

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MARCH TERM, 2024

STATE OF NEW HAMPSHIRE

v.

ERIC SWEENEY

DOCKET NO: 217-2023-CR-00721

STATE'S RESPONSE AND OBJECTION TO DEFENDANT'S
MOTION TO COMPEL DISCOVERY

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby responds to the defendant's Motion to Compel Discovery. The State requests that this Court deny defendant's request given (1) that the material sought is outside the scope of the State's legal authority to access and (2) that the defendant has provided no basis to demonstrate that there is any relevant or material information contained in the additional materials requested. In support thereof, the State submits as follows:

1. The defendant was indicted on three counts of first-degree murder, contrary to RSA 630:1-a, for the murders of Kassandra Sweeney (Age: 25) (Kassandra), Benjamin Sweeney (Age: 5) (Benjamin) and Mason Sweeney (Age: 23 months) (Mason) which occurred on August 3, 2022. The defendant has also been indicted on one count of falsifying physical evidence related to the murder weapon.
2. On August 3, 2022, the defendant, Eric Sweeney (then aged 16) was living with his brother, Sean Sweeney (then aged 25) (Sean) and his brother's family which included Sean's wife, Kassandra Sweeney (Age: 25) (Kassandra), and their two children, Benjamin (Age: 4) and Mason (Age: 23 months).
3. On August 3, 2022, at approximately 11:23 A.M., Sean called 911 and requested that an ambulance be dispatched to his residence at 56 Wethersfield Drive, Northfield, New Hampshire. When asked by the 911 operator what had occurred, Sean stated, "I don't know... my brother told me someone broke in and killed them all." Sean's brother was

later identified as the defendant. Sean told the 911 operator that he was on his way to the residence and that he was driving an oil truck.

4. Sergeant Holly Harris and Officer Richard Paulhus of the Northfield Police Department arrived on scene at 56 Wethersfield drive at approximately 11:32 A.M. At the top of the driveway, officers observed a crew of workers from Asplundh Tree Service. There were no vehicles in the driveway. Officers knocked on the front door and received no response. Sergeant Harris looked through a window near the door and was able to see a male child and an adult female lying motionless on the floor. Sergeant Harris also observed a pool of blood.
5. Lieutenant Abraham Gilman and Officer Jordan Smith of the Tilton Police Department then arrived on scene. Based on Sergeant Harris' observations, Lieutenant Gilman, along with Sergeant Harris and Officer Paulhus entered the home under exigent circumstances. Upon entering the home, officers found that the male child and the adult female were on the floor inside of the kitchen suffering from apparent gunshot wounds. The male child was later identified as Mason, and the adult female was later identified as Cassandra. A second male child, later identified as Benjamin, was located on the floor on the other side of the kitchen. Benjamin was also suffering from a suspected gunshot wound. Officers were able to determine that all three were deceased.
6. Sergeant Harris observed several .40 caliber casings in the area of the victims. Officers conducted a limited search of the home to determine if any additional victims or any suspects were inside and found none. Emergency Medical Services arrived at the location and confirmed that Cassandra, Mason and Benjamin were deceased. Officers cleared the location and secured it pending the issuance of a search warrant.
7. ADMES from the Office of the Chief Medical Examiner arrived on scene and were allowed access to the home to view the victim's bodies. Investigators escorted the ADMES into the crime scene at which time, they observed in plain view a black and gray bath-towel which was wrapped around a pair of gym shorts and a black handgun holster. These items were located on the kitchen counter close to the victims.
8. While investigators were on scene, at approximately 11:51 A.M., Sean arrived at the top of the driveway driving the oil truck. He was immediately followed by the defendant driving a silver Ford F-150 truck. The defendant remained at the top of the driveway while Sean took possession of the silver Ford F-150 and drove it to the front yard of the home. While Sean was speaking with officers, the defendant began walking down the driveway, where officers ultimately detained him at 11:54:40 A.M. Just prior to being detained, the defendant placed an object on the ground, that object was recovered and found to be an iPhone 12 Pro in a glitter phone case. The iPhone 12 Pro was identified as Cassandra's cellular phone. The silver Ford F-150 was registered to Cassandra.
9. On August 4, 2022, the New Hampshire Office of the Chief Medical Examiner conducted autopsies on Cassandra, Benjamin and Mason at the New Hampshire Office of the Chief

Medical Examiner. Chief Medical Examiner Dr. Jennie Duval found that each victim suffered a single gunshot wound to the head. As to Cassandra, the bullet entered above her right eyebrow. A bullet was recovered from her skull. As to Benjamin, the bullet entered in the left front top of his head and exited behind his right ear. As to Mason, the bullet entered at the right front top of his head and exited behind his left ear. As to each of the victims, Dr. Duval determined that the cause of death was a gunshot wound to the head and the manner of death was homicide. There was no evidence of any other injuries or trauma.

