No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ISAIAH PINKERTON,
Petitioner

v.

STATE OF RHODE ISLAND,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE RHODE ISLAND SUPREME COURT

APPENDIX

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355 A.3d 1051
Supreme Court of Rhode Island.

STATE
v.
Isaiah PINKERTON.

No. 2024-104-C.A.
|
(P1/22-3059BG)
|
May 19, 2026

Synopsis

Background: Following denial of his motion to suppress, 2023 WL 4108468, defendant was convicted after a jury trial in the Superior Court, Providence County, Robert D. Krause, J., of 17 counts relating to a murder and evidence obtained as a result of a traffic stop. Defendant appealed.

Holdings: The Supreme Court, Goldberg, J., held that:

[1] search warrant affidavit supported determination that probable cause existed that evidence relevant to murder would be found in certain cell phone records, and

[2] evidence was sufficient to support finding that defendant freely consented to buccal swab for DNA.

Affirmed.

Robinson, J., concurred in part and dissented in part with opinion.

Long, J., filed dissenting opinion.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

West Headnotes (17)

[1] **Criminal Law** Evidence wrongfully obtained

When reviewing the denial of a motion to suppress, the Supreme Court is required to make an independent examination of the record to determine if the defendant's rights have been violated.

[2] **Criminal Law** Illegally obtained evidence
Criminal Law Evidence wrongfully obtained

The Supreme Court will reverse a trial justice's findings on a motion to suppress only if (1) his or her findings reveal clear error, and (2) the Court's independent review of the conclusions drawn from the historical facts establishes that the defendant's federal constitutional rights were denied.

[3] **Search, Seizure, and Arrest** Necessity of probable cause

The United States Constitution and the Rhode Island Constitution prohibit the issuance of a search warrant absent a showing of probable cause. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

[4] **Search, Seizure, and Arrest** Matters appearing on the face of affidavit; four corners

The judicial officer must ascertain probable cause for a search within the four corners of the affidavit prepared in support of the warrant. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

[5] **Criminal Law** Search and arrest
Search, Seizure, and Arrest Deference to issuing magistrate or court
Search, Seizure, and Arrest Substantial basis

It is incumbent upon the trial justice and the reviewing court to accord great deference to the probable-cause determination of the magistrate who issued the search warrant, so long as there is showing of substantial basis from which to discern probable cause. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

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[6] **Criminal Law** In general; complaint, warrant, and preliminary examination

Criminal Law Search and arrest

A court reviewing a search warrant should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

[7] **Criminal Law** Review De Novo

Supreme Court reviews the trial justice's determination of existence or nonexistence of probable cause for a search de novo. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

[8] **Search, Seizure, and Arrest** Particular cases

Search warrant affidavit supported determination that probable cause existed that evidence relevant to murder would be found in certain cell phone records, even if only a single statement in the affidavit, which stated that, through investigation, it was learned that defendant utilized a previously-undisclosed mobile cell number, linked defendant to the phone number; affidavit described the murder and the ensuing investigation, implicated defendant in murder, and detailed defendant's involvement in subsequent traffic stop and the discovery of satchel containing ghost gun linked to the shooting, and affidavit noted that defendant had not disclosed the subject cell phone number when he was interviewed. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

More cases on this issue

[9] **Search, Seizure, and Arrest** Totality of circumstances in general

Probable cause for a search must be ascertained based on the totality of the circumstances presented in the search warrant affidavit. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

[10] **Search, Seizure, and Arrest** Nexus with criminal activity in general

A nexus between the items to be seized and the place to be searched does not rise or fall on direct observations, or on the existence of underlying facts connecting the two. U.S. Const. Amend. 4; R.I. Const. art. 1, § 6.

[11] **Search, Seizure, and Arrest** Validity; reasonableness

A search conducted without a warrant issued upon probable cause is per se unreasonable subject only to a few specifically established and well-delineated exceptions. U.S. Const. Amends. 4, 14.

[12] **Search, Seizure, and Arrest** Necessity of showing voluntariness

State must prove that consent was freely and voluntarily given to justify a search or seizure on consent grounds. U.S. Const. Amend. 4.

[13] **Criminal Law** Review De Novo

Criminal Law Search and arrest

While the Supreme Court gives deference to the findings of historical fact made by a trial justice, the Court reviews the determination of the voluntariness of an individual's consent to search de novo. U.S. Const. Amend. 4.

[14] **Search, Seizure, and Arrest** What constitutes voluntary consent

Search, Seizure, and Arrest Waiver and consent

There is no single criterion that is determinative in deciding whether or not there was free and voluntary consent to search; rather, the question of whether consent was in fact voluntary or was the product of duress or coercion, express or implied, is a question of fact to be determined

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from the totality of all the circumstances. U.S. Const. Amend. 4.

[15] **Search, Seizure, and Arrest** What constitutes voluntary consent

In determining whether consent to search was voluntary, the Supreme Court looks to whether, under the totality of the circumstances, defendant's will was overborne; some of the factors that may be considered include the youth of the accused, the lack of education, low intelligence, the absence of notice to the accused of his or her constitutional rights, the length of detention, the repeated and prolonged nature of questioning, and the use of physical punishment. U.S. Const. Amend. 4.

[16] **Search, Seizure, and Arrest** Particular searches in general

Evidence was sufficient to support finding that murder defendant freely consented to buccal swab for DNA; there was evidence defendant spent less than one hour in the room being interviewed and the questioning largely focused on the separate murder of his associate, and that defendant was not shackled, was provided a cup of water, and was well acquainted with detective and the criminal justice system, video footage depicted a conversational and non-confrontational dialogue, during which defendant appeared comfortable and did not express a hint of duress, defendant was apprised of his *Miranda* rights and signed the waiver form, and defendant consented to the swab on three separate occasions within a 12-minute timespan. U.S. Const. Amend. 4.

More cases on this issue

[17] **Criminal Law** Consent

At bottom, the operative inquiry is whether the evidence presented at the suppression hearing fairly supports the court's finding with respect to voluntary consent to search. U.S. Const. Amend. 4.

Providence County Superior Court, Associate Justice Robert D. Krause

Attorneys and Law Firms

Brendan P. Sullivan, Department of Attorney General, for State.

Kara J. Maguire, Office of the Public Defender, for Defendant.

Present: Suttell, C.J., Goldberg, Robinson, Lynch Prata, and Long, JJ.

OPINION

Justice Goldberg, for the Court.

***1053** The defendant, Isaiah Pinkerton (defendant or Pinkerton), appeals from a judgment of conviction and commitment following a jury trial held in the Providence County Superior Court. A grand jury issued an indictment, charging Pinkerton with seventeen counts relating to both a murder that occurred on August 1, 2021, and certain evidence, *viz.*, a firearm, obtained as a result of a traffic stop that occurred on December 12, 2021. On appeal, the defendant contends that the trial justice erred in denying his motion to suppress cell phone records obtained through a search warrant and his motion to suppress evidence from a particular DNA buccal swab obtained through his consent.

For the reasons set forth in this opinion, we affirm the judgment of the Superior Court.

Facts and Travel

On August 1, 2021, Miya Brophy-Baermann was enjoying the early morning hours with her boyfriend, Sheron Robinson, ***1054** and other friends. Around 2:30 a.m., the couple returned to Robinson's apartment; and shortly thereafter, Robinson escorted Brophy-Baermann to her vehicle, which was parked on Olney Street in Providence. The duo stood at Brophy-Baermann's vehicle, chatting for approximately fifteen minutes. At trial, Robinson recounted the fateful moments. A dark sedan approached them at a high rate of speed. Robinson heard the engine revving and witnessed the

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vehicle straddling the middle line of the street, "almost as if * * * they wanted to get closer to our position." Suddenly, four gunshots rang out in rapid succession, along with a flash of light emanating from the speeding vehicle. Understanding the gravity of the situation, Robinson examined himself and confirmed that he had not been shot. Robinson then assessed Brophy-Baermann and discovered that she was in obvious distress; her last words were, "I'm shot."

Emergency personnel soon arrived and transported Brophy-Baermann to Rhode Island Hospital. Rather than celebrating the start of her fourth week as a clinical fellow at Lincolnwood Rehabilitation Center in North Providence, Brophy-Baermann was pronounced dead. Tragically, she was twenty-four years old. Two nine-millimeter cartridge casings were recovered from the scene.

For months, Brophy-Baermann's murder remained unsolved, but then, in the early morning hours of December 12, 2021, a fortuitous traffic stop shined a spotlight on a suspect, defendant. Patrolman Ryan Malloy and Patrolman Brad McParlin were patrolling the area of Broad Street in Providence. The police were on heightened alert due to a murder that had occurred hours earlier. While on patrol, they noticed a vehicle with heavily tinted windows. The vehicle then made erratic and suspicious movements, which the officers considered indicative of a driver seeking to avoid the police. Upon following the vehicle, the officers observed it make additional evasive maneuvers, including rapid acceleration, while also committing what they considered to be traffic violations. When the vehicle accelerated, the officers briefly lost sight of it, but shortly thereafter they managed to pull the vehicle over.

As the officers approached the vehicle, Officer Malloy recognized its three occupants, Justin Laurie (the driver), Shawn Mann (the front-seat passenger), and defendant (the rear-seat passenger). All three were known associates of James "Hammer Beanz" Owens, the decedent who was murdered hours earlier. The officers also observed that, even though it was December and had been raining, the rear passenger window closest to where defendant had been sitting (on the left side behind the driver) was completely lowered. Officer Malloy further detected that defendant was manifesting nervous behavior, including heavy breathing and the avoidance of eye contact.

The officers canvassed the route that the vehicle had previously traversed, looking for possible discarded items. As they backtracked, Officer Malloy discovered and seized a cross-body satchel. Based on the path the vehicle had traveled, the satchel was located on the left side of the road; and in spite of the fact that it had been heavily raining, the satchel was fairly dry and free of any debris. Upon seizing the bag, Officer Malloy immediately realized, based upon its weight and the shape of the object inside the satchel, that it contained a firearm. He unzipped the satchel and shined his flashlight inside to observe its contents; he confirmed the bag contained a firearm. Thereafter, defendant, Laurie, and Shawn Mann were all handcuffed and transported to the Providence Police Department.

***1055** Shortly after 2 a.m. on December 12, 2021, Detective Theodore Michael and Detective Kevin Costa, both of the Providence Police Department, interviewed Pinkerton. The defendant was apprised of his *Miranda* rights, and it is uncontroverted that he freely and voluntarily waived those rights and agreed to talk to the detectives. The conversation mostly concerned the murder of defendant's associate, Owens, which had occurred hours earlier, but intermittently Det. Michael also questioned Pinkerton concerning the firearm that was discovered in the abandoned satchel. Pinkerton denied any knowledge of the firearm and agreed to a buccal swab for possible DNA comparison.[1] We discuss the interview and the buccal swab in greater detail, *infra*. After less than an hour with the detectives, Pinkerton was released but the investigation into Brophy-Baermann's murder continued and was reenergized.

A forensic analysis linked the casings discovered after the shooting on Olney Street to the firearm discovered in the satchel. Additional forensic analysis revealed that the handgun contained DNA from at least two people and that the "major component DNA profile" belonged to Pinkerton. A statistical comparison further determined that the DNA profile generated would be expected to be found "in one in greater than 12 nanillion," which equates to thirty zeros.

Police also received information from Silkies Paulino, another associate of defendant and whose boyfriend, Dante Mann, was shot and killed in October 2020.[2] Paulino related that, on August 1, 2021, she spoke with defendant and he conveyed that he and Shawn Mann had been driving around looking to avenge Dante Mann's death. Paulino further relayed that defendant indicated that he and Shawn Mann had found a rival target, whom they shot.

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The next day, Paulino and defendant spoke once again; specifically, Paulino asked defendant whether he had shot "the girl on the news." According to Paulino, defendant admitted he had done so, but claimed that it was an "accident," and that he "f* * *ed up." Several days later, on August 5, 2021, Paulino texted Pinkerton a picture of Brophy-Baermann, along with a notice that a reward would be paid for information leading to the arrest and conviction of the person responsible for Brophy-Baermann's murder. According to Paulino, Pinkerton responded that he was unconcerned with the reward due to what he considered as the relatively low amount. Soon thereafter, on August 8, 2021, Paulino participated in a three-way telephone call, during which defendant, again, acknowledged shooting Brophy-Baermann.

The record further reveals that at 4:57 a.m., on December 12, 2021, defendant texted Paulino, advising that he had just been released from jail. According to Paulino, the two soon talked on the telephone, during which conversation defendant described the events preceding his arrest—a police pursuit in a vehicle with Shawn Mann and Laurie. Paulino further recounted Pinkerton's account: during the pursuit, Laurie accelerated and made a quick turn, at which point defendant tossed the gun out the window. After the reward increased to $100,000, and fearing for her own safety, Paulino provided police with ***1056** information incriminating defendant in Brophy-Baermann's murder. Police also obtained a search warrant for Paulino's cell phone, seizing the communications discussed *supra*, as well as other evidence implicating defendant in Brophy-Baermann's murder.

On August 24, 2022, a grand jury indicted defendant on seventeen counts: one count of murder; six counts of conspiracy; two counts of discharging a firearm while committing a crime of violence; one count of discharging a firearm from a motor vehicle, thereby creating a substantial risk of death or serious personal injury; two counts of unlawfully possessing a ghost gun; two counts of carrying a firearm without a license; two counts of possession of a firearm after a conviction of a crime of domestic violence; and one count of assault with intent to commit murder.

In May 2023, defendant filed several pretrial motions, including the two motions that are before us on appeal: (1) defendant's "Motion to Suppress Mobile/Cellular Records for (401) 771-7836, Seized Pursuant to the January 14, 2022 Warrant" and (2) defendant's "Motion to Suppress the Buccal Swab Obtained Without Mr. Pinkerton's Free and Voluntary Consent." After an evidentiary hearing on the latter motion, the trial justice issued a written decision denying the motions to suppress on June 14, 2023.

