SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0671-22

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

CHARLES R. WILSON,

Defendant-Respondent.

Argued February 14, 2023 – Decided April 25, 2023

Before Judges Messano, Gilson and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 20-12-0900.

Jaimee M. Chasmer, Assistant Prosecutor, argued the cause for appellant (Mark Musella, Bergen County Prosecutor, attorney; Jaimee M. Chasmer, of counsel and on the brief).

David J. Bruno argued the cause for respondent (The Bianchi Law Group, LLC, attorneys; Robert A. Bianchi and Jorge E. Morales, on the brief).

PER CURIAM

In this interlocutory appeal, we consider the admissibility of cell phone extraction records seized pursuant to a search warrant, issued after the phone was twice unlocked while in police custody but without any of the searched content giving rise to probable cause for issuance of the warrant. Concluding police impermissibly searched the phone before the warrant issued, the motion judge suppressed the evidence seized after the warrant was executed. The judge rejected the State's alternate theory that the forensic evidence was admissible under the attenuation doctrine and did not consider the State's second theory that the evidence was derived from an independent source. In view of her decision, the judge declined to consider defendant's contentions that police unlawfully seized his phone and demanded his passcode, and that the search warrant issued by another judge was supported by a deficient affidavit.

We granted the State leave to appeal from the September 8, 2022 order granting defendant's motion. The State contends the judge's pivotal factual and credibility findings are not supported by the record. Alternatively, the State argues forensic evidence seized pursuant to the warrant after it was issued is admissible under the attenuation and independent source doctrines.

We conclude the motion record supports the judge's decision that defendant's cell phone was unlawfully searched when it was twice unlocked in

police custody. We are persuaded, however, the record further supports admission of defendant's cell phone extraction records under the independent source doctrine. Because the parties addressed the propriety of the seizure of defendant's cell phone before the motion judge and on appeal, and the area of law is rapidly evolving, we consider the issue and conclude the seizure was not unreasonable. Accordingly, we discern no deficiency in the search warrant affidavit and reverse the order under review.

I.

In December 2020, defendant was charged in a Bergen County indictment with two counts of second-degree death by auto, N.J.S.A. 2C:11-5. The State alleges that around 9:25 a.m. on August 27, 2020, a Corvette driven by defendant Charles R. Wilson struck another car on the George Washington Bridge, killing both occupants. Evidence obtained from a search of the Corvette's event data recorder (EDR) after the warrant issued revealed seconds before the crash, defendant was driving more than eighty miles per hour in a forty-five-mile-per-hour zone.

Defendant was taken by ambulance from the crash scene to the hospital. Police viewed video footage of the crash and responded to the hospital. Shortly after noon, defendant was interviewed by Detective Carl Holmsen of the Bergen

County Prosecutor's Office (BCPO) and Detective Anthony Cutrone of the Port Authority Police Department (PAPD). Prior to administering Miranda[1] warnings, Holmsen requested defendant's cell phone; Cutrone was not present for the exchange. At the conclusion of defendant's initial statement to the detectives,[2] Holmsen asked defendant for his phone's passcode. Defendant complied with both requests. Holmsen neither asked defendant to sign consent forms nor advised defendant he had a right to refuse consent before he turned over his phone or disclosed his passcode. Nor were these conversations recorded.

During their ensuing questioning, defendant told the detectives he was on the phone with his son at the time of the crash. Defendant claimed he was utilizing the car's Bluetooth feature. Defendant's cell phone was twice unlocked at the hospital while it was in police custody. Later that day – without citing any information obtained while defendant's cell phone was unlocked in his

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[1] Miranda v. Arizona, 384 U.S. 436 (1966). During oral argument before us, the State advised that its motion to admit defendant's statements was pending before the trial court.

[2] Shortly after noon, defendant was given his Miranda warnings and he gave a statement. Around 2:00 p.m., he gave another Mirandized statement to police. Neither statement is relevant to this appeal.

affidavit – Cutrone secured a warrant to search the phone for stored data.[3] Cutrone asserted:

> [a] forensic analysis of Charles Wilson's cell phone may provide information as to whether Wilson was utilizing his cell phone at the time of the crash and/or as to his activities prior to the crash. In my experience, cell phones can be a distraction that leads to motor vehicle crashes. An analysis of his cell phone will enable investigators to determine if his cell phone was a cause of the crash, and whether it was in fact connected to Bluetooth. Wilson's cell phone was transported to the hospital with him and subsequently secured at the BCPO by Detective Holmsen.