10. On August 3, 2022, at approximately 1:53 P.M., investigators interviewed Sean. During that interview, Sean provided information about communications contained on his phone between himself and Cassandra and between himself and the defendant that had occurred on August 3, 2022.
11. During the interview, at 3:04 P.M., Sean signed a consent form to allow investigators to conduct a forensic download of his cellular phone identified as a blue iPhone 12 in a black case. The State notes that the form shows a time of 2:58 P.M., but the recording of the interview clarified the time to be 3:04 P.M. Prior to signing that form, investigators told Sean that “basically, um, you are authorizing us to go through all that information that’s on the phone and that’s going to be considered pertinent as evidence to any violation of law, **we’re just looking for information for today’s stuff of what happened today.**” See CD#9 – Interview with Sean Sweeney.080322, file: Sean Sweeney 220803_001 (emphasis added).
12. At approximately 4:52 P.M., Sean signed a consent form to allow investigators to conduct a forensic download of Cassandra’s cellular phone identified as an iPhone 12 Max in a sparkley [sic] design [case] with a pop socket. Prior to signing that form, investigators told Sean that this was “the same type of download but **specifically looking for locations of where that phone may have been when it was with Eric.**” See CD#9 – Interview with Sean Sweeney.080322, file: Sean Sweeney 220803_002 (emphasis added).
13. During the investigation, investigators conducted forensic downloads of the two cellular phones utilizing Cellebrite. Sean’s cellular phone was returned to him following the download while Cassandra’s was maintained in the custody of the New Hampshire State Police.
14. Cellebrite captures a complete forensic copy of the contents of a cellular phone. A forensic examiner examines that contents of the download to locate data that is within the parameters of a search warrant or within the confines of any consent to search. The forensic examiner then generates a report that is limited in scope to the information sought.
15. The forensic examiner then provides a report to investigators that contains only the information that is within the government’s legal authority to access. Investigators do not have legal authority to access the entirety of information contained in the complete

download without obtaining further consent or a warrant. *See* N.H. Const. pt. I, art. 19 (providing that all people are protected against unreasonable searches). *See also* N.H. Const. pt. 1, art. 2-b (establishing a constitutional right to live free from government intrusion in private or personal information).

16. In the instant case, investigators received reports from both cellular phones that were limited in scope to August 3, 2022, the day of the homicides. These reports and the related phone contents were provided to counsel for the defendant in discovery on or about November 10, 2022.
17. On February 21, 2024, counsel for the defendant requested additional discovery in the form of a more expansive date range of materials from the forensic downloads of both Sean Sweeney's iPhone and of Cassandra Sweeney's iPhone. Specifically, counsel requested "Cellebrite records for the six months preceding August 3" for both phones which would amount to a date range from February 3, 2022, through August 3, 2022.
18. On February 26, 2024, the State advised counsel for the defendant that after a review of the consent/permissions given to investigators to search the contents of the phones that "in good faith [the State] does not believe that the consent given during the investigation would allow us to look further back in the phones than was done." Specifically, counsel for the defendant was directed to Sean's recorded statement and advised that given the statements made to Sean at the time his consent was given, the State believes that Sean's consent was limited to allow investigators to review the contents of the phones for communications and data from August 3, 2022.
19. The defendant is correct that Sean signed generic consent forms that stated that investigators had blanket authority to review the content of both phones for evidence of any violation of law. However, as discussed *supra*, and as ignored by the defendant, the statements made to Sean during the recorded interview and prior to his consent limited the scope of the consent that was given and thereby of the authority of the State to review additional materials that may or may not be contained in the forensic downloads at issue.
20. In *Riley v. California*, 134 S. Ct. 2473 (2014), the United States Supreme Court held that a search warrant is required before the police can search the contents of a phone. While consent is an exception to the warrant requirement, consent can be limited and, in this case, it was limited as discussed *supra*.
21. In rendering the decision in *Riley*, the Court recognized that cell phones are not only ubiquitous in modern culture but contain vast amounts of personal data. The Court called cell phones "such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." *Id.*
22. When assessing a consent search, the court employs an objective test to determine the scope of consent given. *See State v. Szczerbiak*, 148 N.H. 352 (2002). Essentially, the question to be asked is whether under the circumstances surrounding the search and consent, it was reasonable for officers to believe there was consent. In the instant case,

