NO. 22-_____

In the Supreme Court of the United States

THE STATE OF TEXAS,

Petitioner,

v.

JOHN WESLEY BALDWIN,

Respondent.

On Petition for a Writ of Certiorari to the Texas Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

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***** CAPITAL CASE *****

QUESTIONS PRESENTED

In *Illinois v. Gates*, this Court held that a warrant's issuance "cannot be a mere ratification of the bare conclusions of others," but also that "warrants are—quite properly—issued on the basis of non-technical, common-sense judgments of laymen."

1. Whether an officer's uncorroborated belief that co-conspirators who planned a crime over multiple days used their cell phones to do so is a "bare conclusion" or a "common-sense judgment" given this Court's acknowledgment in *Riley v. California* that cell phones are "a pervasive and insistent part of daily life."

2. Does the Constitution require a distinct nexus between a cell phone and an offense in order to obtain a search warrant for the device in the context of an organized criminal offense, or is it sufficient that there are nexuses between the device and the offender as well as between the offender and the offense?

LIST OF PROCEEDINGS

Texas Court of Criminal Appeals
No. PD–0027–21
The State of Texas v. John Wesley Baldwin
Date of Final Opinion: May 11, 2022
Date of Rehearing Denial: July 27, 2022

Court of Appeals of Texas, Fourteenth District
No. 14–19–00154–CR
The State of Texas v. John Wesley Baldwin
Date of Final Opinion: December 10, 2020

208th District Court of Harris County, Texas
No. 1527611
The State of Texas v. John Wesley Baldwin
Date of Order on Pre-trial Motion to Suppress:
January 11, 2019, amended February 11, 2020

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STATUTES

JUDICIAL RULES

To the Honorable Supreme Court of the United States:

OPINIONS BELOW

The Opinion of the Texas Court of Criminal Appeals, dated May 11, 2022, is designated for publication and included at App.1a. The Opinion of the Fourteenth Court of Appeals, dated December 10, 2020, and published at 614 S.W.3d 411 (Tex. App.—Houston [14th Dist.] 2020), is included at App.38a. The relevant bench ruling and trial court orders granting the respondent's motion to suppress are included at App.70a, 72a, and 73a.

STATEMENT OF JURISDICTION

The respondent was charged with capital murder and filed a motion to suppress evidence obtained from his cell phone, which was searched pursuant to a warrant. The State of Texas appealed the trial court's pre-trial ruling granting his motion. The intermediate court of appeals affirmed the ruling of the trial court. (App.38a). After granting the State's petition for discretionary review, the Texas Court of Criminal Appeals also affirmed the rulings of the lower courts. (App.1a). According to Rule 13.3, the time to file a petition for a writ of certiorari runs from the date of the denial

of rehearing. Sup. Ct. R. 13.3. The State's motion for rehearing in this case was denied by the Court of Criminal Appeals on July 27, 2022. (App.87a). Pursuant to Rule 13.5, this Court extended the time to file the instant petition to November 24, 2022. Sup. Ct. Dkt. 22A308; Sup. Ct. R. 13.5.

This Court has jurisdiction to hear this case because the respondent asserted a right under the United States Constitution. *See* 28 U.S.C. § 1257(a) (providing for jurisdiction "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution"). Specifically, the respondent claimed in the initial hearing that the affidavit in support of the search warrant for his cell phone lacked sufficient probable cause, a contention arising from his rights under the Fourth Amendment to the United States Constitution. (App.77a). Subsequent rulings in the intermediate court of appeals and the Texas Court of Criminal Appeals rested on the same ground. (App. 28a, 50a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. XIV

Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

A. Facts of the Offense and Police Investigation

On the evening of September 18, 2016, two masked and armed black men kicked down the back door and entered the home of brothers Sebastianus and Adrianus Kusuma. (App.91a). One of the men demanded money from Sebastianus and beat him. *Id.* Sebastianus heard a gunshot and saw the other gunman running from the back of the house, where Sebastianus would soon find Adrianus dying from a gunshot wound to his chest. (App.92a). The two gunmen took a box of receipts and money from the Kusumas' family-run business and fled through the front door; they entered a white sedan and fled the scene. *Id.*