On or about June 19, 2023, a jury trial commenced. At the close of the evidence, defense counsel moved for a judgment of acquittal pursuant to Rule 29 of the Superior Court Rules of Criminal Procedure. After hearing arguments, the trial justice dismissed all but one of the six conspiracy counts, *viz.*, count 2, alleging conspiracy to commit murder. The defendant was found guilty of the remaining counts. On January 26, 2024, the trial justice pronounced the sentence; defendant received two consecutive life sentences as well as additional consecutive terms totaling fifty years to serve, ten of which were non-parolable. A judgment of conviction and commitment was entered, and defendant filed a notice of appeal.

A

The Defendant's Motion to Suppress Cell Phone Records

On January 14, 2022, Det. Michael submitted a complaint, affidavit, and a search warrant relating to, *inter alia*, the cell phone records pertaining to (401) 771-7836, a number that had been used by defendant. The affidavit begins with Det. Michael describing his nineteen years of experience with the Providence Police Department, his assignment within the investigative division/major crimes bureau, and his participation in various law enforcement organizations. Detective Michael also specified his training and experience in investigations relating to cellular/mobile forensics and cellular triangulations.

Detective Michael's affidavit detailed certain facts implicating defendant in Brophy-Baermann's murder. In particular, the affidavit stated that nine-millimeter shell casings were located at the crime scene. The affidavit also described the December 12, 2021 traffic stop, and specifically, the discovery of the satchel containing the nine-millimeter ghost gun. Detective Michael further related that a forensic analysis connected the firearm to the shell casings and that DNA recovered from the firearm was consistent "with the reference profile from Isaiah Pinkerton * * *."

In his affidavit, Det. Michael also stated that, as a result of the December 12, 2021 traffic stop, defendant, Laurie, and Shawn Mann were detained and transported to the Providence police station, and that all three detainees provided the police with

***1057** cell phone numbers. The defendant provided two cell phone numbers, neither of which pertained to cell phone number (401) 771-7836. Detective Michael noted that he compared the cell phone numbers that he received to "Tower Dumps" in order "to see if any of the subjects were in the area of the homicide on August 1, 2021 * * *." The comparison revealed that a number provided by Shawn Mann "appeared in the Tower Dump Data for T-Mobile."

Critically, the affidavit continued and stated:

> "Through the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initally [*sic*]."

In this regard, Det. Michael referenced his experience and training in mobile forensics and expressed that mobile devices contain data evidencing communications among multiple parties, as well as "location data that can assist the Providence Police in locating a mobile device[ ] in [a] particular area, and a particular time." Based upon these circumstances, Det. Michael requested "the Historical Call Detail Records for the mobile number of Isiah [*sic*] Pinkerton in 401-771-7836 * * * from July 1, 2021, to December 18, 2021 for any/all evidence of admission/evidence of the crime in this investigation." A District Court judge signed the warrant, and T-Mobile USA Network subsequently provided the cell phone records from July 1, 2021, through December 1, 2021.

As previously noted, defendant filed a motion to suppress the cell phone records associated with the cell phone number (401) 771-7836. Specifically, defendant contended that the affidavit alleged no facts connecting him to the (401) 771-7836 number, and he further alleged that the affidavit failed to connect that number to the homicide. In addition, defendant asserted that the affidavit lacked information regarding the investigation that led to the discovery of the (401) 771-7836 number, and he stated that there were "no facts that even allowed for an inference that the phone number was connected to [defendant], or that it was 'utilized' during the relevant time period of July-August 2021." The defendant further emphasized that the affidavit only contained the following conclusory language: "Through the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initally [*sic*]."

The state filed an objection to the motion, in which it contended that defendant's claims failed because "the affidavit does in fact contain sufficient reliable information to establish probable cause." The state highlighted that the affidavit described: the commission of the crime; the weapon used to commit the crime; and defendant's connection to that weapon through DNA and ballistics testing. The state additionally pointed to information in the affidavit regarding defendant's use of cell phones—including the fact that defendant provided only two cell phone numbers to the affiant during the December 12, 2021 interview—and that his "co-conspirator used a cellular telephone identified as being in the vicinity of the homicide through cellular tower dump analysis." Additionally, the state argued that the affiant described "the widespread use of cellular telephones and the types of relevant data available from the cellular service provider, including location data, which is evidence of where a particular mobile device was located during a specific time frame."

A hearing on the motion to suppress took place on May 30, 2023. At that hearing, the parties provided arguments that ***1058** were substantially similar to those provided in their filings. The trial justice denied defendant's motion to suppress.

B

The Defendant's Motion to Suppress the Buccal Swab

The defendant filed a motion to suppress the evidence obtained from the buccal swab, which he asserted was gained without his free and voluntary consent. In the motion to suppress, defendant contended that, while being detained at the Providence police station after the December 12, 2021 traffic stop, "the police conducted a warrantless search of [defendant's] person, obtaining a buccal swab for his DNA." He further noted that, while he did sign a consent form relative to that search, "the totality of the circumstances demonstrates that the search was conducted without [defendant's] free and voluntary consent." The state filed an objection to defendant's motion to suppress.

During the hearing on the motion to suppress, the state presented the testimony of Officer Malloy and Det. Michael. The defendant elected not to testify at the suppression hearing. Upon the conclusion of Det. Michael's testimony, the parties

presented arguments relative to the motion to suppress. The trial justice denied defendant's motion to suppress.

Additional relevant facts will be discussed as necessary.

Issues on Appeal

The defendant contends that the trial justice erred in denying his motion to suppress the cell phone records associated with (401) 771-7836 because there was neither "probable cause to believe evidence of the murder would be found in those records" nor was there anything connecting defendant to that cell phone number. The defendant also argues that the trial justice erred in denying the motion to suppress the buccal swab evidence because he did not freely and voluntarily consent.

Standard of Review

[1] **[2]** This Court has previously stated that "when reviewing a trial justice's decision granting or denying a motion to suppress, we defer to the factual findings of the trial justice, applying a clearly erroneous standard." *State v. Depina*, 245 A.3d 1222, 1226 (R.I. 2021) (brackets omitted) (quoting *State v. Storey*, 8 A.3d 454, 459-60 (R.I. 2010)). When reviewing "the denial of a motion to suppress, 'we are required to make an independent examination of the record to determine if the defendant's rights have been violated.' " *State v. Cooper*, 340 A.3d 432, 439 (R.I. 2025) (quoting *State v. Casas*, 900 A.2d 1120, 1129 (R.I. 2006)). Accordingly, "we will reverse a trial justice's findings on a motion to suppress only if '(1) his or her findings * * * reveal clear error, and (2) our independent review of the conclusions drawn from the historical facts establishes that the defendant's federal constitutional rights were denied.' " *State v. Gonzalez*, 136 A.3d 1131, 1145 (R.I. 2016) (quoting *State v. Grayhurst*, 852 A.2d 491, 513 (R.I. 2004)).

Analysis

A

The Motion to Suppress Cell Phone Records

On appeal, defendant contends that the affidavit in support of the search warrant did not allege specific facts connecting him with the cell phone number or the cell phone number to the murder; he adds that the affidavit only contained the "unsupported assertion that police learned through the investigation" that defendant had used that number. (Internal quotation marks omitted.) He also posits that the ***1059** "bare conclusion that it was learned that [defendant] used this number, unsupported by any facts, did not establish probable cause." Additionally, defendant argues that there were no other facts or allegations connecting the cell phone number to the homicide of Brophy-Baermann.

For its part, the state asserts that the trial justice correctly determined that the affidavit established probable cause that the cell phone records contained evidence of criminal activity. To support that contention, the state emphasizes the eight-page affidavit detailing: Det. Michael's experience and background; the circumstances of the murder; the police investigation; defendant's connection to the investigation; and why there was a belief that the cell phone records would contain evidence of the crime. [3]

[3] **[4]** As we have previously made clear, "[t]he Fourth Amendment to the United States Constitution and article 1, section 6, of the Rhode Island Constitution, prohibit the issuance of a search warrant absent a showing of probable cause." *State v. Verrecchia*, 880 A.2d 89, 94 (R.I. 2005). The judicial officer must ascertain probable cause "within the four corners of the affidavit prepared in support of the warrant * * *." *State v. Byrne*, 972 A.2d 633, 638 (R.I. 2009). We have stated that the existence of probable cause should be determined "pursuant to a flexible 'totality-of-the-circumstances analysis.' " *Verrecchia*, 880 A.2d at 94 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)). And we have also recognized that the "approach to the probable cause question should be pragmatic and flexible" with the judicial officer "permitted to draw reasonable inferences from the affidavit presented to him or her." *Id.*; *see Byrne*, 972 A.2d at 638 ("In making this determination, the issuing magistrate must review the affidavit and, based on the facts contained therein, together with the reasonable inferences that may be drawn from those facts, make a practical, commonsense determination as to 'whether there is a fair probability that contraband or evidence of a crime will be found in a particular place.' ") (quoting *Gates*, 462 U.S. at 238, 103 S.Ct. 2317).

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[5] **[6]** **[7]** This Court has also observed that "[b]ecause there is 'a strong preference for searches conducted pursuant to a warrant,' affidavits are to be interpreted in a realistic fashion that is consistent with common sense, and not subject to rigorous and hypertechnical scrutiny." *Byrne*, 972 A.2d at 638 (quoting *Gates*, 462 U.S. at 236, 103 S.Ct. 2317). Furthermore, it is "incumbent upon the trial justice and the reviewing court to accord great deference to the issuing magistrate's probable-cause determination, so long as there is a showing of 'a substantial basis from which to discern probable cause.' " *Id.* (quoting *State v. Correia*, 707 A.2d 1245, 1249 (R.I. 1998)). We have indicated that " '[t]he magistrate need only conclude that it would be reasonable to seek the evidence in the place indicated in the affidavit,' and 'in doubtful cases, the reviewing court should give preference to the validity of the warrant.' " *Id.* at 639 (brackets omitted) (quoting *United States v. Peacock*, 761 F.2d 1313, 1315 (9th Cir. 1985)). "[A] reviewing court should take care both to ***1060** review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." *Id.* (quoting *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). We review a trial justice's determination of the existence or nonexistence of probable cause *de novo*. *See Verrecchia*, 880 A.2d at 95.

[8] **[9]** It is undisputed that the only place the affidavit directly points to any specific connection between defendant and the cell phone number (401) 771-7836 is in the following statement: "Through the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initally [*sic*]." However, defendant's attention to this single sentence is misplaced because "[p]robable cause must be ascertained * * * based on the totality of the circumstances presented in the affidavit." *Byrne*, 972 A.2d at 638. The trial justice properly reviewed the affidavit with this holistic approach.

In denying defendant's motion to suppress, the trial justice specifically noted Det. Michael's professional experience, which was not disputed by defendant. Detective Michael's affidavit began with a recitation of his training and experience in the fields of forensic cell phone and cell phone location data examination. Detective Michael further elucidated that most of the population of the United States communicates through cell phones, and, for that reason, cell phone records contain particularly useful communications and location data for law enforcement investigations. The trial justice further explained that defendant's arguments "fail[ ] to account for scores of undisclosed and clandestine cell phone and social media correspondence which Detective Michael, in his experience, attests probably relates to criminal activity, given the entirety of the circumstances in this case."

We note that, among other details, Det. Michael's affidavit described the murder and the ensuing investigation, implicating defendant in Brophy-Baermann's murder. Critically, the affidavit detailed defendant's involvement in the December 12, 2021 traffic stop and the discovery of the satchel containing the nine-millimeter ghost gun. The affidavit further linked the shell casings found at the crime scene to the firearm seized as a result of the traffic stop, and the affidavit detailed that defendant's DNA was found on the gun. The trial justice also emphasized Det. Michael's statement that he discovered, through the investigation, that defendant had utilized the (401) 771-7836 cell phone number and that this cell phone number had not been disclosed to the detectives when defendant was interviewed on December 12, 2021.

To be sure, defendant focuses upon this single sentence—rather than the totality of the detailed eight-page affidavit—in maintaining that "[t]here was no explanation of what the police investigation entailed and how it led them to this conclusion." In *Gates*, the Supreme Court of the United States considered a similar argument when it agreed that an informant's "veracity," "reliability," and "basis of knowledge" were all "highly relevant" in determining whether a search warrant satisfied the probable cause standard. *See Gates*, 462 U.S. at 230, 103 S.Ct. 2317. Despite the relevancy of these multiple considerations, the Supreme Court explicated that these elements should not be "understood as entirely separate and independent requirements to be rigidly exacted in every case * * *." *Id.* Rather, these considerations are better understood "in the totality-of-the-circumstances analysis that traditionally has guided probable-cause determinations: ***1061** a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* at 233, 103 S.Ct. 2317.

[10] While, unlike *Gates*, this appeal does not concern the reliability of an informant, it is our opinion that when viewed in its totality, the affidavit specifically implicates defendant in Brophy-Baermann's murder and that the trial justice did not err when he concluded that the District Court judge drew reasonable inferences from the affidavit and determined

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that there was sufficient probable cause to obtain the cell phone records associated with (401) 771-7836. As this Court has previously stated, "a nexus between the items to be seized and the place to be searched does not rise or fall on direct observations, or, * * * on the existence of underlying facts connecting the two." *Byrne*, 972 A.2d at 642 (internal quotation marks omitted).

