assistant Deputy Public Defender, of counsel and on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Debra G. Simms, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Kenneth Daniels appeals from a February 6, 2019 judgment of conviction after pleading guilty to one count of first-degree racketeering, N.J.S.A. 2C:41-2(c) and preserving the right to appeal from a January 4, 2019 order denying his motion to suppress cell phone evidence. We affirm.

We recite the facts from the evidentiary hearing on defendant's motion. On March 18, 2015, defendant was arrested in Newark while driving a stolen vehicle suspected in a string of automated teller machine (ATM) thefts in Essex County.

At the same time, the New Jersey State Police (NJSP) were separately investigating a car theft ring operating in New Jersey and New York. The NJSP and other law enforcement agencies gathered information regarding the car thefts using global positioning system (GPS) devices, pole cameras, consensual recorded phone calls, wiretaps, and search warrants for recovered cell phones.

In early March 2015, police officers surveilled a stolen Audi, tracking the car using a GPS device. The officers tracked the car to the Irvington municipal court. They saw someone driving a "newer model silver Porsche," with a fictitious temporary New Jersey license plate, pull into the municipal court's lot and park next to the stolen Audi. The police officers observed a passenger,

Levell Burnett,[1] exit the Porsche and enter the Audi. They then saw the two vehicles leave the area "in tandem" and followed, but lost sight of the cars a short while later.

Several days later, the NJSP received an alert for a stolen white or silver Porsche associated with several "smash and grabs" at ATMs in the Newark area. Officers assigned to the NJSP in the Newark area learned that a Porsche matching that description was in a parking lot near their location. When the NJSP officers approached the car, the driver reversed the Porsche and backed into the officers' vehicle. In the process, the Porsche driver knocked one officer to the ground. Thereafter, gunshots rang out and the officers pulled the Porsche driver from the car. The driver was handcuffed and arrested. During the arrest, the police found a cell phone in the front seat of the Porsche. The NJSP officers subsequently learned defendant was the Porsche driver.

The officers charged defendant with attempted murder, aggravated assault, eluding, possession of weapon for an unlawful purpose, and receiving stolen property. After the arrest, the officers brought defendant to the Essex County jail.

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[1] Burnett is defendant's uncle.

Two days after his arrest, detectives from the Essex County Prosecutor's Office (ECPO) transported defendant from the county jail to their office to be interviewed by Sergeant Holt Walker in connection with the ATM thefts. Walker briefly left the interview room and asked Detective Antonio Rua of the ECPO to "keep an eye" on defendant prior to the start of the interview.

Although they shared information, the team investigating the car theft ring and the team investigating the ATM thefts were independent and did not work together. Detective Rua was part of the team investigating the ATM thefts but did not plan to interview defendant. According to Rua, he was assigned to ensure defendant was "okay" while defendant waited to be interviewed by Sergeant Walker and that he did not cause a disturbance in the interview room. Rua explained that ECPO detectives typically monitored suspects brought in for questioning for everyone's safety.

While the two men were waiting in the interview room, defendant, unprompted, began a conversation with Rua. Defendant stated: "[T]hey want to look at my phone. Why would they want to look at my phone? They're saying I did something with these ATMs. I'm not an ATM guy, I'm a car guy." Rua did not instigate these statements. Rua responded, "[I]f you didn't do it, you're saying you didn't do it, you weren't there, you didn't do the ATMs, just let them

look at your phone. Your phone is going to show that you weren't there, that you didn't have anything to do with it, and you'll be good."[2] Defendant then said, "[O]h, that's it? They want to look at my phone?" Rua replied, "[Y]eah, if your phone says that you weren't there, and you didn't do it, then you're good." In response, defendant stated, "[A]ll right, fine."

