SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

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

Not for Publication Without Approval of the Committee on Opinions

April 2, 2025

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

Dear Counselors:

INTRODUCTION

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

On January 3, 2025, Mr. Small, through counsel, filed the instant Motion to Suppress Physical Evidence obtained pursuant to Search Warrants granted by the Court on March 27, 2024. Mrs. Small, through counsel, joined the instant motion on March 12, 2025. Counsel presented oral argument on the issue before the Court on March 14, 2025. The Court has considered all matters presented.

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

PROCEDURAL HISTORY

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

On March 28, 2024, law enforcement executed the Search Warrant, which described the location as a two-story house located at [redacted] New Jersey.[2]

STATEMENT OF FACTS[3]

I. FACTS ALLEGED IN THE CERTIFICATION

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

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

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

[2] Defense Exhibit B—Search Warrant; BED-ATL-NA-SW-24-23(C); State's Exhibit A—Search Warrant; BED-ATL-NA-SW-24-23(C).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As it relates to the Defendants' residence, the Certification sought "any and all electronic devices located within the premises," Cert. at ¶1(b)(5), ¶4, ¶7(e), "photographs of the premises . . . including but not limited to the foyer, kitchen area, dining area, entertainment area, 'man cave', bar stools, bedrooms, bathrooms, etc.," Cert. at ¶1(b)(6), ¶4, ¶7(f), and a "long grayish colored broom, and belts." Cert. at ¶1(b)(7), ¶7(g).

II. THE MARCH 27, 2024, SEARCH WARRANT

The Court authorized the search of the Defendants' residence pursuant to Search Warrant BED-ATL-NASW-24-23C on March 27, 2024. The language in the Search Warrant thoroughly described the exterior of the residence and included pictures of the residence. The Search Warrant authorized law enforcement to search for:

> (d) any/all electronic devices located on or in the possession of [Defendants]. These electronic devices are to include but are not limited to cellphones, tablets, GPS devices, removable media/storage devices, and/or any electronic communication devices, as well as PC computers, and laptop computers;
>
> (e) any and all information pertaining to passwords and/or encryption relating to the cellphones, tablet, computer system, software, and/or any related communication device seized;
>
> (f) any and all containers, safes, or compartments reasonable associated with the residence . . . to include any and all garages and or storage sheds, trash cans and

dumpsters, garbage within the residence, around the residence or within garbage cans and dumpsters, locked containers or compartments for any and all electronic communication devices;

(g) all occupants of the [residence] for cellular phones, tablets, electronic watches, and any other electronic communication devices;

(h) Photographs of the premises . . . to include but not limited to foyer, kitchen area, dining area, entertainment area, "man cave," bar stools, bedrooms, bathrooms, etc.;

(i) a long grayish colored broom and belts; and

(j) any other evidence used or believed to be preserve evidence for the prosecution for the crimes[.]

Id.

The Search Warrant authorized law enforcement to search for evidence of official misconduct, conspiracy to commit official misconduct, aggravated assault, endangering the welfare of a child, child abuse, hindering apprehension, obstruction of justice, and failure to report child abuse. Id.

DEFENSE'S ARGUMENT

The Defense asserts that the warrant to search the Defendants' home was unconstitutional, supported by stale and insufficient probable cause. The Defense urges this court to suppress the evidence seized during the search of the Defendants' home pursuant to the March 27, 2024, Search Warrant. The Defense argues (1) recusal by the court is warranted pursuant to R. 1:12-1(g); (2) the probable cause alleged to search the Defendants' home was stale; (3) even if accepted as true, the probable cause alleged by the State in its application does not establish any reasonable belief that a violation of the law existed at the premises at the time the warrant was issued; and (4) the Certification intentionally or in reckless disregard of the truth misrepresents the actual number of phone contacts between the phones of Principal Chapman and the Defendants, and therefore requires a Franks hearing.

I. RECUSAL BY THE COURT IS WARRANTED, PURSUANT TO R. 1:12-1(g).

The Defense asserts that pursuant to R. 1:12-1(g), the Court should recuse itself from hearing and deciding the issues raised in this motion. The Defense contends this case is similar to State v. McCann, 391 N.J. Super. 542 (2007). In McCann, a municipal court judge signed a warrant authorizing a search of the Defendants' home, whom he had previously represented. Id. 544-45. The defendant filed a motion to suppress evidence, which was granted by the trial court. The State appealed. Id. at 543. Relying upon R. 1:12-1(g), the Appellate Division determined the circumstances raised "an appearance of partiality" and held the municipal court judge should have recused himself from the warrant application proceedings. Id. at 554.