In the case at bar, defendant has effectively excised the statement relating to (401) 771-7836 from the entire affidavit. However, the affidavit in its entirety sufficiently indicates that probable cause existed. *See, e.g.*, *State v. Hudgen*, 272 A.3d 1069, 1082 (R.I. 2022) ("[T]he question for this Court is not whether the fifth paragraph of the affidavit provides a substantial basis to find the two .22-caliber guns in defendant's apartment. Rather, the question is whether the affidavit as a whole provides a substantial basis for concluding that the apartment likely [contains evidence of the crime]."). Therefore, when read in the context of the entirety of the lengthy affidavit, which the totality-of-the-circumstances approach counsels us to do, we are satisfied that probable cause existed as to the likelihood that defendant committed the shooting on August 1, 2021, and that evidence relevant to that crime would be found in the cell phone records pertaining to (401) 771-7836. *See Byrne*, 972 A.2d at 640 ("[I]t is our view that a reasonable inference could be drawn from these facts that the camera—the instrumentality of the crime and a handheld, easily transportable item of personal property—could be found at defendant's residence."); *see also State v. Cosme*, 57 A.3d 295, 302 (R.I. 2012).

B

The Motion to Suppress the Buccal Swab

The defendant argues on appeal that he did not freely consent to the buccal swab and that the detectives led him "to believe he had no choice but to submit to a DNA swab." Specifically, defendant directs our attention to Det. Michael's statements: "[Y]ou're gonna take a buccal, right?" and "I'm gonna have you sign for a buccal * * *." Pinkerton further references his inquiry, "So we all gotta do this?" and Det. Michael's response, "Yeah. The other guys are gonna do it too." Based upon these expressions, defendant claims that his consent to the buccal swab was the result of "false claims of authority" and that the trial justice erred when he "overlooked the detective's statements of authority * * *."

The defendant presents additional arguments concerning the voluntariness *vel non* of the buccal swab. For example, defendant asserts that the trial justice failed to properly consider that he was in custody during the interview or that Det. Michael purportedly used "that custody as leverage." The defendant notes that after being arrested, he was handcuffed to the wall at 2 a.m. and that he was therefore more susceptible to pressure applied by the police. He also states that Det. Michael "pushed him into compliance by suggesting that he would be released if he succumbed[.]" Finally, defendant contends ***1062** that the trial justice erred in focusing on the consent form that defendant signed because it "was not sufficient to establish free and voluntary consent." The state disputes the merits of defendant's arguments.

[11] **[12]** "It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is '*per se* unreasonable subject only to a few specifically established and well-delineated exceptions.' " *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (deletion omitted) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)). This Court has made clear that consent is one of the explicitly established exceptions to the requirement of a warrant. *See Gonzalez*, 136 A.3d at 1147; *see also Schneckloth*, 412 U.S. at 219, 93 S.Ct. 2041. However, the state must prove that consent was "freely and voluntarily given" to justify a search or seizure on consent grounds. *See Gonzalez*, 136 A.3d at 1147 (quoting *State v. Bailey*, 417 A.2d 915, 918 (R.I. 1980)); *see also id.* ("In the Fourth Amendment context, the state must prove by a 'fair preponderance of the evidence' that there was free and voluntary consent.") (quoting *State v. O'Dell*, 576 A.2d 425, 427 (R.I. 1990)).

[13] **[14]** **[15]** While "we give deference to the findings of historical fact made by a trial justice," this Court reviews "the determination of the voluntariness of an individual's consent to search * * * *de novo*." *State v. Shelton*, 990 A.2d 191, 199 (R.I. 2010) (quoting *State v. Texter*, 923 A.2d 568, 576-77 (R.I. 2007)). There is no single criterion that is determinative "in deciding whether or not there was free and voluntary consent." *See Gonzalez*, 136 A.3d at 1148. Rather, "the question of whether consent was in fact voluntary or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Id.* at 1147-48 (quoting *Palmigiano v. Mullen*, 119 R.I. 363, 370, 377 A.2d 242, 246 (1977)). We look to whether, under the totality of the circumstances, defendant's will was overborne. *See State v. Mlyniec*, 15

A.3d 983, 996 (R.I. 2011). Some of the factors that may be considered include the youth of the accused, the lack of education, low intelligence, the absence of notice to the accused of his or her constitutional rights, the length of detention, the repeated and prolonged nature of questioning, and the use of physical punishment. *See Schneckloth*, 412 U.S. at 226, 93 S.Ct. 2041.

[16] After carefully scrutinizing defendant's arguments, it is our opinion that the trial justice did not err when he denied defendant's motion to suppress the evidence obtained as a result of the buccal swab. In *State v. Humphrey*, 715 A.2d 1265 (R.I. 1998), this Court recognized that the defendant's confession that he had attempted to murder two state troopers was not rendered involuntary based upon his hours-long confinement in a conference room during which he was stripped to an undershirt and underwear; his legs were shackled; and he was handcuffed to a wall, parallel to his shoulder, while seated. *See Humphrey*, 715 A.2d at 1269, 1274-75; *see also State v. Robinson*, 989 A.2d 965, 976 (R.I. 2010). So too here.

In denying defendant's motion to suppress, the trial justice articulated compelling findings of fact. The trial justice noted that "Pinkerton agrees that he was properly advised of his *Miranda* rights, understood them, and voluntarily spoke with the detectives." (Italics added.) He further recognized that "Pinkerton [was] not a newcomer to the criminal justice system," and, as an example, he noted that Pinkerton had been "cooperating with the Rhode Island ***1063** State Police in a criminal investigation." Additionally, the trial justice observed that "Pinkerton enjoyed a very comfortable relationship with Detective Michael" and that defendant "did not blindly, hastily, or cavalierly sign the consent form." Rather, as the trial justice noted, even though Det. Michael acknowledged that he had not orally advised defendant that he could decline the buccal swab,[4] "[i]t is clear from the video that Pinkerton read [the consent form], considered it, and insisted on knowing what it was for." The trial justice added that the plain language on the consent form "makes it abundantly clear to any casual reader that the swabbing could be conditioned upon a warrant and that declining to consent was an obvious option."

The trial justice further determined that there was no suggestion that defendant was under the influence of alcohol or drugs; that Det. Michael had advised defendant that he was not under arrest and that he expected defendant to be released at the conclusion of their conversation; that defendant was handcuffed to the wall bar for officer safety; that there was an absence of evidence that defendant's will was overborne "by threats or inappropriate promises to obtain his consent"; and that "[t]he facts do not support chicanery." In determining whether defendant's consent was voluntarily procured, these findings of fact are entitled to our deference, and we discern no error in these determinations. *See Shelton*, 990 A.2d at 199.

The defendant spent less than one hour in the conference room being interviewed and the questioning largely focused on the murder of defendant's associate, which had been committed hours earlier. As the trial justice observed, Pinkerton's left hand was handcuffed to the wall bar for officer safety, but he was not shackled, he was provided a cup of water, and he was well acquainted with Det. Michael and the criminal justice system. Our review of the video footage depicts a conversational and non-confrontational dialogue, during which defendant was seated at a table, appeared comfortable, and did not express a hint of duress or that his will was overborne. It is further notable that upon entering the conference room, defendant was apprised of his *Miranda* rights and signed the waiver form. Indeed, during the hearing on the motion to suppress, defense counsel candidly acknowledged that defendant understood his *Miranda* rights and voluntarily waived them.

Our review of the totality of the record further establishes that on multiple occasions defendant expressly and voluntarily consented to the buccal swab. In one instance, the following colloquy ensued:

> "[DETECTIVE MICHAEL]: Good. Good. You wanna take a bu- -- you're gonna take a buccal, right?
>
> "[DEFENDANT]: Huh?
>
> "[DETECTIVE MICHAEL]: I'm gonna have you sign for a buccal swab so they can make sure that it wasn't -- I gotta do --
>
> "[DEFENDANT]: What's that?
>
> "[DETECTIVE MICHAEL]: To make sure there's no DNA on that gun. There's been --
>
> "[DEFENDANT]: *Oh, you can do -- all right. All right, f* * *ing, yeah. * * **
>
> "[DETECTIVE MICHAEL]: Right there. I'll fill everything out.

***1064** "[DEFENDANT]: 'Cause you know, I don't wanna -- I wanna make sure --

"[DETECTIVE MICHAEL]: I -- I wanna make sure that you, you know, you're -- you're --."[5] (Emphasis added.)

The defendant's affirmative retort—and his equally compelling body language as seen in the video—demonstrate an unequivocal and unconditional expression of voluntary consent. This was the first instance evidencing voluntary consent.

As defendant was reviewing the form, Det. Costa began questioning him relative to Owens's shooting, but the conversation—and defendant's focus—quickly returned to the consent form. In a second instance evidencing voluntary consent, defendant read the consent form and signed it:

"I, Isaiah Pinkerton, having been informed of my right not to have a search made of my persons without a search warrant and of my right to refuse to consent to such a search, do authorize: Detectives of the Providence Police Department to conduct a buccal swab.[6] I give my consent to this search knowing that if any incriminating evidence is found it can be used against me in [c]ourt.

"I give this written permission to the Detectives named above voluntarily and without threats or promises of any kind."

Approximately ten minutes later, two officers, neither of whom previously participated in defendant's interview, entered the conference room to perform the buccal swab. In a third instance evidencing voluntary consent, the following ensued:

"[OFFICER]: What -- what's your name first?

"[DEFENDANT]: Me, Isaiah Pinkerton.

"* * *

"[OFFICER]: Yeah, all right. You're gonna swab, buccal swab?

"[DEFENDANT]: Um, yeah, I guess.

"[OFFICER]: Okay.

"[DEFENDANT]: A buccal swab?

"[OFFICER]: Yeah.

"[DEFENDANT]: Where's that at? In my mouth?

"[OFFICER]: Yeah.

"* * *

"[OFFICER 2]: Did the other detective explain it to you?

"[DEFENDANT]: *Yeah, I was just -- just, like, f* * * it. Come on*.

"[OFFICER]: *Yeah*?

"[DEFENDANT]: *Yeah*." (Emphases added.)

The defendant's third expression of consent within an approximately twelve-minute timespan unequivocally and unconditionally demonstrated voluntary consent and contradicts any suggestion that defendant's will was overborne.

Despite the foregoing, defendant insists that his release was predicated upon consenting ***1065** to the buccal swab and that his various expressions of consent, *see supra*, were the product of Det. Michael's coercive statements. Applying the totality-of-the-circumstances analysis, however, we conclude that there is simply no evidence in the record to support the argument that Pinkerton's will was overborne. In this regard, we note that defendant had already consented to the buccal swab *before* Det. Michael mentioned seeking his release and *before* Det. Michael responded affirmatively to defendant's inquiry, "So we all gotta do this?" While defendant contends on appeal that he interpreted Det. Michael's statements as meaning "he had to submit to the swab," critically, defendant declined to testify at the suppression hearing. In the absence of defendant's testimony or other evidence, defendant asks this Court to speculate, draw its own conclusion, and determine that his will was overborne when he consented to the buccal swab. The trial justice made no such finding and our *de novo* review of the record can discern no constitutional error.

[17] At bottom, "the operative inquiry is whether the evidence presented at the suppression hearing fairly supports the court's finding with respect to voluntary consent." *Gonzalez*, 136 A.3d at 1148 (brackets omitted) (quoting *State v. Barkmeyer*, 949 A.2d 984, 995 (R.I. 2008)). We accord deference to the trial justice's findings of fact and discern no evidence whatsoever that the defendant's will was overborne when he consented to the buccal swab. In so doing, we once

again reference the video footage of the detectives' interview with the defendant and recall the familiar adage that "a picture is worth a thousand words * * *." *McElroy v. Stephens*, 331 A.3d 971, 975 n.2 (R.I. 2025). The relatively relaxed nature of the defendant's encounter with the detectives when he thrice consented to the buccal swab, as shown in the video, validates the continued application of this proverb to the law enforcement context and conclusively demonstrates that the defendant's will was not overborne.

Conclusion

For the reasons set forth, we affirm the judgment of the Superior Court. The record shall be remanded to the Superior Court.

Justice Goldberg participated in the decision and authored the majority opinion but retired prior to its publication.

Justice Robinson, concurring in part and dissenting in part.
I respectfully but unequivocally dissent. I hasten to add, however, that I dissent only from the majority's ruling concerning the buccal swab issue. I agree with and concur in the Court's opinion upholding the trial justice's denial of the motion to suppress certain cell phone records.

To my mind, the crucial and dispositive point with respect to the buccal swab issue is that, while Mr. Pinkerton was in the process of deciding whether or not he should sign the consent form [1] relative to the buccal swab, he specifically asked Det. Michael: "*So we all gotta do this*?" (Emphasis ***1066** added.) Detective Michael's immediate and unqualified answer to that question was: "*Yeah*. *The other guys are gonna do it too*." (Emphasis added.)

I am convinced that, in light of Det. Michael's unambiguous but completely false response to Mr. Pinkerton's legitimate question as to whether or not he was required to submit to a buccal swab, the trial justice committed reversible error in failing to grant the motion to suppress the evidence obtained as a result of that buccal swab.

In my judgment, the detective's unequivocal and never altered false response to Mr. Pinkerton's important question, should *in and of itself*, require suppression of the buccal swab evidence. However, when one considers that false response against the background of the totality of the circumstances [2] surrounding Mr. Pinkerton's eventual signing of the consent form, it becomes even more evident that Mr. Pinkerton's purported consent was not "free and voluntary." *See State v. Gonzalez*, 136 A.3d 1131, 1147 (R.I. 2016).

