SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

Criminal Division
Criminal Court Complex
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Mays Landing, N.J. 08330
609-402-0100 ext. 47360

Not for Publication Without Approval of the Committee on Opinions

April 2, 2025

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Re: **State v. Marty Small and La'Quetta Small: Motion to Suppress Evidence Seized from the Defendants' Vehicles Pursuant to the March 27, 2024, Search Warrant.**
Ind. No. 24-09-2951

Dear Counselors:

INTRODUCTION

On September 17, 2024, an Atlantic Count Grand Jury returned Indictment Number 24-09-2951-T, charging the Marty and La'Quetta Small (collectively, "Defendants") with second-degree endangering by abuse/neglect of a child (Count 1). Mr. Small was additionally charged with third-degree terroristic threats (Count 2) and third-degree aggravated assault (Count 3).

On December 19, 2024, Mr. Small, through counsel, filed the instant Motion to Suppress Physical Evidence obtained pursuant to Search Warrants granted by the Court on March 27, 2024. Mrs. Small, through counsel, joined and provided separate submissions to the instant motion on March 18, 2025. Counsel presented oral argument on the issue before the Court on March 14, 2025. The Court has considered all matters presented.

For the reasons stated below, the Court has concluded that the Defendants have failed to show that the evidence obtained pursuant to the March 27, 2024, Search Warrant requires suppression. As such, the Court has **DENIED** the Defendants' Motion to Suppress Physical Evidence Obtained from their vehicles pursuant to the Search Warrant.

PROCEDURAL HISTORY

On March 27, 2024, Detective Daniel Choe from the Atlantic County Prosecutor's Office ("ACPO") filed a Certification in Support of a Search Warrant with the Superior Court for the Defendants' home in Atlantic City, New Jersey.[1]

On March 28, 2025, law enforcement executed the Search Warrants, which described the vehicles as a black 2021 Chevrolet Suburban and a black 2022 Chevy Tahoe.

STATEMENT OF FACTS[2]

I. FACTS ALLEGED IN THE CERTIFICATION

On January 22, 2024, [redacted] a [redacted] student attending [redacted] attended a school assembly concerning [redacted] Cert. at ¶¶3(cc)(1)-(2). At the conclusion of the assembly, [redacted] completed a written "exit ticket." Ibid. On the "exit ticket," [redacted] wrote [redacted] experienced "abuse" and asked to speak to a [redacted] Ibid. That same day, a [redacted] at the [redacted] spoke to [redacted] in the hallway where [redacted] disclosed that [redacted] was hit with a broom and passed out. Cert. at ¶3(cc)(3). [redacted] also stated [redacted] "dad is a big guy" and "[redacted] already spoke with Principal Chapman about some choices." Ibid.

On January 24, 2024, Division of Child Protection and Permanency ("DCPP") reported to the Defendants' home to speak with [redacted] in reference to a DCPP referral for allegations of physical abuse. Cert. at ¶3(a). The referral was submitted by [redacted] in [redacted], New Jersey. Cert. at ¶3(b). The referral provided information pertaining to physical abuse committed by the Defendants on their [redacted] to [redacted] during a [redacted] video appointment. Ibid.

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[1] Defense Exhibit A—A Certification in Support of a Search Warrant BED-ATL-NASW-24-23(A-F) and State's Exhibit A—A Certification in Support of a Search Warrant BED-ATL-NASW-24-23(A-F).

[2] Statement of Facts derived from Detective Choe's Certification in Support of a Search Warrant BED-ATL-NA-SW-24-23(A-F).

DCPP stated [redacted] and [redacted] were interviewed and both denied the allegations. DCPP stated when they arrived to speak with [redacted] both [redacted] parents were home and present during the interview. [redacted] denied disclosing abuse to anyone at the high school. [redacted] stated the first person [redacted] disclosed to was the [redacted] at [redacted]. Cert. at ¶3(c).

Mrs. Small told DCPP that she was unaware that [redacted] made a disclosure to [redacted] Cert. at ¶3(d). DCPP stated [redacted] said [redacted] made the allegations up because [redacted] was mad at [redacted] parents for taking [redacted] phone away and neither parent agrees with the relationship [redacted] has with [redacted] DCPP stated that when [redacted] asked who [redacted]s, Mrs. Small interrupted the interview and told [redacted] not to provide [redacted] last name because she was not comfortable with providing another child's information to DCPP. Cert. at ¶3(e).

