STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 10, 2017)

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**No. P1-2015-0929A**
	:	
KENNETH EMUAKPOR	**:**	

DECISION

". . . [T]he single most important determinant of evidence accuracy is the police investigation."[1]

PROCACCINI, J. Before the Court are Kenneth Emuakpor's (Mr. Emuakpor) motions to suppress evidence obtained during the course of a Christmas Day 2014 homicide investigation. Mr. Emuakpor contends that his arrest was unlawful, the initial search of his apartment was warrantless and not within any exception, and the search warrants subsequently obtained by the Central Falls Police Department were deficient. In his five separate motions, Mr. Emuakpor moves to suppress the following: (1) a bottle of bleach, a mop, and a bucket observed during the initial search of his apartment; (2) his clothes that were seized at the police station, including the hat, boot, and jeans with blood on them; (3) his cell phone and any evidence retrieved from that phone; (4) his statements made to detectives during two interrogations at the police station; and (5) an empty knife box, a knife, a police department ticket, and a paystub discovered in his apartment pursuant to a search warrant. The State of Rhode Island (the State) objects to all of

[1] Dan Simon, In Doubt: The Psychology of the Criminal Justice Process 17 (2012) (providing an extensive and thought-provoking look at the intersection between social science research and the criminal justice system, with a focus on police investigation techniques and methodology).

Mr. Emuakpor's motions. Conversely, the State maintains that Mr. Emuakpor's arrest was supported by probable cause, the initial sweep of his apartment was justified under the exigency exception to the search warrant requirement, and the search warrants were based on probable cause. Jurisdiction is pursuant to G.L. 1956 § 8-2-15. For reasons discussed infra, the Court grants Mr. Emuakpor's motions to suppress the following evidence: his clothes, blood evidence found on his hat, boot, and jeans, and his statements made during interrogations at the police station. The Court denies his motions to suppress the bleach, mop, and bucket,[2] his cell phone and any evidence obtained from the phone, the knife, knife box, ticket, and paystub.

I

Facts[3] and Travel

The following narrative offers a timeline and description of the Central Falls Police Department police investigation surrounding a suspicious death that occurred on Christmas Day 2014.

On December 25, 2014 at approximately 6:00 P.M., Officer Paul Savoie (Officer Savoie) of the Central Falls Police Department was dispatched to 17 Parker Street, Central Falls, Rhode Island following a 911 call reporting a male passed out with blood on him at that address. In 2014, Officer Savoie was a six-year veteran of the Central Falls Police Department (C.F.P.D.). According to the Crime Scene Time Log maintained by the C.F.P.D, Officer Savoie was the first law enforcement officer to arrive at the scene at 6:38 P.M.[4] Once he arrived at 17 Parker Street,

[2] In section III(B) of this Decision, the Court reserves its admissibility determination for those items until the time of trial.

[3] The following facts are taken from testimony at a suppression hearing held October 19-21, 2016.

[4] The Court notes that there is a discrepancy between Officer Savoie's testimony that he arrived on scene four to five minutes after the 911 call and the Crime Scene Time Log that notes 6:38 P.M. as his arrival time.

Officer Savoie followed a walkway adjacent to the house that led toward the rear of the house where he came upon a bloodied body on the side entrance stairs. Standing in close proximity to the body were two rescue personnel and a third, unidentified man. The decedent, later identified as Cheikh Diop, had a severe laceration on the left side of his head and his white T-shirt was covered in wet blood. The door to the side entrance was open and the decedent's head was partially inside the doorway. Officer Savoie observed a wooden handle of what appeared to be a knife tucked into the decedent's waistband and a set of car keys in his left hand.

Officer Savoie asked the man standing by the decedent's body some basic questions. The officer learned that this individual lived in the third floor apartment at 17 Parker Street and that he had made the 911 call to police. Officer Savoie requested that the man provide identification. The man handed over a motor vehicle operator's license that identified him as Kenneth Emuakpor, the Defendant. Officer Savoie ordered Mr. Emuakpor to extinguish a cigarette he was smoking, and he immediately complied. Officer Savoie then asked Mr. Emuakpor if he could pat down his outer clothing. Mr. Emuakpor consented, and no weapons or contraband were discovered on his person. During this period of interaction, Officer Savoie made several observations of Mr. Emuakpor: he did not appear disheveled; he was extremely calm; and he was slow to respond to basic questions which Officer Savoie attributed to evasiveness. Officer Savoie then asked Mr. Emuakpor to stand by on scene for approximately fifteen minutes.[5] Sometime within this fifteen minute window, Officer Savoie decided to place Mr. Emuakpor in handcuffs behind his back.[6]

[5] Officer Savoie's first mention of a fifteen minute interlude was during testimony for these motions; it was not included in his police report narrative.

[6] It is unclear from the record at exactly what point in time Mr. Emuakpor was handcuffed. Officer Crenshaw testified that he was handcuffed prior to her and Officer DeCristofaro entering

Meanwhile, the investigation continued as other officers arrived at the scene.[7] Almost immediately upon arrival, Officer DeCristofaro and Officer Crenshaw entered 17 Parker Street to conduct a protective sweep in search of other victims. On his way into the house, Officer DeCristofaro stopped briefly to ask Officer Savoie "what he has," to which Officer Savoie replied, "I don't know."