A forensic search later revealed a deleted FaceTime call had transpired at the time of the crash. According to the extraction report admitted in evidence, an incoming FaceTime call was received from a contact named, "Matthew," at 9:16:01 a.m.

Because defendant moved to suppress evidence seized pursuant to a warrant, defendant bore the burden of proof and production of evidence. See State v. Chippero, 201 N.J. 14, 26 (2009). Defendant testified at the suppression hearing and called four witnesses: Holmsen; Cutrone; BCPO Detective Michael Venezia; and BCPO forensic analyst, Anand Patel. The State did not call any

[3] The same warrant also authorized the search of the Corvette's EDR.

witnesses but introduced into evidence various documents, including certain pages of the extraction report.

Testimony concerning the "seizure" of defendant's cell phone and passcode.

Holmsen testified about the interviewing procedure. Prior to questioning, defendant was not considered a suspect, but Holmsen requested his cell phone because police "find that phones are a distraction during the interview" and, as such, they "hold them for safekeeping." Additionally, in this case, the detectives believed defendant's phone could "yield[] potential evidence," and Holmsen wanted to ensure "nothing [wa]s deleted" before speaking with him.

Holmsen took steps to ensure defendant's cell phone remained powered on "in order to facilitate the forensic examiner's job." Those steps included setting the phone to airplane mode by swiping the screen in a downward motion, without unlocking the phone, and charging the phone at the nurses' station.

Holmsen said after the first statement concluded, he requested defendant's passcode to the phone and memorialized the code in his notebook. He denied unlocking the phone with the passcode. At least two other officers "watched over" defendant's phone while it was charging at the nurses' station. Defendant was arrested two days later.

After Cutrone left the crash scene, he met Holmsen at the hospital. By that time, Holmsen had taken defendant's phone. Cutrone acknowledged that although PAPD policy did not require removal of phones from the interview room, police do so "as a matter of procedure" for the interviewer's safety. Based on his "training and experience," Cutrone knew of "several devices out there that appear to be cell phones that are actually weapons, such as small caliber rounds, like a firearm and/or stun guns."

Cutrone stated he was present in the room when defendant shared his passcode with Holmsen. Cutrone was "pretty confident" defendant provided the code "seconds after his first statement ended" but acknowledged the exchange was not recorded. The detectives requested the passcode because they "were going to apply for a search warrant" in view of defendant's statement "that he was operating the cell phone while he was operating his vehicle at the time of the accident." Cutrone explained disclosure of a cell phone's passcode "expedites any sort of extraction of data from the phone."

Defendant's account seemingly differed from that of the detectives in terms of timing. Defendant claimed Holmsen entered his room before the interview began and said "Charles, I need your phone. And my phone – (indiscernible) a password to it." Holmsen then left defendant's room with

phone in hand. The motion judge found defendant's testimony "generally credible, although at times, his demeanor seemed defensive."

Testimony concerning the "search" of defendant's cell phone.

Venezia assisted in the investigation. He received defendant's cell phone from Holmsen on the date of the incident and said the phone was signed out to Patel the following morning.

Venezia testified about the BCPO's policies and procedures for securing a cell phone in police custody. Venezia confirmed police either ask the owner to place the phone "in airplane mode to preserve the data on the phone," or police do so. According to Venezia, "With past practice, with iPhones you're able to just swipe down from the top righthand corner and access the airplane mode." However, the data on the phone would not have been accessed during that process. Venezia acknowledged: "That would be against practice and policy."

Assigned to the forensics laboratory division within the BCPO's Cyber Crimes Unit, Patel examined defendant's iPhone 11 Pro Max.[4] Patel acknowledged that placing the phone in airplane mode preserves the data and the phone need not be unlocked with the passcode to do so. He defined the term,

[4] Patel confirmed that he received defendant's phone on August 28, 2020, but the date on which he performed his analysis is not clearly established in the record.

"unlocking," as "gaining access to the device [in] one of two ways. Either [by] facial rec[ognition] or passcode."