The Defense argues that similar to McCann, here there exists an objectively reasonable appearance of partiality on the Court's part, strictly for purposes of the present motion. The Defense asserts that the Court authorized the Search Warrant on March 27, 2024, and in doing so, the Court has already made determinations regarding staleness and veracity of probable cause in the supporting Certification . The Defense's motion seeks to challenge both aspects as deficient.

II. EVIDENCE IN SUPPORT OF PROBABLE CAUSE TO SEARCH THE DEFENDANT'S HOME WAS STALE.

The Defense further asserts that the State relied upon allegations that were at least two months old and, in some instances, more than three months old. The Defense argues that by March 27, 2024, the allegations the State clung to were stale and insufficient to support probable cause to believe evidence of child abuse or a conspiracy would be located in the Defendants' home.

The Defense contends that the alleged criminal conduct concluded more than 2-3 months before the Search Warrant was presented and executed. As to the child abuse, the Defense submits that two of the three instances of alleged abuse were more than 90 days old by the time the Search Warrant was secured, and the remaining instance of alleged abuse was more than 60 days old. The Defense alleges that the State was aware of all abuse allegations as early as January 24, 2024, and no later than January 31, 2024. The Defense argues that there was simply no reason to believe that any child abuse laws were being violated nor any reason to believe contraband or evidence of child abuse would be found in the Defendants' home. According to the Defense, the Certification does not contain any assertions beyond mid-January 2024. Therefore, the Defense argues that any evidence to support probable cause for child abuse was stale by March 27, 2024.

As to the allegation of conspiracy, the Defense submits that the timeline of criminality is clear. The Defense argues that the only logical conclusion to draw from reading the Certification is the conspiracy began on January 22, 2024, and concluded by January 31, 2024. Therefore, the Defense asserts that any conspiracy to cover up child abuse was over at that point.

Lastly, the Defense asserts, providing all favorable inferences, the State failed to allege any additional instances of child abuse against ███ after mid-January nor any conspiratorial criminality beyond January 31, 2024. According to the Defense, there was no reason to believe that any ongoing child abuse or conspiracy to cover it up was taking place, and that any evidence in furtherance of those crimes would be located inside the Defendants' residence.

III. THE WARRANT APPLICATION FAILS TO ESTABLISH PROBABLE CAUSE THAT THE DEFENDANT'S HOME WOULD CONTAIN EVIDENCE OF CHILD ABUSE OR A CONSPIRACY TO COVER IT UP OR ANY NEXUS TO THAT CRIMINALITY.

The Defense submits that no independent probable cause to believe the crimes would be found inside the Defendants' residence, rendering the March 27, 2024, Search Warrant constitutionally infirm.

The Defense cites to State v. Boone, 232 N.J. 417, 427 (2017). In Boone, law enforcement applied for a search warrant for defendant's apartment unit—one of 30 inside an apartment complex. During a two-month investigation into defendant's drug activity, police observed him coming and going from the apartment building and conducting what were described as "hand-to-hand" drug transactions inside the complex. Id. at 422. The State secured a warrant for a search of defendant's specific apartment, Unit 4A. Id. at 421. The State's warrant application discussed the drug activity observations made outside of the apartment building, but never discussed the inside apartment building within the Affidavit, nor was there any mention of defendant's specific Unit-4A, other than in passing within the Affidavit. Id. at 423. The Boone Court struck down the warrant finding there was "no basis to conclude that narcotics were in his apartment because the affidavit never established a nexus linking the hand-to-hand transactions with defendant's residence." Id. at 425. "Nothing in the application specified how police knew defendant lived in Unit 4A or why that unit—one of thirty units in the building—should be searched, Id. at 421. The Defense argues that the deficient Certification in Boone is identical to the one in this case for the reasons set forth below.