Once inside, Officers DeCristofaro and Crenshaw knocked on the doors of the first and second floor apartments, but found no answer at either apartment and no signs of suspicious activity. The officers proceeded to the third floor and found that apartment door ajar.[8] They entered, announced "police," and performed a cursory sweep of the apartment for victims. During the sweep, an open door to the bathroom revealed, in plain view, a bottle of bleach, a mop, and a bucket. Upon entering the bathroom, Officer Crenshaw smelled an odor that she identified as bleach. The only person in the apartment was a woman sleeping on a couch.[9] The woman did not have any visible injuries, but the officers roused her. When she refused to accompany the officers to the police station, they handcuffed her and brought her to the station. This Court notes with interest that these officers, the second and third on scene, contributed no written statements to the police report for this investigation.

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17 Parker Street, but Officer DeCristofaro testified that Mr. Emuakpor was not handcuffed at that time.

[7] The Court notes another inconsistency in the timeline between Officer Savoie's testimony and the Crime Scene Time Log maintained by Officer DeCristofaro. Officer Savoie recalled that his initial interaction sequence with Mr. Emuakpor occurred prior to the arrival of any other officers. However, the Crime Scene Time Log indicates that other officers arrived at the scene one minute after Officer Savoie.

[8] At this time, Officers DeCristofaro and Crenshaw did not know that Mr. Emuakpor lived in the third floor apartment.

[9] The woman was identified as Heather Rivera and was later determined to be Mr. Emuakpor's girlfriend.

While Officers Crenshaw and DeCristofaro were inside the house, Officer Savoie placed the handcuffed Mr. Emuakpor in the back seat of a police cruiser with the doors locked. Officer Savoie testified at the suppression hearing that at this point in time Mr. Emuakpor was not free to leave. Officer Savoie then conducted a canvas of the immediate area—this time with a flashlight. The flashlight illuminated a trail of blood and hair that led from the decedent's body to a Dodge Durango parked across the street. Upon closer inspection of the Dodge Durango, Officer Savoie, along with other officers, observed blood on the exterior of the vehicle and pools of blood on some of the interior surfaces.

At this time, Officer Savoie relinquished any further investigation of the scene to other officers and transported Mr. Emuakpor to the police station. Once Mr. Emuakpor was inside the processing room of the police station, which Officer Savoie described as "well lit," he observed what appeared to be blood on Mr. Emuakpor's hat, boot, and jeans. Upon this realization, Officer Savoie asked Mr. Emuakpor to remove those items of clothing. Officer Savoie then placed Mr. Emuakpor in a holding cell, leaving his hat, boot, and jeans on the floor of the processing room.

At approximately 7:52 P.M., Detective Robinson arrived at the scene and conducted a second protective sweep of 17 Parker Street with another detective.[10] For some unknown and unexplained reason, the detectives were not informed that an earlier sweep had already been completed. Once inside, the detectives found the door to the first floor apartment ajar, heard loud music, and entered. No one was present inside, but the detectives observed a cell phone plugged into the wall. These observations, made after the first sweep and while Officer Savoie had already secured 17 Parker Street as a crime scene, are at odds with the observations of

[10] Detective Robinson testified that she arrived to the scene between 6:30-7:00 P.M.; however, the Crime Scene Time Log states that she arrived at 7:52 P.M.

Officers DeCristofaro and Crenshaw's description of a quiet and secure first floor apartment made minutes before.

At approximately 8:00 P.M., a neighbor, Ana Cruz (Ms. Cruz), returned home to 19 Parker Street from a family Christmas party. At that time, Ms. Cruz informed unknown officers about a fight she had witnessed earlier that day. Ms. Cruz was transported to the police station at approximately 9:00 P.M., and her official statement was taken by Detective Robinson at 12:26 A.M. She reported that at approximately 4:30 P.M. on December 25, 2014, she left her house at 19 Parker Street in Central Falls to attend a Christmas celebration at her daughter's home. As she was leaving, she saw three men and one woman arguing outside 17 Parker Street. In her car's rearview mirror, she watched "the tall guy with the white shirt and the guy on the third floor . . . fighting." Mot. to Suppress, Ex. C. She did not call the police because she thought "they may have been playing . . . [because] they are all friends [and] drink together every weekend." Id.

Shortly thereafter, Detective Viens conducted two interrogations of Mr. Emuakpor at 9:41 P.M. and 11:26 P.M.[11] During this time, Mr. Emuakpor was given conflicting information about whether he was under arrest. He was read his Miranda warnings and subsequently waived those rights. Mr. Emuakpor informed detectives that he and his girlfriend[12] had been drinking earlier that day in his apartment, and that he was drunk when they decided to go to the store. He recounted that they went downstairs and walked by the decedent on the side door stairway. It was not until they returned and saw that the decedent was still on the stairs that Mr. Emuakpor

[11] It was not until the second interrogation that Detective Viens had knowledge of Ms. Cruz's observations of the earlier fight.

