

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. 2382CR00091

COMMONWEALTH

vs.

BRIAN WALSH

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S
MOTION TO SUPPRESS SEARCH WARRANTS
[RULING ON PAPER NO. 83.0]**

The defendant, Brian Walsh ("Brian" or "the defendant"), has been charged with one count of murder (G.L. c. 265, § 1), one count of misleading a police officer (G.L. c. 268, § 13B), and one count of unlawful conveyance of a human body (G.L. c. 272, § 71). He moves this court to suppress evidence against him obtained during the execution of thirteen search warrants by the Massachusetts State Police arguing the warrants were not supported by probable cause and were impermissibly broad.

On June 18, 2025, the court held a non-evidentiary hearing on the motion. After careful review of the warrants at issue and the arguments of the parties, the court concludes that there was probable cause to support the search warrants for the defendant's residence and electronic devices, but not for the GPS tracking of his mother's Volkswagen, and for some, but not all, of the records sought from his cellular phone provider. For those reasons, the motion to suppress is **ALLOWED IN PART** and **DENIED IN PART**.

BACKGROUND

There are thirteen warrants challenged here: (1) Search Warrant No. 23SW34 for 516 Chief Justice Cushing Highway in Cohasset ("Walsh Residence Warrant"); (2) Search Warrant

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No. 23SW35 for GPS install on a 2013 Volkswagen Beetle, MA Reg. 5TR646 (“Volkswagen Warrant”); (3) Search Warrant No. 23SW39 for a Macbook A1534, Serial No. C02W62T0HH25 (“Macbook A1534 Warrant”); (4) Search Warrant No. 23SW40 for a Macbook A2159, Serial No. FVFC18LDL404 (“Macbook A2159 Warrant”); (5) Search Warrant No. 23SW41 for an Apple iPad 6 Mini, Serial No. DKC23DCX1J (“iPad 6 Mini Warrant”); (6) Search Warrant No. 23SW42 for an Apple iPhone 13 Mini, color red (“Red iPhone Warrant”); (7) Search Warrant No. 23SW43 for a Macbook A2179, Serial No. C02C4075M6KJ (“Macbook A2179 Warrant”); (8) Search Warrant No. 23SW44 for an Apple iPhone, color black (“Black iPhone Warrant”); (9) Search Warrant No. 23SW45 for an Apple iPad A2603, Serial No. LYNJ9G4FQC (“iPad A2603 Warrant”); (10) Search Warrant No. 23SW46 for an Apple iPad 6, Serial No. GG7X2PQJF88 (“iPad 6 Warrant”); (11) Search Warrant No. 23SW76 for Verizon Records of Cell Phone Number 617-939-8646 (“Verizon #8646 Warrant”); (12) Search Warrant No. 23SW119 for Verizon Records of Cell Phone Number 617-895-8028 (“Verizon #8028 Warrant”); and (13) Search Warrant No. 23SW188 for an iPad A1474, Serial No. DMPMVGETFK15 (“iPad A1474 Warrant”).¹

The Court’s “inquiry as to the sufficiency of the search warrant application always begins and ends with the four corners of the affidavit” (citation omitted). *Commonwealth v. O’Day*, 440 Mass. 296, 297 (2003). The facts pertinent to the affidavits at issue here are as follows.

I. Walshe Residence Warrant

Massachusetts State Police (“MSP”) Trooper Michael Proctor submitted the application for the Walshe Residence Warrant. Trooper Proctor has ten years’ experience as a police officer

¹ Police obtained several other warrants during their investigation which are not challenged by the defendant. The defendant’s motion (Paper 83.0) states he is challenging two additional search warrants. However, at the hearing on the motion, the defendant clarified that he was only challenging the above-noted thirteen warrants.

and is assigned to the State Police Detective Unit at the Norfolk County District Attorney's Office ("NCDAO").² He has extensive experience investigating violent crimes and collecting crime scene evidence and is specially trained in cellular telephone data and call records used in support of criminal investigations.

The Quincy District Court issued the warrant on January 8, 2023.³ The warrant sought: (A) physiological evidence including hair, skin, blood, brain matter, bodily fluids, bone, and any items that may contain their presence; (B) electronic devices including cell phones, iPads, laptops and other devices capable of communications, custody and control, internet searches, recording, or video surveillance; (C) clothing and jewelry described to be worn by Ana; (D) Ana's passport, wallet, and cell phone; and (E) instruments of the crime including blunt force objects such as a hammer, knife, hacksaw, trash bags, cleaning supplies, and receipts or such items and financial documents indicating their purchase. Police executed the warrant on January 8 and 9, 2023. The affidavit supporting the Walshe Residence Warrant provided the following information.

On January 5, 2023, at approximately 3:45 p.m., Cohasset police notified state police detectives assigned to the NCDAO of a missing person and requested assistance. Cohasset Police reported that the day before, they responded to 516 Chief Justice Cushing Highway (the "Walshe Residence") after receiving a call from Hugh Dunleavy, the head of security of Tishman Speyer in Washington, D.C., the employer of Ana Walshe ("Ana"), stating that she had

² Although the court is aware that Trooper Proctor is no longer part of the MSP, its recitation of the factual background is as stated in the affidavits supporting the warrants and its inquiry into the sufficiency of the affidavits is necessarily based on that recitation.

³ Trooper Proctor wrote the incorrect date of submission on the Walshe Residence Warrant affidavit, stating that he submitted it on February 9, 2023. The defendant does not argue nor does this court find that such an error should factor into the analysis of this motion. See *Commonwealth v. Valdez*, 402 Mass. 65, 70 (1988) (typographical errors that are at most negligent misrepresentations cannot form the basis of suppression).

not been seen since December 30, 2022. Ana split her time between Massachusetts and Washington, D.C., maintaining a residence in D.C. for work and one in Cohasset with her husband Brian and their three children. Dunleavy told Cohasset police that Ana's vehicle was presently at her Washington, D.C. residence.

Cohasset Police Officer Gregory Lowrance went to the Walshe Residence on January 4, 2023. Brian was at the house. Brian stated that his wife Ana was missing and he wanted to file a missing person report. According to Brian, Ana had left the Walshe Residence between 6:00 a.m. and 7:00 a.m. on January 1, 2023, taking a Lyft or an Uber to Logan Airport in Boston to return to Washington, D.C. for work. Brian had no specific flight information. He explained that despite efforts to reach her, he had not spoken to Ana since the early morning hours of January 1, 2023. Brian had not contacted the police, but only Ana's employer who in turn notified Cohasset police.

Cohasset police requested and were granted a "ping" for Ana's cellular phone from Verizon. Cohasset police received data from Verizon at approximately 3:30 p.m. on January 4, 2023, indicating that Ana's phone pinged in the area of Reservoir Road in Cohasset which encompasses the Walshe Residence. The data further indicated that Ana's phone was stationary starting from the evening of December 31, 2022 until 3:14 a.m. on January 2, 2023, at which time the phone went off and did not turn back on.

Washington, D.C. Metro Police performed a wellbeing check of Ana at her D.C. residence. There were no signs of Ana there nor any indication of foul play. Further review of Ana's employment records including her access to her employer's building, video surveillance of the parking garage, corporate credit card transactions, and phone and email activity showed no indication of any new activity by Ana on January 1, 2023 or anytime thereafter.

Cohasset police checked domestic and international flight records and found no indication that Ana had booked any travel on January 1, 2023. Ana had booked a flight from Boston to Washington D.C. on January 3, 2023, but she did not board the flight. Cohasset police also requested records from Lyft and Uber. They had no records related to the Walshe Residence or Ana's account on the relevant dates. Ana's financial records did not show any activity on January 1, 2023 or any time thereafter.