In view of the fact that the false information provided to Mr. Pinkerton by the detective directly related to Mr. Pinkerton's Fourth Amendment rights, I am unable to say that it constituted harmless error beyond a reasonable doubt. This Court has recognized harmless error as being "an error that in the setting of a particular case is so unimportant and insignificant that it may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction." *State v. Terzian*, 162 A.3d 1230, 1244 (R.I. 2017) (internal quotation marks and brackets omitted); *see Chapman v. California*, 386 U.S. 18, 22, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *see also Gonzalez*, 136 A.3d at 1158 ("No court can scrutinize the minds of jurors so as to be able to know with certainty what did or did not influence a particular verdict. But the Supreme Court has told us that the state must 'prove, *beyond a reasonable doubt*, that the error complained of * * * did not contribute to the verdict obtained.' ") (emphasis in original) (brackets omitted) (quoting *Chapman*, 386 U.S. at 24, 87 S.Ct. 824); *see also State v. Lopez*, 943 A.2d 1035, 1043 (R.I. 2008) ("[W]hether or not an error is harmless turns on whether it is reasonably possible that the error contributed to the conviction.").

In conclusion, I concur in the Court's opinion concerning the denial of the motion to suppress certain cell phone records. However, I vigorously dissent from the Court's opinion with respect to the buccal swab issue. It is my view that the trial justice erred in not suppressing the evidence obtained from the buccal swab, and I believe that that error was sufficiently grave and pervasive to require the grant of a new trial.

Justice Long, dissenting.
I respectfully dissent from the decision affirming the defendant's conviction. I believe that the trial justice erred in denying Mr. Pinkerton's motion to suppress the cell phone records, as well as his motion to suppress the buccal swab.

The Motion to Suppress Cell Phone Records

I cannot join in the majority's holding that probable cause existed to issue a warrant for the cellular records for (401) 771-7836 (the 7836 number). Based on my review ***1067** of the totality of the circumstances, the affidavit submitted by Detective Theodore Michael lacked any evidence that connected Mr. Pinkerton to this cell phone number or that linked the number to the commission of the shooting of Ms. Brophy-Baermann. As such, I believe the trial justice erred in declining to grant Mr. Pinkerton's motion to suppress the cell phone records.

We have said time and again that "[t]he Fourth Amendment to the United States Constitution and article 1, section 6, of the Rhode Island Constitution, prohibit the issuance of a search warrant absent a showing of probable cause." *State v. Verrecchia*, 880 A.2d 89, 94 (R.I. 2005). The search warrant requirement stems from our recognition of "an individual's right to be free from unreasonable search and seizure of their person, home, and possessions." *State v. Hudgen*, 272 A.3d 1069, 1079 (R.I. 2022). We therefore "generally prohibit[ ] police officers from conducting searches and seizures without a warrant issued by a neutral, detached judicial officer." *Id.* at 1080. As part of the warrant application, the state and federal constitutions require a sworn affidavit from a police officer to aid the judicial officer in making a determination as to whether probable cause exists. *See State v. Byrne*, 972 A.2d 633, 637 (R.I. 2009). "Probable cause must be ascertained within the four corners of the affidavit prepared in support of the warrant * * * and based on the totality of the circumstances presented in the affidavit." *Id.* at 638.

The judicial officer's task in evaluating if the affidavit establishes probable cause is to weigh whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). They may "draw reasonable inferences from the affidavit presented to [them]" as part of that determination. *Verrecchia*, 880 A.2d at 94. The trial justice and this Court must give "deference to the issuing magistrate's determination of probable cause and confine ourselves to reviewing whether the magistrate had a substantial basis for [their] finding * * *." *State v. King*, 693 A.2d 658, 661 (R.I. 1997); *see Verrecchia*, 880 A.2d at 95. Because we encourage searches to be conducted pursuant to a warrant, "affidavits are to be interpreted in a realistic fashion that is consistent with common sense, and not subject to rigorous and hypertechnical scrutiny." *Byrne*, 972 A.2d at 638. This Court, however, "examine[s] the record *de novo* to determine independently whether the defendant's constitutional rights have been violated." *Hudgen*, 272 A.3d at 1079.

I believe the issuing judge's conclusion that there was probable cause to grant the warrant application was error. There were no reasonable inferences to draw from the four corners of the affidavit because there were simply no facts that suggested that evidence of the crime would be found in the cell phone records associated with the 7836 number. I believe, therefore, that the judge did not have a substantial basis for her finding.

Detective Michael's warrant application for the cell phone records for the 7836 number included an eight-page affidavit, which contained detailed information about his experience in cellular forensics and about his investigation to that point in time. He described the August 1, 2021 shooting and the Providence police's review of video surveillance footage. He explained that he obtained a search warrant for tower dumps from the major cellular carriers to determine all of the phone numbers in the vicinity of the shooting around the time it occurred. He recounted the December 2021 traffic stop of Mr. Pinkerton, Mr. Mann, and Mr. Laurie; the ***1068** recovery by police officers of the satchel containing the ghost gun; and the police interviews with these men, in which they told police their phone numbers. He further relayed his comparison of the numbers provided by these men with the tower dump and his identification of social media profiles connected to these numbers; he noted that a number given by Mr. Mann appeared in the tower dump but did not say whether the numbers given by Mr. Pinkerton also appeared. He explained that the DNA profile collected from the gun was consistent with Mr. Pinkerton's reference profile and noted his subsequent arrest. Detective Michael then stated, "[t]hrough the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initally [*sic*]." The rest of the affidavit described the arrest and search of Mr. Mann's electronic devices before providing a technical explanation of cellular forensics. The affidavit concluded with a request for the cell phone records for the 7836 number for the period from July 1 through December 18, 2021.

Looking to the warrant application and its accompanying affidavit, they contained no facts that linked Mr. Pinkerton to the 7836 number. The first, and only, reference to that number is the conclusory assertion that "[t]hrough the investigation it was learned that Isaiah Pinkerton also utilized the mobile

number of 401-771-7836 * * *." This on its own does not comport with constitutional requirements. Indeed, as the United States Supreme Court has explained, "[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; [their] action cannot be a mere ratification of the bare conclusions of others." *Gates*, 462 U.S. at 239, 103 S.Ct. 2317. I struggle to see how this solitary, vague pronouncement that Mr. Pinkerton "utilized" a mobile phone number could fulfill that condition. It fails to satisfy even the evergreen grade school literary requirements of who, what, when, where, and why.

The affidavit's treatment of Mr. Mann's cell phone number provides a useful contrast. Although Mr. Mann's number was not one that Det. Michael sought to search, the affidavit nevertheless tied that number to the crime by describing how the number supplied by Mr. Mann appeared in a tower dump conducted by the Providence police for the area around the shooting on August 1, 2021. Those facts therefore connected (1) Mr. Mann to a phone number and (2) that phone number to the approximate time and location of the murder. Conversely, the affidavit failed to explain why Det. Michael believed that Mr. Pinkerton utilized the 7836 number when this was not one Mr. Pinkerton had provided to police. The affidavit did not suggest that the number was in the vicinity of the shooting during that time, nor did it allege that this number was utilized to communicate about the shooting either before or after it happened. Rather, the only explanation Det. Michael offered was that "[t]hrough the investigation it was learned" that Mr. Pinkerton used the 7836 number. Detective Michael did not supply even a single fact connecting the 7836 number either to Mr. Pinkerton or to the location and time of the crime. *See Byrne*, 972 A.2d at 640.

To be sure, a warrant application's "deficiency in veracity or reliability 'may be compensated for * * * by a strong showing as to the basis of knowledge, or by some other indicia of reliability.' " *King*, 693 A.2d at 661 (brackets omitted) (quoting *Gates*, 462 U.S. at 233, 103 S.Ct. 2317). But this affidavit does not supply any facts to demonstrate the veracity, reliability, basis of knowledge, or any other indicia of reliability ***1069** upon which the issuing judge could have based a decision.

In asserting that the affidavit supplied a sufficient basis for the issuing judge to grant the warrant application, the state asks us to take Det. Michael at his word that, based on his years of experience as a police officer well-versed in cellular forensics, and because he told us that people use cell phones to commit crimes, there must be a connection between the 7836 number and Mr. Pinkerton. I simply cannot conclude that the information contained in the affidavit established a fair probability that the 7836 number would lead investigators to evidence of the murder. [1]

The state explains in its brief that Det. Michael learned about Mr. Pinkerton's purported connection to the 7836 number when Silkies Paulino (Ms. Paulino), Dante Mann's girlfriend at the time of his death, went to the police and allowed them to do an extraction on her phone; detectives found that she had saved this number under the name "SOS Cap"—a nickname alleged to have been associated with Mr. Pinkerton. This detail was not included within the affidavit and therefore should not factor into our analysis, *Byrne*, 972 A.2d at 638; however, had Det. Michael shared this information in the affidavit, I believe it would have been a helpful *Gates* indicator of reliability. That Det. Michael declined to include these details is therefore perplexing. Absent that information, however, I believe that the issuing judge erred in granting this warrant and that the trial justice erred in declining to grant Mr. Pinkerton's motion to suppress the cell phone records for the 7836 number.

The next question, then, is whether this error was harmless. *See State v. Gomes*, 881 A.2d 97, 105 (R.I. 2005). It is clear to me that it was not. A harmless error is one that "in the setting of a particular case is so unimportant and insignificant that it may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction." *State v. Lopez*, 943 A.2d 1035, 1043 (R.I. 2008) (brackets omitted) (quoting *Chapman v. California*, 386 U.S. 18, 22, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)). "[W]hether or not an error is harmless turns on whether it is reasonably possible that the error contributed to the conviction." *Id.* "When evaluating improperly admitted evidence, this Court reviews the remainder of the evidence introduced to discern whether the error was harmless beyond a reasonable doubt." *State v. Ramirez*, 936 A.2d 1254, 1267 (R.I. 2007).

Through testimony at trial, we know that the cell phone records placed the 7836 number proximate to the scene of the shooting around the time that it occurred. No other data connected Mr. Pinkerton to the scene of the crime. And, although Ms. Paulino testified that Mr. Pinkerton told her about his involvement in the shooting and about his visit to Dante Mann's grave (which aligned with the location data recovered from the 7836 number), she was not with Mr. Pinkerton that night and therefore had no direct knowledge of

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where he was. To be sure, counsel for Mr. Pinkerton had the opportunity to cross-examine her; but it is far more difficult to ***1070** refute cell site location data that placed a phone, allegedly belonging to Mr. Pinkerton, at the scene of the shooting. The state also used the location of the 7836 number as part of its closing argument portraying Mr. Pinkerton as a participant in the shooting: "before and after the murder, [Mr. Pinkerton and Mr. Mann were] together[.] * * * At 3:34 [a.m.], the time of the murder, where are they? They're right in the vicinity of Olney Street." I therefore cannot conclude that the admission of these records was harmless beyond a reasonable doubt because it was not cumulative and was compelling evidence that established a necessary prerequisite for the state to make its case—that Mr. Pinkerton was present at the scene of the crime, close in time to the murder.

Accordingly, I conclude that the trial justice erred in denying Mr. Pinkerton's motion to suppress because the affidavit accompanying the warrant application failed absolutely to tie Mr. Pinkerton to the phone number and the phone number to the crime. The issuing judge thus lacked a sufficient basis from which to conclude that there was probable cause that a search of the records associated with that number would yield evidence of the crime. In light of that error, I believe that Mr. Pinkerton's conviction should be vacated and that the matter should be remanded for a new trial.

Beyond my concerns for Mr. Pinkerton's rights as protected by the Fourth Amendment and article 1, section 6, I am greatly troubled that the fruits of this warrant revealed the extensive data of a private individual not involved whatsoever in this case. This individual's name was revealed at trial, and their cell site location data, tracking almost three weeks of their detailed geographic movements, was included as a full exhibit introduced by the state at trial. This is deeply disturbing. Based on the information contained within Det. Michael's warrant application, any number could have been swapped out for the 7836 one—including yours or mine. The majority's decision here allows the police and the state to gain access to anyone's data as long as they baldly represent that their investigation supports doing so. Given the "deeply revealing nature of [cell site location information], its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection," I would hope that this Court would take greater care in allowing police to gather such data. *Carpenter v. United States*, 585 U.S. 296, 320, 138 S.Ct. 2206, 201 L.Ed.2d 507 (2018); *see also State v. Sinapi*, 295 A.3d 787, 802-03 (R.I. 2023) (acknowledging the grave privacy concerns associated with cell phone data). That an uninvolved party's data was not only collected as a result of this warrant but also presented at trial should demonstrate the stakes of an improperly substantiated warrant application. This suggests all the more strongly to me that the granting of the warrant application and the refusal to suppress the cell phone records were error.

The Motion to Suppress the Buccal Swab

I also disagree with the majority's conclusion that Mr. Pinkerton voluntarily consented to the buccal swab and that his will was not overborne. It is inescapably clear to me that Mr. Pinkerton did not voluntarily consent to the buccal swab. Moreover, I believe the trial justice's failure to address the substance of Det. Michael's false and constitutionally inaccurate statements made during the custodial interrogation and their effect on Mr. Pinkerton's behavior was error. At no point during the interrogation did Det. Michael inform Mr. Pinkerton that he had the right to refuse to sign the consent form, but instead, told ***1071** him he had to sign the form and submit to the swab. When Mr. Pinkerton tried to clarify whether signing the form was compulsory, Det. Michael falsely and affirmatively suggested that it was. Mr. Pinkerton also appeared to be confused throughout this encounter about the consequences of signing the form and trusted the oral statements made by Det. Michael rather than taking the time to carefully review the form.

Voluntariness "involves a mixed question of fact and law that impacts a constitutional right, and this Court therefore reviews such determinations *de novo*." *State v. Texter*, 923 A.2d 568, 576-77 (R.I. 2007). "Notwithstanding our *de novo* review of the ultimate determination of voluntariness, we give deference to the findings of historical fact made by a trial justice in the context of making that determination." *Id.* at 577.