[12] Mr. Emuakpor's girlfriend is Heather Rivera (Ms. Rivera). Ms. Rivera was the woman police found sleeping on Mr. Emuakpor's couch during the first protective sweep. Officers handcuffed and brought Ms. Rivera to the station.

called police. Throughout the interrogations, Mr. Emuakpor consistently denied knowing the decedent.

Detective Robinson drafted the three search warrants Mr. Emuakpor is challenging in the instant motions—warrants for Mr. Emuakpor's clothes, cell phone, and apartment. Later that evening, Detective Rodriguez seized Mr. Emuakpor's clothes from the floor of the processing room. After midnight on December 26, 2014, Detective Rodriguez executed the search warrant for Mr. Emuakpor's apartment. During the suppression hearing, Detective Rodriguez testified that he did not look at the search warrant prior to executing the search. Items seized from the apartment included an empty Survivor knife box, a Survivor knife with a nine-inch blade located in the attic, a C.F.P.D. Violation Notice, and a paystub from Workers Mania. On December 29, 2014, an additional search warrant was issued for Mr. Emuakpor's cell phone, and the phone was subsequently seized.

II

Standard of Review

Mr. Emuakpor brings the instant motions pursuant to Super. R. Crim. P. 41(f). The State bears the burden of establishing that the evidence seized from Mr. Emuakpor's person and premises is admissible "by a fair preponderance of the evidence." State v. O'Dell, 576 A.2d 425, 427 (R.I. 1990) (citing United States v. Matlock, 415 U.S. 164, 177-78 n.14 (1974)); see also State v. Tavarez, 572 A.2d 276, 279 (R.I. 1990).

III

Analysis

Mr. Emuakpor contends that his constitutional rights were violated by members of the C.F.P.D. in several ways.[13] First, he claims that Officer Savoie did not possess reasonable suspicion that he was armed and dangerous to justify the pat-down of his outer clothing. Second, he contends that his arrest was unlawful because it was not supported by probable cause. Third, he contests the initial search of his apartment and argues that it was warrantless and not within any exception. Fourth, he alleges that the statements he made to detectives and the observation of blood on his clothes were directly related to and tainted by his unlawful arrest and should be suppressed as poisonous fruit. He further contends that the bleach, mop, and bucket observed during the initial search of his apartment are fruit of an unlawful search and should also be suppressed. Fifth, Mr. Emuakpor claims that the search warrants for his apartment, clothing, and cell phone were deficient. He contends the deficiencies render the subsequent searches and seizures to be unlawful for the following reasons: (1) the attic where a knife was discovered by police during the execution of the search warrant for his apartment was not particularly described in the warrant; (2) probable cause to search the apartment did not exist in the warrant; (3) the search warrant for his clothes lacks probable cause once the blood evidence that was observed on Mr. Emuakpor's hat, boot, and jeans is excised as illegal fruit; (4) the affidavits contained statements written in reckless disregard for the truth; and (5) the return of service on the warrants was delayed. Conversely, the State argues that Officer Savoie possessed probable cause to arrest

[13] "The Fourth Amendment to the United States Constitution, as well as article I, section 6, of the Rhode Island Constitution, protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" State v. Werner, 615 A.2d 1010, 1011 (R.I. 1992).

Mr. Emuakpor, the initial search of his apartment was justified under the exigency exception to the search warrant requirement, and the search warrants are based on probable cause.

A

Arrest

Mr. Emuakpor contends that Officer Savoie did not possess reasonable suspicion to believe he was armed and dangerous sufficient to support a pat-down of his outer clothing. However, since Mr. Emuakpor's motions to suppress focus on his arrest and not the pat-down, the Court finds it unnecessary to address that issue. In fact, the Court finds the circumstances surrounding the pat-down favorable to Mr. Emuakpor because he consented to and cooperated in the pat-down, and there were no weapons, contraband, or other evidence found on his person.

Mr. Emuakpor also alleges that his arrest was not supported by probable cause and is therefore unlawful. When assessing the lawfulness of an arrest, the Court must first determine if an arrest actually occurred. Since Mr. Emuakpor moves to suppress evidence that was obtained at the police station, including the blood on his clothes and his statements to detectives, the Court must only determine whether an arrest had occurred by the time Officer Savoie brought Mr. Emuakpor through the station's processing room. In order to make that determination, the Court must evaluate "the extent to which the person's freedom of movement has been curtailed and the degree of force used by the police; the belief of a reasonable innocent person in the same circumstances; and whether the person had the option of not going with the police." State v. Bailey, 417 A.2d 915, 917-18 (R.I. 1980) (internal citation omitted).

Here, the Court finds that Mr. Emuakpor's freedom was substantially curtailed when he was handcuffed behind his back, placed in the back seat of a locked police cruiser, involuntarily taken to the station, and brought through the station's processing room. A reasonable, innocent

person in Mr. Emuakpor's shoes would not have felt free to leave.[14] One of the most telling indications that Mr. Emuakpor was under arrest is Officer Savoie's unequivocal testimony that when he walked Mr. Emuakpor to his cruiser, he was not free to leave at that time. See contra State v. Vieira, 913 A.2d 1015, 1021 (R.I. 2007) (determining that the defendant who was not handcuffed and agreed to go to the police station was not under arrest even though he was placed in a locked cruiser). The Court finds that Mr. Emuakpor was under arrest at the time he was brought through the processing room at the station.