As to the child abuse, the Defense argues that the Certification fails to identify how or why the State had reason to believe evidence of child abuse or conspiracy would be located in the Defendants' home as of March 27, 2024, when it applied for the Search Warrant. The Defense asserts that two of the three incidents of the alleged child abuse date back to December of 2023 and only one is alleged to have occurred in mid-January.

As to the conspiracy, the Defense argues that the Certification fails to establish any alleged criminal conduct in furtherance of that crime occurred inside the home nor is any such evidence asserted by the State in the Certification. According to the Defendants, there is no assertion of any conspiratorial meetings, discussions, or communications occurred in, were directed at, or originated from the Defendants' home. The Defense contends that the State concedes that the one and only conspiratorial meeting on January 22, 2024, occurred outside of the defendant's home, in Principal Chapman's vehicle.

The Defense further submits that the State's attempt to include content of text messages between the Defendants and Principal Chapman from January 22-March 15, 2024 to support probable cause to search the Defendants' home for electronic devices fails to establish any probable cause to believe either child abuse or conspiracy occurred, was occurring, or that evidence of either alleged crime would be found in the Defendants' home as of March 27, 2024.

Furthermore, the Defense argues that the State's attempts to include the quantity of phone contacts are nefarious on their face. The Defense submits that number alone is not an indication

of criminality, and if it were, the State would have carte balance to search the homes of any married couple or those in regular phone contact within this State, rendering the Fourth Amendment and the New Jersey Constitution toothless. Specifically, the Defense contends that the State fails to establish in its Certification that any of the phone contacts, including the "over 100" toll records, occurred in, were directed at, or originated from the inside of the Defendant's home.

Therefore, the Defense urges this Court to suppress all of the evidence seized from the Defendant's home.

IV. THE MATERIAL FACTS ASSERTED IN THE CERTIFICATION ESTABLISH AN INTENTIONAL OR RECKLESS DISREGARD FOR THE TRUTH AND WARRANT A FRANKS HEARING.

Lastly, the Defense argues that there can be no dispute the State relied heavily upon the number of contacts between the phones of all three parties, the Defendants and Principal Chapman, to support its probable cause to search the Defendants' home for "electronic communication devices." The Defense notes that the State alleges that a "Communications Information Order" received by Verizon Wireless for Principal Days revealed "over 100" telephone calls and/or text messaged between her phone and Defendants' from December 1, 2023, through February 13, 2024. According to the Defense, the truth is that data confirms that the Detective who authored the Certification was aware that from December 1, 2023, to February 13, 2024, the number of phone contacts between the Defendants and Principal Chapman were about half the amount listed in his Certification , and about a quarter of the amount listed in in the Certification between January 22-31, 2024. The Defense contends that those dates are critical because January 22nd is the alleged date that [redacted] first disclosed the abuse to school officials. Further, by January 31 authorities were aware of the disclosure and DCPP had already started interviews. The Defense asserts, instead, the issuing judge was left to believe that the Defendants' phones had been in contact with Principal Chapman's phone over 100 times, when the State knew otherwise. Therefore, the Defense submits that this is a reckless disregard for the truth on the part of the detective who authored the Certification .

As to the one "suspect" call between the Defendant's wife and Principal Chapman on January 22, 2024, the Defense asserts that the call lasted less than one minute and it is unclear whether the two even spoke, let alone discussed anything in furtherance of an alleged conspiracy. The Defense argues that the State provided no indication as to where any of the over 100 toll records originated from, were directed to, or took place.

Therefore, the Defense submits that representing only the quantity of contact without providing any contact regarding the known pre-existing relationship between the parties to that contact further establishes a reckless disregard of the truth in the Certification , and therefore, misleading by omission. The Defense contends that the Certification omitted that Principal Chapman and the Defendants have been close family friends for years, the Small children refer to her as "aunty," and she is the campaign manager for the Defendant.

Furthermore, the Defense contends that the State cherry picks when to provide further context to the issuing judge only when it believes the context will help its application, and as a result, the Search Warrant for the Defendants' home, at minimum, requires a Franks hearing.

STATE'S ARGUMENT

In opposition of the Defendants' motion, the State argues (1) court recusal is not required; (2) there was more than ample probable cause to support the search of the Defendants' family home; (3) the probable cause was not stale due to the nature of the case and continuing actions of the Defendants; and (4) the Certification does not establish intentional or reckless disregard for the truth for averring over 100 calls were made between the Defendants and Principal Chapman.