A buccal swab is a search, thus falling within the ambit of the Fourth Amendment. *See Maryland v. King*, 569 U.S. 435, 446, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013). It is undisputed that the Providence police did not have a warrant to collect a buccal swab from Mr. Pinkerton. Thus, in order to accord with constitutional requirements, the state must prove that Mr. Pinkerton freely and voluntarily consented to the buccal swab. *State v. Gonzalez*, 136 A.3d 1131, 1147 (R.I. 2016). Although Mr. Pinkerton signed the consent-to-search form that permitted the state to conduct a buccal swab, the operative

question here is whether Mr. Pinkerton signed this form voluntarily.

The trial justice found that "[t]here [was] no evidence that Det. Michael or Det. [Kevin] Costa overbore Pinkerton's will by threats or inappropriate promises to obtain his consent." From my own review of the interrogation video, however, I am led to the opposite conclusion.

In order to understand how I reached this result, a thorough examination of the exchange is necessary. Detective Michael first introduced the notion of a buccal swab by saying "you're gonna take a buccal, right?"; and, seconds later repeated, "I'm gonna have you sign for a buccal swab * * *." Mr. Pinkerton responded with confusion: "Huh?" to Det. Michael's question and then, "What's that?" to his request. Detective Michael explained that it was "[t]o make sure there's no DNA on that gun" and stated that he would "fill everything out." Mr. Pinkerton turned his head downward toward the form Det. Michael handed to him and began to read; he was interrupted roughly seven seconds later by further questioning from both Det. Michael and Det. Costa and lifted his head up to look at them. After answering their questions, he looked back down at the form and almost immediately expressed confusion again: "[W]ait, what is this right here[?]" Detective Michael stated, "they're gonna come and get * * * your DNA" and instructed him to sign "[r]ight where the X is." Mr. Pinkerton then queried: "So we all gotta do this?" Detective Michael responded, "Yeah. The other guys are gonna do it too." After Mr. Pinkerton exhibited hesitation, Det. Michael then told him, "I'm gonna try to get you out, man," and it was only at this point that Mr. Pinkerton signed the form.

Based on my analysis of the video and this exchange, I cannot agree with the trial justice's conclusion that Mr. Pinkerton "did not blindly, hastily, or cavalierly sign the consent form." Observing the direction of Mr. Pinkerton's gaze, he spent fewer than forty seconds looking down at the form. It is clear to me that he signed the ***1072** form in response to Det. Michael's false assertions that he was obligated to do so without having been given adequate time to review the consent form [2] or understand the consequences.

More than half a century ago, the United States Supreme Court declared in *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968), that "[w]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, [they have] the burden of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." *Bumper*, 391 U.S. at 548-49, 88 S.Ct. 1788 (footnote omitted). "Besides evidence of police coercion or intimidation, the totality-of-the-circumstances test * * * require[s] consideration of any evidence that law enforcement officers' fraud, deceit, trickery or misrepresentation prompted defendant's acquiescence to the search." *United States v. Vanvliet*, 542 F.3d 259, 264 (1st Cir. 2008). Indeed, "the Fourth Amendment may be violated when consent is obtained through a law enforcement officer's false claim of authority * * *." *Pagán-González v. Moreno*, 919 F.3d 582, 596 (1st Cir. 2019). The majority submits that we cannot know whether Mr. Pinkerton's will was overborne because he did not testify at the suppression hearing. However, it seems clear to me, especially under a totality-of-the-circumstances test, that a detective's affirmative misrepresentations regarding the scope of their authority as to a defendant's constitutional right to refuse consent is impermissible under both the Fourth Amendment and article 1, section 6. [3]

The trial justice and the majority's dogged avoidance in addressing Det. Michael's answers to Mr. Pinkerton's direct questions is curious. Framed generously, Det. Michael's statements misrepresented the bounds of his lawful authority and Mr. Pinkerton's right to refuse consent. More likely, they suggest loose regard for constitutional imperatives by the same detective who vaguely pronounced that Mr. Pinkerton utilized the 7836 number in an attempt to demonstrate probable cause in the previously discussed warrant application. I cannot in good faith agree with the trial justice's conclusion that the state met its burden in proving that Mr. Pinkerton's consent was voluntarily and freely given. I believe that Det. Michael's statements improperly induced Mr. Pinkerton into signing the form at the point in the exchange when he still did not understand the purpose or consequences of the swab. In doing so, Det. Michael vitiated Mr. Pinkerton's ability to freely consent and, accordingly, violated the Fourth Amendment and article 1, section 6. As such, I conclude that the trial justice erred in denying Mr. Pinkerton's motion to suppress the results of the buccal swab.

In considering whether this error was harmless, I conclude unequivocally that it was not. *See Gonzalez*, 136 A.3d at 1156. Here, the results from the buccal swab ***1073** allowed the state to link Mr. Pinkerton directly to the gun and the other items recovered from the satchel found by police on December 12, 2021. The state's evidence tied the cartridge cases left at the scene of the shooting to that gun and allowed them to suggest that it was the one used to shoot Ms. Brophy-

Baermann. Without being able to link Mr. Pinkerton to the murder weapon, the state's case would have looked vastly different. Although Ms. Paulino testified that Mr. Pinkerton had confessed to her his involvement in the shooting, nothing else would have tied him directly to its commission, and I cannot conclude definitively that the jury would have credited Ms. Paulino's testimony without this reinforcing evidence. I therefore believe that this error was not harmless beyond a reasonable doubt and that Mr. Pinkerton's conviction must be vacated as a result and the matter be remanded for a new trial.

In no way do I intend to minimize the tragedy of Ms. Brophy-Baermann's death. Every life lost to gun violence is a tragedy. That Ms. Brophy-Baermann had a bright future ahead does not change our obligation to diligently review the defendant's allegations of constitutional error, nor should it move the goalposts for what we find constitutionally impermissible. I believe that Mr. Pinkerton's rights as protected by the Fourth Amendment and article 1, section 6 were violated by both the search of the cell phone records and the buccal swab. Because the majority concludes otherwise, I respectfully dissent.

All Citations

355 A.3d 1051

Footnotes

1 "A buccal swab is a long handled sterile cotton swab that is rubbed against the inside of a person's cheek to collect cell samples." *State v. Roscoe*, 198 A.3d 1232, 1236 n.3 (R.I. 2019).

2 Dante Mann and Shawn Mann were brothers. In October 2024, Shawn Mann was convicted of, *inter alia*, the first-degree murder of Brophy-Baermann. His appeal is pending before this Court.

3 The state also argued that, if this Court were to conclude that the affidavit lacked probable cause, the evidence obtained pursuant to the search warrant would still be admissible pursuant to the good-faith exception to the exclusionary rule. *See generally* *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). The state further posited that any error would be harmless. In light of our resolution of this issue, we need not address these arguments.

4 *See* *Schneckloth v. Bustamonte*, 412 U.S. 218, 232-33, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) ("[W]e cannot accept the position of the Court of Appeals in this case that proof of knowledge of the right to refuse consent is a necessary prerequisite to demonstrating a 'voluntary' consent.") (internal quotation marks omitted).

5 During this colloquy, the video depicts Det. Michael demonstrating a buccal swab, *viz.*, motioning in a circular pattern with his hand in the area of his own cheek.

The Superior Court and this Court have been aided by a transcript of the interview. In the Superior Court, the transcript was not admitted as a full exhibit and based upon our comparison of the transcript and the video footage—which contains audio—at times, reasonable minds could differ concerning the precise verbiage used by the detectives and defendant. These slight discrepancies, if any, do not affect the overall totality-of-the-circumstances analysis. We adopt the language used in the transcript.

6 The trial justice noted that during the suppression hearing, Det. Michael acknowledged that he had not orally advised defendant of the opportunity to refuse the buccal swab.

1 It is well established that consent is one of the recognized exceptions to the warrant requirement. *See* *State v. Gonzalez*, 136 A.3d 1131, 1147 (R.I. 2016). However, it is also well established that consent must be "freely and voluntarily given" in order to constitute a basis for a warrantless search. *Id.* (quoting *State v. Bailey*, 417 A.2d 915, 918 (R.I. 1980)); *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S.Ct. 1788, 20 L.Ed.2d 797

(1968); *see also* *Gonzalez*, 136 A.3d at 1147 ("In the Fourth Amendment context, the state must prove by a fair preponderance of the evidence that there was free and voluntary consent.") (internal quotation marks omitted).

2 *See* *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (stating that whether a consent to a search was voluntary "is a question of fact to be determined from the totality of all of the circumstances"); *Palmigiano v. Mullen*, 119 R.I. 363, 370, 377 A.2d 242, 246 (1977).

1 While I agree with the majority's decision not to address the state's arguments on the good-faith exception to the exclusionary rule, I submit that the facts in the record suggest an absence of good faith when, as here, the affidavit was "so lacking in indicia of probable cause [to search the 7836 number] as to render official belief in its existence entirely unreasonable." *United States v. Leon*, 468 U.S. 897, 923, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (quoting *Brown v. Illinois*, 422 U.S. 590, 610-11, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) (Powell, J., concurring in part)).

2 A review of the consent form reveals that, had Mr. Pinkerton been provided the opportunity to read it more closely, it would have informed him that he had the ability to refuse to consent to the buccal swab. This fact was clearly lost on him in light of Det. Michael's affirmative response to his question regarding whether he had to agree to the swab.

3 Although this Court has observed that police may lie to a suspect during interrogation about the evidence against them, *see* *State v. Marini*, 638 A.2d 507, 513 (R.I. 1994), we have certainly never held that police may lie to a suspect about their constitutional rights.

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STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 14, 2023)

STATE OF RHODE ISLAND	:	
	:	
VS.	:	**P1/2022-3059BG**
	:	
ISAIAH PINKERTON	:	

DECISION

KRAUSE, J. Defendant, Isaiah Pinkerton, along with codefendant Shawn Mann, was charged by a grand jury with murder and multiple other criminal offenses arising out of the August 1, 2021 shooting death of Miya Brophy Baermann on Olney Street in Providence. At the homicide scene several spent cartridge casings were found, but no gun was recovered. Law enforcement's investigation did not produce any suspects until the end of the year.

On December 12, 2021, Providence Police Officers Ryan Malloy and Brad McPartl stopped a Hyundai Elantra driven by Justin Lauria. Pinkerton was in the back seat directly behind Lauria, and Mann was a front seat passenger. Very shortly after the stop, Malloy found on a nearby sidewalk a small satchel containing a loaded handgun which Malloy believed had been tossed from the Elantra. All three men were arrested and taken to the Providence Police Station, where a buccal swab was taken from Pinkerton after he had signed a consent form.

Ballistic examination and laboratory analysis revealed that the firearm had been used to kill Brophy Baermann and that Pinkerton's DNA was on the gun and the ammunition magazine. Further investigation disclosed that Pinkerton had used T-Mobile cellphone number (401) 777-7836 and that he also had a Facebook account. Search warrants were obtained for the data and materials of both accounts.

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Pinkerton has moved to suppress the DNA results and also challenges the probable cause underlying the search warrants.

A hearing on those three suppression motions was held on May 30, 2023, at which Officer Malloy and Providence Detective Theodore Michael, who authored the search warrant affidavits, testified. Pinkerton did not testify.

I. The Buccal Swab

Pinkerton concedes that he lacks standing to contest the stop of the vehicle, but he says that the facts surrounding the motor vehicle stop must be considered because his detention after the stop was impermissibly long, spoiling his arrest and the stationhouse buccal swab, which he also contends was taken without his voluntary consent. The Court disagrees.

The credible evidence discloses that on December 12, 2021, Officers Malloy and McParlin were particularly alert as they patrolled an area of Providence in a marked cruiser where James "Hammer Beanz" Owens, a celebrated Harriet Street gang member, had just been murdered a few hours earlier. The officers' attention was initially drawn to the Elantra because of its heavily tinted windows and the suspicious manner of operation. It came to a sudden stop at an intersection which had no stop sign, a maneuver which, in Malloy's experience, was often employed by a driver hoping to avoid a law enforcement officer's attention. Malloy and McParlin followed the Elantra, which made multiple sharp turns, at least one without a turn signal. Malloy testified that in his experience, such quick turns are frequently made so that a trailing police officer wouldn't see an occupant discard contraband or other items from the car. As they followed the Elantra, the driver also circled a rotary the wrong way.

The officers momentarily lost sight of the Elantra on Niagara Street, just before the Mitchell Street intersection, but Malloy testified that no other car inserted itself between the patrol

car and the Elantra and that they quickly picked it up again at Mitchell Street. After activating the cruiser's lights and siren, the Elantra was stopped at about 12:47 a.m.

The officers recognized the three men in the car and knew that they were, as was Hammer Beanz, affiliated with the Harriet Street gang. Malloy also noted that on that cold and rainy December night, Pinkerton's window, oddly, was fully lowered. No other windows in the car were open. Malloy testified that Pinkerton was nervous, breathing heavily, and wouldn't make eye contact. They ordered all of the occupants out of the vehicle and backup officers quickly arrived. Pat-downs were negative, and the men were directed to stand by the cruiser in the presence of the backup officers. None of the men was handcuffed.

Meanwhile, Malloy and McParlin backtracked a short distance on Niagara Street, and, aided by flashlights and streetlights, within only about five minutes, they found a small satchel containing a loaded gun. Malloy testified that although it had been raining heavily all night and that it was still misty with light rain, the satchel was not very wet at all, permitting the clear inference that it had been dropped there very recently. He also testified that the satchel was on the Niagara Street sidewalk closest to the Elantra's driver's side, i.e., the side of the car where Pinkerton was seated with his window fully lowered. Malloy immediately radioed the backup officers to arrest all three men.

Thus, what may have simply begun as a motor vehicle stop for, say, tinted windows or lack of a turn signal, escalated to articulable and reasonable suspicion within minutes and then quickly ripened into probable cause to arrest the men when Malloy found the gun.