The ensuing police investigation revealed that the Kusumas' neighborhood had only one point of access by vehicle. *Id.* Approximately five minutes after the murder, and shortly before the arrival of emergency vehicles, a neighbor living near the entrance saw a white sedan exit the neighborhood at a high rate of speed. *Id.* Twice around the time of the crime and once more shortly before emergency responders arrived in the area, a neighbor living a couple of blocks from the Kusumas noticed that a white Lexus sedan driven by a black man passed his residence. (App.94a).

Further investigation uncovered evidence of advanced planning. (App.93a–94a). The day prior to the murder, another neighbor saw a white Lexus sedan occupied by two black men circle the neighborhood and drive repeatedly past the Kusumas' home. (App. 93a). The neighbor found the behavior suspicious and

photographed the vehicle, capturing its Texas license plate number. *Id.* Another neighbor—who lived only five houses away from the Kusumas—provided video surveillance footage showing a similar white sedan passing around six hours before the murder, as well as three more times in the half hour before the crime occurred. (App.93a–94a).

Four days after the murder, patrol deputies stopped for traffic violations a white Lexus sedan bearing the same Texas license plate number as in the image taken the day prior to the murder. (App.94a). The respondent was driving the vehicle, and he matched the witnesses' descriptions both of the gunman and of the man whom multiple witnesses had seen driving the same vehicle before and after the crime. (App.91a–94a). Deputies searched the vehicle and recovered a Samsung Galaxy5 cell phone with a red and black case. (App.94a). The respondent identified the phone number corresponding to the phone. *Id.* One day later, a deputy with the Harris County Sheriff's Office obtained from a state district court judge a warrant to search the cell phone for purposes of investigating the robbery and murder of Adrianus Kusuma. (App. 88a–89a).

B. Motion to Suppress Evidence Obtained via Cell Phone Search Warrant

On December 18, 2018, the trial court held a pretrial hearing on the respondent's motion to suppress evidence resulting from the traffic stop on September 22, 2016, as well as from the execution of the cell phone search warrant signed the following day. (App.73a–86a). In addition to the grounds for suppression initially argued in his written motion, the respondent argued at the hearing that the search warrant affidavit lacked

sufficient probable cause to support the warrant. (App.77a–78a). Judge Denise Collins orally denied the respondent's motion to suppress on other grounds, but she later granted it on the basis that the warrant affidavit failed to provide probable cause to support the search of the cell phone. (App.84a–86a). On January 11, 2019, less than a month after Judge Collins's oral ruling, the new presiding judge of the court, Judge Greg Glass, issued a written order granting the motion to suppress. (App.72a). Judge Glass's order did not specify the basis upon which he was granting the respondent's motion. *Id.* One year later, and after abatement by the intermediate court of appeals for clarification of his ruling, Judge Glass issued an amended order in which he explicitly stated his intent to adopt Judge Collins's oral ruling. (App.70a–71a). The State then appealed that order to the intermediate court of appeals.

C. Appeal to the Intermediate State Court

On appeal, the case was assigned to the Court of Appeals for the Fourteenth District of Texas at Houston. (App.38a). It was originally reversed by a panel of that court, but, on rehearing en banc, a majority of the full court affirmed the trial court's ruling, finding insufficient the affidavit in support of the search warrant. (App.39a). Specifically, the court found "that the affidavit did not contain sufficient facts to establish a fair probability that a search of the cellphone found in [the respondent]'s vehicle would likely produce evidence in the investigation of the murder." (App.50a). "[G]eneric, boilerplate language . . . that a smart phone may reveal information relevant to an offense and that suspects might communicate about their plans via cellphone is not sufficient to establish probable cause to

seize and search a cellphone," the court held. (App.48a). The State filed a petition for discretionary review with the Texas Court of Criminal Appeals.