Police entered Ana into the National Crime Information Center database as a missing/endangered person on January 4, 2023. On January 5, 2023, investigators from various agencies canvassed the area in the vicinity of the Walshe Residence and conducted numerous interviews. On January 6 and 7, 2023, law enforcement conducted large scale search and rescue operations in the area of the Walshe Residence. The searches did not produce any evidence.

On January 6, 2023 at 8:30 p.m., Cohasset Police Detective Schmidt and MSP Trooper Dicicco interviewed Gem Mutlu. Mutlu had been at the Walshe Residence on December 31, 2022. He stated that he arrived at the residence at approximately 8:30 p.m. and had dinner, champagne, and wine with Brian and Ana. No other adults were present. According to Mutlu, everyone was enjoying themselves and in a good mood. He left the Walshe Residence around 1:00 a.m. to return home.

On January 6, 2023, Brian's attorney, Tracey Miner, provided verbal and written consent to turn over Brian's cell phone and two Apple iPads.⁴ MSP Lieutenant Fanning secured all three devices, which MSP forensically extracted at the NCD AO and returned to Brian the following day.⁵

⁴ The affidavit did not provide any information about the cell phone, such as a phone number or its make/model, or any further information about the Apple iPads.

⁵ The information obtained from these devices is the subject of another motion to suppress. See Docket No. 78, Motion to Suppress Information Resulting from Search of Electronic Devices Based on Consent. Because the court

On January 7, 2023, Detective Schmidt and Troopers Diccio and Proctor interviewed Brian at 1:30 p.m. at the Walshe Residence. Attorney Miner was present for the interview. Brian stated that on December 31, 2022, Ana told Brian that she had to fly back to D.C. first thing in the morning, which surprised him. According to Brian, at approximately 6:00 a.m. on January 1, 2023, Ana, who was preparing to leave, gave Brian a kiss goodbye and told him to stay in bed since he had to get up with the children soon. Ana was wearing a thin black coat, blue/gray hunter rain boots, and a black/floral dress. Around 6:30 a.m., Brian and Ana's oldest child was awake and had asked Ana to fix his iPad. Later that day, around 2:30 p.m., the Walshe's nanny arrived. Shortly after 3:00 p.m., Brian left the Walshe Residence and went to Shaw's Supermarket to purchase milk and orange juice. He returned home, placed the groceries in the fridge, and left again around 4:00 p.m. to head to his mother's residence in Swampscott. The ride took longer than usual because Brian got lost. Normally, he would use his cell phone GPS for directions but one of his children had taken his phone on December 31, 2022, and he did not find it until January 2, 2023. He did not know how to use the Volvo's GPS. Brian stated that he took Route 3 North to Route 93 North and Route 1 North. He realized he was lost when he observed the pirate ship on Route 1. Then he took Route 114 to his mother's house. Brian arrived at his mother's house around 5:30 p.m. and stayed for approximately fifteen minutes. He then went to the Swampscott Whole Foods, where he purchased frozen foods for his mother, and the CVS in Swampscott, where he purchased alcohol wipes for his mother. He returned home at 8:00 p.m.

MSP Trooper Kotkowski reviewed video at the Swampscott and Salem CVS stores from 4:40 p.m. through 8:30 p.m. He did not observe Brian enter the stores, and neither CVS had a

has denied that motion, the information obtained from the consented-to searches is properly considered as part of the affidavits supporting the search warrants at issue.

record for a purchase of alcohol wipes on January 1, 2023 during that time frame. Video footage from the Swampscott Whole Foods also did not show Brian enter the store and neither his Chase nor Fidelity credit cards showed any purchases at Whole Foods.

During the January 7, 2023 interview, police questioned Brian on why he did not contact law enforcement about Ana being missing. He said that his phone went missing on December 31, 2022 and that he emailed his mother and business partners the next day sharing that information. According to Brian, he found his phone in his six-year-old son's bed on January 2, 2023. That day, he sent Ana multiple messages stating that he was worried and asking where she was. On January 2 and 3, 2023, he texted family and friends asking if they heard from Ana. Brian said he did not become concerned about Ana until January 2, 2023. Recently, Ana had been unreachable for about twenty-four hours when she was coming home for Christmas. When Brian had told her he had been concerned and almost called her work to ask about her whereabouts, Ana had instructed him not to worry and that she did not want any issues at her workplace. For this reason, Brian had not reported that Ana was missing until Cohasset police arrived at the Walshe Residence on January 4, 2023.

MSP Troopers Nicholas Guarino and Connor Keefe conducted a forensic review of the data extracted from the iPad mini that Brian had given to Lieutenant Fanning. On January 1, 2023, Brian's cell phone was manually unlocked. The password for the phone was entered at 7:57 a.m., 11:24 a.m., 12:39 a.m., and 12:46 a.m. The forensic review revealed the following internet searches:⁶

- January 27, 2023⁷ at 9:54:13 p.m.: Best state to divorce for a man

⁶ It is unclear from the affidavit whether the internet searches were extracted from the cell phone or the iPad mini. Later warrant affidavits written by Trooper Guarino clarify that police extracted the internet searches from the iPad mini, which Brian said belonged to his six-year-old son.

⁷ This date is incorrectly written in the Walshe Residence Warrant affidavit. It is corrected in later warrant affidavits written by Trooper Guarino as having occurred on December 27, 2022.

- January 1, 2023 at 4:55:38 a.m.: How long before a body starts to smell
- January 1, 2023 at 4:58:14 a.m.: How to stop a body from decomposing
- January 1, 2023 at 5:20:42 a.m.: How to embalm a body
- January 1, 2023 at 5:47:44 a.m.: 10 ways to dispose of a dead body if you really needed to?
- January 1, 2023 at 6:25:17 a.m.: How long for someone to be missing to inheritance
- January 1, 2023 at 6:33:24 a.m.: Cohasset Dump
- January 1, 2023 at 6:34:04 a.m.: Hingham Dump
- January 1, 2023 at 6:34:55 a.m.: Can you throw away body parts
- January 1, 2023 at 9:29:34 a.m.: What does formaldehyde do
- January 1, 2023 at 9:34:39 a.m.: How long does DNA last
- January 1, 2023 at 9:59:56 a.m.: Can identification be made on partial human remains
- January 1, 2023 at 11:34:54 a.m.: Dismemberment and best ways to dispose of a body
- January 1, 2023 at 11:44:55 a.m.: How to clean blood from wood and floor
- January 1, 2023 at 11:56:05 a.m.: Luminol to detect blood
- January 1, 2023 at 1:08:38 p.m.: What happened when you put body parts in ammonia
- January 1, 2023 at 1:21:47 p.m.: Is it better to throw away crime scene clothes or wash them

Trooper Proctor averred that there was probable cause to believe Brian committed the crimes of kidnapping and misleading a police investigation based upon the foregoing facts, including Brian's inconsistent statements, internet searches, and the fact that Ana had not been located nor had there been any activity from any of her accounts.

II. Volkswagen Warrant

Trooper Proctor submitted the affidavit for the Volkswagen Warrant.⁸ The application sought installation of GPS tracking on the vehicle registered to Diana Walshe, Brian's mother, and in the possession of Brian. The Quincy District Court issued the warrant on January 8, 2023.

The warrant affidavit set forth the exact same facts as in the Walshe Residence Warrant affidavit. It further offered information about the use of GPS surveillance tracking systems.

⁸ Once again, Trooper Proctor incorrectly listed February 9, 2023 as the date he submitted the affidavit for the Volkswagen Warrant.

Specifically, MSP Lieutenant David Crouse, the electronic surveillance equipment technician assigned to the Special Services Sections of the MSP, had informed Trooper Proctor that GPS surveillance systems are installed on a target vehicle without the target's knowledge, and they calculate the position utilizing satellites orbiting the earth. Law enforcement can obtain the position of the target vehicle using mapping software through a cellular phone installed in the vehicle and may obtain current as well as historical locations of the vehicle.

