STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 24, 2025)

STATE OF RHODE ISLAND, ***Plaintiff,***	:	
v.	:	**C.A. No. P1-2020-1991ADV**
VICTOR COLEBUT, ***Defendant.***	:	

DECISION

MONTALBANO, J. Before the Court is Victor Colebut's (Mr. Colebut) Motion to Suppress (Mot. to Suppress) filed with the Court on June 26, 2024 and his Supplemental Motion to Suppress (Suppl. Mot. to Suppress) filed with the Court on November 20, 2024, alleging that evidence and statements were seized in violation of the Rhode Island and United States Constitutions. (Suppl. Mot. to Suppress at 1.) The State filed its Objection and Memorandum in Support of its Objection to Defendant's Motion to Suppress (Mem. in Opp'n) on August 7, 2024. *See* Mem. in Opp'n.

I

Facts and Travel

Mr. Colebut is charged with: Count 1: Domestic First-Degree Murder of Kristine Ohler; Count 2: Domestic Simple Assault and/or Battery, third or more offense; and Count 3: Criminal Violation of a No-Contact Order, third or more offense. (Grand Jury Indictment at 1-2.) Kristine Ohler was allegedly murdered sometime "between the evening of February 16, 2020 and the early morning of February 17, 2020" at Mr. Colebut's apartment located on 65 Fountain Street in Pawtucket, Rhode Island. *Id.* at 1. Mr. Colebut called emergency services on February 17, 2020.

(Mem. in Opp'n at 2.) When police officers arrived on scene, they discovered Ms. Ohler unresponsive and Mr. Colebut "in [Ms. Ohler's] presence." *Id.* at 7. There was an active no-contact order prohibiting Mr. Colebut from being in Ms. Ohler's presence. *Id.* at 4. Ms. Ohler died later that morning. *Id.* Mr. Colebut was charged with First-Degree Domestic Murder (Count 1) for allegedly killing Ms. Ohler, Domestic Simple Assault and Battery (Count 2) for allegedly causing the Ms. Ohler's injuries, and Criminal Violation of the No-Contact Order (Count 3) for being in Ms. Ohler's presence in violation of the active no-contact order. (Grand Jury Indictment at 1-2.)

On June 26, 2024, Mr. Colebut filed a Motion to Suppress statements and evidence, *pro se*. *See* Mot. to Suppress. The State objected to Mr. Colebut's Motion to Suppress and filed a memorandum in support of their objection on August 7, 2024. *See* Mem. in Opp'n. Mr. Colebut filed a supplemental memorandum in support of his Motion to Suppress on November 20, 2024. *See* Suppl. Mot. to Suppress. In the supplemental memorandum, Mr. Colebut specifically requests that the Court suppress the following evidence: (1) all statements made to Pawtucket Police Detectives Hans Cute and David Silva while in police custody and during an interrogation on February 17, 2020 until Mr. Colebut was presented before a Magistrate Judge in District Court on February 18, 2020; (2) DNA seized without a warrant while held in police custody; (3) two Motorola cell phones seized from Mr. Colebut's home without a warrant; and (4) two notebooks seized from Mr. Colebut's home. (Suppl. Mot. to Suppress at 2.)

II

Arguments

A. Mr. Colebut's Motion to Suppress Statements and Evidence

Mr. Colebut argues that Pawtucket Police officers lacked probable cause to detain and arrest him. *Id.* at 8. Further, Mr. Colebut argues that any evidence obtained before he was

brought before a Magistrate Judge on February 18, 2020 at 9 a.m. should be suppressed because of an alleged unnecessary delay in presentment. *Id.* at 26-29. Mr. Colebut also alleges that his statements to police should be suppressed because they were taken in violation of his *Miranda*[1] rights. *Id.* at 26. He further argues that his arrest violates G.L. 1956 § 21-28.9-4 (The Good Samaritan Overdose Prevention Act); G.L. 1956 § 23-1.10-10(b) (requiring police officers to bring intoxicated persons to public treatment facilities for emergency treatment); and G.L. 1956 § 12-7-20 (right of arrested person to use a telephone). *Id.* at 16, 22-24. Finally, Mr. Colebut also requests the Court grant his *Franks*[2] motion, alleging that police officers made a false or misleading statement but does not identify an affidavit or warrant containing the allegedly false statement. (Mot. to Suppress at 5-9.)

B. State's Memorandum in Opposition

The State argues that the Pawtucket Police had sufficient probable cause to detain and subsequently arrest Mr. Colebut. (Mem. in Opp'n at 4-14.) The State also argues that Mr. Colebut's statements to police officers are admissible because they were made at times when Mr. Colebut was not in custody or after Mr. Colebut had waived his *Miranda* rights. *Id.* at 14-29. The State further argues that The Good Samaritan Overdose Prevention Act does not apply in this situation, where Mr. Colebut allegedly murdered Ms. Ohler by strangulation. *Id.* at 29-30. Further, the State alleges the evidence was obtained legally because of the following doctrines: exigent circumstances, consent to search, and plain view. *Id.* at 30-35. Finally, the State asserts that Mr. Colebut is not entitled to a *Franks* hearing because he has failed to make an initial showing that a false statement was made in any warrant or affidavit. *Id.* at 35-38.

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[2] *Franks v. Delaware*, 438 U.S. 154 (1978).