D. Appeal to the State Court of Last Resort

The Texas Court of Criminal Appeals granted the State's petition for discretionary review, and the court affirmed the ruling of the lower appellate court in a narrow five-to-four decision. (App.2a). The majority found that "the court of appeals was correct in concluding that the boilerplate language was insufficient to establish a fair probability that evidence of the murder would be found on the cell phone." (App.17a). The court faulted the intermediate court of appeals for failing to consider the establishment of a nexus between the Lexus sedan and the offense. *Id.* But, the court held, the affidavit was nevertheless insufficient because it failed to show a distinct nexus between the respondent's phone and the offense. (App.20a–29a).

The majority held that the affiant's assertion that through his training and experience he knew that suspects in similar crimes "common[ly] . . . communicate about their plans" using cell phones and "often make[] phone calls and/or text messages immediately" before and after their crimes was "boilerplate language" requiring distinct corroboration. (App.9a, 22a) (internal quotations omitted). The court maintained that, in the respondent's case, there were "simply no facts within the four corners of the affidavit that tie [the respondent]'s cell phone to the offense." (App.27a).

In dissent, Presiding Judge Sharon Keller agreed with the majority "that (so-called) boilerplate language . . . must be coupled with other facts and reasonable inferences to establish a nexus between the device and

the offense." (App.30a). But, she noted, the affidavit did contain such facts—namely, evidence of advance planning and cooperation between the two suspects, along with the fact that the phone was found with the respondent in the Lexus sedan linked to the offense. (App.30a–33a).

The Court of Criminal Appeals denied the State's motion for rehearing. (App.87a).

REASONS FOR GRANTING THE PETITION

I. THE COURT OF CRIMINAL APPEALS MISAPPLIED *ILLINOIS V. GATES* AND DISREGARDED *RILEY V. CALIFORNIA*.

This Court should grant the instant petition because the Texas courts' decisions improperly apply this Court's precedents in *Illinois v. Gates* and *Riley v. California*. The affidavit to search the respondent's cell phone established the facts of the capital murder of Adrianus Kusuma, and the Texas Court of Criminal Appeals conceded that the magistrate who signed the warrant reasonably could infer from that affidavit that the white Lexus sedan driven by the respondent at the time his phone was seized was sufficiently linked to the capital murder. (App.17a, 20a). But the court found that the affidavit failed to sufficiently link the cell phone itself to the offense. (App.29a). Facts connecting the vehicle to the offense, wrote the majority, "have no bearing on whether [the respondent]'s phone is connected with the offense." (App.28a). The majority faulted the affidavit for "contain[ing] nothing about the phone being used before or during the offense." *Id.*

In finding that the phone was not adequately linked to the offense, the court purported to rely on this Court's ruling in *Illinois v. Gates*, 462 U.S. 213, 235–38 (1983). (App.21a–22a). But the court misapprehended the facts of the case in its analysis, misapplied *Gates* by attending to only a portion of its holding, and failed to consider this Court's other relevant precedents and the Constitution's preference for searches pursuant to warrants. The court's failure to consider all of the facts was highlighted by the presiding judge of the Court of Criminal Appeals in her dissent. (App.30a–33a).