All three were transported to the police station, where Detective Theodore Michael, who, over several months, had developed a personal rapport with Pinkerton, interviewed him. Detective Kevin Costa was also present. Pinkerton agrees that he was properly advised of his Miranda rights,

understood them, and voluntarily spoke with the detectives. Their conversation, principally led by Detective Michael and all of which was video/audio recorded, largely focused on the Hammer Beanz homicide, but it also included some discussion of the gun found by Malloy. Pinkerton denied any knowledge of it and signed a consent form allowing the police to take the buccal swab which ultimately led to finding his DNA on the weapon and its magazine.

The Court rejects any notion that Pinkerton's detention was impermissibly long. The facts outlined earlier unquestionably describe, in this Court's view, a justifiable reason to have detained Pinkerton and the other Elantra occupants for what had clearly become much more suspicious than a roadway infraction. Indeed, discovery of the weapon occurred within minutes of the stop.

The brief detention of a motorist is permissible if the police can demonstrate reasonable suspicion, i.e. specific and articulable facts which, when taken together with rational inferences from those facts, reasonably warrant the detainment. *State v. Bjerke*, 697 A.2d 1069, 1071 (R.I. 1997). "The reasonable suspicion standard is not a particularly high threshold to reach," *United States v. Bontemps*, 977 F.3d 909, 915 (9th Cir. 2020) (internal quotation omitted), and a determination that reasonable suspicion exists need not rule out the possibility of innocent conduct. *United States v. Arvizu*, 534 U.S. 266, 277 (2002) (citing *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000)).

Factors, including a series of noncriminal acts which alone do not create a reasonable suspicion, may, when combined, rise to the level of reasonable suspicion when observed as a whole by a trained and experienced law enforcement officer. *State v. Abdullah*, 730 A.2d 1074, 1077 (R.I. 1999). Some of the factors which may contribute to a finding of reasonable suspicion, and which are present here, include the location in which the conduct occurred, the time at which the incident occurred, suspicious conduct, the demeanor and appearance of the individual, and the

personal knowledge and experience of the police officer. *Id.*; *see State v. Foster*, 842 A.2d 1047, 1051 (R.I. 2004).

When evaluating the totality of the circumstances through the experienced eyes of a reasonably prudent and veteran police officer, such as Malloy, this Court has no hesitancy at all finding that reasonable, articulable suspicion justified detaining Pinkerton and his associates to examine the situation further. No undue delay was engaged in by the officers. Indeed, in this Court's view, Malloy and McParlin acted with precision and dispatch, and in no way did they transgress Pinkerton's rights, nor run afoul of the admonitions in *State v. Casas*, 900 A.2d 1120, 1133 (R.I. 2006). In short, they did not commence or embark upon an evidentiary safari in the mere "hope that something might turn up." *Id.* They knew exactly why and where to look and within minutes found the gun. The stop was lawful, and "[b]ased on the totality of the circumstances [these officers] diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *Id.*

* * *

The only remaining question is whether Pinkerton voluntarily consented to the buccal swab.

A search by the police conducted after receiving valid consent is constitutionally permitted, so long as the state demonstrates by a preponderance of evidence that the consent was freely and voluntarily given. *Casas*, 900 A.2d at 1134. In *State v. Gonzalez*, 136 A.3d 1131, 1147 (R.I. 2016), the Court reviewed the principles attendant to the law of consent:

> "Consent is [o]ne of the specifically established exceptions to the requirement[] of . . . a warrant . . . . However, [w]hen seeking to justify a search or seizure on consent grounds, the state must prove that the consent was freely and voluntarily given. In the Fourth Amendment context, the state must prove by a fair preponderance of the

> evidence that there was free and voluntary consent. Moreover, we have followed established United States Supreme Court precedent in stating that the question of whether consent was in fact voluntary or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances. Consequently, [n]o single criterion is the determinative factor in deciding whether or not there was free and voluntary consent." (Citations and internal quotations omitted.)

As was pointed out during the hearing, Pinkerton is not a newcomer to the criminal justice system. In fact, he was cooperating with the Rhode Island State Police in a criminal investigation. More importantly, he also executed a consent-to-search form which provided:

"Consent To Search For Buccal Swab

> "I, Isaiah Pinkerton, having been informed of my right not to have a search made of my persons [*sic*] without a search warrant and of my right to refuse to consent to such a search, do authorize: Detectives of the Providence Police Department to conduct a buccal swab. I give my consent to this search knowing that if any incriminating evidence is found it can be used against me in Court.
>
> "I give this written permission to the Detectives named above voluntarily and without threats or promises of any kind."

Pinkerton focuses on the preface of the consent form which recites that he had been told he could refuse to voluntarily provide a swab and that he could insist that one not be taken without a search warrant. Detective Michael acknowledged that he had not orally offered Pinkerton a choice to opt out. It is clear, however, that the introductory language, by itself, makes it abundantly clear to any casual reader that the swabbing could be conditioned upon a warrant and that declining to consent was an obvious option.

Pinkerton, however, says that he was "tricked" into giving his consent to the buccal swab. The facts do not support chicanery. Although Pinkerton enjoyed a very comfortable relationship with Detective Michael, Pinkerton did not blindly, hastily, or cavalierly sign the consent form. It is clear from the video that Pinkerton read it, considered it, and insisted on knowing what it was for. He had already told Detective Michael that he had nothing to do with the gun, and Detective

Michael explained to him that the buccal swab was for DNA testing and (if Pinkerton was telling him the truth) that it could confirm that he had no connection to the gun. Pinkerton then signed the consent form. *See United States v. Kiendra*, 663 F.2d 349, 352 (1st Cir. 1981) (noting that "[a]n explicit written waiver is strong evidence of a knowing and intelligent act.)[1]

Pinkerton had told Detective Michael that he had been drinking earlier in the evening, but it is clear from watching the video and listening to Pinkerton's conversation with Detective Michael that he did not at all appear to be under the influence of alcohol or drugs. The hallmarks of intoxicants, e.g., slurred speech, incoherent or illogical thought process, or inapposite responses to questions, are absent from Pinkerton's dialogue. Furthermore, Detective Michael, who knew Pinkerton well, and even accompanied him to grand jury proceedings to testify in a Rhode Island State Police investigation, testified unequivocally that Pinkerton was not under the influence when he signed the consent form.

There is no evidence that Detective Michael or Detective Costa overbore Pinkerton's will by threats or inappropriate promises to obtain his consent. Detective Michael told Pinkerton that he was not under arrest and expected that he would be released after their conversation, and he was. The fact that Pinkerton was in custody does not, of course, automatically make his decision involuntary. *See State v. Innis*, 433 A.2d 646, 651 (1981). Handcuffing an individual to a wall bar at the police station, a standard procedure for officers' safety, does not negate voluntariness. The use of restraints during an interview is "no more confining or inhumane than those that are placed

[1] *See State v. Bruskie*, 536 A.2d 522 (R.I. 1988) (holding that the defendant, who had been in a car accident and was arrested for drunk driving and had sustained significant injuries, including a concussion, nonetheless voluntarily signed a consent for a blood test even though he claimed no memory of having given such consent); *accord, State v. St. Jean*, 554 A.2d 206, 211 (R.I. 1989) (follows *Bruskie's* holding, also noting that, as in the instant case, "[t]he record is devoid of any evidence that St. Jean ever expressed a desire to refuse to take the breath test").

on prisoners from the ACI . . . who appear before this Court *pro se*." *State v. Robinson*, 989 A.2d 965, 976 (R.I. 2010) (internal quotation omitted); *State v. Barros*, 24 A.3d 1158, 1181 (R.I. 2011). It is clear from the video that at no time was Pinkerton uncomfortable, irrespective of the wall handcuff (which the video demonstrates allowed Pinkerton extended arm flexibility).

Withal, it is the view here, under the totality of the circumstances, that Pinkerton thought about signing the form, asked clarifying and pointed questions about it, and then voluntarily signed it with full awareness of its import without any overreaching by the police. The Court rejects, as baseless, Pinkerton's imprecation that he was somehow tricked or cajoled into giving consent to the buccal swab.

II. The Search Warrants for Cellphone and Facebook Accounts

Pinkerton challenges the search warrants issued by the District Court judge, claiming that there is insufficient probable cause in Detective Michael's affidavits to link him to the T-Mobile and Facebook accounts which are the subject of the two warrants.

Pinkerton does not challenge the affidavit submitted in support of his arrest warrant. Instead, he simply says that the issuing judge deserved more than Detective Michael's statement, under oath, that the investigation had also disclosed that Pinkerton utilized the subject T-Mobile number and the Facebook account. Absent more information, he asserts that Detective Michael essentially misled the judge to issue the warrants.

A. The Affiant

Detective Michael authored both of the affidavits which were submitted in support of the search warrants. His well-credentialed professional experience is summarized at the outset of those affidavits:

> "I, Detective Theodore J. Michael, do say under oath that I am a sworn member of the Providence Police Department and have been continuously employed in that

> capacity for over nineteen years (19) years. I am currently assigned to the Investigative Division/Major Crimes Bureau of the Providence Police Department. My duties include investigating all violations of the General Laws of the State of Rhode Island. Your affiant is also a Task Force Officer with the FBI Safe Streets Task Force, a Special Deputy Marshal with the United States Secret Service New England Electronic Crimes Task Force, and a Field Investigator with the Rhode Island Attorney General's Office. I also have specific training and experience in the investigation of cellular/mobile forensics and cellular triangulations."

Pinkerton does not dispute Detective Michael's investigative expertise.

B. Probable Cause

Courts follow certain guidelines to work their way through the probable cause matrix. First is the advisement that the standard of proof must correspond to what must be proved, which "means less than evidence which would justify . . . conviction[.]" *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949). Thus, the quantum of proof to establish probable cause "is significantly different from the degree needed to establish guilt," requiring "only the probability, and not a prima facie showing, of criminal activity." *State v. Pratt*, 641 A.2d 732, 736 (R.I. 1994) (internal quotation omitted); *State v. Spaziano*, 685 A.2d 1068, 1069 (R.I. 1996) ("Probability of criminal activity is the benchmark."). Applying a "totality-of-the-circumstances test," the court makes a "practical, commonsense decision whether, given all the circumstances set forth in the affidavit" there is a fair probability that there exists evidence of criminal activity. *Pratt*, 641 A.2d at 736 (internal quotation omitted).

It is said that the existence of probable cause must be found within the "four corners" of the affidavit, *State v. Joseph*, 114 R.I. 596, 603, 337 A.2d 523, 527 (1975), which includes the totality of the circumstances within that framework. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *State v. King*, 693 A.2d 658, 661 (R.I. 1997); *Pratt*, 641 A.2d at 736. Accordingly, examination of the affidavit is "not subject to rigorous and hypertechnical scrutiny," because the court may draw reasonable inferences from it and interpret it "in a realistic fashion that is consistent with common

sense[.]" *State v. Byrne*, 972 A.2d 633, 638 (R.I. 2009). "In *Verrecchia*, 880 A.2d at 94, we declared in the clearest of terms that 'the approach to the probable cause question should be pragmatic and flexible.'" *Id.* at 639. *See Gates,* 462 U.S. at 235-39 (directing courts to apply a practical approach for determining whether an affidavit supplies sufficient probable cause).

Our Supreme Court has renewed Justice Rehnquist's observation that "'probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.'" *State v. Flores*, 996 A.2d 156, 161 (R.I. 2010) (quoting *Gates*, 462 U.S. at 230, 232).

Importantly, "'[t]here is, of course, a presumption of validity with respect to the affidavit supporting the search warrant.'" *State v. Verrecchia*, 880 A.2d 89, 99 (R.I. 2005) (quoting *Franks v. Delaware,* 438 U.S. 154, 171–72 (1978).

Rather than engaging in face-to-face encounters, Detective Michael points out that essentially the entire population of the United States, which is outnumbered by mobile devices, is generally disposed to communicate through cell phones and social media accounts. Accordingly, he advises that call detail records contain information particularly useful for law enforcement investigation, such as the date, location, time, type of event, duration, phone numbers initiating the usage event (called and calling), even if the caller has blocked identification, as well as text messages and other additional important information to assist investigators. He additionally notes that investigations are furthered through all manner of written communications, photographs, and other means of correspondence via mobile devices and social media.

In his affidavits Detective Michael states, "I have not included each and every fact known to me concerning this investigation, and have only set forth the facts that I believe are necessary to establish the foundation for the search warrant." He writes, however, that the "statements in his

affidavit are based in part on the information provided to me by the members of the Providence Police Patrol Department, the Providence Police Department Investigative Bureau, as well as my own investigation and observations." (Concluding paragraph of each of the search warrants.)

With that background, coupled with connecting Pinkerton to the homicide, Detective Michael alerts the issuing judge that investigators had also discovered that Pinkerton had utilized the subject T-Mobile phone number and Facebook account. Significantly, Detective Michael states that when he interviewed Pinkerton on December 12, 2021, immediately after he had been brought to the police station, Pinkerton had identified only two mobile numbers he had been using, (603) 400-4440 and (401) 261-4153. He did not tell Detective Michael about the T-Mobile number which the investigators later uncovered and which "was NOT known by the Providence Police initially." *See* paragraphs 16 and 20 (as designated by the defense); upper caps are the affiant's.