Following the conversation, Detective Rua left the interview room to retrieve a "Consent To Search Electronic Devices" form. After reading the consent form, defendant supplied the required information and signed the document. By signing the form, defendant agreed to waive his constitutional right against the search of his cell phone without a warrant, acknowledged his right to refuse to consent to the search, and voluntarily, without threats or promises of any kind, authorized the search of his cell phone. Rua then dated and signed the form. After completing the consent form, Rua asked defendant if his cell phone had a passcode. Defendant responded in the affirmative and the detective asked him to write the passcode on the consent form. Defendant

[2] During the evidentiary hearing on the motion to suppress the cell phone evidence, Rua also recalled telling defendant: "[I]f you didn't do it, then your phone's going to prove you weren't there. It's going to, you know, they're not going to find anything, and . . . it will help you."

complied. Rua also confirmed that defendant had no questions and was "all good."

Rua testified he did not provide any Miranda[3] warnings to defendant because he did not conduct an interview and did not ask any questions except to request the passcode. Rua also stated the consent form did not indicate defendant had the right to revoke his consent at any time. Nor did Rua recall telling defendant of the right to revoke his consent or that the cell phone would be searched outside of defendant's presence. Rua left the room with the signed consent form and placed the document on the desk belonging to the lead detective assigned to the team investigating the ATM thefts. Rua did not tell Walker about defendant's consent to the search of his cell phone.

After Rua left the room, Sergeant Walker administered the Miranda warnings to defendant prior to starting the interview. Initially, defendant spoke with Walker and denied any involvement in the ATM thefts. After briefly answering Walker's questions, defendant invoked his right to an attorney and the sergeant terminated the interview. Walker testified he never saw defendant's cell phone.

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[3] Miranda v. Arizona, 384 U.S. 436 (1966).

At the evidentiary hearing, Detective Rua testified that if defendant had not signed the consent form, the ATM theft investigation team would have requested a search warrant. He also told the judge that the stolen Porsche driven by defendant was reportedly involved in several ATM thefts earlier in the day on the date of defendant's arrest. Although defendant had not been a suspect in the ATM thefts prior to his arrest, defendant's uncle had been suspected of participating in ATM thefts since 2014.

NJSP Detective Corey Rodriguez, who was involved in the extensive, eighteen-month-long, ongoing investigation into the theft of luxury cars, also testified at the suppression hearing. As part of the car theft investigation, Rodriguez told the judge his team applied for and obtained search warrants for about twenty to twenty-five cell phones belonging to various targets associated with the car theft ring, including a cell phone belonging to defendant. A cell phone, recovered in October 2014 along with two stolen cars, was traced to defendant based on defendant's "selfies" and text messages sent to that phone referring to defendant by his street name. The cell phone recovered in 2014 also contained images of stolen vehicles and text messages with co-conspirators associated with the car theft enterprise. Based on his knowledge of defendant's previous connection to the car theft investigation in 2014, Rodriguez testified

the NJSP would have applied for a warrant to search the cell phone recovered on March 18, 2015 if defendant had not signed the consent form.

Defendant testified he was handcuffed and shackled at the ECPO. However, his claim is contradicted by other testimony in the record. Defendant also claimed the discussion with Rua occurred after defendant invoked his right to counsel. Defendant further asserted Rua told him the police knew defendant was not involved in the ATM thefts but needed to confirm defendant's whereabouts on the morning of March 18, 2015. According to defendant, he signed the consent form with the understanding that the police would only search the GPS data on his cell phone. During the search of defendant's cell phone, the police found call logs, contact information, videos, and photographs which linked defendant to the car theft ring.

At the conclusion of the evidentiary hearing, the judge issued a forty-six-page written decision, dated January 4, 2019, denying defendant's motion to suppress the cell phone evidence.

The judge rejected defendant's claim that his consent to search the cell phone was invalid because Rua sought consent after defendant invoked his Miranda rights as part of the Walker interview. The judge concluded defendant was motivated to lie to the court and was "manic and evasive" while testifying

during the suppression hearing. The judge found Rua's testimony regarding the timing of the consent to search as preceding defendant's invocation of the rights to remain silent and to counsel more credible than defendant's testimony.