Writing for four of the court's nine judges, Presiding Judge Keller highlighted several facts included in the affidavit that connected the seized phone to the offense. The affidavit demonstrated that the crime was "committed by two people, acting together over the course of two days," as shown by a witness account and video surveillance of the vehicle circling the property in the day and hours before it occurred, "and it was the kind of crime that involves coordination, so cell phone use would be expected." (App.32a). To these facts, Presiding Judge Keller added that "[t]he cell phone's presence in [the respondent]'s car that was linked to the crime is itself a fact linking the phone to the crime." (App.31a). The dissent's citation to cases in other jurisdictions makes clear that the *Baldwin* majority put Texas law at odds with a number of other state and federal courts. *Id.* (citing *United States v. Johnson*, 726 Fed. App'x 393, 403 (6th Cir. 2018), *vacated on other grounds*, ___ U.S. ___, 139 S. Ct. 2772, 204 L. Ed. 2d 1154 (2019) (permitting search of phone found at residence at which marijuana was being grown); *People v. Reyes*, 174 N.E.3d 127, 140 (Ill. App. Ct. 2020),

appeal denied, 169 N.E.3d 346 (2021), *cert. denied*, ___ U.S. ___, 142 S. Ct. 295, 211 L. Ed. 2d 138 (2021) (upholding search of phone pursuant to warrant and remarking: "The discovery of the phone in his car also supports the inference that it was there during the offenses. Hence, [the issuing judge] reasonably could infer that the phone contained evidence of the offenses, because (1) it was recovered from defendant's car or, alternatively, (2) defendant carried it on his person and he was at the crime scene."); *Carter v. State*, 105 N.E.3d 1121, 1128–29 (Ind. Ct. App. 2018), *transfer denied* (Ind. 2018) (finding sufficient nexus between drug dealing and cell phone because drugs were found with defendant in vehicle and cell phone was recovered from defendant); *State v. Every*, 274 So.3d 770, 782–83 (La. Ct. App. 2019), *writ denied*, 274 So.3d 1260 (La. 2019) (determining phone that was found in car and belonged to defendant was sufficiently connected to murder and robbery given armed entry by defendant and co-defendant together)).

Reading *Gates* too narrowly, the *Baldwin* majority rested its decision on *Gates*'s admonition that a reviewing magistrate's "action cannot be a mere ratification of the bare conclusions of others." (App.21a) (citing *Gates*, 462 U.S. at 239). But the *Gates* opinion itself recognizes that "warrants are—quite properly—issued on the basis of nontechnical, common-sense judgments of laymen." *Gates*, 462 U.S. at 235–36. Such judgments naturally encompass the rational conclusion that where two suspects planned a robbery over two days and carried it out wearing masks and wielding firearms, they likely used a cell phone belonging to one of the suspects to plan the crime—particularly when the at-issue cell phone is found in the car used by the

suspects to flee the scene of the crime. By ignoring this "common-sense judgment[]," the Texas courts gave short shrift both to the full affidavit in this case and to the remainder of this Court's opinion in *Gates*.

Furthermore, the common-sense judgment urged above is in line with this Court's other precedents. In *Riley*, this Court recognized the omnipresence of cell phones in modern life: "Today . . . it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate." *Riley v. California*, 573 U.S. 373, 395 (2014). By their very nature and purpose, there is a fair probability that evidence of what individuals have done will be found on their cell phones. *See Ontario v. Quon*, 560 U.S. 746, 760 (2010) ("Cell phone and text message communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self-expression, even self-identification."); *see also Riley*, 573 U.S. at 385 (noting that cell phones are such "a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy"). Given the ubiquity and inseparability of cell phones in modern life, the officer's training and experience in similar cases, and the facts of this specific case—facts that included two suspects, advanced planning, and the presence of the phone in the getaway car a mere four days after Adrianus Kusuma was robbed and murdered—the magistrate exercised common-sense judgment when he found a substantial basis for concluding a fair probability existed that evidence of the crime would be found on the respondent's cell phone. *See Gates*,

462 U.S. at 236 ("[T]he traditional standard for review of an issuing magistrate's probable cause determination has been that so long as the magistrate had a 'substantial basis for . . . conclud[ing]' that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more.") (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)).

II. *BALDWIN* UNDERMINES THIS COURT'S PREFERENCE FOR WARRANTS BY REQUIRING HYPERTECHNICAL LANGUAGE, DISMISSING OFFICER EXPERIENCE, AND SUBJECTING AFFIDAVITS TO EXCESSIVE SCRUTINY UPON REVIEW.