I. COURT RECUSAL IS NOT REQUIRED.

The State argues that Court recusal is not required just because the Court granted the Search Warrant in this case and there is no evidence of bias, partiality, or impropriety which might preclude a fair and unbiased hearing and judgment.

The State points to Defense's reliance on State v. McCann, 91 N.J. Super. 542 (App. Div. 2007) and State v. McCabe, 201 N.J. 34 (2010) asserting that the cases are factually inapposite. In McCann, the State represents that the judge who issued the Search Warrant for the appellant's house knew him for decades and was considered by appellate to be "his family attorney." 391 N.J. Super. 544-45. The State asserts that this was a clear situation where recusal was required because the judge had been "attorney of record or counsel for a party" to the action pending before the judge. Id. at 550. The State argues that there is no evidence that the Court knew the Defendant on a personal level or represented him as a practicing attorney.

Additionally, the State contends in McCabe, the part-time municipal court judge who presided over the appellant's traffic ticket matter was an adversary to appellant's attorney in a pending, unrelated probate case. 201 N.J. at 38. The State submits that the Court does not have any open, unresolved cases against the Jacobs and Barbone law firm, which represents the Defendant, nor any unresolved, unrelated cases against any law firm involved in this case, for that matter, as in McCabe.

The State further cites to DeNike v. Cupo, 196 N.J. 502, 517 (2008) in which the New Jersey Supreme Court offered guidance on recusal and state the question if "would a reasonable, fully informed person have doubts about judge's impartiality," and State v. Marshall, 148 N.J. 89 (1997) in which the court found that "it is improper for a court to recuse itself unless the factual bases for its disqualification are shown by the movant to be true or are already known by the court." Id. at 276. Therefore, the State contends that there is simply no evidence to call into question the Court's impartiality from the lone fact that the Court reviewed and granted the warrants, and thus, the Court should deny the Defense's motion for recusal.

II. MORE THAN AMPLE PROBABLE CAUSE EXISTED TO SUPPORT THE SEARCH OF THE FAMILY HOME AND PROBABLE CAUSE WAS NOT STALE DUE TO THE NATURE OF THE CASE AND CONTINUING ACTION OF THE DEFENDANTS

The State contends that the Defense's reliance on Boone is without merit. The State contends that Boone is factually different because the warrant there contained no specific evidence connecting appellant to the apartment and no evidence of criminal activity occurring in the apartment searched. Boone, supra. The State argues that the instance case is different because there is a victim alleging multiple instances of physical and emotional abuse by both Defendants in the family home, and there is an extensive police investigation verifying that defendant lives at that home through surveillance, official records, or witness interviews. Therefore, the State submits that it has established a crime scene where it was reasonable for police to believe there may be probative, relevant evidence inside, be that photographs, electronics, and/or any of the weapons alleged to be used against [redacted]

Furthermore, the State argues, through extensive investigation, police established he usage of electronics by all Defendants involved and had direct evidence of all three using cellphones to communicate with each other as soon a[redacted] disclosed the abuse and in the months that followed. The State points to the Certification that there were cellphone calls made, messages sent, and meetings held, in an attempt to learn more about ACPO and DCPP investigations, with hopes of getting ahead of any damage to each defendant's political or professional careers. The State submits that it was reasonable for police to believe the Defendants may store his electronics in his home, as common sense, everyday experience tells us most people keep their cellphones either on their person or at home.

As to the Defense's second point that whatever probable cause existed to search the home was stale when police applied for the Search Warrant on March 27, 2024, the State submits that police had probable cause to request a warrant for the Defendants' home and that probable cause was not stale when the warrant was obtained. State argues that (1) the nature of the crimes alleged—multiple instances of physical and emotional abuse—is of the kind contemplated of a "continuing and ongoing: type that should not lend the same concerns as a case with easily disposed of evidence, like a narcotics or a firearms case; (2) the cellphones sought were continually and consistently used up until at least March 15, 2024, without proof of any change in devices or cellphone number that would cause a "staleness" concern; and (3) the investigation was intricate and prolonged, with information constantly being obtained by ACPO, especially as it related to video surveillance and cellphone data. Further, the State contends that ACPO continually located message of the Defendants communicating about the investigation and spoke to witnesses confirming that Defendants were actively trying to prevent law enforcement from speaking with [redacted] alone, as best they could.