III

Analysis

A. Probable Cause

1. Seizure

"Article 1, section 6 of the Rhode Island Constitution and the Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, *see Mapp v. Ohio*, 367 U.S. 643, 650 . . . (1961), preserve the right of the people to be secure in their persons against unreasonable searches and seizures." *State v. Jimenez*, 276 A.3d 1258, 1266 (R.I. 2022). "[B]oth 'require that before a police officer can arrest a person, he or she must have probable cause to support such a seizure.'" *Id.* (quoting *State v. Ortiz*, 824 A.2d 473, 480 (R.I. 2003)). "Moreover, when authorities detain a person in violation of these rights, 'any fruits of the illegal detention are inadmissible even if they are oral statements . . . for which adequate *Miranda* warnings had been given[.]'" *Id.* at 1266-67 (quoting *State v. Mattatall*, 510 A.2d 947, 950 (R.I. 1986)).

"To determine whether a person is seized within the meaning of the Fourth Amendment and article 1, section 6, the central inquiry is whether, 'in view of all the circumstances, a reasonable person would believe that he or she was not free to leave.'" *Id.* at 1267 (quoting *State v. Diaz*, 654 A.2d 1195, 1204 (R.I. 1995)). Our Supreme Court "has set forth factors courts may consider in determining whether a person is seized, including '(1) the extent to which the person's freedom is curtailed; (2) the degree of force employed by the police; (3) the belief of a reasonable, innocent person in identical circumstances; and (4) whether the person had the option of not accompanying the police.'" *Id.* (quoting *Diaz*, 654 A.2d at 1204).

Using these factors, Mr. Colebut was seized, by the legal definition, when Officer Sisto handcuffed Mr. Colebut and brought him from the apartment to the rear of the police cruiser. *See* Hr'g Tr. at 15:9-18, Oct. 28-29, 2024. Before that time, Mr. Colebut's freedom was not curtailed and Officer Sisto did not employ force against Mr. Colebut. *See id.* at 9:16-15:10. Further, a reasonable individual would not believe he was in police custody when officers responded to his residence for a medical emergency. *See Jimenez*, 276 A.3d at 1268 (holding that defendant's freedom was not curtailed at the hospital when officers were questioning the circumstances regarding his child's injury). Finally, Officer Sisto's testimony showed that Mr. Colebut had the option of remaining in the kitchen but chose to "eventually" move into the living room. (Hr'g Tr. at 12:19-13:1, Oct. 28-29, 2024.) Thus, Mr. Colebut was not seized prior to being detained by Officer Sisto.

2. Reasonable Suspicion

Officer Sisto testified that Mr. Colebut was detained at 65 Fountain Street. *Id.* at 15:9-18. After Mr. Colebut was transported back to the Pawtucket Police Station it was determined that Ms. Ohler had an active no-contact order prohibiting Mr. Colebut from being in her presence. *Id.* at 16:12-17. Thus, Mr. Colebut was detained until the active no-contact order was discovered at which time Mr. Colebut was arrested. *Id.* at 65:9-17.

"Under the Fourth Amendment and the corollary exclusionary rule, if an officer lacks reasonable suspicion at the initiation of a warrantless search and seizure, then any evidence obtained therefrom must be suppressed." *State v. Pires*, 316 A.3d 701, 709 (R.I. 2024). "At a motion-to-suppress hearing, the state bears the burden to establish reasonable suspicion by a preponderance of the evidence." *Id.* "[A] police officer may conduct an investigatory stop of an individual whom the officer reasonably suspects to be engaged in criminal activity." *Id.*; *see also*

Terry v. Ohio, 392 U.S. 1, 30 (1968). "The officer's suspicion is reasonable when the officer has 'specific and articulable facts that the person detained is engaged in criminal activity.'" *Id.* (quoting *State v. Abdullah*, 730 A.2d 1074, 1076 (R.I. 1999)). "To pass constitutional muster, reasonable suspicion must be present at the inception of the stop, and therefore everything that occurs after the stop cannot factor into the reasonable suspicion analysis." *Id.*

Officer Nicholas Sisto (Officer Sisto) testified that he and his training officer, Officer Diane Rittman-McLaughlin (Officer McLaughlin), responded to 65 Fountain Street in Pawtucket, Rhode Island for an "unresponsive individual." (Hr'g Tr. at 3:19-25; 11:2-5, Oct. 28-29, 2024.) Before going into the third-floor unit, Officer Sisto spoke with a next-door neighbor, Stacy Provost, located at 63 Fountain Street, who stated she heard "banging" noises coming from the third-floor apartment. *Id.* at 7:2-8. Officer Sisto also testified that he spoke with Shana Brady who lived in the second-floor apartment at 65 Fountain Street who confirmed that "there was a possible disturbance" and mentioned that "the third floor tenants fight all the time." *Id.* at 8:5-11. Officer Sisto testified that when he knocked on the door of the third-floor apartment, someone, later identified as Mr. Colebut, told Officer Sisto to "use the other door." *Id.* at 8:18-9:10. However, Officer Sisto testified that Mr. Colebut eventually answered the door. *Id.* at 9:13-16. When Officer Sisto entered the apartment, he observed Mr. Colebut "frantic" and a woman, later identified as Ms. Ohler, lying face-down on the floor. *Id.* at 10:10-11:1. While Officer McLaughlin turned Ms. Ohler onto her back and began administering CPR, Officer Sisto spoke with Mr. Colebut. *Id.* at 11:15-22. Officer Sisto "asked" Mr. Colebut to move to the living room because he believed "it would be best to separate [Mr. Colebut] from the situation" while Officer McLaughlin performed CPR. *Id.* at 12:19-13:4. Mr. Colebut "[e]ventually" agreed to move into the living room. *Id.* at 12:22-24.