Based upon the facts in the affidavit, Trooper Proctor averred that there was probable cause to believe that Brian had access to and the ability to operate three vehicles currently in the driveway of the Walshe Residence, which included the Volkswagen registered to his mother, and that Brian may be a flight risk. Trooper Proctor further averred that there was probable cause to believe Brian committed the crimes of kidnapping and misleading a police investigation and the use of the GPS device would enhance the investigation by quickly identifying locations, durations of stops, and frequencies of locations visited by Brian.

III. Macbook A1534 Warrant, Macbook A2159 Warrant, iPad 6 Mini Warrant, Red iPhone Warrant, Macbook A2179 Warrant, Black iPhone Warrant, iPad A2603 Warrant, and iPad 6 Warrant (collectively, the "Electronic Devices Warrants")⁹

Police recovered the various electronic devices that were the subject of the warrants from the Walshe Residence during their execution of the Walshe Residence Warrant. MSP Trooper Nicolas Guarino submitted the affidavits for the Electronic Devices Warrants. Trooper Guarino has seventeen years in law enforcement. He has specialized training in the analysis and data extraction of cell phones using the Cellebrite software system and in X-ways forensics software, Axiom Magnet Forensic software, and Autopsy Forensic software programs that analyze

⁹ The Court did not include the iPad A1474 Warrant as part of the Electronic Devices Warrants because it was obtained two months after the warrants for the other electronic devices and therefore after the police had gathered much more information. The iPad A1474 Warrant is discussed separately.

extracted data from digital devices. Trooper Guarino conferred with MSP Sergeant Edward Keefe during the investigation. Sergeant Keefe also has specialized training in mobile device extraction and analysis as well as computer and cell phone forensics, GPS forensics, and advanced data extraction. He holds a certificate from the International Association of Computer Investigative Specialists as a Forensic Computer Examiner and Mobile Device Examiner.

The Quincy District Court issued the Electronic Devices Warrants on January 9, 2023.¹⁰ The warrants all sought: (a) documents, photos, audio visuals, files, electronic communications, emails/accounts, web browser history, searched topics, contacts, usernames, passwords, deleted data, significant or cached locations, and GPS location data from Sunday, December 25, 2022 at 0000 hrs to Sunday, January 8, 2023 at 0900 hrs related to the disappearance of Ana and the misleading of the police investigation; (b) any user data related to specified Apple IDs; (c) any notes, journals, word/text documents regarding Brian's activities during this investigation from December 25, 2022 at 0000 hrs to Sunday, January 8, 2023 at 0900 hrs; (d) call logs from December 25, 2022 at 0000 hrs to Sunday, January 8, 2023 at 0900 hrs; (e) chats, texts, and other messages from communications applications from December 25, 2022 at 0000 hrs to Sunday, January 8, 2023 at 0900 hrs; (f) health diagnostic data from December 31, 2022 at 0000 hrs to Sunday, January 8, 2023 at 0900 hrs; and (g) information showing ownership, custody, or control of the electronic devices. Police executed the warrants on January 9, 2023.

The affidavits supporting the warrants set forth information Trooper Guarino gathered during his investigation as well as information he learned from other MSP troopers and

¹⁰ Trooper Guarino also incorrectly listed February 9, 2023 as the date he submitted the affidavits for the Electronic Devices Warrants.

detectives and Cohasset police. The affidavits contained all the information from the affidavit supporting the Walshe Residence Warrant as well as the following additional information.

On January 4, 2023, at approximately 6:35 p.m., Detective Schmidt arrived at the Walshe Residence for a follow up investigation at which time he conducted an audio-recorded interview with Brian. At the conclusion of the interview, Brian consented to a search of the house and surrounding property. Brian led Detective Schmidt around the residence and property and identified items of potential interest in the missing person investigation. Before leaving the scene, Detective Schmidt observed the back of a 2019 Volvo XC90 bearing the MA registration 8NR793 with the third row raised. Lining the floor of the trunk area was an opaque off-white thin piece of plastic. The next day, Detective Schmidt went back and reinterviewed Brian. At the conclusion of the interview, Brian consented to a search of the Volvo. The third-row seat was now folded down and floor mats were laid on the floor of the trunk. There was light brown dirt on the floor mats. The carpet on the floor of the truck appeared freshly vacuumed. When Detective Schmidt asked Brian where the plastic trunk liner was from the night before, he stated that he had put it in the trash cans.

On the morning of January 7, 2023 at 5:18 a.m., Cohasset Police Detective Schmidt received an email from RichardWalker9984@gmail.com stating the following:

“We have the so named Ana Walshe with us here . . . we had a deal worth \$127,000. . she messed up . . we have her here with us and if she doesn’t pay the money . . then she’ll never be back, and we know that the police and the FBI are involved . . good luck finding us.”

(partial ellipses in original). Investigators considered this email suspicious because it contained no timeline to respond to the demand and no contact instructions.

On January 7, 2023, Trooper Connor Keefe analyzed location information extracted from Brian’s cell phone utilizing the Cellebrite Physical Analyzer. During an interview earlier that

day, Brian had told investigators that the only place he visited on January 2, 2023 was an ice cream shop in Norwell called Press; however, location data from Brian's phone showed that on January 2, 2023, at 4:12 p.m., Brian's cell phone was at the Home Depot in Rockland until about 4:56 p.m.

On January 8, 2023, MSP Trooper Moore traveled to the Rockland Home Depot to review security video from January 2, 2023. The footage showed that between 4:12 p.m. and 4:56 p.m., Brian was pushing a shopping cart containing cleaning products including three mops and brushes; two large clear tarps; a drop cloth; two rolls of heavy duty tape; a Tyvek suit with hood, boot, and coverall; and a mop bucket with ringer.

On January 8, 2023, police executed the Walshe Residence Warrant. Located in the basement was an unopened ten by twenty-foot heavy duty canopy tarp which appeared on an itemized receipt that Home Depot had provided Trooper Moore. Police also discovered a roll of plastic consistent with the plastic Detective Schmidt observed in the back of Brian's Volvo on January 4, 2023. Police seized numerous electronic devices from the home including three Macbooks, two iPhones, and three iPads.

During the four occasions police interviewed Brian between January 4, 2023 and January 8, 2023, he gave statements regarding a trip to Whole Foods and CVS in Swampscott that the officers interpreted as willful attempts to mislead investigators. The statements wasted resources and delayed the search for Ana. Further, investigators identified multiple instances where Brian, who was on federal probation monitoring that required him to request to leave his residence, traveled to locations that he did not disclose to his probation officer.

Based upon the facts in the affidavits supporting the Electronic Devices Warrants, Trooper Guarino averred that there was probable cause to believe that Brian committed the crimes of kidnapping, misleading a police investigation, and disinterring a body.

Based on Trooper Guarino's training and experience and information he learned by conferring with Sergeant Keefe, the affidavit also set forth the capabilities of electronic devices and particularly Apple products. According to Trooper Guarino, electronic devices are capable of conducting internet searches, storing large amounts of data and connecting to external devices via universal serial bus cable and Bluetooth signals. Apple computers, cell phones, and tablets have the capability of sharing files between one another using Bluetooth signals. Apple devices which share the same Apple ID will share information such as internet searches across those devices signed in through Apple's iCloud services. The Apple iPhone can be paired with a smart watch or fitness tracker that will record distance traveled, heart rate, and calories burned. An iPhone can also store financial information and be used to make purchases at select locations.