Moreover, at the time defendant gave his consent to the search, the judge found there was no evidence that defendant knew about the NJSP investigation regarding the stolen car ring. While the overall significance of the cell phone evidence was not apparent to defendant at the time he consented to the search of the device, the importance of the evidence on his cell phone was obvious at the time of the suppression hearing. Thus, the judge concluded defendant had every reason to lie about his consent to search the cell phone to avoid being implicated in the car theft enterprise.

The judge further found the State proved that defendant knowingly and voluntarily consented to the search of his cell phone. While the judge recognized defendant was under arrest and denied any involvement in the ATM thefts at the time he gave his consent to search the cell phone, the judge noted: (1) defendant believed the search would result in exculpatory evidence; rather than incriminating evidence; (2) at the time he gave consent, defendant was unaware that he was part of the investigation into the stolen car ring; (3) there was no evidence discovered on defendant's cell phone linking him to the ATM

thefts; (4) other than defendant's testimony during the suppression hearing, there was no evidence defendant was handcuffed at the time he consented to the search of his cell phone or that he previously refused to provide consent; and (5) the signed consent form stated defendant had the right to refuse consent.

The judge further found defendant's claim that he limited his consent to search only the GPS data on his cell phone to be incredible and contrived. In reaching that determination, the judge highlighted that defendant did not include such a limitation on the signed consent form. The judge also held defendant's claim was illogical because defendant was unaware of the NJSP investigation related to the car theft ring or that evidence on his cell phone might link him to stolen cars. Additionally, the judge concluded it was objectively reasonable that defendant understood the search would encompass the content of the entire cell phone upon providing the passcode. Because defendant wrote his passcode on the consent form, the judge determined defendant clearly understood a complete search of his cell phone would occur at another time without defendant present.

In his written decision, the judge concluded:

> Under all the circumstances, the State has proven defendant consented to the search of his cell phone. Defendant signed the consent to search form after the form was read to him, and he was provided an opportunity to review the form on his own before signing and granting consent. Defendant was aware of

> his right to refuse to grant consent, and defendant did not seek clarification or exhibit any confusion regarding his rights. Importantly, defendant believed the search would reveal exculpatory evidence regarding the ATM thefts, so there is no evidence of coercion despite the fact that defendant was under arrest at the time of consent.

Even if the consent to search was constitutionally infirm, the judge concluded the evidence obtained from defendant's cell phone was admissible under the inevitable discovery doctrine. The judge again credited the testimony of Detectives Rua and Rodriguez that they would have sought search warrants to obtain evidence linking defendant to the car theft investigations if defendant had not consented to the search of his cell phone. The judge determined an application to search defendant's cell phone would have satisfied the probable cause requirement to obtain a warrant because the NJSP had a fair probability that evidence of a crime would be found on the cell phone.

Based on the judge's denial of the motion to suppress the cell phone evidence, defendant agreed to plead guilty to first-degree racketeering. In return, the State agreed to dismiss all remaining charges and recommend an eleven-year term of imprisonment, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to run concurrent to defendant's sentence in an unrelated narcotics case. Consistent with the plea agreement, the judge dismissed the

remaining charges and sentenced defendant to a ten-and-a-half-year prison term.

On appeal, defendant raises the following arguments:

POINT I

> THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED FROM HIS CELL PHONE AS DEFENDANT'S CONSENT TO SEARCH THE PHONE WAS NOT KNOWINGLY AND VOLUNTARILY GIVEN.
>
> A. Defendant's Consent to Search Was Obtained in Violation of His Fifth Amendment Rights.
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> B. Under State v. King[4] and the Totality of the Circumstances, Defendant Did Not Knowingly and Voluntarily Consent to the Search of His Cell Phone.
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> C. The Evidence is Not Admissible Pursuant to the Inevitable Discovery Doctrine.