Officer Sisto testified that Mr. Colebut was initially "evasive" when asked questions about what happened to Ms. Ohler but eventually stated that Ms. Ohler's condition was caused by excessive alcohol consumption. *Id.* at 11:21-22, 13:10-11. During this conversation, Officer Sisto observed scratches on Mr. Colebut's neck. *Id.* at 13:12-14. Officer Sisto testified that throughout this time, Mr. Colebut was "very irate" and exhibited "erratic behavior" which included punching the refrigerator and slapping a wall. *Id.* at 11:17-19, 13:2-4, 15:6-7. Mr. Colebut also got into a "fighting stance," where his feet were "offset," and he clenched his fists. *Id.* at 14:24-15:3. At that point, Officer Sisto detained Mr. Colebut using handcuffs and bringing Mr. Colebut to the rear of the police cruiser. *Id.* at 15:9-18.

There is ample evidence to support Officer Sisto's belief that Mr. Colebut may have engaged in criminal activity. Officer Sisto heard from two different neighbors that there had been loud noises coming from the apartment that night and he heard from one neighbor that the occupants of the third-floor apartment frequently fought. *Id.* at 7:2-8, 8:5-11. Further, when officers arrived on-scene, Mr. Colebut initially denied them entry to the apartment. *Id.* at 8:18-9:10. When police officers did enter the apartment, they discovered Ms. Ohler unresponsive and Mr. Colebut acting erratically with scratches on his neck. *Id.* at 10:12-11:1, 13:12-14. Further, when Mr. Colebut was asked about Ms. Ohler's condition, he was evasive. *Id.* at 11:21-22. Mr. Colebut's actions became violent, including hitting the refrigerator, slapping the wall, and getting into a "fighting stance." *Id.* at 13:2-4, 14:24-15:7. Taking these factors into consideration, Officer Sisto had sufficient information to reasonably suspect Mr. Colebut engaged in criminal activity related to Ms. Ohler's condition.

3. Arrest

Mr. Colebut was arrested at the Pawtucket Police Department after it was discovered that there was an active no-contact order between Mr. Colebut and Ms. Ohler for Ms. Ohler's protection. *Id.* at 16:10-17. Mr. Colebut alleges that his warrantless arrest lacked probable cause.

"'The United States Supreme Court has held that a police officer may arrest a suspect without a warrant if, before the arrest, the officer has probable cause to believe that the suspect has committed a crime.'" *State v. Girard*, 799 A.2d 238, 249 (R.I. 2002) (quoting *State v. Guzman*, 752 A.2d 1, 4 (R.I. 2000)). "'Establishing the existence of probable cause to arrest a person does not require the same degree of proof needed to determine whether that person is guilty of the crime in question.'" *Id.* (quoting *Guzman*, 752 A.2d at 4). "'Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which he has reasonably trustworthy information 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.'" *Id.* (quoting *State v. Kryla*, 742 A.2d 1178, 1182 (R.I. 1999)).

Once Mr. Colebut was detained, he was brought back to the Pawtucket Police Station where a background check showed that he was the subject of an active no-contact order that prevented him from contacting Ms. Ohler. (Hr'g Tr. at 16:10-17, Oct. 28-29, 2024.) Violation of a no-contact order is a criminal offense. Police officers found Mr. Colebut in Ms. Ohler's presence at 65 Fountain Street, which constitutes a violation of the no-contact order. Once the active no-contact order was discovered, there was probable cause to arrest Mr. Colebut for criminal violation of a no-contact order. Thus, Mr. Colebut's subsequent arrest was supported by probable cause.

B. Suppression of Evidence Due to Unnecessary Delay in Presentment

Mr. Colebut was detained by Officer Sisto late on February 16, 2020 and placed under arrest for criminal violation of a no-contact order sometime after he was brought to the Pawtucket Police Station. *Id.* at 16:10-17. Ms. Ohler was pronounced deceased in the early morning hours of February 17, 2020, and Detectives David Silva (Detective Silva) and Hans Cute (Detective Cute) were assigned to investigate her death. *Id.* at 73:12-74:2. Detectives Silva and Cute began interviewing Mr. Colebut at "[a]pproximately 11 A.M." on February 17, 2020. *Id.* at 75:16-18. During the course of the interview, Mr. Colebut gave consent to Detectives Silva and Cute to search 65 Fountain Street. (Hr'g Ex. 14B, Tr. of Mr. Colebut's Interview at 131-33.) Mr. Colebut was arraigned on February 18, 2020 for misdemeanor charges. *See* 62-2020-02013. Mr. Colebut seeks to suppress statements made during the interview and any evidence obtained during the search of 65 Fountain Street on the basis that the statements and evidence were the product of an unnecessary delay in presentment. *Id.* at 26-29.