Trooper Guarino further averred that, based on the officers' training and experience, they know that people who commit criminal offenses often communicate prior to and following a crime and often communicate with their victims prior to and following a crime. People also often transport portable devices from location to location and the devices connect to various Wi-Fi connections with ease. A search of an electronic device may reveal log files and file remnants concerning communications, use of internet service accounts as well as internet access to various websites. According to Trooper Guarino, it was reasonable to believe in this case that electronic devices were accessed to communicate with others before, during, and after the commission of the suspected crimes.

Lastly, Trooper Guarino averred that the historical GPS data associated with the electronic devices would contain evidence of the physical location of the devices. According to Trooper Guarino, the information and evidence associated with a particular device would contribute to identifying the locations from which the device departed, where it traveled, and the time it remained at various coordinates. The devices would also store subscriber information as well as telephone numbers recently dialed, calls received, and information related to contacts. Trooper Guarino believed obtaining access to the electronic devices would materially aid the investigation.

IV. iPad A1474 Warrant

Trooper Guarino submitted the application for the iPad A1474 Warrant, and the Quincy District Court issued the warrant on March 9, 2023.¹¹ Police recovered the iPad from Ana's residence in Washington, D.C. The warrant sought: (a) documents, photos, videos, audio visuals, files, electronic communications, emails/accounts, web browser history, searched topics, contacts, usernames, passwords, deleted data, significant or cached locations, and GPS location data from Thursday, November 17, 2022 at 0000 hrs to Saturday, January 7, 2023 at 1250 hrs related to the disappearance and murder of Ana and Brian's misleading of the police investigation; (b) any user data related to specified Apple IDs; (c) Facetime calls and logs from Thursday, November 17, 2022 at 0000 hrs to Saturday, January 7, 2023 at 1250 hrs; (d) information showing ownership, custody, or control of the electronic evidence items; (e) any communications between Ana and Brian, other family members, or friends from Thursday, November 17, 2022 at 0000 hrs to Saturday, January 7, 2023 at 1250 hrs; and (f)

¹¹ As with the other warrant affidavits in this case drafted by Trooper Guarino, this affidavit stated an incorrect date of submission post-dating the date of the issuance and search.

communications and records relating to Ana and Brian's state of mind or motive including financial records, life insurance policies, divorce, child custody disputes, or marital discord.

The warrant affidavit reiterated facts from the previous Walshe Residence Warrant affidavit and affidavits supporting the Electronic Devices Warrants including information about what information can be gleaned from electronic devices. The affidavit contained the following additional information.

In addition to the internet searches occurring on December 27, 2022 and January 1, 2023 that were extracted from the iPad mini belonging to Ana and Brian's son, a search of that iPad mini revealed other internet searches conducted on January 2 and 3, 2023. These included:

- January 2, 2023 at 12:45 p.m.: Hack saw the best tool for dismembering a body
- January 2, 2023 at 1:10 p.m.: Can you be charge with murder without a body
- January 2, 2023 at 1:14 p.m.: Can you identify a body with broken teeth
- January 3, 2023 at 1:02 p.m.: What happens to hair on a dead body
- January 3, 2023 at 1:13 p.m.: What is the rate decomposition of a body found in plastic bag compared to body found on surface in the woods
- January 3, 2023 at 1:20 p.m.: Can baking soda make a body smell good

Several of the internet searches conducted on January 1, 2023 occurred prior to the time Brian stated he had last received a kiss from his wife before she left the Walshe Residence. The searches for "how long before a body starts to smell" and "how to stop a body from decomposing" occurred less than four hours after the time when Ana was last seen alive at the Walshe Residence by Muthu.

On January 7, 2023, Trooper Keefe analyzed location information extracted from Brian's cell phone utilizing Cellebrite software. It showed that on January 2, 2023, at 9:44 a.m., the device was in the area of Home Goods in Norwell. Surveillance footage from the Norwell Home Goods showed Brian pushing a shopping cart and purchasing three rugs among other items. Later in the day, Trooper Moore observed video footage from the Rockland Home Depot

showing Brian purchasing several items including two splash resistant goggles, a soft grip utility knife, two twelve-pound bags of baking soda, and a hatchet.

Brian's cell phone location data showed that after leaving the Home Depot, he made a trip to Derby Street in Hingham lasting from 5:15 p.m. to 5:32 p.m. Video footage shows Brian left the jacket, black facemask, and the blue rubber gloves he was wearing while at Home Depot in his car; walked to a trash can on Derby Street; and discarded small trash bags.

Location data also showed that on January 3, 2023, Brian's cell phone was in the area of the Claremont apartment complex in Abington from 4:27 p.m. to 4:39 p.m. Investigators observed video from the area showing a man consistent with Brian's appearance exit Brian's Volvo and walk towards the dumpster carrying a garbage bag that appeared to be of significant weight. Subsequently, at approximately 4:48 pm to 4:52 p.m., Brian's device was in the area of the Point apartment complex in Abington, but there was no video of the dumpster area. Brian's device then went to the area of the Chatham West apartment complex in Brockton from 5:10 p.m. to 5:16 p.m. Video from that area shows a man consistent with Brian's appearance exiting Brian's Volvo and discarding items in a dumpster. Investigators worked to track the dumpsters at the various locations but the items had already been shredded or incinerated by the evening of January 8, 2023.

On January 8, 2023, while executing the Walshe Residence Warrant, MSP members assigned to the Crime Scene Services Section and members of the State Crime Lab conducted testing on various surfaces and floors within the home. Multiple locations in the basement and staircase leading down to the basement tested positive for blood. A knife that tested positive for blood was located next to multiple bottles of hydrogen peroxide inside a cabinet above the kitchen's refrigerator.

On January 8, 2023, Detective Schmidt and Troopers Diccico and Guarino interviewed Brian at the Walshe Residence. Attorney Miner was present for the interview. During the interview, Brian stated that on January 1, 2023, he went to the CVS in Danvers. Investigators observed Brian on video at the Danvers CVS purchasing and shoplifting cleaning products. The officers confronted Brian with the iPad searches about dismembering and disposing of a body conducted prior to the time he stated that he last saw Ana at the home. Brian offered no explanation other than the iPad belonged to his son. Trooper Diccico asked if Brian's six-year-old son was of average intelligence and Brian stated, "I'd like to think so." When told the searches had no misspelled words, he offered no explanation. Attorney Miner offered the possibility that Ana had performed some of the searches on the iPad herself. When asked to explain how the searches continued after Ana was said to have left the home, Brian offered no explanation. Attorney Miner then terminated the interview.

That same day, police arrested Brian and charged him for intentionally misleading a police investigation.

On January 9, 2023, investigators executed a search warrant on Brian's Volvo. Swabs taken from the weather mat in the trunk of the vehicle and the electronic adjustment buttons along the driver's seat indicated the presence of blood.

The same day, investigators continued to review Brian's cell phone data. They observed that on January 5, 2023, Brian traveled to where his mother resides but unlike a previous visit on December 27, 2022, this time he remained in the southwest corner of the complex near the dumpster for five minutes before leaving. MSP Trooper Kotkowski secured the dumpster. A search revealed ten trash bags. The contents were documented, bagged as evidence, and secured. Among the items secured were towels, rags, slippers, plastic sheeting, tape, a Tyvek suit, gloves,

cleaning agents, carpet/rugs, Hunter boots, a Prada purse, foreign currency, Ana's COVID vaccination card, a hacksaw, a hatchet, heavy duty cutting shears, and a hammer. The boots and purse were consistent with what Brian had described Ana as possessing when he last saw her on January 1, 2023. Many items contained red/brown stains consistent with blood. Preliminary testing on a portion of a rug which was heavily stained and red/brown in color showed a substance consistent with baking soda. Scrapings from the rug also revealed a metal bar with the name Gucci imprinted on it consistent with a necklace Ana wore in photos.