According to DCPP, Mrs. Small said that she knew DCPP would be reporting to her residence to speak with [redacted] because her "good friend" had told her about DCPPs involvement. Cert. at ¶3(f). Mrs. Small did not disclose the identity of her "good friend." Cert. at ¶3(g).

On January 25, 2024, investigators reported to [redacted] to interview [redacted] stated that [redacted] knew why the investigators were at the [redacted] to speak with [redacted] Furthermore, [redacted] explained to the investigators that [redacted] made the allegations up because [redacted] was mad at [redacted] parents for not allowing [redacted] to go to a restaurant with [redacted] friend a few weeks ago and said no physical abuse occurred. Cert. at ¶3(h). [redacted] stated that the first person [redacted] spoke to about physical abuse was [redacted] three days ago. [redacted] further denied disclosing the physical abuse to anyone at school and did not know the identity of [redacted] mother's "good friend." Cert. at ¶¶3(i)-(j).

[redacted] was interviewed by detectives at the Atlantic County Prosecutor's Office ("ACPO"). [redacted] stated that [redacted] was being verbally, mentally, and physically abused by [redacted] parents. [redacted] stated that during the week of December 10, 2023, [redacted] witnessed over the video chat on different occasions how [redacted] father screamed at [redacted] and was physically abusive. Specifically, [redacted] reported that Mr. Small would choke [redacted], rip off [redacted] clothing, and noticed visible bruises on [redacted] body after the abuse incidents. Cert. at ¶3(k).

On January 30, 2024, investigators spoke to [redacted] stated that on January 23, 2024, [redacted] received a referral involving [redacted] The initial intake was conducted via [redacted]. [redacted] reported that the Defendants requested [redacted] to be seen by a [redacted] because of "issues" with a [redacted] stated [redacted] remembered the Defendants being present with [redacted] during the completion of the initial questionnaire while in the kitchen area but left when it was time for the one-on-one interview. [redacted] remembered [redacted] taking [redacted] device with [redacted] to a bedroom for privacy and then disclosing physical abuse by [redacted] parents and [redacted] grandmother. [redacted] explained [redacted] disclosed [redacted] mother hitting [redacted] with a broom, and grandmother shaking [redacted] stated the physical abuse incidents happened twice in December 2023 and sometime mid-January 2024. Cert. at ¶¶3(l)-(p).

[redacted] then stated when [redacted] told [redacted] about mandatory reporting of the abuse to the State, [redacted] said [redacted] disclosed it already at [redacted] school. [redacted] advised [redacted] reported the disclosure by [redacted] to [redacted] supervisor, [redacted]. [redacted] then contacted DCPP the following morning as part of the mandatory reporting procedure. Cert. at ¶3(r).

Intake documents from [redacted] revealed a telephone number, home address, and email of Mrs. Small as [redacted] guardian. Moreover, the same contact information was found in [redacted] medical records from the [redacted] during [redacted] visit on January 16, 2024. Ibid.

On January 31, 2024, investigators again reported to [redacted] to interview [redacted] disclosed being physically abused by the Defendants on multiple occasions during the months of December 2023 and January 2024, while inside their residence. [redacted] stated Mr. Small called [redacted] into his "mancave" to talk [redacted] then disclosed that [redacted] was sitting on a high bar stool when they started arguing, which escalated to Mr. Small punching [redacted] legs. [redacted] reported that [redacted] legs were bruised from this incident. Cert. at ¶¶3(s)-(u). On another occasion, [redacted] advised that [redacted] dad hit [redacted] across the face with the bristle end of a broom multiple times, because [redacted] refused to go out with since [redacted] since [redacted] hair was not done. Cert. at ¶3(v).

During the second interview, [redacted] stated that prior to [redacted] January 23rd disclosure to [redacted] during the [redacted] appointment, [redacted] disclosed the abuse to [redacted] stated that [redacted] believed [redacted] told Principal Chapman because not long after [redacted] asked [redacted] "how [redacted] was doing." Cert. at ¶¶3(w)-(x).