Rule 5(a) of the Superior Court Rules of Criminal Procedure states in relevant part, "[a]ny person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judicial officer of the District Court for the division in which the arrest was made or in which the crime was committed." Critically, our Supreme Court has determined that Rule 5(a) is "'not a constitutional command to be found within the text of our Federal or State Constitutions, and its breach does not necessarily create any constitutional violation.'" *State v. King*, 996 A.2d 613, 621 (R.I. 2010) (quoting *State v. Nardolillo*, 698 A.2d 195, 199 (R.I. 1997)). Importantly, our Supreme Court has viewed Rule 5(a) "'as a prophylactic measure designed to prevent other constitutional infirmities.'" *Id.* (quoting *Nardolillo*, 698 A.2d at 199). As such, Rhode Island Supreme Court opinions interpreting Rule 5(a) are controlling

while reliance on federal case law is misplaced. *See id.* at 621 n.17 ("While cases interpreting and applying federal rules may at times be enlightening as [the Court] interpret[s] and appl[ies] our rules of criminal procedure, those federal cases are by no means binding on [this Court] as [it] deal[s] with a Rhode Island rule such as Rule 5(a).").

"In interpreting Rule 5(a), [our Supreme] Court has held that delay in presentment, without more, does not warrant automatic suppression of a statement made during the period of delay." *Id.* at 622. "Rather, . . . 'delay, if it is to render a confession inadmissible, *must have been operative in inducing the confession*.'" *Id.* (quoting *State v. Lionberg*, 533 A.2d 1172, 1178 (R.I. 1987). Thus, "a '[hearing] justice must consider whether the time preceding a suspect's statement had any *causative effect* upon his [or her] . . . decision to confess.'" *Id.* (quoting *Lionberg*, 533 A.2d at 1178); *see also State v. Ferola*, 518 A.2d 1339, 1344 (R.I. 1986) (holding that the Court must "consider whether the so-called delay in bringing the defendant before a judicial officer in any way *prompted* [the defendant] to give the police his inculpatory statement"). Therefore, "the elapsed time between the defendant's arrest and his confession is the critical period [the Court] must examine and scrutinize in order to determine if it had been *operative in inducing* the defendant's admission." *King*, 996 A.2d at 622 (internal quotation omitted). Thus, "a defendant who seeks to have his or her statement excluded must demonstrate *both*: (1) that the delay in presentment was unnecessary *and* (2) that such delay was 'causative' with respect to his or her confession." *Id.*

Mr. Colebut was taken into police custody and arrested late Sunday night on February 16, 2020 into early Monday morning on February 17, 2020. Detectives Silva and Cute began questioning Mr. Colebut about Ms. Ohler's death at 11 a.m. on Monday, February 17, 2020. Mr.

Colebut was arraigned Tuesday morning on February 18, 2020. Thus, there was a one-day delay between when Mr. Colebut was arrested and when he was arraigned on those charges.

Detectives Silva and Cute interviewed Mr. Colebut as the last person to see Ms. Ohler before she became unresponsive. Mr. Colebut volunteered his statements to Detectives Silva and Cute to help the investigation into Ms. Ohler's death. At one point, Mr. Colebut said "[s]o anything I could do [*sic*] sit here and help[.]" (Hr'g Ex. 14B, Tr. of Mr. Colebut's Interview at 20.) Similar to the defendant in *King* who "was eager to speak with the police and willingly relayed his story 'to persuade the police as to the veracity of his version of the events, while simultaneously attempting to shift blame away from himself[,]'" Mr. Colebut spoke at length with Detectives Silva and Cute in order to assist them in their investigation. *State v. Baribault*, 247 A.3d 1237, 1247 (R.I. 2021) (quoting *King*, 996 A.2d at 623). Any delay in presentment did not induce or coerce Mr. Colebut into providing his statements or consenting to have police search his apartment. Thus, Mr. Colebut's statements and any evidence seized from his apartment should not be suppressed because any delay was not "'operative in inducing'" Mr. Colebut's statements or consent to search his apartment. *King*, 996 A.2d at 623 (quoting *Nardolillo*, 698 A.2d at 199).

C. Suppression of Statements Due to Violation of Fifth Amendment

Mr. Colebut alleges that his statements to police should be suppressed because they were taken in violation of his Fifth Amendment right against self-incrimination. The State argues that Mr. Colebut's statements to police officers are admissible because they were made at times when Mr. Colebut was not in custody or after Mr. Colebut had waived his *Miranda* rights.

"The Fifth Amendment serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." *State*

v. Perez, 422 A.2d 913, 915 (R.I. 1980) (citing *Miranda*, 384 U.S. at 467). "In *Miranda* the Supreme Court established certain procedural safeguards designed to protect the rights of an accused, under the Fifth and Fourteenth Amendments, to be free from compelled self-incrimination during custodial interrogation." *Id.* at 914-15. Specifically, *Miranda* mandates that "prior to custodial interrogation a suspect must receive explicit warnings concerning his constitutional privilege against self-incrimination and his right to counsel." *State v. Amado*, 424 A.2d 1057, 1061 (R.I. 1981).