The Court turns to a determination of whether there was probable cause to justify Mr. Emuakpor's arrest. "Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge . . . are sufficient to warrant a reasonable person's belief that a crime has been committed and that the person to be arrested has committed the crime." State v. Jenison, 442 A.2d 866, 873-74 (R.I. 1982). The reasonable belief "must be based on more than mere suspicion[.]" State v. Ortiz, 824 A.2d 473, 480 (R.I. 2003); see also Wong Sun v. United States, 371 U.S. 471, 479 (1963). Furthermore, "if probable cause [is] absent at the time of arrest, 'then nothing that happened thereafter could make that arrest lawful . . . .'" State v. Flores, 996 A.2d 156, 161 (R.I. 2010) (quoting Rios v. United States, 364 U.S. 253, 261-62 (1960); United States v. Myers, 308 F.3d 251, 263 (3d Cir. 2002) (holding that a weapon discovered subsequent to an arrest may not be used to establish probable cause for that arrest).

Here, Officer Savoie made the following set of observations prior to placing Mr. Emuakpor in handcuffs behind his back and locking him in his police cruiser: (1) Mr. Emuakpor was standing near the body of the decedent when he arrived; (2) Mr. Emuakpor stated that he had

[14] The present circumstances are clearly distinguishable from those set forth in State ex rel. Town of Little Compton v. Simmons. The Court in Simmons held that a defendant who was unrestrained and expressed a willingness to go with police to the station would have felt free to leave and was therefore not under arrest. 87 A.3d 412, 416 (R.I. 2014).

made the 911 call that the officer was responding to; (3) the front of the decedent's white T-shirt was covered in wet blood; (4) Mr. Emuakpor lived in the third floor apartment of 17 Parker Street; (5) a pat-down of Mr. Emuakpor's outer clothing determined that he did not have any weapons or contraband on his person; (6) Mr. Emuakpor complied with requests to provide his identification and extinguish his cigarette; (7) Mr. Emuakpor did not look disheveled; (8) Mr. Emuakpor was extremely calm; and (9) Officer Savoie's suppression hearing testimony included an observation that Mr. Emuakpor was slow to respond to basic questions, which he interpreted as evasiveness. This Court finds it noteworthy that this potentially significant fact regarding the pace at which Mr. Emuakpor answered questions is not mentioned in the police report narrative statement written by Officer Savoie.

Accordingly, the Court finds that the facts and circumstances gathered by Officer Savoie during the limited and brief time period prior to Mr. Emuakpor's arrest are insufficient to establish probable cause for his arrest. See Jenison, 442 A.2d at 873-74 (holding that an individual's mere presence in a place where criminal activity is afoot does not by itself establish probable cause to arrest that individual). Contra Ortiz, 824 A.2d at 480 (holding that reasonable suspicion based on the fact that a crime had been committed and that the defendant, a known associate of the victim, was located a short distance away from the victim's body only converted to probable cause to arrest when police observed blood on the defendant prior to his arrest). Officer Savoie did not know that Mr. Emuakpor was a known associate of the victim at the time of the arrest; it was not until much later that C.F.P.D. knew of this connection. See Flores, 996 A.2d at 161 (finding that police can consider the fact that a defendant is a known associate of the victim as part of their probable cause to arrest determination). Furthermore, Mr. Emuakpor was cooperative and compliant in his interactions with Officer Savoie in every way. Mr. Emuakpor

readily identified himself and stated that he lived at 17 Parker Street. His appearance was normal.[15] He was calm and made no effort to leave the scene. He offered no resistance during the pat-down. Officer Savoie, on the other hand, chose to use broad and obviously inflammatory adjectives in his suppression hearing testimony, describing Mr. Emuakpor as "overly" and "extremely" calm. He also seemed to hastily conclude that Mr. Emuakpor's slow responses to questions were a sign of evasiveness, rather than the result of any number of other plausible explanations, including the gravity of being questioned by a police officer while standing next to a deceased person, or possessing limited English language and comprehension skills, or being intoxicated.[16] Finally, Officer Savoie's suppression hearing testimony included a mistaken memory as to when he had knowledge of the significant information regarding Mr. Emuakpor's alleged involvement in a fight with the decedent earlier in the day. After a review of the totality of the testimony and evidence presented at the suppression hearing, it is clear that this critical fact regarding the earlier fight could not have been known to Officer Savoie or any other C.F.P.D. officer prior to Mr. Emuakpor's arrest. This Court finds that the facts or circumstances known to Officer Savoie at the time of arrest would not lead a reasonable person to believe that Mr. Emuakpor had committed the homicide being investigated. See Jenison, 442 A.2d at 873-74. Contra Ortiz, 824 A.2d at 480. Therefore, the Court finds that the arrest was not based on probable cause and thus is unlawful. See Jenison, 442 A.2d at 873-74.

[15] Officer Savoie did not observe any blood on Mr. Emuakpor's person until they arrived at the police station. See Flores, 996 A.2d at 161 (determining that officers' observations of blood on defendant's clothing prior to his arrest during a homicide investigation can convert reasonable suspicion to probable cause to arrest).

