STATE OF NEW JERSEY, vs. CONSTANCE DAYS-CHAPMAN, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CRIMINAL PART ATLANTIC COUNTY INDICTMENT NO. 24-09-02900

REPLY BRIEF OF DEFENDANT CONSTANCE DAYS-CHAPMAN IN SUPPORT OF HER MOTION TO QUASH THE MARCH 20, 2024 SEARCH WARRANTS AND TO SUPPRESS EVIDENCE

On the brief:

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PRELIMINARY STATEMENT

In response to a short, narrow motion to suppress that focused on the application of binding appellate precedent, the State submits an opposition three times as long, essentially asking this Court to indirectly overturn a published Appellate Division decision, State v. Missak. The State spends a considerable amount of time setting forth policy and legal reasons why it believes Missak was wrongly decided. But those are arguments for the appellate courts to resolve. The State never appealed the Missak decision to the Supreme Court. And only the Supreme Court can overturn it. Unless that happens, Missak remains binding on trial courts. While it is certainly the State's prerogative to lay the groundwork for a future Petition for Certification seeking reversal of Missak, in the interim, this Court is bound to apply Missak as precedential. Whether the Supreme Court will or should adopt Missak is not the question presented to this Court.

Pursuant to the Appellate Division's holding in Missak, the overly broad warrants here to search all data on Days-Chapman's electronic devices are unconstitutional. The State concedes that there was no limitation on these warrants, and the State wants access to all data on the electronic devices for all time periods—the precise thing that the Appellate Division held to be unconstitutional in Missak. For that reason, the search warrants must be quashed, and the electronic devices must be suppressed.

ARGUMENT

THIS COURT MUST QUASH THE SEARCH WARRANTS AND SUPPRESS THE EVIDENCE OBTAINED.

A. The search and seizure of Days-Chapman's complete electronic data is unconstitutional as it eviscerates Days-Chapman's right to privacy and deprives her of her constitutional right to be free from unreasonable searches and seizures.

The State concedes, as it must, that it seized and searched all electronic data from three of Days-Chapman's devices. This data was seized and searched without any limitation whatsoever. It was not limited by relevancy. It was not limited by time period. It was not even limited by privilege. The State simply took, searched, and retained all of Days-Chapman's private data.

"As a general rule, the greater the degree of intrusion into one's private matters by the government, the greater the level of protection that should apply." State v. Lunsford, 226 N.J. 129, 131 (2016). To that end, an individual's phone, including the private information stored on it, is given great protection under the state and federal constitutions. Facebook, Inc. v. State, 254 N.J. 329, 365 (2023).

Here, the intrusion is absolute: the State has the entirety of Days-Chapman's electronic data. This includes her private and intimate communications with her spouse, family, and friends. It also includes all pictures she's taken and stored on her phone. All emails were also included. Days-Chapman's "privacy interests at stake and the level of intrusion" here are "substantial" because "[a] person's unfiltered private conversations can be quite revealing." See id. Law enforcement monitoring and reviewing people's conversations "peer[s] 'into the most private sanctums of people's lives.'" State v. McQueen, 248 N.J. 26, 49 (quoting State v. Manning, 240 N.J. 308, 328 (2020)).

Beyond the intimate nature of private communications, the electronic data further intrudes on numerous other privacy interests that receive heightened constitutional protection from the

Supreme Court. The seized data includes, for example, Days-Chapman's internet browser and search history. See State v. Reid, 194 N.J. 386, 398 (2008) ("With a complete listing of IP addresses, one can track a person's Internet usage. The government can learn the names of stores at which a person shops, the political organizations a person finds interesting, a person's ... fantasies, her health concerns, and so on. Such information can reveal intimate details about one's personal affairs. . . ." (citations and quotations omitted)). It also includes her historical location GPS data. State v. Earls, 214 N.J. 564, 586 (2013) ("[D]etails about the location of a cell phone can provide an intimate picture of one's daily life.").

The warrants granted law enforcement limitless access to rummage through Days-Chapman's entire life. The constitutional protections afforded to Days-Chapman must be at their highest. Lunsford, 226 N.J. at 131.