"[C]ustodial interrogation mean[s] 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *Perez*, 422 A.2d at 915 (quoting *Miranda*, 384 U.S. at 444). The Supreme Court has further defined interrogation to mean "'not only. . . express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect[.]'" *Id.* at 915 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 292 (1980)). "As a matter of law, the exclusionary rule of *Miranda* does not apply unless the defendant (1) was in custody and (2) was interrogated." *State v. Harrison*, 66 A.3d 432, 441 (R.I. 2013). However, "a truly voluntary confession is admissible evidence in a criminal prosecution." *Amado*, 424 A.2d at 1061.

Mr. Colebut made statements to the police at three different junctures: (1) on-scene at 65 Fountain Street; (2) in the back of the police cruiser after he was detained; and (3) at the Pawtucket Police Station in the recorded interview with Detectives Silva and Cute.

1. Statements Made at 65 Fountain Street

Mr. Colebut made several statements to police officers on-scene at his apartment before he was detained by Officer Sisto in response to questions about Ms. Ohler's condition. Mr. Colebut contends that these statements were coerced by police officers. In contrast, the State avers that Mr. Colebut's statements are admissible because he was not in custody at the time these statements were given, and Mr. Colebut voluntarily provided information to the police.

In *State v. Briggs*, 756 A.2d 731 (R.I. 2000) the defendant argued that statements made at his residence should be suppressed because he had not been given *Miranda* warnings and the police considered him a suspect. *Briggs*, 756 A.2d at 737. However, our Supreme Court held that the defendant was not seized under the Fourth Amendment, and thus, he was not in custody and not entitled to receive *Miranda* warnings at that time. *Id.* Further, the Court emphasized that the defendant invited police officers into his home and that any statements made to the police were made voluntarily. *Id.*

For the same reasons that this Court finds Mr. Colebut was not detained prior to being handcuffed, this Court also finds that Mr. Colebut was not in custody when he spoke with Officer Sisto at 65 Fountain Street. Importantly, Mr. Colebut called emergency services asking for assistance and, although initially reticent, invited police officers into his apartment. Thus, any statements made before Mr. Colebut was detained by Officer Sisto are admissible because Mr. Colebut was not subject to custodial interrogation and was not entitled to receive *Miranda* warnings.

2. Statements Made in the Back of the Police Cruiser

When Officer Sisto detained Mr. Colebut, Officer Sisto escorted Mr. Colebut to a police cruiser. Officer Sisto testified that while waiting for police transport, Mr. Colebut "alluded to

something about Kristine taking one of his Prozac pills." (Hr'g Tr. at 16:1-2, Oct. 28-29, 2024.) It is unclear from the evidence presented whether Mr. Colebut elicited this statement or whether it was in response to a question from Officer Sisto. Further, the State does not address the issue of whether this statement is admissible because it does not intend to introduce the statement into evidence in its case-in-chief. The Court does not need to address the issue of whether the statement violated Mr. Colebut's Fifth Amendment rights because the State does not intend to introduce this statement into evidence and will not be allowed to introduce the statement into evidence at trial.

3. Statements Made in the Recorded Interview with Detectives Silva and Cute

Mr. Colebut alleges that the interview conducted by Detectives Silva and Cute at the Pawtucket Police Station on February 17, 2020 was taken in violation of his Fifth Amendment right against self-incrimination. The State argues that Mr. Colebut waived his right to self-incrimination rendering the statements admissible.

"Custodial interrogation mean[s] 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *Perez*, 422 A.2d at 915 (quoting *Miranda*, 384 U.S. at 444). "The prosecution must show a 'voluntary, knowing, and intelligent waiver of *Miranda* rights . . . before comments made by a defendant during custodial interrogation can be admitted into evidence.'" *Harrison*, 66 A.3d at 441 (quoting *State v. Marini*, 638 A.2d 507, 511 (R.I. 1994)). "If the prosecution cannot meet its burden, then 'the *Miranda* exclusionary rule places all statements elicited during such interrogation beyond the state's reach at trial.'" *Id.* (quoting *State v. Caruolo*, 524 A.2d 575, 579 (R.I. 1987)).

Determining the validity of a defendant's waiver is a two-part test. *See State v. Sabourin*, 161 A.3d 1132, 1142 (R.I. 2017). "'First, the relinquishment of the right must have been voluntary[.]'" *Id.* (quoting *State v. Leuthavone*, 640 A.2d 515, 519 (R.I. 1994)). "'The definitive test of the voluntariness of a statement is whether, after taking into consideration the totality of the circumstances, it was the product of the defendant's free will or was instead the result of coercion that overcame the defendant's free will at the time it was made.'" *Id.* (quoting *State v. Mlyniec*, 15 A.3d 983, 996 (R.I. 2011)). "'Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" *Id.* (quoting *Leuthavone*, 640 A.2d at 519). "This bipartite inquiry requires an analysis of the 'totality of the circumstances surrounding the interrogation.'" *Id.* (quoting *Leuthavone*, 640 A.2d at 519).

Further, "'[t]here is no requirement that *Miranda* warnings be given in writing as a constitutional imperative.'" *State v. Torres*, 787 A.2d 1214, 1225 (R.I. 2002) (quoting *State v. Wilding*, 638 A.2d 519, 521 (R.I. 1994)). Thus, *Miranda* warnings may be given orally and "'there [is not] a requirement that a suspect must sign a waiver' even when a defendant is in a custodial setting." *Id.* (quoting *Wilding*, 638 A.2d at 521).