Patel testified about his forensic examination of defendant's cell phone. He described the following events that occurred on August 27, 2020, after the cell phone was placed in police custody:

- 11:29:16 – phone was locked.
- 11:30:14 – airplane mode was enabled while the phone remained locked.
- 11:31:18 – phone was plugged into a charging port or data port via a USB cord.
- 11:43:31 – phone was unlocked for twelve seconds.
- 12:39:12 – phone was unplugged.
- 12:39:28 – phone was unlocked for two minutes and one second.

According to Patel, when the phone was unlocked the second time at 12:39:28 p.m., the mobile notes application was accessed at two- to four-second intervals. Patel acknowledged the data did not expressly indicate whether access to the mobile notes application was user or system generated. However, Patel explained the "duration of the start and end time" was more consistent with system-generated access which he defined as "stuff the phone does such as . . .

keeping logs." He also acknowledged "there is a two-minute timeout feature on . . . a cell phone."

II.

When reviewing a trial court's decision on a motion to suppress evidence, we generally defer to the factual findings of the trial court if they "are supported by sufficient credible evidence in the record." State v. Evans, 235 N.J. 125, 133 (2018) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). Our deference is grounded in the "trial court's 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Ibid. (quoting Elders, 192 N.J. at 244). We therefore defer to the court's credibility findings. See State v. Hubbard, 222 N.J. 249, 264 (2015). We disregard a trial court's findings only when "clearly mistaken," id. at 262, and must refrain from making our own factual findings, see State v. McNeil-Thomas, 238 N.J. 256, 272 (2019).

Our review is generally limited to the matters addressed by the trial judge. See State v. Witt, 223 N.J. 409, 419 (2015) (noting parties must raise an issue before the trial court to allow an appellate court to review it). We may also review a record if the issue was sufficiently developed to allow our full review. See State v. Scott, 229 N.J. 469, 480 (2017) (reviewing a bias argument raised

for the first time on appeal because, unlike in Witt, "the record was fully developed").

We review de novo the trial court's legal conclusions. See State v. Hathaway, 222 N.J. 453, 467 (2015). Because issues of law "do not implicate the fact-finding expertise of the trial courts, appellate courts construe the Constitution, statutes, and common law 'de novo – "with fresh eyes" – owing no deference to the interpretive conclusions' of trial courts, 'unless persuaded by their reasoning.'" State v. S.S., 229 N.J. 360, 380 (2017) (quoting State v. Morrison, 227 N.J. 295, 308 (2016)).

Well-established principles guide our review. "Warrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions." State v. Pineiro, 181 N.J. 13, 19 (2004). To avoid exclusion of the evidence seized, the State must prove the search fell within an exception to the exclusionary rule. See State v. Bryant, 227 N.J. 60, 69-70 (2016). Although "[w]e apply the exclusionary rule when the benefits of deterrence outweigh its substantial costs," State v. Caronna, 469 N.J. Super. 462, 490 (App. Div. 2021), we are mindful that the exclusionary rule's "core purpose" is "deterrence of future police misconduct," State v. Shannon, 222 N.J. 576, 597 (2015).

A. Seizure of the cell phone.

The motion judge declined to reach defendant's primary contention that the warrantless seizure of his cell phone "was unreasonable and [in] violation of the Fourth Amendment." On appeal, however, the State challenges the judge's factual and credibility findings, including the detectives' reasons for taking an interviewee's cell phone prior to questioning. In response, defendant maintains "[t]he moment detectives believed the phone could be used as potential evidence," police improperly seized it without a warrant or valid consent. Because cell phone use pervades our society and most users usually have their phones in tow,[5] and the record is fully developed, see Scott, 229 N.J. at 480, we address the propriety of an officer's "seizure" of an interviewee's cell phone.

Although the motion judge "found portions of Holmsen's testimony credible," she "did not find credible that portion of his testimony regarding reasons for taking a person's cell phone prior to a police interview or interrogation." The judge noted one of the reasons advanced by Holmsen was "that cell phones are generally viewed by police as potential weapons and

[5] See e.g., Adrian F. Ward, et. al, Brain Drain: The Mere Presence of One's Own Smartphone Reduces Available Cognitive Capacity, 2 J. Ass'n for Consumer Rsch., 140, 140 (2017) (stating "[n]inety-one percent report that they never leave home without their phones").

therefore[] cell phones are taken from interviewees for safety reasons." The judge discredited Cutrone's testimony in the same vein. As the State contends, however, only Cutrone advanced the safety concerns cited by the judge.