This is precisely the scenario the Appellate Division addressed in Missak. The Appellate Division forbade law enforcement from executing such a broad and limitless search warrant into all information on an electronic device. There, the Appellate Division held as unconstitutional a warrant authorizing law enforcement to search through "the entirety of the phone's contents" without limitation. State v. Missak, 476 N.J. Super. 302, 318 (App. Div. 2023). In reaching its holding, the Appellate Division explained that "issues related to electronic data stored on personal devices" raise unique concerns regarding "application of the state and federal constitutional protections against unreasonable searches and seizures." Id.

The State argues that it "present[ed] probable cause to search all data, including all data before, during, [and] after December 2023 to January 2024." (Opp'n at 11.) But this is what Missak said is not allowed. Law enforcement in Missak sought to search data before and after the limited window in which the alleged crimes occurred. The Appellate Division rejected this

argument, noting the application was limited to specific crimes, which the application conceded could only have occurred during a limited window. Missak, 476 N.J. Super. at 320. Just as the application here, the warrant application in Missak was "missing" any facts establishing probable cause to search data for information "that either predates defendant's alleged commission of the crimes or does not constitute evidence of his use of the phone 'around the time' the crimes were committed." Id. at 321–22. Any holding otherwise would allow the State complete and unrestricted access to all of a suspect's electronic information any time the State has probable cause to believe a crime was committed. Such a position has been found to violate the Fourth Amendment. Commonwealth v. White, 59 N.E.3d 369, 377 (Mass. 2016).

The State's efforts to argue that there is probable cause to search all electronic data fail given the sheer breadth of the State's searches:

> Unlike in Missak, the Search Warrants in this case were sought to prove a negative: the defendant never reported [redacted] disclosures. And to prove that negative and to show the defendant never complied with her mandatory reporting obligations for child abuse, it was necessary to examine all call, message, and chat data on the Devices, including from December 2023 to January 2024. Indeed, only by reviewing all such data could Detective Choe prove the negative, and it bears emphasizing DCPP required disclosure by a telephone hotline.
>
> [Opp'n at 16.]

This one paragraph shows why the entirety of the warrants needs to be quashed and all evidence suppressed. The State stunningly concedes there is no evidence to recover on Days-Chapman's devices. Lest the State contend this is defense spin, the State makes the point explicit later in its opposition:

> Thus, there was a fair probability that all her devices contained evidence of official misconduct, that evidence being the absence of any communications by the defendant to either DCPP or law enforcement concerning [redacted] disclosures. In other words, there was a "fair probability" that the data on all the Devices would prove that the defendant used none of the Devices she

> possessed to report [redacted] disclosures, which was evidence that she committed Official Misconduct.
>
> [Id. at 35.]

The State's admission needs to be broken down and highlighted. The State concedes that there are no communications to seize. The State also acknowledges that its allegation of criminal conduct was that Days-Chapman failed to call a "telephone hotline." Searching through the entirety of the contents of Days-Chapman's devices will not reveal evidence of a phone call the State alleges never occurred. Additionally, how could there be probable cause to find a non-existent phone call in internet browser history or text messages? The State never specifies because there can be no probable cause for so broad a search. And that was the precise rationale that led the Appellate Division to quash the warrant in Missak.

Although Missak dealt with a motion to quash, the opinion is no less applicable to a motion to suppress. In reaching its conclusion, the Appellate Division relied on broad principles that cannot be limited to the motion-to-quash context. For example, the panel noted "the strong privacy interests associated with the contents[] of individuals' personal electronic devices, which often include an extraordinary amount of confidential and even privileged information." Missak, 476 N.J. Super. at 314 (alteration in original) (quoting Lipsky v. N.J. Ass'n of Health Plans, Inc., 474 N.J. Super. 447, 473 (App. Div. 2023)).

The same constitutional rights are at issue pre-search warrant execution as they are post-search warrant execution. The Appellate Division found that the unlimited search and seizure of Missak's electronic information would cause Missak to "suffer a hardship," leading to "a violation of his constitutional rights against unreasonable searches and seizures and his right to privacy in the personal communications and other information stored on the phone." Id. Those privacy and constitutional rights do not go away because a search was executed. It would be

illogical to limit Missak so that it only prevents "hardship[s]" and constitutional and privacy "violation[s]" from happening in the future, but then render Missak toothless to offer a remedy when those "hardship[s]" and "violation[s]" actually occurred. In fact, post-seizure, there is an even greater violation of rights that needs protection and judicial remedy.