The State explains that one could say it was the Defendants' own actions that extended the timeline far beyond the last instance of physical abuse. The State asserts that the Defendants' assertion that any conspiracy or cover up ended by January 31, 2024, is wrong when considering Mr. Small's conduct on February 5, 2024, and March 15, 2024, as noted in the Certification.

Lastly, the State notes that the emotional abuse was clearly continuing through March 15, 2924, with a new DCPP referral generated with concerns for [redacted] safety after [redacted] ran away to a friend's house, upset and distressed to escape [redacted] parents; attempted to intimidate and retaliate against [redacted] for disclosing the abuse to [redacted] friends.

Therefore, the State submits that the Defendants' motion to suppress evidence obtained pursuant to the March 27, 2024, Search Warrant for lack of probable cause and staleness should be denied.

III. <u>THE CERTIFICATION DOES NOT ESTABLISH INTENTIONAL OR RECKLESS DISREGARD FOR THE TRUTH.</u>

The State asserts that the Certification does not establish intentional or reckless disregard for the truth in averring over 100 calls were made between the Defendants and Principal Chapman nor material omission in stating the trio were political allies, to warrant a <u>Franks</u> hearing.

According to the State, there was no omission of material information or intentional falsehoods in the Certification when the detective stated that there were over 100 calls found between Principal Chapman and the Defendants because Principal Chapman's call detail records show approximately 68 calls and message with Mr. Small between December 1, 2023, and February 13, 2024, and approximately 70 calls and messages with Mrs. Small between those same dates. Thus, totaling over 100 contacts.

Similarly, the State argues that omitting that the Defendants and Principal Chapman were long time friends or political allies is not a deliberate omission of material information going to probable cause. According to the State, there was enough other evidence showing Defendants' communications were nefarious at times allowing the inference that these were not simply innocent communications. The State asserts that these communications were not innocent business or friendly contacts, but rather, a collective mission of three people in power to protect each other, toward the truth, and get ahead of any law enforcement investigation. Therefore, the State submits that a <u>Franks</u> hearing should be denied.

<u>DEFENSE'S REPLY ARGUMENT</u>

In its reply brief dated February 28, 2025, the Defense further argues that ¶(j) of the Certification renders the Search Warrant constitutionally fatal, as a "general warrant," ¶(j) must

be excised from this Search Warrant and anything seized pursuant to it suppressed, and the seizure of the "handwritten letter" violates Arizona v. Hicks, 480 U.S. 321 (1987).

The Defense primarily takes issue with a handwritten letter seized from a walk-in closet in the master bedroom. The Defense points to the body camera footage from the officer who seized the letter.[4] The Defense asserts that the video confirms the officer rummages through every nook and cranny if the Defendant's closet in the master bedroom and the letter was seized within one of the closet drawers and was enclosed in a plastic bag, the officer then unfolded the letter, read its contents, and then determined it would be of evidential value.

The Defense cites to State v. Muldowney, 60 N.J. 594 (1972). The Defense asserts that the instant case is identical to Muldowney in that the "catch-all" paragraph in this warrant permitted unfettered discretion to seize "any other evidence" the searching officer believed to be in furtherance of child abuse or a conspiracy to cover it up. The Defense submits that ¶(j) does not provide any guidelines whatsoever to the searching officer as to what kind of items were to be seized, and instead , it leaves it to the whim of the searching officer to decide what evidence is useful to the State in furtherance of its criminal prosecution and what is not.

Furthermore, the Defense argues that ¶(j) must be excised from this warrant and anything seized (the handwritten letter) pursuant to it must be suppressed and severance is appropriate. The Defense contends that the greater portion of the Search Warrant describes in separate paragraphs—electronic devices, photographs, a broom, and belt—items listed with particularity the State believed it had probable cause to search and find in the Defendants' home, not a letter. The Defense asserts that the paragraphs describing these particular items are distinguishable and easily segregated from ¶(j) in the Warrant permitting the general search.