Because the motion judge declined to determine the propriety of the phone's seizure, her credibility findings are not tethered to a factual finding that police acted improperly in taking defendant's phone and, as such, we are not bound by the judge's unsupported finding concerning Holmsen's testimony. Persuaded by the factual findings the judge otherwise made, we conclude Holmsen had a legitimate basis for seizing defendant's phone prior to his interview in this case.

As the judge correctly recognized, "Holms[e]n acknowledged that cell phones are also sometimes taken by police since the contents of phones are viewed as potential evidence." The record supports that finding here, where the interview was conducted shortly after the fatal motor vehicle crash. Holmsen testified he had viewed video footage of the crash and he recalled defendant's "Corvette traveling at a rate of speed that looked like it was faster than the flow of traffic." Noting "the rate of speed could potentially have been at play in this accident," Holmsen stated drivers often "become distracted" when using the phone while driving.

Thus, even prior to defendant's admission during the interview that he was on the phone at the time of the incident, police had "a reasonable basis for believing the [phone] contained evidence pertaining to the [crash]." See State v. Marshall, 123 N.J. 1, 68 (1991) (reasoning "the validity of the seizure" of the letters at issue "depend[ed] largely on whether the State's investigator, at the time he seized the letters, had a reasonable basis for believing that the envelopes contained evidence pertaining to the murder"). The issue in this case, however, is that police failed to safeguard defendant's cell phone while it remained in their custody.

B. Disclosure of the passcode.

Noting the motion judge did not explicitly determine Holmsen's request for defendant's passcode was unconstitutional, the State nonetheless challenges the judge's findings that Holmsen failed to "advise defendant of his right to refuse to give the passcode or ask for consent to obtain defendant's passcode." To the extent the judge implicitly determined a Fourth Amendment violation in Holmsen's request, we reject that conclusion.

In State v. Andrews, 243 N.J. 447, 483 (2020), our Supreme Court recognized "where ownership and control of an electronic device is not in dispute, its passcode is generally not substantive information, is not a clue to an

element of or the commission of a crime, and does not reveal an inference that a crime has been committed." The Court held that under the foregone conclusion exception to the Fifth Amendment, a trial court may require a defendant to disclose the passcode to his or her cell phone if the State can demonstrate that: the passcode exists; the cell phone was in the defendant's possession when seized; the defendant owned and operated the cell phone thereby establishing his or her knowledge of the passcode; and the passcode enables access to the cell phone's contents. Id. at 478-79.

Similar to the defendant in Andrews, defendant's cell phone in this case was password protected; in his possession when seized; and there was no question of his ownership. We therefore conclude disclosure of defendant's passcode was a foregone conclusion and, as such, the Fifth Amendment was not violated.

C. Search of the cell phone.

The State also challenges the motion judge's "unjustifia[ble] suggest[ion] that Holmsen unlocked defendant's phone without a warrant." The State's argument is unavailing. The judge

> found unexplained inconsistencies in Holms[e]n's testimony, namely, that even though defendant's phone was unlocked while in police custody prior to the BCPO obtaining the search warrant for the phone, and even

> though Holms[e]n was the only law enforcement officer to learn defendant's passcode, Holms[e]n testified that he did not use defendant's passcode to unlock defendant's phone.

The judge elaborated, in pertinent part:

> Although the cell phone was plugged into a charger at the nurses' station, there is no evidence that anyone else, including hospital staff, had access to the cell phone without defendant's passcode. Therefore, the logical inference to be made by the court is that the phone was unlocked by law enforcement prior to the issuance of the search warrant.

Citing federal and New Jersey precedent, the judge recognized "the privacy interest in one's cell phone is one of the highest order." See Riley v. California, 573 U.S. 373, 403 (2014) ("Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life.'" (quoting Boyd v. United States, 116 U.S. 616, 630 (1886))); see also State v. Earls, 214 N.J. 564, 569 (2003) (holding "individuals have a reasonable expectation of privacy in the location of their cell phones under the State Constitution"). The motion judge was persuaded "a search of defendant's cell phone information was conducted when the cell phone was unlocked for approximately [twelve] seconds at 11:43:31 a.m. and for approximately [two] minutes and [one] second at 12:39:28 p.m. on August 27, 2020."