The State Crime Lab performed testing on selected items secured from the dumpster. The slippers, the Tyvek suit, and a tissue showed the presence of DNA. Further testing of the DNA from the slippers and the sleeve cuffs of the Tyvek suit matched Ana with Brian as a contributor. DNA testing of the exterior left pant leg and the interior right sleeve of the Tyvek suit and from the tissue included Ana as a contributor.

The information collected during the investigation caused police to suspect that Brian killed Ana, dismembered her body in the basement of the Walshe Residence, and disposed of her body and other items in various dumpsters. This information included the internet searches, untruthful statements, presence of blood in the basement, Brian's purchase of cleaning supplies and cutting instruments, the presence of blood in the rear of Brian's Volvo, video evidence of his multiple trips to six dumpsters in five days, and the items recovered from the dumpster in Swampscott. Investigators interviewed many of Ana's close friends, colleagues, sister, and mother. No one has heard from her since the early morning hours of January 1, 2023. There was no indication that she would have voluntarily disappeared. She had made future plans for herself professionally and personally and for her children.

V. Verizon #8646 Warrant and Verizon #8028 Warrant (together, the “Verizon Warrants”)

Trooper Connor Keefe submitted the applications for the Verizon Warrants. Trooper Keefe has been assigned to the State Police Detective Unit at the NCDAO since January 2021. He has specialized training and experience in the collection of physical evidence, crime scene processing, and the investigation of cases.

Trooper Keefe submitted the application for the Verizon #8646 Warrant on January 20, 2023 and the Quincy District Court issued the warrant the same day. He submitted the application for the Verizon #8028 Warrant on February 3, 2023 and the Quincy District Court issued that warrant the same day as well. Both applications sought call detail records, location information, subscriber information, network data usage or Internet Protocol usage data, and list information pertaining to cell towers or the respective phone numbers. The records sought for the Verizon #8646 Warrant were from December 30, 2022 at 12:00 a.m. through January 8, 2023 at 11:59 p.m. The records sought for the Verizon #8028 Warrant were from January 1, 2023 at 12:00 a.m. through January 8, 2023 at 11:59 p.m.

The affidavits supporting the Verizon Warrants indicated that Brian used both cell phones since Ana’s disappearance. For instance, according to the Verizon #8646 Warrant, Brian used that cell phone on January 2, 2023 to make an outgoing call and the phone was with him when he traveled to the Rockland Home Depot to purchase items that police believed he used to dispose of Ana’s body. According to the Verizon #8028 Warrant, Brian had that phone with him on January 1, 2023 when police observed him on surveillance footage at Lowe’s purchasing over \$450 worth of tools including a hacksaw as well as cleaning supplies—another trip that Brian had not disclosed to investigators.

The affidavits supporting the Verizon Warrants reiterated information from the previous affidavits learned during the interviews of Brian, the initial investigation upon the report of a missing person, the consented-to search of the iPhone and iPad mini, the search warrant of Brian's Volvo, the location data and subsequent observation of Brian's actions from January 1, 2023 to January 8, 2023, and the items recovered from the dumpster in Swampscott. The affidavits contained the following additional information.

During the police interview of Mutlu on January 6, 2023, he stated that he sent Brian and Ana a message on the same text thread on January 1, 2023 at 11:40 a.m. Ana never responded, and Brian responded on January 2, 2023 telling Mutlu that his child had just found his phone. On January 4, 2023, Brian called Mutlu and sounded distraught and a little off. Brian told Mutlu that he had not heard from Ana in three days and that she had left early in the morning for a work emergency. Mutlu asked Brian if he and Ana had an argument after he had left and Brian responded something to the effect of, "Did it look like we were arguing?" Mutlu provided to police the names of people who knew Ana well, including her friends Alissa Kirby and Will Fastow.

On January 7, 2023, MSP Sergeant Yuri Bukhenik and Detective Lopes traveled to Washington, D.C. and spoke to Fastow with his attorneys present. Fastow resides in D.C. and was the most frequent contact with Ana on the cell phone records in possession of investigators. Fastow told investigators that he had been dating Ana for several months, and that the relationship had become more serious over the past few months. Fastow and Ana had spent Thanksgiving and Christmas Eve together. They were open about their relationship in D.C and had plans to celebrate the New Year on January 4, 2022 when Ana returned from Massachusetts.

Investigators also spoke with Kirby. She told them that Ana and Brian's marriage was strained and that Ana was planning on having the kids live with her in D.C. Ana had reportedly given some sort of ultimatum to Brian about the resolution of his federal criminal case and wanted the kids to be with her. When investigators viewed Ana's residence in D.C., they observed it to be ready for the kids to move in with their clothes and other items present.

The affidavit supporting the Verizon #8028 Warrant contained the following additional information not found in the affidavit for the Verizon #8028 Warrant.

Investigators interviewed the Walshes' nanny, Robin Howe. Howe told police that Brian asked her to watch the children on January 1, 2023 from 2:00 p.m. until 7:00 p.m. Brian had previously told Howe that he and Ana were going to go to brunch that day, but when Howe arrived, he said Ana had to return to Washington, D.C. for a work emergency and he had errands to do. She observed that Brian, who was generally calm and collected, appeared preoccupied that day. He left around 2:00 p.m., returned between 4:00 p.m. and 5:00 p.m. to drop off pizza, and then went out again. Howe observed one of the children had a new iPad. She said that Brian's mother, Diana, was always buying new iPhones and iPads for the children. Brian returned between 8:00 p.m. and 8:30 p.m.

After further investigation, investigators discovered the iPhone with the phone number ending in 8028 was present at Home Goods in Norwell on January 2, 2023 when Brian was seen on surveillance video purchasing three rugs and other items and at Press Juice Bar. Although Brian stated that he had lost or misplaced his iPhone 13 on December 31, 2022 and did not find it until January 2, 2023, he had the care, custody, and control of the iPhone ending in 8028.

The affidavits supporting both the Verizon Warrants explained that based on Trooper Keefe's training and experience, he knows people frequently employ cell phones as a primary

means of communication and suspects involved in criminal behavior often times require communications. Such communication is essential to evading police and disposing of evidence. Trooper Keefe believed that records related to the mobile devices used by Brian ending in 8646 and 8028 relevant to the period preceding and following Ana's murder would provide evidence of planning, execution, and cover-up of a crime.

Trooper Keefe also explained that, based on his training and experience, cell phone providers can provide an estimated distance between a cell phone and a cell site, and modern cell phones contain GPS receivers which can provide the latitude and longitude of the device when certain functions are performed. According to Trooper Keefe, obtaining records from Verizon would allow investigators to confirm or refute Brian's movements during the planning, execution, and disposal of evidence; assist in establishing a timeline; and identifying other possible locations where evidence may have been disposed.

DISCUSSION

“Under the Fourth Amendment and art. 14, a search warrant may issue only on a showing of probable cause” (citation omitted). *Commonwealth v. Martinez*, 476 Mass. 410, 414 (2017). “For probable cause to arise, the facts contained in an affidavit, plus the reasonable inferences that may be drawn from them, must allow the magistrate to determine that ‘the items sought are related to the criminal activity under investigation, and that they reasonably may be expected to be located in the place to be searched at the time the search warrant issues.’” *Id.* at 415 (citations omitted). “In dealing with probable cause, . . . as the very name implies, [courts] deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act” (citation omitted). *Commonwealth v. Kaupp*, 453 Mass. 102, 110-111 (2009).