[16] Mr. Emuakpor is from Senegal and stated during interrogations with police that he had been drinking that day and was drunk when he first walked past the decedent on the stairs. Mot. to Suppress, Ex. 26. The Court also notes that there is no evidence before the Court addressing the English language and comprehension skills of Mr. Emuakpor.

B

Initial Search of Mr. Emuakpor's Apartment

Mr. Emuakpor contends that the officers' initial sweep of his apartment was an illegal warrantless search and moves to suppress the bleach, mop, and bucket observed by officers during that sweep.[17] During the execution of the search warrant for Mr. Emuakpor's apartment which took place in the early morning hours of December 26, Detective Rodriguez photographed the bathroom. Those photos include images of a bottle of bleach, a mop, and a bucket that were entered as exhibits at the suppression hearing. Officers also testified to their observations of the cleaning items during the suppression hearing. In the instant motions, Mr. Emuakpor "moves to suppress and quash" those items. The State noted during oral arguments that the bleach, mop, and bucket were not seized during that protective sweep, but merely observed by officers.

The Court first addresses the legality of the initial protective sweep. The first sweep of Mr. Emuakpor's apartment was justified under the exigency exception to the search warrant requirement. See State v. Jennings, 461 A.2d 361, 368 (R.I. 1983). While there is no murder scene exception to the search warrant requirement, there is an exception for exigent circumstances when officers reasonably believe there is a person or persons in need of immediate aid inside. Id. (holding that when officers responded to the scene of a homicide, they were justified in making an immediate, warrantless search of the vicinity to check for other victims or the perpetrator); State v. Gonzalez, 136 A.3d 1131, 1151 (R.I. 2016); Mincey v. Arizona, 437 U.S. 385, 392 (1978); State v. Hockenhull, 525 A.2d 926, 931 (R.I. 1987) (determining that a

[17] "The United States Supreme Court has . . . establish[ed] the bright-line principle that . . . searches conducted without 'prior approval by judge or magistrate are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" Werner, 615 A.2d at 1011 (citing Katz v. United States, 389 U.S. 347, 357 (1967)).

protective sweep of an apartment for additional victims was justified under the exigency exception when police were called to the scene of a stabbing and arrived to find a wounded victim and fleeing suspect).

Here, officers arrived at the scene to find the decedent lying on the side entrance stairs of 17 Parker Street with his head partially inside the open door, covered in fresh blood, with a severe laceration to the side of his head. During oral arguments, the State portrayed the scene as one where officers came upon a victim who clearly met a violent death. There was no immediately apparent indication of the identity of the perpetrator or the whereabouts of any weapon. The State avers that because of the limited information readily available to officers at this alarming scene, officers were justified in their cursory sweep of 17 Parker Street to check for any victims or the perpetrator under Jennings and Mincey. Jennings, 461 A.2d at 368; Mincey, 437 U.S. at 392. Faced with such a scene, it was reasonable for the officers to believe that other victims or the perpetrator could have been inside the residence, and it was reasonable to perform a cursory sweep of Mr. Emuakpor's apartment. Jennings, 461 A.2d at 368.

Thus, the officers' observations of the cleaning items were lawful because the officers were inside Mr. Emuakpor's apartment lawfully to perform the first protective sweep. See Wayne R. LaFave, Criminal Procedure, § 3.2(b) at 74 (4th ed. 2015) (noting that as long as officers were lawfully in the place from which observations about an object were made, any further requirements needed to seize the objects are not necessary when officers merely observed the objects in plain view). Furthermore, the photos of the bleach, mop, and bucket, entered as exhibits during the suppression hearing, were images of items lawfully observed by officers during the valid execution of a search warrant for Mr. Emuakpor's apartment. Id. Based on the foregoing, Mr. Emuakpor's motion to suppress the bleach, mop, and bucket is denied. See

Jennings, 461 A.2d at 368; Mincey, 437 U.S. at 392; Wayne R. LaFave, Criminal Procedure, § 3.2(b) at 74 (4th ed. 2015). However, this Court reserves its decision regarding whether testimony and photos related to the bleach, mop, and bucket may be presented to a jury at the time of trial. The admissibility of this evidence requires an assessment of relevancy and a consideration of its probative value and prejudicial effect.[18] At that time, the Court will also have the benefit of a more complete record should this evidence be offered at trial.

C

Fruit of Poisonous Tree

The Court must next determine whether certain evidence obtained subsequent to Mr. Emuakpor's unlawful arrest—namely, his clothes, blood evidence on the hat, boot, and jeans, and his statements made during two interrogations—was seized or obtained by "exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Bailey, 417 A.2d at 919 (quoting John M. Maguire, Evidence of Guilt, 221 (1959)).