The Atlantic City Board of Education's District Policy #8462 sets forth procedures for school employees to follow when there is suspected abuse of a student in compliance with New Jersey law. Specifically, the Policy states that "employees, volunteers, or interns working in the school district shall immediately notify designated child welfare authorities of incidents of alleged missing, abused, and/or neglected children." Cert. at ¶¶3(y)-(z).

On Thursday, February 1, 2024, investigators met with Principal Chapman in reference to addressing the terms of a Memorandum of Understanding (MOU) regarding law enforcement's attempt to interview students in a criminal investigation. Principal Chapman understood the MOU. At the end of the interview, she was advised not to contact [redacted] parents because investigators wanted to speak with [redacted] Cert. at ¶3(aa).

On Thursday, February 1, 2024, investigators obtained a recorded statement from [redacted], [redacted] stated [redacted] believed detectives were at [redacted] residence because of the situation with [redacted] Cert. at ¶3(bb).

[redacted] further stated that during the week of January 22, 2024, [redacted] training was held each day at the [redacted] At the end of each session, each student was provided with an "exit ticket." On the front of the "exit ticket" three faces are present, happy, sad, and neutral. [redacted] circled the neutral face. [redacted] wrote on the back of the sheet "abuse" and would like "counselor." Cert. at ¶¶3(cc)(1)-(2).

At approximately 10:00 AM [redacted] followed up with [redacted] and pulled [redacted] from [redacted] classroom to speak with [redacted] This was the first time [redacted] met with [redacted] and spoke with [redacted] for approximately 2-3 minutes in the hallway. [redacted] stated that it seemed like [redacted] wanted to talk and told [redacted] has been hit with a broom and passed out. [redacted] asked [redacted] if this was ongoing, and [redacted] replied "No." [redacted] told [redacted] dad is a big guy and [redacted] wanted to continue on with [redacted] life and

that [redacted] had already spoke to Principal Chapman about "some choices." However, [redacted] did not know what [redacted] was referring to and did not tell [redacted] when the abuse occurred. Cert. at ¶3(cc)(3).

[redacted] then discussed the matter with Principal Chapman in person and advised her of what [redacted] had disclosed to [redacted] Principal Chapman stated that [redacted] never mentioned the abuse to [redacted] and that [redacted] would report it to DCPP. However, there is no DCPP referral from Principal Chapman or anyone from the Atlantic City Board of Education reporting allegations of physical abuse by [redacted] parents. [redacted] explained that whoever reports to DCPP about the abuse must complete a form and email the form to the Atlantic City Superintendent's Office. [redacted] advised [redacted] did not write any reports because [redacted] spoke to Principal Chapman in person about the abuse and she told [redacted] she would report the matter to DCPP. Cert. at ¶¶3(cc)(4)-(6).

On February 2, 2024, investigators met with and spoke with DCPP worker, [redacted]. [redacted] stated [redacted] father, Mr. Small, spoke to [redacted] at least once over the phone and [redacted] was contacting [redacted] multiple times between January 31, 2024, to February 2, 2024. [redacted] provided Mr. Small's phone number to investigators. Cert. at ¶3(dd).

On February 8, 2024, investigators contacted DCPP worker [redacted] via telephone to follow up on the status of [redacted] Cert. at ¶3(ee).

[redacted] stated that on February 5, 2024, [redacted] and another DCPP worker, [redacted] reported to the [redacted] to speak with [redacted] indicated that [redacted] never reported to the school on February 5. [redacted] and [redacted] then reported to [redacted] residence. After knocking on the front door, [redacted] answered the door and they asked if [redacted] parents were home. [redacted] told them no, they were at work, and [redacted] was the only one home. [redacted] asked if [redacted] could step outside to speak with [redacted] and [redacted] agreed. [redacted] noticed multiple surveillance cameras on the exterior of the residence. When [redacted] and [redacted] stepped outside to speak, two large black Chevy Tahoe vehicles drove down the residential street at a high rate of speed and parked at the residence. The Defendants both exited the vehicle and entered the residence. Cert. at ¶¶3(ee)(1)-(4).