Lastly, the Defense in its reply and a supplemental brief dated March 6, 2025, argues that seizure of the handwritten letter violates Arizona v. Hicks, 480 U.S. 321 (1987). The Defense submits that by officers opening the plastic bag, removing the letter, unfolding it, reading it, deciding its contents were useful, then turning it over to a superior, usurped the authority and purposed of a "neutral and detached" magistrate required under the Fourth Amendment.

Therefore, the Defense submits that suppression of the handwritten letter is the only appropriate remedy under these circumstances.

STATE'S REPLY ARGUMENT

In its supplemental brief dated March 10, 2025, the State argues that in Defendants' motion filed on January 3, 2025, the Defendants did not address the legality of the seizure of

[4] During oral argument on March 14, 2025, the Court viewed the body camera footage from defense counsel's computer.

handwritten note, and the seizure of the note was lawful because the warrant by which it was seized was sufficiently specific under New Jersey and binding federal law.[5]

As an initial matter, the State argues that Defense, for the first time on February 28, 2025, does not reply to the State's response, but rather raises entirely new issues. The State specifically notes the Defendants' belief that handwritten note to parents should be suppressed because the note was not specifically named as an article to seize in the warrant. The State submits that Defense's newly raised issues should be denied citing to State v. Smith, 55 N.J. 476 488 (1970) in which the court held that the use of a reply brief by the defendant to enlarge upon his main argument is improper; Borough of Berlin v. Remington & Vernick Eng'rs, 337 N.J. Super. 590, 596 (App. Div. 2001) (raising issue for the first time in reply brief is improper); and L.J. Zucca, Inc. v. Allen Bros. Wholesale Distribs. Inc., 434 N.J. Super. 60, 87 (App. Div. 2014) (argument raised for the first time in reply brief deemed waived).

According to the State, even if the Court considers the Defense's additional arguments in its reply brief, the validly issued Search Warrant was specific in the scope of the search of the Defendants' home due to well established concepts of permissible language in a validly issued warrant and fundamentals surrounding the execution of such validly issued warrants. The State asserts that the Search Warrant's language is sufficiently definite when read in the context of the particular crime that is the occasion of the Search Warrant. The State further disputes the Defense's comparison of Muldowney. The State submits that Muldowney involved a warrant so broadly drafted it gave no guidelines to law enforcement as to what kinds of items to seize. Id. 60 N.J. at 600. On the other hand, the State maintains that the instant Search Warrant gave ample guidelines that comport with New Jersey law—the guidelines to search for electronic, passwords, take photos, seize instruments of crime (broom or belt), any other evidence probative to the crimes at issue in the investigation and to open compartments, safes, and closed spaced in this endeavor.

In support of their argument, the State submits that ACPO did not state they were searching for the note in the warrant they applied for on March 27, 2024, because they did not know it existed. The State argues that by including ¶(j), law enforcement knew they were looking for items of evidentiary value to prove endangering the welfare of a child, aggravated assault, child abuse and other related offenses. Additionally, the State asserts that the note was found inside on a shelf in Mrs. Small's bedroom closet, not in a closed drawer, as the Defense's reply asserts. The State further submits that the note has evidentiary value in the investigation because the note written by was dated during the time the alleged abuse occurred.

[5] The State's reply brief dated March 10, 2025, is the first time this Court is made aware of the contents of the handwritten letter.

Lastly, the State asserts that the Defense is trying to analogize the seizure of the note to the manipulation in Arizona v. Hicks, 480 U.S. 321 (1987), yet Hicks involved an exigent circumstance search. In such a warrantless event, an exigent search and seizure must be strictly circumscribed by the nature of the exigency. On the other hand, the State maintains that ACPO specifically searched for the enumerated items listed in ¶¶ (d) through (i) and in doing so, had the authority to open closets and/or drawers and/or compartments to effectuate their task, even without the explicit provision provided in ¶(f). The State contends that when ACPO discovered the note, it was immediately apparent as probative, relevant evidence going to the charges of child abuse. Endangering the welfare of a child, and aggravated assault.

Therefore, the State submits that the Search Warrant allowed opening of containers and/or compartments, which was not even required under the law, ACPO was in a lawful position when they discovered the immediately apparent evidence of the note, such that the Defendants' motion should be denied.