1

Blood Evidence on Clothes

The Court finds that Officer Savoie discovered the blood on Mr. Emuakpor's clothing only because he was in police custody following his unlawful arrest. See Bailey, 417 A.2d at 918 (holding that physical evidence from the defendant's clothes, seized at the police station, must be suppressed because the seizure occurred as a direct result of his unlawful arrest). Officer Savoie escorted Mr. Emuakpor into the processing room at the station following his arrest. It was at that time that the officer observed blood on Mr. Emuakpor's hat, boot, and jeans for the first time. The Court notes that the photos of the hat, boot, and jeans submitted into

[18] See R.I. R. Evid. 402; R.I. R. Evid. 403; see also State v. Pratt, 641 A.2d 732, 741 (R.I. 1994).

evidence during the suppression hearing depict barely visible, diminutive amounts of blood on these items. Mot. to Suppress, Exs. 5, 7, 8. Nonetheless, the clothing items and blood evidence were obtained by police as a direct result of Mr. Emuakpor's unlawful arrest. See Bailey, 417 A.2d at 918. Mr. Emuakpor was under arrest and brought through the station's processing room pursuant to that arrest. Therefore, the blood evidence, observed only when Mr. Emuakpor was inside the processing room, was obtained solely because of that arrest and not by means sufficiently distinguishable to purge the taint. See id. Thus, the clothes and any related testing evidence must be suppressed. See id.

2

Statements During Interrogations

In addition, the Court also finds that any statements Mr. Emuakpor made to detectives during two interrogations subsequent to his unlawful arrest must be suppressed as illegal fruit.[19] State v. Burns, 431 A.2d 1199, 1205-06 (R.I. 1981). The Court has considered: (1) the temporal proximity of the arrest and the statements; (2) the presence of intervening circumstances; and (3) the purposefulness and flagrancy of the officer misconduct. Burns, 431 A.2d at 1205-06; Wong Sun, 371 U.S. at 485.

Here, Mr. Emuakpor was interrogated, for the first time, less than three hours after he was arrested, and the second time, less than five hours after his arrest. During that time, he never left police custody, his clothes were seized, he was dressed in a Tyvek suit, and he was placed in a holding cell until his first interrogation began. At no point did he have the opportunity to leave

[19] Mr. Emuakpor was properly given his Miranda rights, and he subsequently waived those rights. However, while his statements "may satisfy the voluntariness standards of the Fifth Amendment," it does not necessarily follow that "there is no Fourth Amendment violation." Jennings, 461 A.2d at 368. Therefore, Miranda warnings alone may not "per se make any subsequent statement sufficiently a product of free will to breach the causal connection between the confession and the unlawful action." Id.

the police station, the holding cell, or the interrogation room. Furthermore, he was not allowed to speak to anyone else during that time. In addition, the unlawful police conduct was purposeful because Mr. Emuakpor was brought to the station in order to gather more information about his suspected involvement in the homicide. Therefore, because police arrested and brought Mr. Emuakpor into the station solely to further investigate his connection to the crime, there was no attenuation between the arrest and his statements to detectives sufficient to dissipate the taint of his unlawful arrest. See Burns, 431 A.2d at 1206 (holding that statements should be suppressed when made six to eight hours after the unlawful arrest, with no intervening forces to purge the taint, and the purposefulness of police action by arresting the defendant "in the hope that something might turn up"). Thus, the Court finds that any statements Mr. Emuakpor made to detectives during the two interrogations must be suppressed. See id.

D

Search Warrants

Mr. Emuakpor asserts several contentions pertaining to the search warrants for his clothes, apartment, and cell phone. First, he argues that the search warrant for his apartment did not particularly describe the attic, where police found a knife, when it specifically included the basement and curtilage. Second, he avers that the magistrate's determination that the search warrant for his apartment was based on probable cause was unfounded. Third, he argues that the search warrant for his clothes is deficient because it was supported solely by evidence obtained pursuant to his unlawful arrest. Fourth, he asserts that the affidavits in support of the search warrants for his clothes, apartment, and cell phone[20] included statements written in reckless

[20] The hearing record is unclear as to when exactly Mr. Emuakpor's cell phone was seized and searched. The evidence presented to the Court includes the search warrant for the cell phone

disregard for the truth and must be excluded. Fifth, he claims that return of service for all the search warrants was improper because it was delayed.

When reviewing a search warrant's validity, the Court must determine whether the search warrant was based on probable cause. State v. Storey, 8 A.3d 454, 461 (R.I. 2010). The search must also "satisfy the particularity requirement, which limits the scope and intensity of the search." United States v. Ferreras, 192 F.3d 5, 10 (1st Cir. 1999) (citing United States v. Bonner, 808 F.2d 864, 867 (1st Cir. 1986)). Furthermore, "affidavits are to be interpreted in a realistic fashion that is consistent with common sense, and not subject to rigorous and hypertechnical scrutiny." State v. Byrne, 972 A.2d 633, 638 (R.I. 2009). The issuing magistrate "need only conclude that it would be reasonable to seek the evidence in the place indicated in the affidavit." Id. at 639; State v. Baldoni, 609 A.2d 219, 220 (R.I. 1992).

1

Attic Not Included in Search Warrant for Apartment

Mr. Emuakpor contends that the search warrant for his apartment did not particularly describe the attic, where police found a knife, when it specifically included the basement and curtilage. Here, the attic is akin to a crawl space above the ceiling of Mr. Emuakpor's apartment. The only access to the attic was inside Mr. Emuakpor's apartment. Thus, the attic would be considered part of Mr. Emuakpor's apartment for search warrant purposes. See Ferreras, 192 F.3d at 11 (holding that an attic that is not independent from the apartment can be lawfully searched pursuant to a warrant for that apartment); Byrne, 972 A.2d at 638 (noting that search warrant "affidavits are to be interpreted in a realistic fashion that is consistent with common sense" because there is a "strong preference for searches conducted pursuant to a warrant").