On February 12, 2024, investigators obtained a recorded statement from [redacted], at [redacted]. [redacted] stated [redacted] reported to [redacted] approximately two weeks prior and told [redacted] that [redacted] received a card (the "exit ticket") from [redacted] The company that organized the [redacted] training kept the card and provided the card to [redacted]. [redacted] advised that [redacted] did not read the card. After [redacted] followed up with [redacted] reported to [redacted] stated [redacted] was not exactly sure of the conversation between [redacted] and [redacted], but [redacted] felt comfortable enough to let [redacted] go. [redacted] believed that [redacted] was nervous because [redacted] name would be on the report and worried about how this was going to look [redacted] and [redacted] then reported to Principal Chapman's office to tell her [redacted] disclosure. Cert. at ¶¶3(ff)-(gg).

This was the first of two meetings between Principal Chapman, [redacted] and [redacted] regarding the disclosure made by [redacted] wanted to be present with [redacted] when they met with Principal Chapman because [redacted] wanted to make sure someone else was

present during the meeting. Once they reported to Principal Chapman, according to [redacted], it became a "mess." Cert. at ¶¶3(hh)-(ii).

Initially, [redacted] offered to call DCPP, with [redacted] support. However, Principal Chapman told them that she would make the call to DCPP [redacted] explained that Principal Chapman made it seem as if she was going to make the call to DCPP right then and there as they were leaving her office. [redacted] also offered to call DCPP in which Principal Chapman, again, stated that she would make the call. Cert. at ¶3(jj).

In the second meeting, Principal Chapman told [redacted] and [redacted] that she had met and spoken with the parents of [redacted] at their residence. [redacted] stated that Principal Chapman advised that she spoke with the parents about [redacted] Principal Chapman spoke with the Defendants about the behavior of [redacted] and how intense the parents were about the [redacted] situation. [redacted] further explained Principal Chapman advised [redacted] and [redacted] how each parent would have to be able to balance each other out, meaning one parent would have to be the calm one. Cert. at ¶3(ll).

[redacted] then stated when DCPP reported to [redacted] they told [redacted] that no report was made to DCPP by anyone at the school on behalf of [redacted] did not follow up with Principal Chapman to find out why she never made the call to DCPP because [redacted] was advised not to by DCPP. Cert. at ¶3(mm)-(nn).

Based on the foregoing, investigators believed Principal Chapman arranged to meet with the Defendants and inform them that [redacted] had disclosed they were physically abusing [redacted] rather than reporting to DCPP. Cert. at ¶3(oo).

An open public records search was conducted for Principal Chapman. The search revealed a telephone facility number which was confirmed from reports of her assistance in a child abuse investigation when she was the Vice Principal at Pleasantville High School. Cert. at ¶3(pp).

On February 16, 2024, the Court approved the following: (1) Communications Information Order for toll records in reference to all outgoing and incoming calls and text message communication to and from Verizon Wireless telephone facility (the above-referenced telephone number revealed during the open public records search) from December 1, 2023, and February 13, 2024; and (2) Search Warrant (BED-ATL-NA3-SW-24) for video surveillance of recordings from outside of the Small residence. Cert. at ¶3(qq).

Review of video footage from January 22, 2024, revealed a Black BMW registered to Principal Chapman parked in front of the Defendants' residence. Mrs. Small exited her residence and entered the front passenger side of the vehicle. Thereafter, Mr. Small arrived at his residence. Principal Chapman then lowered the driver side window. The driver then opened the driver's side door. Mr. Small then entered the rear driver's side back seat. Mrs. Small then left the vehicle and the BMW drove away from the residence. Cert. at ¶¶3(rr)(i)-(v).

It was further revealed that on January 31, 2024, Mr. Small contacted Principal Chapman 23 times. This was the same day investigators interviewed [redacted] Cert. at ¶3(ss).

On February 26, 2024, via Grand Jury Subpoena, video surveillance from the [redacted] was obtained. Later, a review of the recording, specifically the interior cameras aimed at the main entrance of the school from January 31, 2024, revealed that a dark SUV drove over the curb and onto the concrete walkway, parking feet away from the [redacted] entrance. Mr. Small is then observed walking across the front of the SUV holding what appears to be a cellular device. Mr. Small held the device near his ear while he continued to walk toward the main entrance. Cert. at ¶¶3(tt)(i)-(uu).