The language in the search warrant in Missak mirrors the broad, limitless language the State used here. These general warrants are unconstitutional, just as the one in Missak was. No line can be drawn distinguishing between the two. If anything, Days-Chapman's privacy rights have been infringed to a greater degree than Missak's because Missak involved only one device, but here the State has seized and searched three separate electronic devices.

The State's attempts to induce this Court to ignore binding precedent should be set aside. The State remarks that "[s]ince Missak was decided in May 2023, it has never been cited in a published decision of the Appellate Division, nor has the Supreme Court ever passed on its validity." (Opp'n at 14 n.2.) Stated differently, since Missak was published by the Appellate Division in May 2023, the Appellate Division has not reversed course, and the State did not appeal or obtain Supreme Court reversal of Missak. In other words, Missak, as the State must acknowledge, remains good law, binding upon this Court.

"The exclusionary rule 'is a judicially created remedy designed to safeguard' the right of the people to be free from 'unreasonable searches and seizures.'" State v. Chisum, 236 N.J. 530, 547–48 (2019) (quoting State v. Williams, 192 N.J. 1, 14 (2007)). This is the quintessential unreasonable search and seizure. The State has seized and searched through the entirety of Days-Chapman's private electronic life with no limitation whatsoever. That unreasonable and limitless search and seizure requires suppression.

1. **Days-Chapman's constitutional rights and right to privacy have been further infringed because the State has now distributed the entire contents of her phone to other defendants—without any consideration of whether these materials are relevant or privileged.**

Not only was the initial and continued intrusion into Days-Chapman's electronic data unconstitutional, but the State has now compounded the problem by disseminating the full contents of Days-Chapman's phone to others.

The State has distributed Days-Chapman's full electronic information to other individuals in related criminal prosecutions. The State has now given Marty Small, and presumably LaQuetta Small, complete access to the entirety of Days-Chapman's phone without regard to the materials' relevancy or privilege and with complete disregard to Days-Chapman's constitutional and privacy rights. (Supplemental Certification of Lee Vartan, Esq., ¶ 4.) Likewise, Days-Chapman received unfiltered "cell phone dumps" (the State's term) of phones from Marty Small, LaQuetta Small, [redacted], and [redacted]. (Id., Ex C, #4, 23, 24, and 28.) So, the State's constitutional violations have impacted other individuals and are not limited to Days-Chapman.

All private conversations and messages that the State has seized from Days-Chapman have been given to others. Days-Chapman's internet browser and search history is in the possession of others. Same with intimate—and privileged—discussions with her husband.

The problems with the State's approach become evident when considered. How were calls Days-Chapman had with her children months and years before the alleged conduct constitutionally seized in her prosecution, let alone materially relevant to other prosecutions? The State has no explanation for this. The State believes it can seize an individual's entire electronic profile from her phone and then distribute that information to whomever the State sees fit without any consideration of constitutionality, privacy, relevancy, or privilege.

This gross and unprecedented intrusion into Days-Chapman's rights must be remedied. All contents derived from the State's unconstitutional search and seizure of Days-Chapman's electronic devices must be suppressed.

2. Missak adopted quashing the entire warrant as the remedy for such an overbroad search warrant into electronic information; but, nonetheless, the State waived its ability to seek severance of the electronic information when the State chose to distribute the entirety of the private data to other individuals.

Severance of an overly broad, general warrant is not the remedy. Notably, the Appellate Division in Missak did not approve a narrower search warrant limited to a narrower time period. Instead, the Appellate Division quashed the entire search warrant. The same remedy must apply here.

Moreover, the State's post-search activity precludes severance as a remedy. As discussed, the State has distributed the entirety of Days-Chapman's private electronic information to other individuals. That cannot be severed. The harm is complete. Not only did the State commit a violation when it seized and searched through Days-Chapman's private life, but the State committed further violations of Days-Chapman's rights when it disseminated the entire contents of her phone to other individuals. Even if severance was ever an acceptable remedy for a warrant that violated Missak, that time has now passed because of the post-search conduct by the State.

B. The warrant applications never identified a nexus between the probable cause that an alleged crime occurred and that each of the three electronic devices seized contained evidence of that crime.