The record supports the judge's findings. The State's forensic analyst confirmed the phone was twice unlocked while in police custody, and the phone could be unlocked only by facial recognition or entering the passcode. Although Patel could not conclusively determine whether access to the mobile notes application was user or system generated, and the duration of both unlocked periods was relatively short, there is no explanation in the record as to why the phone was unlocked. Further, as defendant argues, his cell phone was first unlocked at 11:43:31, prior to his initial Mirandized statement to police which commenced around 12:11 p.m. We therefore conclude, as did the motion judge, the unexplained unlocking of defendant's cell phone twice while in police custody constituted an unreasonable invasion of defendant's privacy and violated defendant's constitutional rights. See U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7; see also Pineiro, 181 N.J. at 19. Consequently, we next address whether that violation rendered inadmissible the forensic evidence seized pursuant to the search warrant.

D. Applicability of the attenuation and independent source doctrines.

In its post-hearing trial court brief,[6] the State argued, assuming the search

[6] See R. 2:6-1(a)(2) (permitting the submission of trial court briefs where "the question of whether an issue was raised in the trial court is germane to the appeal").

was deemed illegal, the forensic extraction of defendant's cell phone was "discovered by means independent of the unlawful police conduct," under State v. Hinton, 333 N.J. Super. 35, 40-41 (2000), "or the causal connection between the illegal conduct and discovery of the challenged evidence was 'so attenuated' that the taint dissipated," under State v. Hunt, 91 N.J. 338, 348 (1982) (quoting Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920)). Maintaining the forensic evidence is admissible under both theories, the State claims the motion judge improperly conducted an attenuation analysis, and failed to consider whether the extracted data is admissible under the independent source doctrine.

We first address the attenuation doctrine. An exception to the exclusionary rule, this theory permits the introduction of otherwise inadmissible evidence that "is so attenuated from unconstitutional police conduct that the taint from the unlawful conduct is sufficiently purged," In the Int. of J.A., 233 N.J. 432, 458 (2018), or "discovered by means wholly independent of any constitutional violation," State v. Holland, 176 N.J. 344, 354 (2003) (quoting Nix v. Williams, 467 U.S. 431, 443 (1984)).

We consider three factors when evaluating whether the seizure of evidence is sufficiently attenuated from unlawful police conduct: "(1) the

temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." State v. Williams, 192 N.J. 1, 15 (2007) (quoting State v. Johnson, 118 N.J. 639, 653 (1990)). Thus, the challenged evidence may be admissible if "the causal connection between the illegal conduct and the discovery of the challenged evidence was 'so attenuated' that the taint was dissipated." Hunt, 91 N.J. at 349 (quoting Nardone v. United States, 308 U.S. 338, 341 (1939)).

Citing these factors, the motion judge rejected the State's attenuation argument. The judge was not convinced the search warrant "redress[ed] the violation that already occurred" when defendant's cell phone was twice unlocked in police custody. Noting the deleted FaceTime call at issue "was discovered during a forensic analysis conducted days later pursuant to a warrant," the judge found "those circumstances [we]re not sufficient to dissipate the taint that resulted from the illegal search of the phone." The judge also found unavailing the State's contention "that nothing of evidentiary value was discovered" during the unlocking, stating, "It [wa]s not clear from the record what, if any information was learned when the phone was unlocked prior to the application

of the warrant." The judge did not address the "purpose and flagrancy" prong of the attenuation doctrine.

As a preliminary matter, we agree with the State that the record demonstrates the mobile notes application was accessed during the second unlocking. Referencing that portion of the extraction report admitted in evidence at the hearing as S-8, the prosecutor asked Patel whether he could "determine what was being accessed on the phone" the second time it was unlocked. According to his unrefuted testimony, which the judge generally found credible, Patel responded: "S-8 shows for that unlock time, mobile notes being activated."