Our review of a trial court's decision on a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021) (citing State v. Robinson, 200 N.J. 1, 15 (2009)). Generally, "a trial court's factual findings in support of granting or denying a motion to suppress must be upheld when 'those findings are supported by sufficient credible evidence in the record.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). We defer to the trial

[4] 44 N.J. 346 (1965).

court "because a trial court's decision is influenced by the opportunity to hear and see the witnesses." State v. Gonzalez, 249 N.J. 612, 628 (2022). We "ordinarily will not disturb the trial court's factual findings unless they are 'so clearly mistaken' "'that the interests of justice demand intervention and correction."'" State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). However, we review a trial court's legal conclusions de novo. State v. Hubbard, 222 N.J. 249, 263 (2015) (citing State v. Gandhi, 201 N.J. 161, 176 (2010)).

Defendant argues Detective Rua obtained consent to search the cell phone in violation of his Fifth Amendment rights because Rua failed to provide the required Miranda warnings. Specifically, defendant claims his conversation with Rua while waiting in the interview room amounted to custodial interrogation and Miranda warnings were necessary before he could properly consent to a search of his cell phone. We disagree.

The Fifth Amendment to the United States Constitution guarantees that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. New Jersey similarly guarantees the right against self-incrimination. N.J.R.E. 503; S.S., 229 N.J. at 381–82. This right exists to combat the inherent pressures of custodial interrogation, "which work to

undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." Miranda, 384 U.S. at 467. Incriminating statements elicited during a custodial interrogation may not be admitted into evidence unless defendants have been advised of their constitutional rights. Id. at 492; Hubbard, 222 N.J. at 265.

It is undisputed that defendant was "in custody" when he spoke with Detective Rua. Defendant contends his conversation with Rua constituted "interrogative action" because Rua engaged in a discussion of the investigation and asked for defendant's consent to search his cell phone.

The State contends defendant's Fifth Amendment rights were not triggered because defendant initiated the conversation with Rua and the detective never questioned defendant. As we held in State v. Mallozzi, 246 N.J. Super. 509, 516 (App. Div. 1991), "unexpected incriminating statements made by in-custody defendants in response to non-investigative questions by the police without prior Miranda warnings are admissible."

Here, after his arrest, defendant was transported to the ECPO and placed in a room to be interviewed by Sergeant Walker. Walker left the interview room momentarily, and Detective Rua was asked to watch defendant.

Without any prompting, defendant started talking to Rua about his cell phone. At no time did Detective Rua question defendant. Rua testified he was not assigned to interview defendant and had no intention of questioning him on any topic.

Further, Rua testified the ATM theft investigation was separate and distinct from the car theft investigation. There is nothing in the record to support the conclusion that Rua planned to implicate defendant in the car theft ring by telling defendant a search of his cell phone would clear him of the ATM thefts.

Because defendant initiated a conversation with Rua about his cell phone, we are satisfied his Fifth Amendment rights were not violated. "Miranda has no application to statements that are 'volunteered.'" State v. Brabham, 413 N.J. Super. 196, 210 (App. Div. 2010) (quoting Miranda, 384 U.S. at 478).

Additionally, the judge noted that defendant received Miranda warnings and waived his rights when he first spoke to the police on March 18, 2015, after his arrest and before being transported to the ECPO. Thus, defendant's waiver of his rights remained in effect before Sergeant Walker began to interview defendant and there was no need for Rua to re-administer the Miranda warnings.

We next consider whether the judge erred in finding defendant knowingly and voluntarily consented to a search under the Fourth Amendment. Defendant,

citing the factors in State v. King, 44 N.J. 346 (1965), contends his consent was invalid. We disagree.

The Fourth Amendment of the United States Constitution and Article I of the New Jersey Constitution provide individuals the right to be protected from unreasonable searches and seizures. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. Searches and seizures executed without a warrant are "presumptively invalid." State v. Pineiro, 181 N.J. 13, 19 (2004). However, a consent search is a recognized exception to the warrant requirement. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973); State v. Camey, 239 N.J. 282, 300 (2019).