As previously discussed, Mr. Colebut was under arrest when Detectives Silva and Cute interviewed him on February 17, 2020. This renders the interview a custodial interrogation: Mr. Colebut was in police custody and Detectives Silva and Cute asked questions that could elicit an incriminating response. Detectives Silva and Cute began questioning Mr. Colebut about his activities but did not immediately provide the *Miranda* warnings. *See* Hr'g Ex. 14B, Tr. of Mr. Colebut's Interview at 1-4. Any statements made by Mr. Colebut before he was read the

Miranda warnings are inadmissible, which amounts to the first six minutes and forty seconds of the recorded interview. *See id.*

Detective Cute read Mr. Colebut the *Miranda* warnings and after each sentence he asked Mr. Colebut if he understood the warning. *See id.* at 4-7. When Mr. Colebut became distraught, Detective Cute paused, allowed Mr. Colebut to compose himself, and continued reading the *Miranda* warnings. *Id.* Mr. Colebut responded in the affirmative, saying "yes" after each portion of the *Miranda* warning. *Id.* Thus, Mr. Colebut voluntarily relinquished his right against self-incrimination by acknowledging his right to remain silent and continuing to speak with the detectives. This waiver was not coerced, and Mr. Colebut had every opportunity to invoke his right to remain silent during the interview. Mr. Colebut chose to continue speaking with the detectives after being informed of the *Miranda* warnings. Thus, Mr. Colebut's waiver of the *Miranda* warnings was knowing, intelligent, and voluntary. As such, his statements to Detectives Silva and Cute after the *Miranda* warnings were read are admissible.

D. Fourth Amendment Search & Seizure

Mr. Colebut argues that the initial entry of his apartment by Pawtucket Police officers and rescue personnel was a violation of his Fourth Amendment right against unreasonable searches and any evidence obtained should be suppressed. Further, he also argues that the subsequent search of his apartment was a violation of his Fourth Amendment right against unreasonable searches and any evidence obtained should be suppressed. Mr. Colebut also argues that his Fourth Amendment rights were violated when a DNA sample was taken at the Pawtucket Police Station without a warrant. In particular, Mr. Colebut seeks to suppress his DNA sample taken at the police station, as well as two Motorola cell phones and two notebooks that were taken from his apartment. The State argues that the initial entry of Mr. Colebut's apartment was

supported by exigent circumstances. The State also argues that the subsequent search of Mr. Colebut's apartment was supported by Mr. Colebut's consent.

1. Initial Entry of Apartment

Mr. Colebut objects to the initial entry of his home by Pawtucket Police officers and rescue personnel. Specifically, he argues that the 911 dispatcher, as an agent of the police, created an exigency by classifying the situation as "unknown medical" to police officers and medical personnel. The State argues that the initial entry into Mr. Colebut's apartment was supported by exigent circumstances and that Mr. Colebut had provided nonverbal consent to enter his apartment.

"The Fourth Amendment to the United States Constitution provides: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'" *State v. Sinapi*, 295 A.3d 787, 799 (R.I. 2023) (quoting U.S. Const. Amend. IV). "'[S]earches conducted outside the judicial process, 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.'" *Id.* (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971)).

"One of these exceptions has come to be identified as exigent circumstances." *Id.* at 800. "In certain cases, 'the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.'" *Id.* at 806 (quoting *State v. Jennings*, 461 A.2d 361, 366 (R.I. 1983)). "[An e]xample[] of exigent circumstances include[s] 'law enforcement's need to provide emergency assistance to an

occupant of a home[.]'" *Id.* (quoting *State v. Gonzalez*, 136 A.3d 1131, 1164 (R.I. 2016) (Goldberg, J., concurring)).

Here, Mr. Colebut called 911 requesting emergency services because Ms. Ohler was unresponsive. Officer Sisto testified that he and Officer McLaughlin were dispatched to 65 Fountain Street to assist an "unresponsive individual." (Hr'g Tr. at 3:23-25, Oct 28-29, 2024.) When Mr. Colebut eventually opened the door to the residence, he asked responding officers to help Ms. Ohler. *Id.* at 10:15-18. Officers found Ms. Ohler unresponsive on the floor. *Id.* An exigent circumstance – Ms. Ohler's medical emergency – was the reason that police officers were brought to 65 Fountain Street. In fact, Mr. Colebut is the one who asked police officers to help her, which required them to enter the apartment. Further, it appears the only evidence "seized" as a result of this entry was Ms. Ohler's body. Thus, the initial entry into Mr. Colebut's apartment was reasonable because it was supported by an exigent circumstance and any evidence seized as a result of this entry is admissible.

2. Subsequent Search of Apartment

Mr. Colebut also objects to the subsequent search of his apartment which was executed on February 17, 2020 after Detectives Silva and Cute interviewed him about his alleged involvement in Ms. Ohler's death. Mr. Colebut asserts that two Motorola cell phones and two notebooks were seized as a result of this search and should be suppressed. The State notes that Mr. Colebut consented to this search but it does not intend to introduce this evidence into its case-in-chief.