In reviewing a finding of probable cause, search warrant affidavits are to be interpreted in a realistic and commonsense manner, and should be ‘read as a whole, not parsed, severed, and subjected to hypercritical analysis’” (citations omitted). *Commonwealth v. Anthony*, 451 Mass. 59, 69 (2008). “An inference drawn from the affidavit, ‘if not forbidden by some rule of law, need only be reasonable and possible; it need not be necessary or inescapable.’” *Kaupp*, 453 Mass. at 111. Moreover, “[a] reviewing court gives considerable deference to the magistrate’s determination of probable cause, and even ‘the resolution of doubtful or marginal cases . . . should be largely determined by the preference to be accorded to warrants’” (citation omitted). *Anthony*, 451 Mass. at 69.

I. Walshe Residence Warrant

The defendant contends that the Walshe Residence Warrant was not supported by probable cause because the affidavit in support of the warrant failed to establish a nexus between the items sought and any criminal activity. He also argues that insofar as the warrant authorized the seizure of all electronic devices in the Walshe Residence, it was impermissibly broad.¹² Based on careful review of the warrant affidavit, the court concludes there was probable cause to search the Walshe Residence for the specific items, including all electronic devices.

As to the defendant’s first contention, it is well established that the affidavit submitted with the search warrant application must provide a “substantial basis to conclude that the items sought are related to the criminal activity under investigation, and that they reasonably may be expected to be located in the place to be searched at the time the search warrant issues”

¹² The defendant’s memorandum in support of his motion also contends that the evidence and information seized from the consented-to searches of defendant’s iPhone and his son’s iPad mini should be excised from the affidavits in support of the search warrants. As stated in footnote 5, *infra*, the court has denied the defendant’s separate motion to dismiss based on lack of consent. Accordingly, there is no basis to excise such information from the warrant affidavits.

(quotations and citation omitted). *Commonwealth v. Alexis*, 481 Mass. 91, 101-102 (2018).

“Stated differently, ‘the government must show not only that there is probable cause that the individual committed a crime but also that there is a ‘nexus’ between the alleged crime and the article to be searched or seized.’” *Commonwealth v. Colina*, 495 Mass. 13, 25 (2024), quoting *Commonwealth v. Snow*, 486 Mass. 582, 586 (2021).

The affidavit here showed that Brian had not contacted police even though his wife had been missing for several days, and that his account of what occurred on January 1, 2023 did not match the other information investigators had obtained. There was no evidence that Ana had left the Walshe Residence in an Uber or Lyft to fly to Washington, D.C., as Brian claimed, or that she had ever planned to do so, and surveillance footage and store records contradicted Brian’s statements that he went to Whole Foods and CVS in Swampscott that day. See *Commonwealth v. Camuti*, 495 Mass. 630, 642 (2025) (defendant’s false statements to police and concealment of information contributed to probable cause analysis of whether he was involved in the crime). Additionally, police discovered several internet searches made following Ana’s disappearance on Brian’s son’s iPad mini regarding ways to dispose of a dead body and clean up a crime scene. Taken together, this information was sufficient to establish probable cause to believe that the defendant was involved in Ana’s disappearance and was misleading the police, and therefore had committed the crimes of kidnapping and misleading a police investigation.

The affidavit also established a nexus between these crimes and the items sought in the warrant including physiological evidence; items belonging to Ana such as her clothing and jewelry, passport, wallet, and cell phone; electronic devices; and instruments of the crime as described in the warrant application. It is reasonable to infer from the affidavit that Brian, the only adult in the home at the time the internet searches concerning the dismembering and

disposing of and the cleaning up after a dead body occurred, performed those searches. Thus, there was probable cause to believe that physiological evidence would be found in the Walshe Residence as well as the tools and cleaning supplies necessary to perform the actions identified in the internet searches.¹³ The affidavit also explained that Brian was using electronic devices to make internet searches directly related to Ana's disappearance and to communicate about her disappearance in the time before police were aware she was missing. Therefore, there was probable cause to believe that there would be evidence of the crimes on the devices. See *Colina*, 495 Mass. at 26-28 (warrant authorizing search of defendant's apartment for telephones and computers which could help detect identity of victim was supported by probable cause). Further, where there was no evidence that Ana had left the home and her phone pinged in the area of the home after she went missing, there was probable cause to believe the clothing she was allegedly wearing when she was last seen and her passport, wallet, and cell phone as well as the other items sought in the warrant would be found in the Walshe Residence. Accordingly, defendant's first contention fails.

With regard to defendant's second argument, the warrant's authorization to seize all electronic devices in the residence was not impermissibly broad. The fact that the internet searches about dismembering and disposing of a body appeared on the defendant's son's iPad mini is significant. It was reasonable for police to infer that Brian made those searches either on his son's device or on another Apple device synched to that iPad. In either case, officers could further infer that Brian used various electronic devices to which he had access in an effort to

¹³ In his memorandum, the defendant separately argues that there is no probable cause for the items listed under section "E" in Addendum A to the warrant—"Instruments of the crime as listed in the iPad searches in the affidavit including blunt force objects such as a hammer, knife, hacksaw, trash bags, cleaning supplies, and receipts or such items and financial documents indicating their purchase" because they are common tools or household items not generally related to criminal activity. This argument appears to only apply if the court suppressed the internet searches due to lack of consent, which as noted herein, the court has not. Considering the content of the internet searches, police had probable cause to seize the items as listed in Addendum A, Section E.

cover up his crime. See *Commonwealth v. Molina*, 476 Mass. 388, 396-397 (2017) (“Where evidence of child pornography could thus have existed on any or all electronic devices at the location associated with the target IP address, the seizure of over a dozen electronic devices found in the apartment did not exceed the warrant’s scope.”).

Also, the affidavit set forth that Brian was using his phone as well as some other electronic device(s) to communicate about Ana’s whereabouts. Brian told the investigators that while his phone was missing from December 31, 2022 to January 2, 2022, he had emailed his mother and business partners to tell them Ana was missing. He further explained that upon locating his phone, he had texted Ana multiple times and reached out to her friends and family to inquire if they had heard from her, and he had contacted Ana’s work about not being able to get in touch with her. Thus, Brian was using more than one electronic device to communicate to and about Ana during the time she was missing.

Based on the information in the affidavit, police had probable cause to believe that Brian was using electronic devices he had access to in the Walshe Residence to affect the investigation into Ana’s disappearance. Where the officers could not know which electronic devices held such information, the warrant authorizing the seizure of all devices was not overly broad. See *Commonwealth v. McDermott*, 448 Mass. 750, 770 (2007) (warrant seeking evidence of defendant’s mental state not overbroad where police “did not have information that would allow them further to limit the description of this category of items”). Thus, defendant’s second argument is also unavailing.

Accordingly, there is no basis to suppress the evidence seized pursuant to the Walshe Residence Warrant.

II. Volkswagen Warrant

The defendant challenges the warrant authorizing police to install a GPS tracking device on the 2013 Volkswagen Beetle registered to Brian's mother and parked in the driveway of the Walshe Residence. The court agrees that there was no probable cause for this warrant.

The "surreptitious installation of a GPS device on a motor vehicle is a search or a seizure" and thus requires a search warrant (quotations and citations omitted). *Commonwealth v. Johnson*, 91 Mass. App. Ct. 296, 303 (2017). "[W]arrants for GPS monitoring of a vehicle may be issued under the courts' common-law authority, in circumstances . . . where [there is] probable cause to believe that a particularly described offense has been, is being, or is about to be committed, and that GPS monitoring of the vehicle will produce evidence of such offense or will aid in the apprehension of a person who the applicant has probable cause to believe has committed, is committing, or is about to commit such offense." *Commonwealth v. Rousseau*, 465 Mass. 372, 383 (2013), quoting *Commonwealth v. Connolly*, 454 Mass. 808, 825 (2009)

The warrant at issue does not meet this standard. The warrant authorized the GPS tracking of the Volkswagen for fifteen days from the date of its issuance, January 8, 2023.¹⁴ However, the affidavit supporting the warrant did not offer any information as to how monitoring the Volkswagen would produce evidence of Brian's alleged kidnapping of Ana or his misleading of the police investigation or aid in his apprehension for such crimes. Other than stating that the Volkswagen was currently parked in the driveway of the Walshe Residence and that Brian had access to and the ability to operate it, there was no information in the affidavit connecting the vehicle to Brian or the crimes.¹⁵ Cf. *Rousseau*, 465 Mass. at 384-385

¹⁴ The warrant return indicates that Trooper Proctor installed the device pursuant to the warrant at 3:30 a.m. on January 8, 2023. Police arrested the defendant later that day.