On March 15, 2024, Verizon Wireless produced records in response to the Communications Information Order. Upon review, the information revealed over 100 telephone calls (outgoing and incoming) as well as text messages between Principal Chapman and the Defendants' numbers. Additionally, on January 22, 2024, there was an outgoing call made from Principal Chapman to Mrs. Small—the same day [redacted] disclosed the abuse to a school official, to include Principal Chapman. Cert. at ¶¶3(vv)(a)-(b).

On March 19, 2024, the Court approved Search Warrants of the person of Principal Chapman, the premises of [redacted] specifically, the office of Principal Chapman, and Principal Chapman's vehicle for electronic devices. Law enforcement executed the Search Warrants and seized an Apple iPhone, a Samsung cellphone, and Apple iWatch from Principal Chapman. On March 20, 2024, law enforcement executed the Search Warrants. Cert. at ¶¶3(xx)-(aaa). An initial review of Principal Chapman's iPhone revealed text messages exchanged with the Defendants discussing the investigation of [redacted] abuse allegations. Cert. at ¶¶3(bbb)-(ccc).

As it relates to the Defendants' residence, the Certification sought "any and all electronic devices on or in the following vehicles:" a black 2021 Chevrolet Suburban and a black 2022 Chevrolet Tahoe, and "electronic evidence located within the infotainment system(s) found in" the vehicles. Cert. at ¶7(e)-(d). The Court authorized the Search Warrant of the Defendants' vehicles on March 27, 2024.

DEFENSE'S ARGUMENT (MARTY SMALL)

The Defense argues that the certification fails to establish probable cause that evidence of criminality would be located in Mr. Small's Chevy Suburban and fails to provide any nexus between the criminal conduct and that vehicle, in violation of State v. Boone, 232 N.J. 417 426, (2017).

The Defense cites to State v. Boone, 232 N.J. 417, 427 (2017). In Boone, law enforcement applied for a search warrant for defendant's apartment unit—one of 30 inside an apartment complex. During a two month investigation into defendant's drug activity, police observed him coming and going from the apartment building and conducting what were described as "hand-to-hand" drug transactions inside the complex. Id. at 422. The State secured a warrant for a search of defendant's specific apartment, Unit 4A. Id. at 421. The State's warrant application discussed the drug activity observations made outside of the apartment building, but never discussed the inside apartment building within the Affidavit, nor was there any mention of defendant's specific Unit-4A, other than in passing within the Affidavit. Id. at 423. The Boone Court struck down the warrant finding there was "no basis to conclude that narcotics were in his

apartment because the affidavit never established a nexus linking the hand-to-hand transactions with defendant's residence." Id. at 425. "Nothing in the application specified how police knew defendant lived in Unit 4A or why that unit—one of thirty units in the building—should be searched, Id. at 421. The Defense argues that the deficient certification in Boone is identical to the one in this case for the reasons set forth below.

The Defense maintains that the warrant in Boone and the instant Warrant at issue contains the same level of vagueness because the certification only referred to a vehicle three times in passing. The Defense contends that there is not indication in the certification as to how the State knew or how it came to learn Mr. Small even owned a Chevy Suburban, or why it believed that particular vehicle was likely to contain evidence of any crime. The Defense explains that the alleged meeting between Principal Chapman and the Smalls occurred in Principal Chapman's vehicle, not the Chevy Suburban. The Defense submits that there is nothing about a make, model, or license plate number and the surveillance video of Mr. Small driving up to [redacted] exited from the passenger side of the vehicle, not the driver's side.

Furthermore, the report by the DCPP worker purportedly observed a "Chevy Tahoe," not a Suburban. The Defense submits that the only evidence the State provides to support probable cause to search Mr. Small's Chevy Suburban is that on three separate dates he was driving a "black" or "dark colored" SUV.

According to the Defense, nothing in the certification establishes probable cause that any child abuse occurred within Mr. Smalls vehicle, nor is there anything in the certification to establish that any conspiratorial meetings, discussion, or communications occurred in, were directed at, or came from that particular vehicle. For the above reasons, the Defense urges this Court to suppress all evidence seized from the search of the Chevy Suburban must be suppressed.