The State makes a general—and unconstitutional—assumption that any electronic data will contain evidence of criminal conduct based solely on allegations that there is probable cause a crime was committed. This is a step too far. Law enforcement still must connect probable cause that a crime occurred to probable cause that evidence of that crime would be found on each of the three specific devices seized. Allowing the warrants to stand here would render New Jersey an

outlier compared to other states that mandate a warrant application for a phone to "establish a nexus between the device and the offense." See State v. Baldwin, 664 S.W.3d 122, 123 (Tex. Crim. App. 2022), cert. denied, 143 S. Ct. 777 (2023); accord Buckham v. State, 185 A.3d 1, 17 (Del. 2018); White, 59 N.E.3d at 377.

As Days-Chapman argued in her opening brief, (Br. at 8–11), the State sought to search two cell phones and an Apple Watch. But the warrant applications contained no allegation identifying on which of the two phones any potential evidence of criminal activity would be found. Nor did the applications contain any allegation that the Watch contained any potential evidence of criminal activity. This alone renders the searches unconstitutional general warrants that require suppression. Nowhere in its opposition brief does the State dispute these arguments. Instead, the State reiterates its belief merely that there is probable cause that a crime was committed. But the warrant applications had to demonstrate probable cause that evidence of that crime would be found on each of the three electronic devices the State sought to seize and search.

Ironically, the State notes that Missak was never cited in a published Appellate Division decision. But in one recent unpublished decision, the Appellate Division granted the defendant's leave to appeal the denial of a suppression motion and specifically held that there was no need to resolve the apparent Missak issue of overbreadth where the "warrant application does not set forth any factual basis to find a nexus between the alleged crimes and information that might be located on cell phones." State v. Halgas, No. A-2851-23, 2024 WL 4563241, at *8 (App. Div. Oct. 24, 2024). That is the situation here. The State has not identified a nexus between Days-Chapman's supposed crimes and each of the three electronic devices it seized. Although Halgas is not binding on this Court, the appellate panel decision there demonstrates that suppression is necessary separate and apart from the "scope of search issue addressed in Missak." See id.

C. At a minimum, a Franks hearing is necessary to ascertain the impact of the omission of material information from the warrant applications.

In her opening brief, Days-Chapman argued that the failure to include information in the warrant applications about the preexisting relationships between Days-Chapman and Mr. and Mrs. Small required a Franks hearing to determine whether this omission impacted the probable cause finding. (Br. at 11–12.) The State's opposition indicates a misunderstanding of Days-Chapman's argument on Franks.

The warrant applications misled the Court by indicating it was suspicious for Days-Chapman to have any communications with Mr. Small or Mrs. Small, [redacted] The warrant applications omitted key, relevant information that Days-Chapman was friends with the Smalls and worked for both. This information would have directly undermined the State's reliance on supposedly suspicious communications by offering a straightforward, non-criminal explanation for the communications between Days-Chapman and each of the Smalls.

The existence of communications was submitted by the State in the applications to support its allegations of probable cause. But none of these communications, as discussed in the opening brief, are nefarious or evidence of criminal conduct. That would have been evident on the face of the applications had the pre-existing relationships not been omitted. Thus, a Franks hearing is necessary to determine why the pre-existing relationships were omitted from the applications and to assess what impact that omission had on the finding of probable cause.

CONCLUSION

For the foregoing reasons, and those expressed in the opening brief, the three search warrants must be quashed, and the evidence obtained must be suppressed.

CHIESA SHAHINIAN & GIANTOMASI PC

By: *s/ Lee Vartan*

Dated: December 23, 2024

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STATE OF NEW JERSEY, vs. CONSTANCE DAYS-CHAPMAN, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CRIMINAL PART ATLANTIC COUNTY INDICTMENT NO. 24-09-02900 **SUPPLEMENTAL CERTIFICATION OF LEE VARTAN, ESQ. IN SUPPORT OF MOTION TO QUASH SEARCH WARRANTS AND TO SUPPRESS EVIDENCE**

I, LEE VARTAN, of full age, certify as follows:

1. I am an attorney-at-law of the State of New Jersey and a member of Chiesa Shahinian & Giantomasi PC. I am counsel for Defendant Constance Days-Chapman in the above-captioned matter. I have personal knowledge of the facts set forth herein.

2. I submit this certification in further support of the motion to quash the search warrants and to suppress evidence.

3. Attached hereto as **Exhibit C** is a true and correct copy of a discovery cover letter dated December 12, 2024, in which the State produced "cell phone dump[s]" containing what appears to be the entire electronic data from numerous individuals' cell phones. Exhibit C is redacted to omit personally identifiable information and names of minors.