¹⁵ The information about this vehicle stands in sharp contrast with that of the Volvo. Brian told police he used the Volvo to run errands on January 1, 2023—the account of which police later discovered was not entirely true.

(information in affidavit describing defendant charged with arson using pickup truck to drive away from scene of fire was sufficient for GPS tracking on defendant's truck). While the affiant averred that having access to three vehicles suggested Brian "may be a flight risk," there are no facts in the affidavit from which it can be inferred that Brian was considering flight. Nor is it clear to the court how having access to more than one vehicle increases a suspect's risk of flight.

Because the affidavit supporting the Volkswagen Warrant was not supported by probable cause, the court will suppress any evidence obtained from that warrant.

III. The Electronic Devices Warrants and the iPad A1474 Warrant

During the execution of the Walshe Residence Warrant, police seized several electronic devices which each became the subject of their own warrant. Much later in the investigation, police obtained the warrant for the iPad A1474, a device they obtained from Ana's residence in Washington, D.C. The defendant argues that (1) all the affidavits supporting these warrants lack specific evidence linking the electronic devices to criminal conduct; (2) that the affidavits impermissibly rely only on the general presence of cell phones in daily life and officer experience; and (3) they are overly broad in terms of the time frame and the items sought. None of these arguments have any merit.

"To establish probable cause to search the contents of a computer-like device, 'police first must obtain information that establishes the existence of some "particularized evidence" related to the crime' that they believe is likely to be found on the device in question" (citation omitted). *Colina*, 495 Mass. at 31, quoting *Commonwealth v. White*, 475 Mass. 583, 589 (2016). "[T]here must be 'specific, not speculative,' evidence linking the device in question to the criminal conduct" (citation omitted). *Commonwealth v. Henley*, 488 Mass. 95, 116 (2021). The warrant affidavits at issue here meet this standard.

Turning to defendant's first contention, for largely the same reasons as stated in Section I. discussing the Walshe Residence Warrant, the affidavits for the Electronic Devices Warrants contained sufficient specific evidence linking Brian's electronic devices to the accused of criminal conduct. The affidavits explained that on the day Ana went missing, Brian utilized an electronic device to conduct internet searches about how to dismember, dispose of, and clean up after a dead body; that in the days after Ana's disappearance, Brian utilized more than one device to send emails, text messages and/or make phone calls to Ana, her friends and family, and her employer about her disappearance; that police knew Brian was giving them false information about his whereabouts based on location data and other evidence showing he was not where he said but rather was purchasing materials they suspected would be used in furtherance of his crimes; and that after the police had commenced their investigation, they received a suspicious ransom email from someone claiming to be holding Ana. The affidavits also explained how Apple electronic devices can share information such as internet searches across devices and how they can store information related to a device's location, distance traveled, and time remained at various coordinates; health information such as heart rate; financial information such as purchases made; and incoming and outgoing communications. Thus, the affidavits established probable cause to believe that Brian's electronic devices would contain evidence of Ana's disappearance and Brian's efforts to mislead the police investigation.¹⁶

As to defendant's second argument, the affidavits did not, as he contends, rely only on general evidence about cell phones and officer experience. Rather, as noted above, they provided detailed information regarding how police believed Brian's used electronic devices in

¹⁶ At the hearing on the motion, the defendant argued that police should have sought a warrant for the iCloud information rather than for each individual device. While it may have been possible for police to retrieve some information sought through other means, they were not constitutionally required to do so. See *Commonwealth v. Dorelas*, 473 Mass. 496, 502-504 (2016).

the commission of the crimes and why they believed the information sought would be on his electronic devices. Cf. *Commonwealth v. Broom*, 474 Mass. 486, 496-497 (2016) (affidavit did not provide probable cause to search defendant's cell phone where the only connection between cell phone and crime was affiant's conclusory statement that "cellular telephones contain multiple modes used to store vast amounts of electronic data" and that there was "probable cause to believe that the [defendant's] cell phone and its associated accounts . . . will likely contain information pertinent to this investigation").

With regard to the defendant's last contention, the items sought in the Electronic Devices Warrants were not overly broad. To be sure, the warrants authorized the search of a significant amount of information from the devices. This included all communications (emails, texts, etc.), browser/search history, photos/videos/audio files, location data, text documents, health data, user data related to specified Apple IDs, and information related to the ownership, custody, and control of the evidence sought. However, the warrants were directed at information that police expected to find on the devices based on what they had already uncovered during the investigation. See *Commonwealth v. Perkins*, 478 Mass. 97, 105-106 (2017) ("police had detailed and specific knowledge concerning the defendant's use of a cellular telephone" in commission of crime establishing probable cause to search the call logs and telephone contact lists of the nine seized telephones). Moreover, the warrants were limited in scope to items that "related to the disappearance of Ana Walshe and the misleading of the police investigation" (Addendum A, item a.) or related to "Brian Walshe's activities regarding this investigation" (Addendum A, item c.). As such, the warrants were "clear about what they were seeking on the device[s]" and "specifically identified the type of evidence sought" and so were not overly broad in scope. *Henley*, 488 Mass. at 120 (warrant specifying eight categories of relevant evidence

police were seeking on cell phone did not lack particularity where police “did not know the precise identity or content of the evidence that would be found”); *United States v. Ulbricht*, 858 F.3d 71, 102 (2d Cir. 2017), cert. denied, 585 U.S. 1033, (2018) (“A warrant may be broad, in that it authorizes the government to search an identified location or object for a wide range of potentially relevant material, without violating the particularity requirement”).

The defendant’s challenge to the breadth of the time frame similarly fails. “[T]o be sufficiently particular, a warrant for a cell phone search [or other electronic device] presumptively must contain some temporal limit.” *Snow*, 486 Mass. at 594. “Determining the permissible parameters for a cell phone search is a fact-intensive inquiry and must be resolved based on the particular facts of each case” (citation omitted). *Id.* “[T]he inquiry can be based on the type of crime, the nature of the [evidence] sought, and normal inferences’ about how far back in time the evidence could be found” (quotations and citations omitted). *Henley*, 488 Mass. at 121. Here, the time frame was within permissible parameters.

The Electronic Devices warrants were limited to the time between December 25, 2022 and January 8, 2023 or in the case of the health data, from December 31, 2022 to January 8, 2023. Based on the facts of this case, there was nothing overly expansive about these time frames. As to the time period between January 1, 2022 and January 8, 2023, the affidavits articulated a reasonable belief by police that Brian was engaging in efforts to mislead the police in their investigation into Ana’s disappearance by, among other things, giving police false information about what he was doing and where he was going during that time period and engaging in efforts to get rid of evidence. Moreover, Ana’s body had not yet been located, and as discussed herein, police had reason to believe that evidence of what happened to her and

Brian's actions since her disappearance would be found in the specifically articulated evidence sought on his devices.