STATE'S ARGUMENT (MARTY SMALL)

The State argues that probable cause existed to support the search of the black 2021 Chevrolet Suburban, which he was seen using three time during ACPO's investigation and which reasonably may have contained probative evidence. The State contends that this case is factually different from Boone because the warrant there contained no specific evidence connecting appellant to the apartment searched. Boone, supra. This Defendant's case is different, according to the State, because ACPO knew the SUV was registered to the City of Atlantic City, and knew the make, model, vehicle identification number ("VIN"), and New Jersey registration number. Additionally, the State cites to other evidence of Mr. Small's ownership of the vehicle such as video surveillance and witness information where Mr. Small exited or entered a black SUV or "Tahoe" type SUV, and therefore, it was reasonable to infer the SUV to be searched was the same one Mr. Small was seen in possession of. See Cert. at ¶¶3(rr)(i)-(iv); Cert. at ¶¶3(ss)-(uu); Cert. at ¶¶3(ee)(1)-(4).

Furthermore, the State adds that through extensive investigation, police established the usage of electronics involved, and had direct evidence of all three using cellphones to communicate with each other as soon as [redacted] disclosed the abuse and in the months that followed. Therefore, it was reasonable for police to believe that the Mr. Small may store his electronics in

the SUV, as common sense, everyday life experience would indicate as to how people behave by keeping their cellphones either on their person, in their vehicle, or in a home.

Lastly, the State contends that the only evidence recovered from the SUV were photographs of the interior and exteriors, and Mr. Small has no reasonable expectation of privacy in the outside of the SUV. The State submits that no incriminating evidence was seized from the SUV and for the reasons set forth above, Mr. Small's motion to suppress evidence obtained from the search of Mr. Small's vehicle should be denied.

DEFENSE'S ARGUMENT (LA'QUETTA SMALL)

The Defense initially argued their motion on the record on March 14, 2025. Thereafter, the parties filed additional written submissions concerning this issue on March 18, 2025. The Defense argues that there is nothing in the Certification to establish probable cause that any criminal activity occurred in Mrs. Small's Tahoe. According to the Defense, the Certification does not set forth any factual basis to find a nexus between the alleged crimes and any information that might be located within her vehicle.

The Defense argues that the prima facie elements of the charge of child abuse do not involve the use of Mrs. Small's Tahoe, nor do any of the related crimes charges. Thus, none of the allegations, characterized by the Defense, contained evidence of criminal activity—certainly not the single allegation the Mrs. Small drove her Tahoe at a high rate of speed when she allegedly saw DCPP talking to [redacted] The Defense submits that the affidavit improperly required the Court to infer that the vague and unspecific facts and observations alleged were sufficient to establish probable cause.

On March 31, 2025, the Defense submitted an additional reply argument asserting that "[i]t is clear that what should have been treated as a difficult and challenging family matter handled by DCPP in providing the family services, has been exploited and used by [ACPO] to engage in a targeted political smear campaign." Additionally, the Defense further clarifies its prior position regarding the insufficiency of the probable cause to search Mrs. Small's vehicle. The Defense contends that the State fails to establish probable cause that any criminal activity occurred within Mrs. Small's Tahoe and fails to set forth any factual basis to find a nexus between the vehicle and the alleged crimes.

STATE'S ARGUMENT (LA'QUETTA SMALL)

The State fully incorporates its response to co-defendant, Mr. Small's motion and all arguments made on the records for the search of the Chevy Tahoe during oral argument on March 14, 2025. In essence, the State maintains that the Search Warrant was supported by probable cause to believe electronics would be found in the Tahoe given the copious electronic contact ACPO observed by and between Mrs. Small and her co-defendants, as noted in the Certification.

Therefore, the State urges this Court to deny the Defendants' motions.

APPLICABLE LAW & ANALYSIS

I. SUPPRESSION OF EVIDENCE OBTAINED PURSUANT TO THE MARCH 27, 2024, SEARCH WARRANT OF THE DEFENDANTS' VEHICLES IS NOT REQUIRED.

Evidence can be gathered in two ways: (1) through warranted searches, or (2) through warrantless searches. Citizens are protected from unreasonable search and seizure under the Fourth Amendment of the United States Constitution as well as New Jersey Constitution art 1. ¶ 7.