To justify a warrantless search, the State bears the burden of proving the consent was given voluntarily and the accused knew of the right to refuse consent. State v. Hagans, 233 N.J. 30, 39 (2018). Consent must be "unequivocal and specific," and "freely and intelligently given." King, 44 N.J. at 352 (quoting Judd v. United States, 190 F.2d 649, 651 (D.C. Cir. 1951)). "[T]he existence of a written waiver points strongly to the fact that the waiver was specific and intelligently made." State v. Daley, 45 N.J. 68, 76 (1965).

In King, our Supreme Court set forth the following factors in determining whether an individual's consent to search was coerced:

> (1) that consent was made by an individual already arrested; (2) that consent was obtained despite a denial

> of guilt; (3) that consent was obtained only after the accused had refused initial requests for consent to search; (4) that consent was given where the subsequent search resulted in a seizure of contraband which the accused must have known would be discovered; [and] (5) that consent was given while the defendant was handcuffed.
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> [King, 44 N.J. at 352–53 (citations omitted).]

A trial court should view these factors as "guideposts" in determining the voluntariness of the consent to search and must consider the "totality of the particular circumstances" in each case. Ibid.; see also Hagans, 233 N.J. at 40.

Applying the King factors here, the judge correctly concluded defendant's consent to search was knowing and voluntary. Other than defendant's own self-serving testimony, there is no evidence in the record that defendant was handcuffed when he consented to the search. Additionally, defendant did not refuse initial requests for consent to search, initiated the discussion with Detective Rua about his cell phone, and believed the search would result in exculpatory evidence—specifically, his non-involvement in the ATM thefts.

Moreover, defendant had no knowledge that he was a suspect in the stolen car investigation at the time of his arrest for the ATM thefts. Further, defendant voluntarily executed the consent form. He read and signed the consent form, which advised that he had the "right to refuse to consent to such a search." At

no time did defendant question Rua about the consent form or indicate any discomfort when Rua asked if defendant was "okay" when he signed the form.

Defendant also argues Rua led him to believe the search of his cell phone would be limited to GPS information relating to the alleged ATM thefts and be conducted in his presence. "The scope of a search extends to what is objectively reasonable, which is defined as what 'the typical reasonable person [would] have understood' the scope to include." State v. Hampton, 333 N.J. Super. 19, 29 (App. Div. 2000) (alteration in original) (quoting Florida v. Jimeno, 500 U.S. 248, 251 (1991)).

Here, the signed consent form provided: "These [o]fficers are authorized by me to take any electronic device(s) deemed to have evidential value which they may desire." Defendant could have written "only for GPS information" on the form to limit his consent to the search of the cell phone but did not do so. Additionally, defendant wrote the passcode for his cell phone on the consent form, effectively allowing anyone to unlock the device and access its contents at any time.

We are satisfied the King factors support the judge's conclusion that defendant's consent to search his cell phone was freely and voluntarily given.

There is no evidence on this record that defendant reasonably believed the search would be limited in scope.

We next address defendant's argument that the judge erred in his alternative finding that the search of his cell phone was justified under the inevitable discovery doctrine. The judge found the detectives associated with the ECPO and NJSP would have followed routine and customary procedures to obtain a search warrant for defendant's cell phone. Because the judge also determined there was probable cause related to a crime committed by defendant, he concluded that a search warrant would have issued.

Defendant asserts the State failed to prove by clear and convincing evidence that a search warrant would have been obtained because the detectives' testimony did not establish probable cause. We disagree.

The inevitable discovery doctrine may be invoked to preserve "the admissibility of evidence obtained without a warrant or a valid exception to the warrant requirement." Camey, 239 N.J. at 301. The inevitable discovery exception permits the admission of illegally obtained evidence when "the evidence in question would inevitably have been discovered without reference to the police error or misconduct," thereby negating any taint. State v. Sugar, 108 N.J. 151, 156 (1987) (quoting Nix v. Williams, 467 U.S. 431, 444 (1984));

accord State v. Maltese, 222 N.J. 525, 551-52 (2015). To apply the exception, the State must prove the following by clear and convincing evidence:

> (1) proper, normal and specific investigatory procedures would have been pursued in order to complete the investigation of the case; (2) under all of the surrounding relevant circumstances the pursuit of those procedures would have inevitably resulted in the discovery of the evidence; and (3) the discovery of the evidence through the use of such procedures would have occurred wholly independently of the discovery of such evidence by unlawful means.
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> [Id. at 552 (quoting State v. Johnson, 120 N.J. 263, 284 (1990)).]