Pinkerton's assertion that no nexus whatsoever was included in Detective Michael's affidavits is much too sanguine, as his complaint fails to account for scores of undisclosed and clandestine cell phone and social media correspondence which Detective Michael, in his experience, attests probably relates to criminal activity, given the entirety of the circumstances in this case. *See United States v. Feliz*, 182 F.3d 82, 88 (1st Cir. 1999) ("The nexus between the objects to be seized and the [place or person] searched need not, and often will not, rest on direct observation, but rather 'can be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide [evidence of a crime]' *United States v. Charest,* 602 F.2d 1015, 1017 (1st Cir. 1979).") As stated in *United States v. Bain*, 874 F.3d 1, 23 (1st Cir. 2017):

> "'When it comes to nexus, common sense says that a connection with the search site can be deduced 'from the type of crime, the nature of the items sought,' plus 'normal inferences as to where a criminal would hide' evidence of his crime.' *United States v. Rivera*, 825 F.3d 59, 63 (1st Cir. 2016) (quoting *United*

> *States v. Feliz*, 182 F.3d 82, 88 (1st Cir. 1999)). This court has, 'with a regularity bordering on the echolalic, endorsed the concept that a law enforcement officer's training and experience may yield insights that support a probable cause determination.'" (quoting *United States v. Floyd*, 740 F.3d 22, 35 (1st Cir. 2014).

Detective Michael's affidavits reflect a careful analysis by a savvy, extremely knowledgeable law enforcement officer who has spent many years examining, dissecting, and investigating mobile, digital, and electronic devices. He avows that, based upon his experience, there is probably evidence of criminal activity to be gleaned from the T-Mobile and Facebook accounts which investigation had uncovered, and courts have consistently accorded significant weight to the opinions, inferences, and experience of affiants like Detective Michael in the probable cause formula. Thus, the United States and the Rhode Island Supreme Courts have directed us to view the totality of the facts and circumstances in affidavits "cumulatively through the eyes of a reasonable, cautious police officer guided by his or her experience and training[.]" *State v. Brennan*, 526 A.2d 483, 485 (R.I. 1987).

"'[T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" *Flores*, 996 A.2d at 162 (quoting *United States v. Cortez,* 449 U.S. 411, 418 (1981)); *Byrne*, 972 A.2d at 639 (noting that a reviewing court "'should take care...to give due weight to inferences drawn from those facts'" by judges and law enforcement officers) (quoting *Ornelas v. United States,* 517 U.S. 690, 699 (1996)). As stated by Mr. Justice Rehnquist in *Gates*, 462 U.S. at 231-32, applying the particularized suspicion standard from *Cortez* to the probable cause analysis:

> "The [probable cause] process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same - and so are law enforcement officers."

And so are the judges who are tasked with carrying out that process.

Withal, upon completion of the analysis, the District Court judge determined from the totality of the facts and circumstances that Detective Michael's affidavits supported a finding of probable cause to issue the warrants, and the issuing judge's determination is entitled to great deference. *State v. Tejeda*, 171 A.3d 983, 996 (R.I. 2017); *Byrne*, 972 A.2d at 637. This Court finds no persuasive basis to override that determination.

C. The "Good Faith" Exception

Without in any way diminishing its confidence in the validity of the instant search warrants, this Court renews the sentiments expressed by the United States and the Rhode Island Supreme Courts that close cases and marginal circumstances should be resolved in favor of upholding the issuing magistrate's conclusions. In *State v. Storey*, 8 A.3d 454, 461 and n.8 (R.I. 2010) our Court wrote: "[W]e firmly acknowledge the postulate that 'the resolution of doubtful or marginal [probable-cause] cases . . . [is] largely determined by the preference to be accorded to warrants.'" (citing *Byrne*, 972 A.2d at 639 and quoting *United States v. Ventresca*, 380 U.S. 102, 109 (1965)). In its footnote 8, the Court also noted that "the police are more likely to use the warrant process if the scrutiny applied to a magistrate's probable-cause determination to issue a warrant is less than that for warrantless searches." *Id.* (quoting *Gates*, 462 U.S. at 236).

In *Storey*, the Supreme Court found the warrant valid and had no need to consider application of the "Good Faith" exception articulated in *United States v. Leon*, 468 U.S. 897 (1984) in order to resolve a claim of probable cause deficiency. Without in any way suggesting that Detective Michael's attestations are unconvincing, in the event that a reviewing court questions the adequacy of probable cause in Detective Michael's affidavits, this Court believes that *Leon* is a sensible and judicially approved safety net to avoid the severe step of excluding relevant evidence

when, as here, a law enforcement officer makes a good faith effort to abide by the Supreme Court's directive to seek a warrant from a detached, neutral judicial officer.

* * *

For all of the foregoing reasons, all of Pinkerton's suppression motions are denied.

Supreme Court

No. 2024-104-C.A.

State of Rhode Island :

v. :

Isaiah Pinkerton. :

O R D E R

The appellant's petition for reargument, as prayed, is denied. "The purpose of reargument is to afford a petitioner an opportunity to point out matters presented in the briefs and relied upon in the original argument which he believes were overlooked or misapprehended by the appellate court in reviewing the case." *Tempest v. State*, 150 A.3d 179, 180 n.1 (R.I. 2016) (quoting *American Condominium Association, Inc. v. IDC, Inc.*, 870 A.2d 434, 436 (R.I. 2005)). The appellant has failed to identify any matters that were overlooked or misapprehended by this Court in its opinion.

This matter shall be closed.

Entered as an Order of this Court this ***11th*** day of ***June 2026.***

By Order,

/s/ *Meredith A. Benoit*
Clerk

State of Rhode Island and Providence Plantations Complaint to Search and Seize Property / or Person

TO Melissa DuBose Justice of the Supreme, Superior Court, or Judge of the District Court of the State of Rhode Island.

a) Detective Theodore Michael, Member of the Providence Police Department.

b) _____, a person authorized by law to bring complaints for violation of the law which it is my responsibility to enforce/a person who has a right to possession of the property stolen, embezzled, or obtained by false pretense or pretenses:

ON OATH COMPLAINS THAT:

(1) Certain property has been stolen or embezzled, or obtained by false pretenses, or pretenses, with intent to cheat or defraud within this state or elsewhere.

(2) Certain property has been kept, suffered to be kept, concealed, deposited, or possessed in violation of law, or for the purpose of violating the law;

(3) Certain property is designed or intended for use, or is or has been used in violation of law, or as a means of committing a violation of law;

(4) Certain property is evidence of the commission of a crime;

and prays that a warrant to search for and seize said property/person be issued and if the same be subject to forfeiture, that the property be forfeited.

Place or person to be searched: The mobile/cellular phone records for 401-771-7836, and 401-648-5211 with subscriber information (activation date/place/date of purchase), make/model of the mobile device, Electronic Serial Number (ESN), IMEI, MEID, IMSI that the carrier has captured as to being associated with the above listed mobile number to include, cellular phone information with all available toll records to include call detail records, and cell site sector information/historical GPS Data, Data Usage records, Historical call detail records from July 1, 2021 to December 1, 2021 with (TRU-CALL Timing Advanced System for July 31, 2021, and August 1, 2021 only) to include communications or other data created by the cell phone user and stored through the cellular phone company when data was used such as emails, social media accounts and other websites to include all digital media contents, e-mail contents, instant messages, MMS text messages, SMS text messages, any/all messages that would include photos, images, and/or video(digital media), voice messages, e-mail subscriber information, IP Locations, subscriber information and account data, contact information and data, (Latitude/Longitude),GPS DATA, historical phone information and data, all call detail records(incoming, outgoing, missed calls). Again, all Historical call detail records from July 1, 2021 to December 1, 2021 with TRU-Call Timing Advanced System for July 31, 2021 and August 1, 2021 only through the T-Mobile USA Account with a definition page. Please note Preservations were sent, via Tower Dump preservation on August 2, 2021

Property or articles to be searched for: T-Mobile USA Network 401-771-7836, and 401-648-5211

The name of the owner or keeper, thereof (if known) is: unknown subscriber of the T-Mobile USA Wireless account

1/14/22
Date

Judge/Justice

Complainant

Search Warrant

State Ex rel	Providence Police Department Detective Theodore Michael	County: Providence
vs. Respondent John Doe		TO: An Officer authorized by law to execute the within warrant, _____

Complaint and affidavit having been made to me under oath Detective Theodore Michael and as I am satisfied that there is probable cause for the belief therein set forth that grounds for issuing a search warrant exist, you are hereby commanded diligently to search the place or person herein described for the property specified and to bring such property or articles, and to summon the owner, or keeper thereof, if any be named in the complaint, if to be found by you, to appear before the District Court in the district where such property shall have been seized, namely the 6th Division of the District Court of Rhode Island.

Place or person to be searched: The mobile/cellular phone records for 401-771-7836, and 401-648-5211 with subscriber information (activation date/place/date of purchase), make/model of the mobile device, Electronic Serial Number (ESN), IMEI, MEID, IMSI that the carrier has captured as to being associated with the above listed mobile number to include, cellular phone information with all available toll records to include call detail records, and cell site sector information/historical GPS Data, Data Usage records, Historical call detail records from July 1, 2021 to December 1, 2021 with (TRU-CALL Timing Advanced System for July 31, 2021, and August 1, 2021 only) to include communications or other data created by the cell phone user and stored through the cellular phone company when data was used such as emails, social media accounts and other websites to include all digital media contents, e-mail contents, instant messages, MMS text messages, SMS text messages, any/all messages that would include photos, images, and/or video(digital media), voice messages, e-mail subscriber information, IP Locations, subscriber information and account data, contact information and data, (Latitude/Longitude),GPS DATA, historical phone information and data, all call detail records(incoming, outgoing, missed calls). Again, all Historical call detail records from July 1, 2021 to December 1, 2021 with TRU-Call Timing Advanced System for July 31, 2021 and August 1, 2021 only through the T-Mobile USA Account with a definition page. Please note Preservations were sent, via Tower Dump preservation on August 2, 2021
Property or articles to be searched for: T-Mobile USA Network 401-771-7836, and 401-648-5211

The name of the owner or keeper, thereof (if known) is: unknown subscriber of the T-Mobile USA Wireless account

Said warrant shall be served in the daytime within seven (7) days from the issuance hereof, AND IF NOT SERVED WITHIN SAID TIME TO BE RETURNED FORTHWITH TO A JUDGE SITTING IN THE ABOVE NAMED COURT.
Property seized by you hereunder shall be safely kept by you under the direction of the Court so long as may be necessary for the purpose of being used as evidence in any case. As soon as may be thereafter, if the same be subject to forfeiture, such further proceedings shall be had thereon for forfeiture as is prescribed by law.
Hereof fail not and MAKE TRUE RETURN PROMPTLY OF THIS WARRANT TO A JUDGE THERE SITTING with your doings thereon, accompanied by a written inventory of any property taken to a judge sitting in the above named court.

Issued at Providence in the county of Providence this 14 day of JAN, A.D. 2022.

Judge of the District Court

ACKNOWLEDGMENT OF RETURN

Warrant received on the ____ day of _____, 2022, from _____ at Providence

NO: PI-22-3059DG
DATE 5-30-23
EXHIBIT D
M.K. RACHIELE, DEPUTY CLERK
full

PARAGRAPH NUMBERING ADDED BY DEFENSE

AFFIDAVIT

I, Detective Theodore J. Michael, do say under oath that I am a sworn member of the Providence Police Department and have been continuosly employed in that capacity for over nineteen years (19) years. I am currently assigned to the Investigative Division/Major Crimes
1 **Bureau of the Providence Police Department. My duties include investigating all violations of the General Laws of the State of Rhode Island. Your affiant is also a Task Force Officer with the FBI Safe Streets Task Force, a Special Deputy Marshal with the United States Secret Service New England Electronic Crimes Task Force,and a Field Investigator with the Rhode Island Attorney General's Office. I also have specific training and experience in the investigation of cellular/mobile forensics and cellular triangulations.**

On August 1, 2021 at 3:36 am, members of the Providence Police Patrol Bureau/Detective Bureau were dispatched to the area of 59 Roger Williams Green (Olney Street) for a report of a shooting. As
2 patrol/detectives arrived on scene, a female, who was later identified as Miya Brophy-Baerman DOB 7/23/1993, was transported to RI Hospital with a gunshot wound. At RI Hospital, Miya Brophy-Bearman was pronounced deceased at the hospital from her injuries.

A witness was transported to the Detective Bureau where the witness was interviewed and released. A vehicle in RI Registration SU 286, a 2016 White Honda VIN: 1HGCT1B8XGA009548 was struck by
3 gunfire in the rear of the vehicle. This vehicle was towed by Precision Tow Company where it was processed by BCI Detectives.

As Detectives were conducting this homicide investigation, Detectives reviewed multiple video surveillance cameras in the area. As this affiant and members of the Providence Police Detective Bureau anaylized the surveillance cameras from residential and commercial locations it was learned
4 that a dark colored sedan operates inbound on Onley Street at 3:34 am, where an unknown subject fires (4) rounds striking Bearman once in the right side from this dark colored sedan with distinct fog lights. The shell casings located where seized by the Providence Police BCI Division, and were 9mm spent shell casings.

As Detectives backtracked the video surveillance cameras, the suspect dark colored sedan is observed on video surveillance at 3:21 am in the area of Branch/North Main Street. The vehicle is then observed turning onto Duncan Street. The vehicle is then observed at 3:25 am operating inbound on Hope Street, where the suspect vehicle takes a right turn onto Onley Street. This suspect vehicle then operates past Sheron Robinson, and Miya Brophy-Bearman who were talking outside of her vehicle that was parked in front of 45 Onley Street.

5

The suspect vehicle is then observed operting on North Main Street, where the suspect vehicle makes a loop, around a multi-block area, where it circles back to the area where Robinson and Bearman are talking outside of 45 Onley Street. As the suspect is conducting its second loop, the suspect vehicle is observed at 3:32 am operating on North Main Street making a right turn onto Doyle Avenue. The suspect vehicle is then observed on video at the corner of Doyle/Hope Street less than a minute later. At 3:34 am, the suspect vehicle is observed taking a right turn from Hope Street to Onley Street. It needs to be noted that as the suspect vehicle is operating past video at the corner of Hope/Onley, the rear drives side window is observed to be down.