The ruling of the Texas Court of Criminal Appeals in this case is sweeping in its scope. Where this Court in *Riley* established a search-warrant requirement for accessing cell phones, it did not articulate a higher standard of probable cause for such a warrant. *Riley*, 573 U.S. at 385. With its ruling, however, the Texas Court of Criminal Appeals effectively did just that. *Baldwin* injects uncertainty into officers' good-faith procurement of warrants and thereby undermines the Constitution's preference for searches based on warrants—a preference acknowledged in *Gates* itself. *See Gates*, 462 U.S. at 236–37 ("A grudging or negative attitude by reviewing courts toward warrants is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant.") (internal citations omitted).

There is no dispute in this case that the affidavit was reviewed and the warrant issued by a magistrate. And this Court has "repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review." *Id.* at 236. Yet the intermediate court of appeals and Texas

Court of Criminal Appeals subjected the affidavit in this case to a searching scrutiny—highlighting, discussing, and dismissing facts in minute detail. Having thus stripped the bark from the tree, the courts blamed it for its nakedness. The approach runs counter to this Court's holding that "[a] magistrate's determination of probable cause should be paid great deference by reviewing courts." *Id.* (internal citation omitted). It likewise stands in sharp contrast to this Court's statement that "[a]lthough in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants[.]" *United States v. Ventresca*, 380 U.S. 102, 109 (1965).

The requirement announced in this case—that a warrant affidavit establish a nexus between the offense and the object of the search without regard to the object's links to the suspect and the suspicious location where the object was found—is a requirement sure to stymie the best efforts of law enforcement officers and lawyers alike to understand and faithfully comply with the law. The court dismissed both the officer's training and experience and the magistrate's commonsense judgment. It required instead evidence that the cell phone was "used before or during the offense." (App.28a). In so doing, it required the affidavit to establish not a "fair probability" that the phone would contain evidence of the offense, but a near certainty. *See Gates*, 462 U.S. at 214 ("The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair

probability that contraband or evidence of a crime will be found in a particular place."). This new requirement stands in opposition to this Court's prior assertion that "it is clear that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause." *Id.* at 235 (internal quotation and citation omitted).

The consequences of the Texas Court of Criminal Appeals' ruling are compounded by its failure to explicitly limit its holding about the insufficiency of "boilerplate" language detailing an officer's training and experience with certain types of crime. (*See* App. 26a–27a) ("[S]pecific facts connecting the items to be searched to the alleged offense are required for the magistrate to reasonably determine probable cause."). Thus, in the context of an application for a warrant to search a home computer, where an officer provides evidence in the affidavit that a suspect's cell phone contained child pornography and that, in her training and experience, such files are often shared between a phone and a home computer or viewed on all electronic devices operated by that user, this holding would be used to deny the officer the warrant because the officer failed to offer facts demonstrating a distinct nexus between the offense and the computer. Absent affirmative knowledge that the computer contained contraband, no warrant would be upheld.

The ruling has further implications for Texas warrants outside the scope of electronic devices, as well. Training and experience justifiably could lead an officer to believe that evidence of a murder is in a suspect's home because such evidence is often found in an individual's residence. But, under the new standard announced by the Texas Court of Criminal Appeals,

unless the murder happened in the home or a witness saw the suspect carrying bloody clothes or weapons into the home, the magistrate would be required to find insufficient probable cause for a search of the suspect's home. It would be insufficient to show merely that police found the suspect in the residence or that the suspect entered it shortly after the crime. The independent nexus requiring "specific facts connecting the items to be searched to the alleged offense" supplants the totality-of-the-circumstances approach long endorsed by this Court. (App.26a–27a); *see Gates*, 462 U.S. at 214 (eschewing stricter test in favor of "the 'totality of the circumstances' approach that traditionally has informed probable-cause determinations").[1]