As to the days prior to January 1, 2023, police had reason to believe that Brian and Ana were having marital troubles before her disappearance. The affidavits noted that although Brian had told police that there was no marital discord between him and Ana, on December 27, 2022, Brian had searched for "Best state to divorce for a man." Moreover, the affidavits explained that Ana had come back to Massachusetts around Christmas, then gone back to D.C., and then returned again to Massachusetts right before December 31, 2022. Given the general use of cell phones as articulated in the affidavit and Brian and Ana's relationship, it was reasonable to infer that there would be communications between them leading up to New Years Eve. There was, therefore, probable cause to believe evidence as to the reasons for Ana's disappearance would be found in the days leading up to January 1, 2023 and the inclusion of the five days prior to Ana's disappearance as part of the temporal time was not overly expansive. See *Henley*, 488 Mass. at 121-122 (where record showed "long-standing relationship between the defendants and the victim," reasonable temporal limit for cell phone search "would extend beyond just the day of the murder or even the days leading up to the murder"); *Snow*, 486 Mass. at 594 ("where the tenor of the parties' relationship is critical to the claim, it could be reasonable to look back further in time").

Although the defendant makes no specific argument as to the iPad A1474 Warrant, there is no question that warrant was also supported by probable cause.¹⁷ Police obtained the iPad A1474 Warrant on March 9, 2023, well into the investigation, and as such it contained more

¹⁷ The court questions whether the defendant can even raise a challenge to this warrant where the device appears to be Ana's not his, where it was found in the residence she singularly occupied in Washington, D.C., and where there is no evidence that the defendant had custody or control over it.

evidence supporting probable cause to believe that Brian had killed and dismembered Ana's body and misled police about what had occurred, and more information about what had been found on Brian's electronic devices already searched. The iPad A1474 Warrant primarily sought communications or records contained on the device between Brian and Ana relating to their states of mind or motive as well as browser history, location data, and other documentary evidence related to Ana's disappearance and murder. To the extent that the defendant is challenging the expanded time frame of this warrant—from November 17, 2022 to January 7, 2023—given the evidence police had implicating Brian in the crimes as articulated in the supporting affidavit, there was a substantial basis to believe that evidence related to the crimes would be recovered in the expanded time frame.

IV. Verizon Warrants Affidavits

The defendant challenges the two warrants for Verizon Records pertaining to the CSLI and location data for the two iPhones he used. He contends that the time periods requested for the data—from December 30, 2022 through January 8, 2023 for the number ending in 8646 and from January 1, 2023 through January 8, 2023 for the number ending in 8028—are unreasonably large and amount to an unlawful general warrant. The court agrees with the defendant only to the extent that the Verizon #8646 Warrant sought CSLI data for December 30 and 31, 2022. The time periods sought were otherwise permissible.

An affidavit in support of a search warrant for historical CSLI must demonstrate “probable cause to believe ‘that a particularly described offense has been, is being, or is about to be committed, and that [the CSLI being sought] will produce evidence of such offense or will aid in the apprehension of a person who the applicant has probable cause to believe has committed, is committing, or is about to commit such offense’” (citation omitted). *Commonwealth v.*

Augustine, 467 Mass. 230, 256 (2014). The Supreme Judicial Court has recognized that “defining the permissible parameters of time for CSLI searches that are justified by probable cause is difficult. This is a ‘fact-intensive inquiry, and must be resolved based on the particular facts of each case’” (citation omitted). *Commonwealth v. Hobbs*, 482 Mass. 538, 549, (2019).

There is no question here that the affidavits supporting the Verizon Warrants provided probable cause to believe the defendant had committed the crimes alleged. The affidavits contained additional information regarding Brian’s purchase of tools such as a hacksaw, police observations of Brian discarding items in various dumpsters, items police recovered from the Swampscott dumpster, Brian and Ana’s strained relationship, and Brian’s attempts to mislead the investigation into her disappearance. The affidavits further stated that Brian used both cell phones during the relevant time frame when Ana went missing and the police commenced their investigation. Where “cell phones have become an indispensable part of daily life and exist as almost permanent attachments to [their users’] bodies, . . . [it] may generally [be] infer[red] that the location data from a particular phone will yield the suspect’s location at any given time Therefore, an affidavit establishing that a suspect committed a crime and that the suspect was known to own or use a particular cell phone provides the requisite basis to believe that location data will provide evidence of the suspect’s participation, or lack thereof, in the suspected criminal activity” (quotations and citations omitted). *Commonwealth v. Janvier*, 104 Mass. App. Ct. 93, 99-100, *review denied*, 494 Mass. 1102 (2024).

Insofar as the warrants sought CSLI data from January 1, 2023 to January 8, 2023, the time frame was not impermissible expansive. The information in the affidavits outlined Brian’s actions from January 1, 2023 to January 8, 2023. During that time, Brian bought tools and cleaning supplies that could be used to dismember, dispose of, and clean up after a dead body

(January 1 and 2) and went to dumpsters at various apartment complexes to discard bags (January 3 and 5), including at his mother's complex where police later recovered items belonging to Ana and items stained with what appeared to be blood. Further, during interviews with investigators, the last of which occurred on January 7, 2023, Brian continually gave police false information about where he had gone in the days after Ana's disappearance, and police still had not recovered Ana's body as of January 8, 2023. Given that police had probable cause to believe Brian was responsible for Ana's disappearance on January 1, 2023 and that he had spent the days between then and his arrest attempting to cover up his crimes and mislead the police investigation, there was probable cause to believe location data from Brian's phone records for January 1, 2023 through January 8, 2023 would yield evidence of his involvement with the crimes. See *Commonwealth v. Jordan*, 91 Mass. App. Ct. 743, 753 (2017) (concluding that probable cause supported CSLI warrant where affidavit established that the defendant had a cellular telephone that was in use around the time of crime, which there was probable cause to believe he had committed).

However, with regards to the additional two days of CSLI (December 30 and 31, 2022) sought in the Verizon #8646 Warrant, there was no probable cause to believe that CSLI data from those dates would contain evidence of the offenses. The affidavit explained that Mutlu told police that he last saw Ana around 1:00 a.m. January 1, 2023. There is nothing in the affidavit suggesting that police had any reason to believe that a crime occurred before that point. Thus, there was no "substantial basis" to believe "that the device would contain relevant evidence of the crime—that is, the defendant's location at or around the time the crime was committed." *Commonwealth v. Vasquez*, 482 Mass. 850, 867 (2019).¹⁸

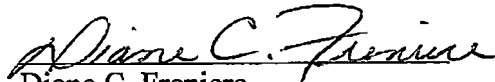
¹⁸ The court's conclusion is not inconsistent with that in Section III of the Discussion concerning the time frame of the search of the electronic devices. Although location data was a part of items sought in the Electronic Devices

Because there was only probable cause to support Verizon Warrants for the period of time from January 1, 2023 through January 8, 2023, the court will sever the Verizon #8646 Warrant and suppress any CSLI and location data obtained for December 30, 2022 and December 31, 2022. See *Commonwealth v. Wilkerson*, 486 Mass. 159, 167 (2020) (severance of the valid portion of a search warrant where a part of the warrant was proper remedy for overly broad CSLI warrant).

CONCLUSION AND ORDER

For the foregoing reasons, Defendant's Motion to Suppress is **ALLOWED** as to Search Warrant No. 23SW0035 for GPS install on a 2013 Volkswagen Beetle, MA Reg. 5TR6461. It is also **ALLOWED** as to Search Warrant No. 23SW76 for Verizon Records of Cell Phone Number 617-939-8646 insofar it authorized CSLI and location data obtained for December 30, 2022 and December 31, 2022. The Motion to Suppress is otherwise **DENIED**.

Dated: July 25, 2025


Diane C. Freniere
Justice of the Superior Court

Warrants, the warrants only authorized police to search for location data "related to the disappearance of Ana and the misleading of the police investigation."