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which is dated December 29, 2014. Therefore, the Court presumes that the phone was seized and searched after that date.

Therefore, the search of the attic was within the scope of the search warrant and the discovery of the knife in the attic was lawful. See Byrne, 972 A.2d at 638.

2

Search Warrants and Probable Cause

a

Search Warrants for Apartment and Cell Phone

Mr. Emuakpor contends that the search warrant affidavit for his apartment was not based on probable cause. In reviewing the search warrant for Mr. Emuakpor's apartment, this Court is required to give great deference to the issuing magistrate's determination of probable cause. Byrne, 972 A.2d at 638. In December 2014, when Detective Robinson applied for the search warrant for Mr. Emuakpor's apartment, the affidavit included the following information: the decedent was found lying with his head partially inside the hallway of 17 Parker Street; Mr. Emuakpor was a third floor resident of 17 Parker Street; the decedent was a known associate of Mr. Emuakpor; Mr. Emuakpor "stated in an interview that he came downstairs seen [sic] the body, stepped over it, went to store and then called police"; Mr. Emuakpor was standing next to the body of the decedent when police arrived; a bottle of bleach was located in Mr. Emuakpor's bathroom along with a mop and a bucket. This information, taken together and reviewed in a realistic and common sense fashion, was sufficient to support a reasonable belief that evidence of the crime was located in Mr. Emuakpor's apartment. Therefore, the Court finds that the search warrant for Mr. Emuakpor's apartment was based on probable cause rendering the search warrant valid. The Court does note that the affidavit was poorly drafted. The lack of attention to detail, however, does not make a valid search warrant invalid under Rhode Island law.

In section III(C)(2) of this Decision, the Court determined that Mr. Emuakpor's statements to detectives during two interrogations are illegal fruit tainted by his unlawful arrest. Burns, 431 A.2d at 1205-06. The next issue for this Court to resolve is whether the affidavits in support of the search warrants for Mr. Emuakpor's apartment and cell phone are based on probable cause after redacting those statements to detectives from the supporting affidavits. See Pratt, 641 A.2d at 739 (holding that a court is allowed to redact invalid portions of a search warrant and uphold searches and seizures made pursuant to the valid portions of the warrant); U.S. v. Dessesaure, 429 F.3d 359, 367 (1st Cir. 2005). After the statements are excised, the affidavits contain the following information: decedent's body was located on the stairs of 17 Parker Street with his head partially inside the doorway; Mr. Emuakpor was the third floor resident of 17 Parker Street; Mr. Emuakpor was standing next to the body of the decedent when police arrived; police observed a bottle of bleach, a mop, and a bucket in plain view during a protective sweep of Mr. Emuakpor's apartment; and Mr. Emuakpor was a known associate of the decedent. The Court finds that without Mr. Emuakpor's statements to detectives, the probable cause determination is a close call. This Court concludes, however, that the affidavits in support of the search warrant for Mr. Emuakpor's apartment and cell phone contain information sufficient to support a reasonable belief that evidence relating to the crime is in the apartment and on his cell phone. See Byrne, 972 A.2d at 639. Therefore, the warrants remain based on probable cause and the searches and seizures remain valid. See Pratt, 641 A.2d at 739.

b

Search Warrant for Clothes

Mr. Emuakpor's statements made during two interrogations are now also excised from the affidavit in support of the warrant for his clothes. In addition, the warrant for Mr.

Emuakpor's clothes included Officer Savoie's observation of blood on Mr. Emuakpor's hat, boot, and jeans. Since this Court has already determined that the clothes and blood evidence are inadmissible at trial because they are tainted by Mr. Emuakpor's unlawful arrest, this information, in addition to the statements, must be excised from the search warrant for Mr. Emuakpor's clothes. Consequently, this additional excision is fatal to the warrant for his clothes because the probable cause determination to search and seize Mr. Emuakpor's clothing was based solely on Officer Savoie's observations of the blood. See Pratt, 641 A.2d at 739. Furthermore, there is no independent source for the tainted evidence. See Dessesaure, 429 F.3d at 367. Thus, the Court finds that the search warrant for Mr. Emuakpor's clothes is no longer based on probable cause and his clothes and the blood evidence found thereon must be suppressed. See Pratt, 641 A.2d at 739.

3

Reckless Disregard for the Truth in Search Warrant Affidavits

Mr. Emuakpor avers that the affidavits supporting the search warrants for his apartment, clothes, and cell phone contain statements written in reckless disregard for the truth. While an affiant is required to act reasonably and cannot make statements that are "false . . . knowingly and intentionally, or with reckless disregard for the truth," any mischaracterizations contained in these C.F.P.D. search warrant affidavits do not rise to the level of reckless disregard for the truth. Franks v. Delaware, 438 U.S. 154, 155 (1978); see also State v. DeMasi, 452 A.2d 1150, 1153 (R.I. 1982) (holding that the affiant never attempted to "beguile the magistrate who signed the warrant by making recklessly false statements or intentional misrepresentations in his affidavit[,]" and thus, the affidavit did not reach the level of conduct prohibited by Franks). Franks, 438 U.S. at 155. The Court finds that some of the descriptions and assertions included in

the search warrants are sloppy or even negligent. See id. However, Mr. Emuakpor has not presented evidence sufficient to support a finding that any statements were made in reckless disregard for the truth or knowingly or intentionally false. See id.