"Consent is '[o]ne of the specifically established exceptions to the requirement[] of . . . a warrant . . .'" *State v. Gonzalez*, 136 A.3d 1131, 1147 (R.I. 2016) (quoting *State v. Linde*, 876 A.2d 1115, 1125 (R.I. 2005)). "'When seeking to justify a search or seizure on consent grounds,

the state must prove that the consent was 'freely and voluntarily given.'" *Id.* (quoting *State v. Bailey*, 417 A.2d 915, 918 (R.I. 1980)). "In the Fourth Amendment context, the state must prove by a 'fair preponderance of the evidence' that there was free and voluntary consent." *Id.* (quoting *State v. O'Dell*, 576 A.2d 425, 427 (R.I. 1990)). "'[T]he question of whether consent was 'in fact voluntary or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances.'" *Id.* at 1147-48 (quoting *Palmigiano v. Mullen*, 119 R.I. 363, 370, 377 A.2d 242, 246 (1977)).

The consent to search Mr. Colebut's apartment was given during an interview with Detectives Silva and Cute on February 17, 2020. Detectives Silva and Cute told Mr. Colebut that they needed his consent to search his apartment. (Hr'g Ex. 14B, Tr. of Mr. Colebut's Interview at 132.) Mr. Colebut responded, "That's fine" and later reiterated, "You have my consent." *Id.* Thus, the subsequent warrantless search of Mr. Colebut's apartment was valid because it was supported by Mr. Colebut's consent.

3. DNA Sample

Mr. Colebut alleges that the Pawtucket Police took a sample of his DNA at the police station without a warrant. Further, he states that this action constituted an unreasonable search and seizure in violation of his Fourth Amendment rights. The State indicates that it does not intend to present DNA evidence at trial, and as such, the State does not intend to object to Mr. Colebut's motion to suppress DNA evidence. Since the State does not intend to present DNA evidence at trial, Mr. Colebut's motion to suppress DNA evidence will pass.

E. *Corpus Delicti*

In his supplemental memorandum, Mr. Colebut argues that the State has not established *corpus delicti* in this case. In the State's supplemental memorandum filed on January 2, 2025,

the State argues that there is ample evidence to establish *corpus delicti*. (State's Suppl. Mem. in Opp'n Mot. to Suppress at 8.) The State intends to call the medical examiner to testify that Ms. Ohler's cause of death was "asphyxia due to strangulation," the manner of death was homicide, and that Ms. Ohler had a bruise on the right side of her face. *Id.* Officer Sisto has already testified that Mr. Colebut had a scratch mark on his neck. *Id.* The State asserts that multiple neighbors will testify that they heard struggling and fighting coming from the third-floor apartment prior to police arrival. *Id.* The State argues that this is sufficient evidence to establish *corpus delicti*, and thus, Mr. Colebut's statements should not be precluded.

Corpus delicti literally translates to "the body of the crime[.]" Wayne R. LaFave, *Substantive Criminal Law* § 1.4(b) (3d ed. 2018). "[T]he corpus delicti of a crime must be established before extrajudicial confessions or admissions connecting the accused with the crime are admissible into evidence." *State v. Angell*, 122 R.I. 160, 165, 405 A.2d 10, 13 (1979). "As a result, there must be proof of the crime from some source other than defendant's admission." *Id.* "The prosecution is thus required to establish the corpus delicti through the production of sufficient direct or circumstantial evidence to establish that the crime charged was committed, regardless of who may have committed it." *Id.* The prosecution must establish "*prima facie proof* of corpus delicti[.]"' *In re Joseph C.*, 178 A.3d 288, 294 (R.I. 2018) (quoting *Angell*, 122 R.I. at 165, 405 A.2d at 13). Our Supreme Court has "specifically 'emphasized that the so-called corpus delicti need not be proved beyond a reasonable doubt before the admission can be admitted into evidence.'" *Id.* (quoting *State v. Wilbur*, 115 R.I. 7, 14, 339 A.2d 730, 734 (1975)). The State only needs to provide '"some corroborative evidence tending to prove the corpus delicti[.]'" *Id.* (quoting *Wilbur*, 115 R.I. at 13, 339 A.2d at 734).

The State has met its obligation of showing that a homicide occurred independent of Mr. Colebut's statements. Officer Sisto testified that Ms. Ohler was found unresponsive on the floor at Mr. Colebut's apartment. (Hr'g Tr. at 14:20-21, Oct. 28-29, 2024.) Further, Detective Silva testified that Ms. Ohler's death was initially treated as suspicious because she had "fresh injuries to her face, injuries to her neck, all consistent with a non-natural death." *Id.* at 104:20-21. Officer Gretchen Galvin (Officer Galvin) testified that Ms. Ohler had bruises on her face. (Hr'g Tr. at 19:23, Dec. 10, 2024.) Detective Silva testified that the Medical Examiner informed him that the "cause of death was asphyxiation by strangulation[.]" (Hr'g Tr. at 131:18-20, Oct 28-29, 2024.) Thus, the State has met its burden of establishing prima facie proof that Ms. Ohler was murdered.

F. Public Treatment Facility

Mr. Colebut also argues that his arrest violates § 23-1.10-10(b) which requires police officers to bring intoxicated persons to public treatment facilities for emergency treatment. As a result, Mr. Colebut argues that evidence obtained from his arrest should be suppressed. The State argues that there is no evidence to suggest that Mr. Colebut was intoxicated at the time of his arrest and that § 23-1.10-10(b) does not apply to Mr. Colebut's situation. (State's Suppl. Mem. in Opp'n Mot. to Suppress at 6.)