The Texas Court of Criminal Appeals' complete disregard of officers' assertions based on their training and experience conflicts with numerous cases from federal courts upholding affidavits which depended upon these assertions as part of the totality of the circumstances.[2] The ruling therefore risks broadly

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[1] It also puts Texas law in direct conflict with the law elsewhere. *See United States v. Jones*, 942 F.3d 634, 639 (4th Cir. 2019) ("[W]e have long held that an affidavit need not directly link the evidence sought with the place to be searched."); *United States v. Anderson*, 851 F.2d 727, 729 (4th Cir. 1988) (holding nexus requirement "may be established by the nature of the item and the normal inferences of where one would likely keep such evidence.").

[2] *See United States v. Laury*, 985 F.2d 1293, 1313–14 (5th Cir. 1993) (finding affidavit furnished sufficient nexus between defendant's home and evidence of robbery where it relied on officer's training and experience with bank robberies); *see also United States v. Martin*, 426 F.3d 68, 74–76 (2nd Cir. 2005) (holding affidavit stated probable cause to search residence when it showed defendant's membership in electronic group related to child pornography, an email address linked defendant to that address, and officer's training and experience that collectors of

raising the standard of probable cause in a variety of contexts and stands in stark contrast to this Court's rejection of "rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach." *Florida v. Harris*, 568 U.S. 237, 244 (2013); *see Gates*, 462 U.S. at 235 ("Finely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the magistrate's decision.").[3]

As this Court has repeatedly held, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley*, 573 U.S. at 381–82 (citing *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). The duty of the reviewing court in this case was "simply to ensure that the magistrate had a substantial basis for con-

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child pornography use computers to distribute and hoard illegal material); *United States v. Rees*, 957 F.3d 761, 766–71 (7th Cir. 2020) (upholding search of home and vehicle where affidavit associated defendant's IP address to residence and related officer's knowledge and experience of how child pornography was often stored and distributed on personal computers).

[3] The federal circuit courts have applied this Court's preference for a flexible approach to allow for logical inferences—an approach that would be prohibited by the Texas court's opinion in this case. *See United States v. Pace*, 955 F.2d 270, 277 (5th Cir. 1992) (holding affidavit stated probable cause to search residence for business records of illegal drug operation because records were not found at scene of operation) ("The expectation of finding evidence of the crime at the suspect's home, given that such evidence was not found at the scene of the illegal activity, was a reasonable inference which supported the magistrate's determination[.]") (emphasis in original); *Jones*, 942 F.3d at 639–41 (upholding search of defendant's home for evidence of terroristic threat where suspect had suggested police officers should "be careful" if they went near the home and boasted of ownership of handgun he had previously used to shoot someone).

cluding that probable cause existed," not to announce a new standard of probable cause for cell phone search warrants or a new standard of review for magistrates' findings of probable cause. *Gates*, 462 U.S. at 214. Where an officer knows that his or her training and experience stands to be discounted on review as mere "boilerplate," where reviewing courts vivisect his or her affidavit, and where he or she is required to be not merely criminal investigator but augur of a sufficient nexus, that officer may abandon the pursuit of warrants altogether. *See id.* at 236 ("If the affidavits submitted by police officers are subjected to the type of scrutiny some courts have deemed appropriate, police might well resort to warrantless searches, with the hope of relying on consent or some other exception to the warrant clause that might develop at the time of the search."). By raising the bar on what constitutes probable cause under the Fourth Amendment based on the item or location searched, the Court of Criminal appeals misapprehended the facts in the affidavit, misapplied *Gates*, failed to consider *Riley*, and undermined the Constitution's preference for searches pursuant to warrants. The State of Texas therefore respectfully requests that this Court grant its petition.

CONCLUSION

For the foregoing reasons, the State of Texas requests that this Court grant review.

Respectfully submitted,

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