4

Delay in Return of Service

Mr. Emuakpor contends that the delay in return of service is an additional indicator that the overall police work in this case violated Mr. Emuakpor's constitutional rights. See G.L. 1956 § 12-5-3(b). However, absent Mr. Emuakpor demonstrating any evidence showing prejudice resulting from the delay, an error of this nature does not void an otherwise valid search warrant. See Wayne R. LaFave, Criminal Procedure, § 3.4(l) at 220-221 (4th ed. 2015) (noting that a prompt return of service requirement, "under the prevailing view, [is] deemed to be ministerial only, so that failure to comply with [it] does not void an otherwise valid search"); United States v. Dudek, 530 F.2d 684, 688 (6th Cir. 1976) (determining that there is no prejudice to a defendant when an officer fails to file an inventory because this type of error does not violate an individual's fundamental rights, unlike prejudices inherent in unlawful searches and seizures); see also State v. Roy, 111 A.3d 1061, 1068 (N.H. 2015) (holding that late return of a search warrant is "merely a technical violation" and suppression of evidence is not required). The Court finds that the delay is ministerial in nature and not dispositive of these motions.

E

Uncoordinated Police Action

The Court notes with concern that much of this investigation was plagued by disjointed and single-minded police action. For instance, Officer Savoie did not share pertinent information that Mr. Emuakpor lived in the third floor apartment with the second and third

officers on scene prior to those officers charging into 17 Parker Street to conduct a protective sweep. In addition, detectives who arrived at the scene later and conducted a second protective sweep were not advised that a protective sweep had already been completed minutes earlier. While the illegality of the second protective sweep is not dispositive of Mr. Emuakpor's motions, the collectively muddled actions of the C.F.P.D. hindered the investigation and in some cases violated Mr. Emuakpor's constitutional rights. Not only was there uncoordinated action amongst the officers and detectives, but there were also large discrepancies in police records and memories from that Christmas night in 2014. It is particularly troubling to this Court that several officers involved in a homicide investigation made no written record of their actions and observations. One of the most glaring inconsistencies exists between the recollections of detectives and officers regarding the first floor apartment. The officers who performed the first protective sweep described the first floor apartment as quiet with the apartment door closed. In contrast, the detectives at the scene shortly thereafter observed the first floor apartment door open with loud music coming from inside. The Court notes that 17 Parker Street was under constant police surveillance during this time, making these diverging observations perplexing and irreconcilable. In addition, Detective Rodriguez testified at the suppression hearing that he did not look at the search warrant for Mr. Emuakpor's apartment prior to executing the search. The Court ponders how a detective could execute a search warrant without first looking at the warrant to ensure his actions and the actions of his fellow officers are within the warrant's scope and parameters.

Significant inconsistencies pervade the timeline of events and work to discredit the officers' testimony, particularly in the timing of when officers obtained the critical information about the earlier fight from Ms. Cruz. This Court is mindful of the challenges associated with

investigating a violent murder on Christmas day, with few officers on patrol and detectives being called away from their families in the evening. Notwithstanding these challenges, key officers failed to record any of their actions and observations from that Christmas evening, and much of the records that were retained from the investigation are contradictory to officer testimony from the suppression hearing. These oversights and discrepancies afflicting this case are deeply troubling to the Court. Not only do lapses such as these impact the efficiency of police investigation, but more significantly, they also lead to infringement of individuals' constitutional rights. The obvious and inherent tension between an individual's constitutional rights and the authority to investigate and apprehend violators of the criminal law was recognized by U.S. Supreme Justice Robert Jackson, who observed:

> "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 13-14 (1948).

IV

Conclusion

For the reasons set forth in this Decision, the Court denies Mr. Emuakpor's motion to suppress the bleach, mop, and bucket because the first protective sweep was justified by the exigency exception to the search warrant requirement. This Court grants Mr. Emuakpor's motion to suppress his clothes, including the blood evidence on his hat, boot, and jeans, because that evidence is illegal fruit tainted by his unlawful arrest. Mr. Emuakpor's motion to suppress evidence on his cell phone is denied because the search warrant for his phone was valid and is sufficiently supported by probable cause. This Court grants his motion to suppress his

statements made during the two interrogations because those statements are illegal fruit of his unlawful arrest. This Court denies Mr. Emuakpor's motion to suppress the knife, knife box, ticket, and paystub because the search warrant for his apartment was valid and is sufficiently justified by probable cause. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Kenneth Emuakpor**
CASE NO:	**P1-2015-0929A**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 10, 2017**
JUSTICE/MAGISTRATE:	**Procaccini, J.**
ATTORNEYS:	
For Plaintiff:	**John E. Corrigan, Esq.**
For Defendant:	**Collin M. Geiselman, Esq.**