In a warranted search, the search is presumed valid, and it is up to the defense to prove the lack of "probable cause" or that the search was otherwise unreasonable based on the "totality of the circumstances." "A search warrant is presumed to be valid once the State establishes that the search warrant was issued in accordance with the procedures prescribed by the rules governing search warrants." State v. Valencia, 93 N.J. 126, 133 (1983). First, if the search was conducted with a warrant, the warrant needs to have been issued properly. This means that before the warrant was issued, the requesting officer had to demonstrate a sufficient showing of probable cause – "more than mere naked suspicion but less than legal evidence necessary to convict," that would give "suspicion that a crime has been or is being committed." State v. Waltz, 61 N.J. 83, 87 (1972).

"The burden of demonstrating the invalidity of such a search is placed upon the defendant. The defendant must establish that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable." Valencia, 93 N.J. at 133. "When a search warrant is sought, 'the probable cause determination must be made based on the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony before the issuing judge that is recorded contemporaneously'" State v. Marshall, 199 N.J. 602, 612 (2009) (quoting Schneider v. Simonini, 163 N.J. 336,363 (2000)). So long as the warrant was issued in accordance with R. 3:5-3, the State is presumed to have a valid warrant.

To demonstrate that there was no probable cause, the defendant will have to show the lack of probable cause in the totality of the circumstances. State v. Keyes, 184 N.J. 541, 554-59 (2005). The following factors, though not inclusive, should be considered: the reliability of the informant, supporting claims, hearsay with supporting facts that give the appearance of trustworthiness, independent corroboration, "staleness" of information, and the presence of illegally obtained information.

Additionally, for a warrant to be considered sufficient, it must include a description of the person to be searched, a description of the premises, and the property to be seized. See State v. Malave, 127 N.J. Super. 151 (App. Div. 1974); State v. Marshall, 199 N.J. 602 (2009); State v.

Muldowney, 60 N.J. 594 (1972). If no particular person is listed or identified by name in the warrant, but instead a specific physical description is given, the warrant will suffice. State v. Malave, 127 N.J. super. 151 (App. Div. 1974). When obtaining and executing a warrant, the officer must first assert "probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized." N.J. CONST. art 1. ¶ 7. This ensures the citizens are protected from unnecessarily exploratory searches and are limited to certain premises and places. State v. Marshall, 199 N.J. 602, 610 (2009). The warrant must describe the property to be seized with a "sufficiently definite" manner, enabling officers executing the warrant to "identify the property sought with reasonable certainty." State v. Muldowney, 60 N.J. 594, 600 (1972). The description cannot be overly broad. Id.

Here, the Search Warrant is presumptively valid and the burden rests on Defendants to show that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable. A court's after-the-fact review of a magistrate's determination of probable cause is intended to be quite limited. State v. Dispoto, 383 N.J. Super 205, 216 (App. Div. 2006), aff'd as modified, 189 N.J. 108 (2007) (citing State v. Kasabucki, 52 N.J. 110, 117 (1968)). The trial court should give substantial deference to the issuing judge's determination of probable cause. Kasabucki, at 117. . Applying the objective test of presumed validity in the totality of the circumstances, the Court is persuaded that there was an ample basis in fact to support probable cause for issuance of the Search Warrant. The Defendants urge the Court to apply a hypothetical, hindsight-driven analysis to a rather straightforward set of factual circumstances. The Court declines to adopt such an approach. The Search Warrant meets all constitutional, legal, and procedural requirements for validity.

The Defense cites to State v. Boone in its argument. In Boone, the defendant lived in a thirty-unit apartment building and the detective did not note that fact nor provide any details about how the police knew Boone's unit (4A) was in fact his unit. Id. at 422. The Court determined that the police failed to show that the defendant lived in specific unit or why that unit should be searched because there was no specificity, no independent corroboration of Boone's address, such as utility bills or voting records, and no neighbor, informant, or controlled but demonstrated that Boone lived in apartment 4A. Id. at 429. Boone is distinguishable from the case at hand.

In the case at hand, the Certification established Mr. Small was in possession of the vehicle described through surveillance footage from the [redacted] and outside of his residence and the vehicle's registration as the City of Atlantic City. Additionally, Mrs. Small's vehicle was identified by DCPP workers during their home visit. The description by the DCPP workers rather than pinpointing the vehicle's exact make and model is not dispositive of the facts established by the Certification. Common, everyday life experience would indicate as to how people behave by keeping their phones either on their person, in their vehicle, or in their home. It is reasonable to believe that evidence of the alleged crimes would be found in the Defendants' vehicles.