APPLICABLE LAW & ANALYSIS

I. RECUSAL

An independent and honorable judiciary is indispensable in our society. DeNike v. Cupo, 196 N.J. 502, 514-15 (2008)(citing Canon 1 of the Code of Judicial Conduct). In furtherance of that goal, judges should observe a high standard of conduct to preserve the integrity and independence of the judiciary. Id. Judges should act at all times in a manner that promotes public confidence and avoid both impropriety and the appearance of impropriety. Id.

R. 1:12-1 and R. 1:12-2 provide for recusal on the court's own motion or upon the motion of any party. R. 1:12-1 states that:

> "The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge:
> (a) is by blood or marriage the second cousin of or is more closely related to any party to the action;
> (b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;
> (c) has been attorney of record or counsel in the action;
> (d) has given an opinion upon a matter in question in the action;
> (e) is interested in the event of the action;
> (f) has discussed or negotiated his or her post-retirement employment with any party, attorney or law firm involved in the matter; or
> (g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

R. 1:12-2 provides that, "[a]ny party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." R. 1:12-2 permits a party to move to disqualify a judge from hearing a matter. Motions for recusal should be made before the judge presiding over the matter. State v. McCabe, 201 N.J. 34, 45 (2010). Courts should evaluate requests for recusal in light of whether a reasonable, fully informed person would have doubts about the judge's impartiality. DeNike v. Cupo, 196 N.J. at 517. The disposition of such motions is entrusted to the sound discretion of the judge presiding over the matter. State v. McCabe, 201 N.J. at 45 (citing Panitch v. Panitch, 339 N.J. Super. 63, 66 (App. Div. 2001). The decision of the presiding judge whether or not to recuse himself is subject to an abuse of discretion standard upon review. Id.

It is with the utmost respect for the mandate requiring judges to act in a manner that promotes public confidence and avoid both impropriety and the appearance of impropriety that the court considers a party's application. DeNike v. Cupo, 196 N.J. at 514-15 (2008)(citing Canon 1 of the Code of Judicial Conduct). Further, in State v. Salentre, 275 N.J. Super. 410, 421(App. Div. 1994), the trial court properly denied a recusal motion because, "there was no showing that the trial judge had any personal or private interest apart from the fulfilment of his judicial duties."

Pursuant to an Order dated March 19, 2025, the Court denied the Defendants' Motion for Recusal for the reasons set forth on the record on March 14, 2025.

II. THE EVIDENCE OBTAINED PURSUANT TO THE MARCH 27, 2024, SEARCH WARRANT ESTABLISHED SUFFICIENT, RIPE, PROBABLE CAUSE AND DOES NOT REQUIRE SUPPRESSION.

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

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

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

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

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

In the case at hand, the Search Warrant is presumptively valid and the burden rests on Defendants to show that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable. A court's after-the-fact review of a magistrate's determination of probable cause is intended to be quite limited. State v. Dispoto, 383 N.J. Super 205, 216 (App. Div. 2006), aff'd as modified, 189 N.J. 108 (2007) (citing State v. Kasabucki, 52 N.J. 110, 117 (1968)). The trial court should give substantial deference to the issuing judge's determination of probable cause. Kasabucki, at 117. It is of no moment that the issuing judge and the motion judge is the same person. Applying the objective test of presumed validity in the totality of the circumstances, the Court remains persuaded that there was an ample basis in fact to support probable cause for issuance of the Search Warrant, even now in retrospect. The

Defendants urge the Court to apply a hypothetical, hindsight-driven analysis to a rather straightforward set of factual circumstances. The Court declines to adopt such an approach. The Search Warrant meets all constitutional, legal, and procedural requirements for validity.

The Defense argues the instant case in identical to State v. Boone, 232 N.J. 417 (2017). In Boone, the defendant lived in a thirty-unit apartment building and the detective did not note that fact nor provide any details about how the police knew the defendant's unit (4A) was in fact his unit. Id. at 422. The Court determined that the police failed to show that the defendant lived in specific unit or why that unit should be searched because there was no specificity, no independent corroboration of the defendant's address, such as utility bills or voting records, and no neighbor, informant, or controlled transaction but demonstrated that the defendant lived in apartment 4A. Id. at 429. Boone is distinguishable from the present case.