4. Counsel for Mayor Marty Small, who is also facing prosecution by the State, has represented that he received a similar discovery production with the complete contents of Ms. Days-Chapman's cell phones.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: *s/ Lee Vartan*
LEE VARTAN

Dated: December 23, 2024

EXHIBIT C

OFFICE OF THE PROSECUTOR

County of Atlantic

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Atlantic County Prosecutor

4997 Unami Boulevard, Suite 2
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First Assistant Prosecutor

RICHARD E. McKELVEY
Executive Assistant Prosecutor

JOHN H. FLAMMER
Chief Counsel to the Prosecutor

PATRICK F. SNYDER
Chief of County Detectives

PATRICIA A. HAYEK
Director of Victim Witness

December 12, 2024

Lee Vartan, Esq.
Chiesa Shahinian & Giantomasi PC
105 Eisenhower Parkway
Roseland, NJ 07068

Re: State v. Constance Days-Chapman
IND: 24-09-02900

Dear Mr. Vartan:

Enclosed is the hard drive your office provided, now containing the discovery outline below.

1. AC High School Surv. Video
2. ACBOE Emails
3. ACMC – 01.16.24
4. Bianca Dozier Cell Phone Dump
5. BWC Footage
6. CDW Return – AT&T [redacted]
7. CDW Return – AT&T Wireless [redacted]
8. CDW Return – Instagram ([redacted])
9. CDW Return – [redacted]
10. CDW Return – [redacted]
11. CDW Return – AT&T [redacted] (Marty Small)
12. CDW Return – T Mobile [redacted] (LaQuetta Small)
13. CDW Return – Verizon [redacted] (Chapman)
14. Cellebrite Extraction – Apple iPad
15. Cellebrite Extraction – Apple iPhone ([redacted])
16. Cellebrite Extraction – [redacted] Cell Phone
17. Cellebrite Extraction – [redacted] iPhone
18. Chapman Video – DCP&P
19. CIO Return – Constance Days Chapman
20. Constance Days Chapman Cell Phone Dump

21. DCP&P Hotline Call 01.10.24 – Constance Days Chapman
22. [redacted] iCloud Return
23. LaQuetta Small Cell Phone Dump
24. Marty Small Cell Phone Dump
25. Pennsylvania Avenue School Subpoena Return
26. Recorded Intrvs
27. Subpoena Return – Mayor Small Response to SW
28. [redacted] Cell Phone Dump
29. [redacted] Call to DCP&P – 01.24.24
30. Video Surv. @ [redacted]
31. WOND

Please confirm you received this package, and that you are able to open and view the material. Do not hesitate to contact me if you have any questions.

Very truly yours,

Kathleen E. Robinson

Kathleen E. Robinson, Esq.
Chief Assistant Prosecutor

Atlantic County Prosecutor's Office

Discovery Duplication & Billing Form

Prosecutor's Docket File #	Defendant: Constance Days-Chapman
Indictment # 24-09-02900	Unit Case #
Item(s) Copied By: CAP Robinson	Date: 12/12/2024

BILLING INFORMATION

Name of Attorney to be Billed: Lee Vartan, Esq.

Billing Address:
Cheisa Shahinian & Giantomasi PC
105 Eisenhowerver Parkway
Roseland, NJ 07068

☐ Pool Attorney ☑ Private Attorney ☐ Public Defender

Quantity	Description	Unit Price	Line Total
	Compact Discs (CDs)	$ 1.00	$0.00
	Digital Versatile Discs (DVDs)	$ 1.00	$0.00
	16 GB Flash Drive	$ 5.00	$0.00
	32 GB Flash Drive	$ 7.00	$0.00
	64 GB Flash Drive	$ 10.00	$0.00
	BluRay Discs	$ 5.00	$0.00
	50GB BluRay Discs	$ 10.00	$0.00
	Postage		
		Total	$0.00

Comments:
1. AC High School Surv. Video
2. ACBOE Emails
3. ACMC – 01.16.24
4. Bianca Dozier Cell Phone Dump
5. BWC Footage
6. CDW Return – AT&T [redacted]
7. CDW Return – AT&T Wireless [redacted]

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White: Administration Yellow: File