Therefore, there is enough particularity to a 'well grounded' suspicion that a crime has been or is being committed at a particular place, as required for probable cause under State v. Waltz, 61 N.J. 83, 87 (1972) (quoting State v. Burnett, 42 N.J. 377, 387 (1964)).

Further, law enforcement seized Mrs. Small's cellphone from her vehicle.[3] The Certification established sufficient probable cause to believe that Mrs. Small owned the Tahoe described and that evidence of a crime, particularly the cellphone used to communicate between all co-defendants, contained evidence of child abuse and related crimes. The Defense claims that criminal activity is required to occur *within* the vehicle to establish sufficient probable cause to execute a search of the vehicle. Criminal activity does not have to occur in the vehicle, but rather the facts must establish probable cause to believe that evidence of the crime would be found in the vehicle. If an alleged offense occurs in a motor vehicle and there is sufficient probable cause to establish that evidence of that offense would be found therein, then a search of the vehicle would be permissible. However, it is not necessary that an offense occur in a motor vehicle in order to search it. It is only necessary that the State establish probable cause to search within the vehicle for evidence believed to be within stemming from an alleged offense, wherever it may have been committed. The Certification provides more than adequate facts to establish probable cause.

Despite the validity of the Search Warrant and the permitted extent and breadth of the area to be searched and the items to be seized, the only evidence that law enforcement seized were photographs of the interior and exterior of Mr. Small's vehicles. During oral argument, counsel for Mr. Small called into question the State's assertion that the photographs were the only evidence taken from the vehicle. However, the Court finds no reason to doubt the State's proffer that no other evidence was seized during the search.

Although the Search Warrant authorized the search of the vehicle's infotainment system, law enforcement ultimately did not find it necessary. While a search warrant authorizes law enforcement to search a specific location, it does not mandate them to do so. It is within law enforcement's discretion to choose whether to execute a warrant or not. For instance, authorized law enforcement officers executing a search warrant may have been authorized to tear up a car's floor in search of evidence of the crime. However, if after a less intrusive and less destructive search of the car's interior compartments the evidence sought is found, law enforcement is not required to dismantle the vehicle merely because such may have been authorized. The example and the present case are identical: law enforcement searching Mr. Small's vehicle and home found the evidence they were searching for before searching the vehicle's infotainment system.

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[3] The parties during oral argument asserted that nothing of evidential value was obtained from Mr. Small's vehicle. It seems law enforcement only captured photographs of the vehicle's interior and exterior during the execution of their search. Mrs. Small's black 2022 Chevrolet Tahoe was searched and yielded, as described in the State's inventory, a black iPhone with a cracked casing/screen from the glove compartment of the Tahoe. Additionally, an Apple iPhone Pro Midnight blue was also obtained from Mrs. Small's person.

Thus, law enforcement was not required to continue to search the infotainment system. The Defendant's assertion that law enforcement was required to search the infotainment system, despite having obtained the evidence it sought elsewhere, is unsupported by the law. The search was lawful to the extent it did not exceed the limits of the warrant. Therefore, the Court, having considered the totality of the circumstances, finds that law enforcement had probable cause to request a warrant for the Defendants' vehicles and thereafter search for and seize the items detailed in the warrant.

Lastly, counsel for Mrs. Small claims that the State's case is a "targeted political smear campaign." The Court is in no position to address this assertion. Whether the State has a political motive in the prosecution of the charges against the Defendants is beyond the parameters of a motion to suppress evidence obtained from a lawfully entered search warrant.

CONCLUSION

Based on the submissions of the parties, the arguments of counsel, and the totality of the facts and circumstances, the Court finds that the Search Warrants, which are presumptively valid were issued upon more than adequate probable cause. Accordingly, the Court concludes that the Defendants' request to suppress the evidence seized from their vehicles pursuant to the March 27, 2025, Search Warrants must be and hereby is **DENIED**. The Court has prepared, entered and attached an Order setting forth its decision.

Very truly yours,

Bernard E. DeLury, Jr., P.J.Cr.

BED/ep
Encl.