Here, the Certification established that the Defendants lived in the specific location where the alleged child abuse occurred. ███ described specific incidents of abuse that occurred inside the home to the guidance counselor, DCPP workers, a therapist, and ACPO investigators. Some of the incidents disclosed described the Defendant's use of a household item—a broom—that caused ███ to pass out on at least one of the two separate broom-incidents in their residence. Cert. at ¶¶3(l)-(p), ¶3(v).

The Court, having considered the totality of the circumstances, finds that law enforcement had probable cause to request a warrant for the Defendants' home and that probable cause was not stale when the warrant was obtained. The Court agrees with the State's assertions and concludes that the nature of the crimes alleged are continuing and ongoing. As such, staleness is not a concern as it may be in a case with easily disposed of evidence. The cellphones sought were continually and consistently used up until at least March 15, 2024, without proof of any change in devices or cellphone numbers that would cause a "staleness" concern. And the investigation was intricate and prolonged, with information constantly being obtained by ACPO, especially as it related to video surveillance and cellphone data. Similarly, evidence related to the alleged acts of abuse, such as a broom or belt, would not necessarily be disposed of, since they are personal items not ordinarily deemed to be contraband in nature.

Furthermore, the handwritten note was within the parameters authorized in the Search Warrant for law enforcement to search for evidence of the alleged child abuse and related crimes—a note from ███ to ███ parents written during the timeframe the alleged abuse occurred. Therefore, there is enough particularity to a 'well grounded' suspicion that a crime has been or is being committed at a particular place, as required for probable cause under State v. Waltz, 61 N.J. 83, 87 (1972) (quoting State v. Burnett, 42 N.J. 377, 387 (1964)). The Court viewed the body camera footage during oral argument. The footage revealed law enforcement searching through what appeared to be open closet shelves, and not "rummaging" through smaller spaces.

III. FRANKS HEARING

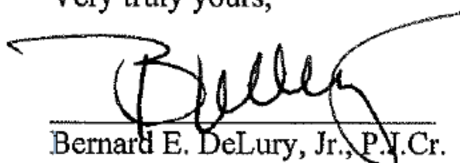
If the Defendant establishes that the warrant was issued on fictious or false statement, he is entitled to receive a hearing. Franks v. Delaware, 438 U.S. 154 (1978). Such a hearing can include the warrant and all fruits from that search if the Defendant establishes perjury, willful disregard for the truth, or false statement to be the basis of the warrant's probable cause. Franks, 438 U.S. 1154. However, a Franks hearing is not required when (1) there is adequate unchallenged information which establishes probable cause, Marshall, 123 N.J. 1, 72 (1991); (1) there is an absence of any preliminary findings of intentional falsehoods, State v. Martinez, 387 N.J. Super. 129, 140 (App. Div. 2006); and (3) there is no suggestion of official wrongdoing, State v. Broom-Smith, 406 N.J. Super. 228, 240-41 (App. Div. 2009).

Here, the Defendant maintained professional and personal relationships with the Principal Chapman. It does not appear that the inclusion of the nature of their relationship in the Certification would defeat a finding of probable cause. In fact, the inclusion of their relationship would likely show that the Defendant's Verizon Wireless records and the timing of the communications were intended to give her friends a "heads-up" about the allegations against them. Additionally, the number of calls asserted in the Certification as being "over 100" does not defeat a finding of probable cause as the communications between Principal Chapman and the Defendants were in contact with each other following [redacted] disclosures. In any event, the Defendants have not met the heavy burden under Franks to show that the issuance of the warrants was based wrong-doing by the State or were based in an inadequacy of probable cause that would require a hearing to determine the validity of the warrants.

CONCLUSION

Based on the submissions of the parties, the arguments of counsel, and the totality of the facts and circumstances the Court finds that the Search Warrant, which is presumptively valid were issued upon more than adequate probable cause. Further, the Court finds that the information used to support a finding of probable cause was continuing in nature and by the time the Search Warrants were sought, the information was fresh. Moreover, a Franks hearing is not supported by the record. Accordingly, the Court concludes that the Defendants' request to suppress the evidence seized from their residence pursuant to the March 27, 2025, Search Warrants must be and hereby is **DENIED**. Further the Defendants' application for a Franks hearing is **DENIED**. The Court has prepared, entered, and attached an Order setting forth its decision.

Very truly yours,



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

BED/ep
Encl.