The State need not establish with particularity "the exact circumstances of the evidence's discovery" nor "the exclusive path leading to the discovery." Sugar, 108 N.J. at 158. Rather, the State may demonstrate the evidence would have eventually been discovered based on the totality of "the evidence understood in light of ordinary experience and common sense." Id. at 163.

Here, the trial judge held the inevitable discovery doctrine applied because Rua testified the ECPO would have requested a search warrant for defendant's cell phone related to the ATM thefts if defendant had not consented. Detective Rodriguez similarly testified he would have sought a search warrant related to the NJSP car theft investigation. Rodriguez would have done so because defendant was seen driving a stolen Porsche and discharging a passenger, his

uncle, who then drove away in a separate stolen car. Additionally, Rodriguez explained that the police in 2014 linked a different cell phone found near stolen cars as belonging to defendant, which contained incriminating evidence implicating defendant in the theft of luxury cars.

Here, consistent with the test articulated in Sugar and Maltese, the judge properly concluded that the cell phone evidence would have been admissible under the inevitable discovery doctrine. Detective Rodriguez testified regarding the normal and routine investigatory procedures that the NJSP employed as part of the extensive car theft investigation. According to Rodriguez, the NJSP used GPS devices, pole cameras, consensual recorded phone calls, physical surveillance, and search warrants for recovered cell phones as part of the stolen car investigation. Further, at the time of his arrest, defendant, his uncle, and several other individuals had been identified by the NJSP as linked to the car theft ring. During the NJSP car theft investigation, warrants were issued for co-defendants' cell phones. There is nothing in the record suggesting that Rodriguez would have deviated from his typical practice to seek a search warrant or that he would have been unsuccessful in obtaining a warrant.

Additionally, a previous search of a different cell phone in 2014 connected defendant to the car theft ring. Although defendant argues Rodriguez could not

confirm the identity of the owner of the cell phone recovered in 2014, Rodriguez testified that cell phone contained "selfie"-style photographs of defendant, pictures of various stolen vehicles, and text messages about the car theft operation, which referred to defendant by his street name. Based on his training, experience and knowledge, Rodriguez determined defendant had a connection to the cell phone recovered in 2014. After learning of defendant's arrest on March 18, 2015 for the suspected ATM thefts, Rodriguez had sufficient information to establish probable cause to search the cell phone recovered in the stolen Porsche and therefore, a search warrant would likely have issued.

Additionally, although Detective Rua was assigned to the separate investigation related to the ATM thefts, based on his training and experience, he too would have followed his routine investigative procedures and sought a search warrant. Officers with the NJSP saw defendant driving a stolen Porsche associated with the recent ATM thefts. Defendant was accompanied by his uncle, who was also linked to the ATM thefts. Further, defendant attempted to flee from the officers to avoid arrest. This information provided Rua with sufficient information to establish probable cause to seek a warrant to search defendant's cell phone and such a request would likely have been granted.

Further, the discovery of the evidence on the cell phone would have occurred independent of any challenge to the means by which it was obtained. Defendant does not claim his arrest on March 18, 2015 was unlawful. The officers saw defendant drive a stolen car, attempt to flee the scene to avoid arrest, and commit aggravated assault upon an officer. Under these circumstances, independent of the car theft or the ATM theft investigations, we are satisfied that information from defendant's cell phone recovered in the stolen Porsche would have been of interest to the investigating officers to further support the charges against defendant. Thus, the information on defendant's cell phone recovered from the Porsche would have inevitably been discovered and the judge correctly concluded the information was admissible based on the doctrine.

Affirmed.