6

Also at 3:34 am the suspect dark colored vehicle is observed operating on video at 45 Onley Street, where (4) rounds are shot at Robinson and Bearman. Bearman was struck one time in the right side of her torso, and another round struck the rear trunk area of her white Honda. Video shows Robinson, and Bearman cross Onley Street trying to run for safety, where Bearman is obseved collapsing in front of 95 Roger Williams Green Apartments.

7

Members of the Providence Police Patrol Bureau along with Providence Fire arrived on scene, where Bearman was transported to RI Hospital. At RI Hospital Miya Brophy-Bearman succumed to her injuries from being shot.

8

It needs to be noted that neither Bearman or Robinson are affilated with any street faction, and the Providence Police believe that both targets were innocent bystanders, that were shot for no apparent reason.

9

At this time the Providence Police can only state that the suspect vehicle is a dark colored sedan with fog lights. The suspect vehicle was operating at a high rate of speed, and through the video

10

sequence, this affiant and members of the Providence Police Detective Bureau, were able to track the vehicle due to the time of the morning with little vehicle traffic. It also needs to be noted that at this
11 time the Providence Police are attemtping to identify all parties that were involved in this shooting/homicide of an innocent twenty four year old female.

At the time this affiant had search warrant signed for TOWER DUMPS of all the Major Carriers in
12 AT&T, VERIZON, Sprint, and T-Mobile, along with Google GEO-FENCE warrants.

On December 12, 2021 members of the Patrol Bureau conducted a traffic stop in the area of Mitchell/Niagra Avenue in the City of Providence. As the vehicle was attemtping to elude patrol units, it was later learned from video surveillance that the subjects threw out a satchel that was located on
13 the sidewalk on Niagra Avenue near the corner of Mitchell Street. Patrol units at the time did backtrack the route, and observed the satchel. Inside the satchel was a 9mm Ghost Gun pistol, that was seized by BCI Detectives. This weapon was processed and brought down to the RI State Crime Lab for a forensic analysis. An analysis was conducted by Criminalist II Dennis Lyons, where it was determined that the 9mm Ghost Gun, and the 9mm shell casings located at the Onley Street Homicide were those of the same Class characteristics, individual characteristics, and with the test fire. The conclusion was that this 9mm Ghost Gun was that same weapon that was used in the shooting death of Miya Brophy-Baerman.

Please note that this affiant retrieved video surveillance from the area of Niagra/Mitchell Street, where the video does show the vehicle in question take a left turn from Laura St to Niagra St. As the vehicle is in the process of taking the immediate left turn onto Mitchell Street, the subjects in the vehicle discard the satchel that is located minutes later by Patrol. Please note as this affiant reviewed the
14 video seconds before the suspect vehicle is operating on Niagra St, this affiant can obseve through video that there is NO satchel on the ground. Seconds after the vehicle discards the satchel and turns onto Mitchell Street, this affiant obseves a object/satchel on the ground where the patrol units located the satchel. Again, there was NO other foot/vehicle traffic, and this affiant observed NO other subjects in the area.

The three subjects in the vehicle were identified as a Isiah Pinkerton, Justin Laurie, and Shawn Mann. All three were detained, transported to the Providence Police, where this affiant and Detective Costa
15 interveiwed them. This affiant was able to obtain mobile numbers for all three subjects, where they

were released pending the investigation. Again, video surveillance was NOT obtained that night, and it was not learned that these subjects were responsible for discarding the gun at the time, due to the
16 fact that the patrol units did lose sight of the vehicle for a few seconds as the gun was discarded, as the vehicle was eluding the patrol units. Pinkerton gave this affiant two mobile numbers in 603-400-4440, and 401-261-4153.

This affiant then compared the mobile numbers that were given to this affiant by the three subjects to the Tower Dumps that this affiant conducted to see if any of the subjects were in the area of the homicide on August 1, 2021, since the weapon is the homicide weapon, this affiant checked all the mobile numbers to the Tower dumps. The number provided by Shawn Mann in 401-654-3877 appeared in the Tower Dump Data for T-Mobile.. This was a mobile call at 3:34 am hitting off the T-Mobile USA Tower with a southeast facing direction toward Onley Street in the immediate area of the Homicide. Due to the fact that not only is the 9mm Ghost Gun the weapon that killed Miya Brophy-
17 Baerman, but the Tower Dump also showed that Shawn Mann's mobile device with the phone number that he provided to this affiant in 401-654-3877 is in the immediate area, this affiant will be requesting the Historical Call Detail Records for his mobile number. This affiant was also able to identify a social media account/SNAPCHAT account that is synced to the mobile number 401-654-3877 for Shawn Mann with the Snapchat identifer jay_6968. Search warrants were executed for the CSLI for Mann's mobile number by District Court Associate Justice Colleen Hastings.

On January 10, 202 the RIDOH contacted the Providence Police Detective Bureau and concluded that the DNA profile obtained from the swabs from the firearm grip, slide, trigger, magazine, the
18 satchel, and the bandana are mixtures that are consistant with the reference profile from Isaiah Pinkerton DOB 2/7/1997. On 1/11/2022 this affiant obtained a arrest warrant for Isaiah Pinkerton for (1) Count of Possession of a Firearm/Ghost Gun in violation of RIGL's.

19 On January 13, 2022 Isaiah Pinkerton was arrested for the warrant at the Kent County Courthouse.

20 Through the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initally.

HIGHLIGHTING ADDED BY DEFENSE

On December 20, 2021 a Adrianna Grassley reported to the members of RI Hospital that she was assaulted by her ex-boyfriend, a Shawn Mann DOB 3/3/1991. Grassley stated that Mann punched
21 and hit her over the head with a bottle in the area of the Autozone on Elmwood Avenue. Providence Police Patrol and Detectives took a brief statement from Grassley at RI Hospital, where it was determined that there was evidence of a assault with the visible injuries to the facial area of Grassley.

A description was placed to all departments, where Cranston Police located Shawn Mann at an address listed for a ex-girlfriend. Here, Mann was placed into custody without incident, and transported to Cranston Police Department. Also, on his person were (2) I-Phones, one White I-
22 Phone Series, one Black I-Phone Series, and a Apple I-Phone Watch. All were seized, and turned over to the Providence Police, where they were turned over to this affiant, and placed into the Providence Police Detective Digital Forensic Unit pending a search warrant that was executed by District Court Justice Colleen Hastings.

During the examination of the White I-Phone of Shawn Mann, this affiant observed that Mann utlizes the following google accounts: jcruz8713@gmail.com, ManMann91.MM@gmail.com,
23 manmann91.mm@gmail.com, and ThickBunny24@gmail.com, and the Instagram account https://www.instagram.com/man mann/, and for the ex-girlfriend of Adrianna Grassley is https://www.facebook.com/xOMISZAYED.

For Isaiah Pinkerton, this affiant learned that Isaiah Pinkerton uses the facebook account
24 https://www.facebook.com/IsaiahOrCapo, and the SNAPCHAT account cap.capleaon.

Through this affiants training and experience in mobile forensics, mobile devices are used for not only voice/text/chat communication between multiple parties, but also for location data that can assist the Providence Police in locating a mobile devices in particular area, and a particular time. Calls/texts are made that will transmit a signal to a cellular tower that will show an area that the mobile device
25 was in at a certain time frame. Mobile devices are also used to store images, and videos, along with internet/URL searches, along with mobile information on the subscriber/owner of the device. Contacts and transmissions are made through Voice/Chats/E-Mails from different parties, and in some situations, location data can be retrieved that can assist the Providence Police in the investigation at hand.

Based upon your affiant's training and experience, your affiant has learned that cellular phones and other cellular devices communicate wirelessly across a network of cellular infrastructure, including cell sites (towers) that route and connect individual communications. Cell sites (towers) are strategically placed by cellular service providers, to provide a seamless operation so people can travel virtually anywhere and make or receive an uninterrupted call, send or receive text messages, or initiate a data session via their cellular phone. Usually, cell sites will be mounted high on a large pole, building, or other structure which provides line of sight with the population below. Cell sites are typically divided into sectors, which are made up of antennas connected to cellular radio transceivers. Each sector is mounted on the cell site and faces a specific direction to provide maximum cellular
26 coverage for the people in the area. When initiating or receiving a voice call, text message, or a data session (usage event) for a cellular device, the device broadcasts certain signals to the cellular site that is routing its communication. These signals include a cellular device's unique identifiers, as well as details about the usage event. Cellular phone carriers collect and store these usage event details (transaction records) associated with cellular phone numbers during the normal course of business. The usage event records, commonly referred to as call detail records, stored by their respective cell phone carrier contain the following information: date, time, type of event, duration, phone number initiating the usage event (called, calling), even if caller identification is blocked by the calling party, text message transaction data, the international mobile equipment identity (IMEI), the international mobile subscriber identity (IMSI), IP packet data session logs, and cell site location and sector information at the beginning and ending of each usage event. Interpretation and mapping of the historic records can assist in determining the general geo-location of a specific cellular device.

Your affiant knows through training and experience that individuals with portable electronic devices communicate information about their activities and location in numerous ways to include, but not limited to, voice communications such as direct conversations and voicemail, sharing photographs and written communications such as text messages. In addition, your affiant knows that users or
27 subscribers of portable electronic devices utilize the cellular network to exchange information over the internet. Such communication can occur without user input on the device (i.e. email, regular automatic updates from websites, application data exchanges, and account update searches). These communications are transmitted through cell towers in the vicinity where the cellphone making the communication was located.

Your affiant is aware that the United States Supreme Court has recognized that a "significant majority of American adults now own" smart phones and that cell phones "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." *Riley v. California*, 573 U.S. 373, 385 (2014). The *Riley* Court recognized that nearly three-quarters of smart phone users admit being within five feet of their phone most of the time and that "phones have become important tools in facilitating coordination and
28 communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals." *Riley* at 395, 401. In the *Carpenter* case, the Court recognized that there are 396 million cell phone service accounts in the U.S. for a population of 326 million people making it far more than probable for an individual to have a cell phone. *Carpenter v. U.S.*, 138 S.Ct. 2206, 2211 (2018). The Court also recognized that "carrying [a cell phone] is indispensable to participation in modern society," and that a phone's location "tracks nearly exactly the movements of its owner." *Carpenter*, at 2220, 2218.

Based on the facts and circumstances that this affiant and members of the Providence Police are investigating the shooting of Miya Brophy-Baerman a innocent bystander, where the 9mm Ghost Gun was located from a vehicle that Shawn Mann, Isiah Pinkerton, and Justin Laurie were in, where they
29 attempted to elude Police, this affiant respectfully requests the search warrant for the Historcial Call Detail Records for the mobile number of Isiah Pinkerton in 401-771-7836, and Adraianna Grassley in 401-648-5211 from July 1, 2021 to December 18, 2021 for any/all evidence of admission/evidence of the crime in this investigation.

Pursuant to RIGL 12-32-3 this affiant is also requesting an extention of 90 days to NOT notifiy the user of the Live Tracking through "Adverse Means". With that being said, due to the fact
30 **that this is an on-going investigation with the threat of Destruction or tampering with evidence, and the fact that notification can seriously jeopardize the investigation, the Providence Police are requesting an extention of 90 Days with NO SUCH NOTIFICATION.**

The statements contained in this affidavit are based in part on the information provided to me
31 **by the members of the Providence Police Patrol Bureau, the Providence Police Department**

Investigative Bureau, as well as my own investigation and observations. I have not included each and every fact known to me concerning this investigation, and have only set forth the facts that I believe are necessary to establish the foundation for the search warrant.

32

1/14/22
Date

Affiant

Sc., In this 14 day of , 2022 before me personally came Detective Theodore Michael and made oath to the truth of the foregoing.

Judge of the District Court
Justice of the Supreme/Superior Court

RETURN OF SERVICE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS Providence, SC.

At _____
_____A.D. 2014, pursuant to the within warrant I have made search during the –DAYTIME – as commanded and submit herewith a written inventory of property taken :

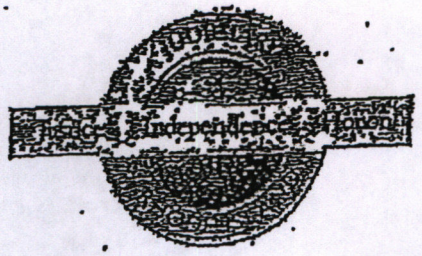
Cellular Records

I have also summoned _____ named in said Complaint, as commanded to appear before the 3rd Division of the District Court in Providence at 9:30 o'clock in the forenoon, on _____ A.D. 2014.

I have also given to _____ the person from whom – from whose premises said property was taken – a copy of the within warrant – I have left a copy of the within warrant at – on the place from which said property was taken – but I did not find the person from whose premises said property was taken but left a copy of said warrant – on the place from which the property was taken.

Tyrrell 322

Authorized Officer



State of Rhode Island and Providence Plantations
Rhode Island District Court

Receipt For Search/Forfeiture Warrant

Date Received: _____

Received From: Providence Police Department
Police Department

Detective Theodore Michael
Officer/Trooper Making Return

Person Charged: ( ) Person Not Charged: ( )

Complaint Number 2021-59240

Search Warrant RE: T-Mobile USA 401-771-7836 / 401-648-5211
Person / Property / Vehicle ID Number / Residence

Defendants Name _____

Date of Birth _____

For Office Use

Receiving Clerk _____

Clerk of Court _____

Date Logged In Search Warrant Book: _____

Date Filed with Complaint: _____

NO: PI-22-3059 BG
DATE 5.30.23
EXHIBIT E
M.K. RACHIELE, DEPUTY CLERK