However, that factual distinction is not dispositive to our analysis of the attenuation doctrine. In our view, because the State argued police did not unlock the phone while in police custody, the State fell short of demonstrating the "purpose of the police misconduct." In its closing trial court brief, the State acknowledged the purpose was "unknown," asserting the "practical suggestion . . . that someone simply decided to test whether the passcode defendant provided was correct." Although the deleted FaceTime call was obtained pursuant to a search warrant days after the phone was unlocked by police, thereby satisfying the first and second prongs of the attenuation doctrine, we

cannot conclude on this record that the State satisfied the third prong as to the purpose of the police misconduct.

We reach a different conclusion regarding the State's contentions under the independent source doctrine – a theory the motion judge did not consider. Unlike the attenuation doctrine, the independent source doctrine "allows admission of evidence discovered by means wholly independent of any constitutional violation." Holland, 176 N.J. at 354 (quoting Nix, 467 U.S. at 443). The doctrine has three prongs:

> First, the State must demonstrate that probable cause existed to conduct the challenged search without the unlawfully obtained information. It must make that showing by relying on factors wholly independent from the knowledge, evidence, or other information acquired as a result of the prior illegal search. Second, the State must demonstrate in accordance with an elevated standard of proof, namely, by clear and convincing evidence, that the police would have sought a warrant without the tainted knowledge or evidence that they previously had acquired or viewed. Third, regardless of the strength of their proofs under the first and second prongs, prosecutors must demonstrate by the same enhanced standard that the initial impermissible search was not the product of flagrant police misconduct.
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> [Id. at 360-61 (emphasis added).]

The State must establish all three prongs by clear and convincing evidence, and its failure to satisfy any one prong will result in suppression. Id.

at 362. "In imposing the elevated burden," the Holland Court was persuaded the same standard it had articulated in State v. Sugar, 100 N.J. 214, 238 (1985), regarding the admission of evidence under the inevitable discovery doctrine applies with equal force under the independent source doctrine. 176 N.J. at 361.

The independent source doctrine often is invoked by the State "to justify the use of evidence that has come into its possession through police error or misconduct." State v. Smith, 212 N.J. 365, 394 (2012). "Thus, the State cannot use what it obtained through the improper search to bootstrap the existence of probable cause to justify the search." Ibid. Put simply, probable cause should not arise from flagrant police misconduct.

There is no record evidence suggesting the State utilized information learned during the brief durations that defendant's phone was unlocked, thereby satisfying the first prong. In his search warrant application, Cutrone averred "cell phones can be a distraction that leads to a motor vehicle crash," and police learned from their interview with defendant that he was "speaking on his cellphone via Bluetooth with his son" at the time of the crash.

Moreover, the extraction report indicates the FaceTime call at issue was placed at 9:16:01, well before defendant was hospitalized and turned over his phone to Holmsen. Nor is there any evidence that the mobile notes application

accessed during the second unlocking provided any basis for the warrant. Accordingly, the second prong is satisfied.

Turing to the third factor, the Court has explained: "Flagrancy is a high bar, requiring active disregard of proper procedure, or overt attempts to undermine constitutional protections." State v. Camey, 239 N.J. 282, 310 (2019). We recently found flagrant police misconduct when a "dispatcher engaged in impermissible racial targeting" by claiming a suspect was African American when the witness said she did not know the perpetrator's race. State v. Scott, 474 N.J. Super 388, 408 (2023). Previously, we excluded evidence when police "unjustifiably ignor[ed] a search warrant requiring that they knock and announce their presence before entering a dwelling." Caronna, 469 N.J. Super. at 474. We determined that entering without knocking constituted flagrant police misconduct. Ibid. Further, the Court has deemed the actions of law enforcement officers flagrant police misconduct under the attenuation doctrine where police conducted an illegal random detention on the basis of race. State v. Shaw, 213 N.J. 398, 413, 419-21 (2012).

Conversely, in the present matter, there is no evidence of an overt disregard of police procedures or an attempt by police to undermine constitutional protections. Although the purpose of the unlocking is unknown,

the durations were brief, and police gained nothing that gave rise to probable cause for issuance of the warrant. Accordingly, there exists clear and convincing evidence that the unlocking of defendant's cell phone twice before the warrant issued was not the product of flagrant police misconduct. We therefore conclude the evidence disclosed after the cell phone was searched pursuant to a warrant is admissible under the independent source doctrine. In view of our conclusion, we reject defendant's contention that the search warrant affidavit was deficient.

Affirmed in part and reversed in part.