Sean was asked to consent to a forensic download of the contents of his cell phone, which he did. But when he was signing the consent forms, he was advised that the search was limited on both his and Cassandra's cell phones to evidence of what had happened on August 3, 2022. Specifically, Sean was told that it was related to the events that had happened "today" and/or to the location of the phone when it was with the defendant.

23. The State does not, in good faith, have legal authority to review or disclose the contents of the forensic downloads from the cell phones of Sean and Cassandra that are outside of the scope of the consent authorized on August 3, 2022.
24. Further, there is no sufficient basis for probable cause to believe that evidence of the crime of Cassandra, Benjamin and/or Mason's murders from August 3, 2022, exist on Sean's cell phone between February 3, 2022, and August 2, 2022. Likewise, there is no sufficient basis for probable cause to believe that evidence of the crime of her own murder and the murder of her children would exist on Cassandra's cell phone in that same time frame.
25. In the instant Motion, the defendant avers that the State "does not deny that the evidence contained in the phones is potentially exculpatory." *Defense Motion*, ¶11. There was no discussion between the parties as to what, if any, evidence may exist between February 3, 2022, and August 3, 2022. The defendant made a mere request for "Cellebrite records for the six months preceding August 3, 2022", and provided no basis for the request.
26. To be clear, the State has no reason to believe that there is any evidence contained in either cell phone that would exculpate the defendant nor any reason to believe that any evidence relevant to this triple murder would exist in the cellular downloads of Sean and/or Cassandra's cell phones.
27. Based on the investigation to date, the murders of Cassandra, Benjamin and Mason occurred on August 3, 2022, between 10:52 A.M. and 10:59 A.M. inside of their home at 56 Wethersfield Drive in Northfield. During the course of the morning, Cassandra's cell phone exchanged messages with Sean's cell phone – the messages discussed bills, the children and included several videos of the children playing in of the house, dancing in the house and telling their dad that they loved him. At 10:52 A.M., Cassandra sent a video of the children to her mother; the children were recorded sitting on the sofa in their playroom watching a groundhog in the front yard. That video had been recorded on her phone at approximately 10:08 A.M. that same morning. At approximately 10:59 A.M., the defendant left the house with Cassandra's cellular phone and drove from the scene, heading south on I-93. No other person was observed entering or leaving the home and no unidentified person was seen leaving the area of Wethersfield Drive. The handgun used to shoot Cassandra, Benjamin and Mason was later recovered on the defendant's path of travel. Sean's location at the time of the murders was confirmed by GPS data in his work vehicle to be in Wilmot, NH from 10:22:42 A.M. until 11:03:40 A.M. and in Andover, NH from approximately 11:10 A.M. Further, 911 dispatch recorded his location as Andover, NH at the time of his 911 call.

28. Beyond mere bald assertion, the defendant has provided no basis for his belief that “relevant and exculpatory evidence” exists within the contents of the forensic download of the cellular phones of Sean Sweeney and Cassandra Sweeney between the dates of February 3, 2022, and August 3, 2022. *Defense Motion*, ¶12. The defendant’s instant request is merely a fishing expedition that provides no basis to access data that is beyond the scope of the consent to search that was given.

29. The consent that allowed a warrantless search of Sean and Cassandra's cell phones did not extend beyond August 3, 2022, as demonstrated by the recorded statement of Sean. There is nothing in defendant’s motion or in the investigation that demonstrates sufficient probable cause to allow a search of six months of personal, private phone communications. Nor is there any support for the defendant’s belief that relevant and exculpatory evidence would exist in the records.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- A. Deny the Defendant’s Motion to Compel; and
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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March 7, 2024

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was provided to counsel for the defendant through the Court's e-filing system.

March 7, 2024

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