"Because suppression of relevant and incriminating evidence 'will often have the effect of allowing criminals to go unpunished, it is justified only as a means of deterring the police from violating constitutional and statutory rights.'" *State v. Barkmeyer*, 949 A.2d 984, 998 (R.I. 2008) (quoting *United States v. Silvestri*, 787 F.2d 736, 740 (1st Cir. 1986)). Section 23-1.10-10(b) states "A person who appears to be incapacitated by alcohol shall be taken into protective

custody by the police and immediately brought to an approved public treatment facility for emergency treatment. . . A taking into protective custody under this section is not an arrest."

Section 23-1.10-10(b) is not applicable to Mr. Colebut's situation on February 16, 2020, and the police were not required to bring him to a public treatment facility. While Mr. Colebut may have been under the influence of alcohol when he called for emergency services and spoke with Officer Sisto on-scene, he was not so impaired that he would be considered "incapacitated." Mr. Colebut was able to answer questions and follow directions. Further, Mr. Colebut was not taken into protective custody but was initially detained on reasonable suspicion that he had committed a crime and then arrested. Thus, Mr. Colebut's statutory rights were not violated and does not constitute a basis for suppression of evidence.

G. Confidential Telephone Call

Mr. Colebut also argues that his arrest violates § 12-7-20 which provides for the right of an arrested person to use a telephone. Mr. Colebut argues that because he was not told that he had the right to use the telephone his statements should be suppressed. The State argues that § 12-7-20 only applies to telephone calls made to an attorney or to secure bail. (State's Suppl. Mem. in Opp'n Mot. to Suppress at 5.) It argues that Mr. Colebut's request to call his mother does not implicate § 12-7-20. *Id.*

"Because suppression of relevant and incriminating evidence 'will often have the effect of allowing criminals to go unpunished, it is justified only as a means of deterring the police from violating constitutional and statutory rights.'" *Barkmeyer*, 949 A.2d at 998 (quoting *Silvestri*, 787 F.2d at 740). Section 12-7-20 states, in relevant part: "Any person arrested . . . shall be afforded, as soon after being detained as practicable, not to exceed one hour from the time of detention, the opportunity to make use of a telephone for the purpose of securing an

attorney or arranging for bail. . .” Section 12-7-20. Our Supreme Court has determined that while “a suspect’s right to a confidential telephone call in the course of a DUI arrest does not rise to the level of a constitutional right, [the Court] also recognize[s] that in order to enjoy the benefit mandated by § 12-7-20, a suspect must be informed of his or her right to a confidential telephone call.” *State v. Carcieri*, 730 A.2d 11, 15 (R.I. 1999). “However, the failure to notify a suspect of his right to use a telephone is not fatal to the state’s case unless a defendant is prejudiced thereby.” *Id.* Further, “[t]he confidentiality requirement of § 12-7-20 clearly does not attach to any and every telephone call an arrestee makes while at the police station; rather, it only attaches when the purpose of the call is to speak to an attorney or to arrange for bail.” *State v. Quattrucci*, 39 A.3d 1036, 1043 (R.I. 2012).

Section 12-7-20 requires that Mr. Colebut be given an *opportunity* to make a phone call within one hour of arrest but does not require that he take that opportunity. During the interview at the police station which occurred many hours after his arrest, Mr. Colebut asked the detectives if he could call his mother once he finished speaking with the detectives. (Hr’g Ex. 14B, Tr. of Mr. Colebut’s Interview at 89.) Detectives Cute and Silva both responded affirmatively and Detective Cute even emphasized “[y]ou’ll get that call anytime you want. We’ll let you call her.” *Id.* At one point, Detective Cute even states, “I’m gonna . . . get you downstairs and . . . get you that call to your mom. All right? . . . any final thoughts before we . . . wrap this up?” *Id.* at 263. Mr. Colebut continued the conversation. Thus, Mr. Colebut was given the opportunity to make a phone call to his mother but chose not to take it. As our Supreme Court emphasized in *Carcieri*, “the failure to notify a suspect of his right to use a telephone is not fatal to the state’s case unless a defendant is prejudiced thereby.” *Carcieri*, 730 A.2d at 15. While Mr. Colebut may not have been given the opportunity to make a phone call within one hour of his arrest, he was not

prejudiced by this oversight. Consequently, § 12-7-20 does not constitute a basis for suppression of evidence in this case.

H. Good Samaritan Overdose Prevention Act

Mr. Colebut alleges that his actions fall under the Good Samaritan Overdose Protection Act, § 21-28.9-4, and should prevent him from being prosecuted for Ms. Ohler's murder. Specifically, he argues that he called emergency services – and not the police – in good faith to report an overdose medical emergency. As such, Mr. Colebut argues that it was a violation of the Act to arrest him and any evidence obtained as a result should be suppressed. The State argues that the Act was intended to protect emergency callers from being prosecuted for crimes related to drug activity after calling emergency services for an overdose. The State argues that this Act does not apply to Mr. Colebut because Ms. Ohler was not overdosing but was allegedly experiencing a medical emergency due to Mr. Colebut's conduct.

Section 21-28.9-4 titled "Emergency overdose care – Immunity from legal repercussions" states, in relevant part:

> "(a) Any person who, in good faith, without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug or alcohol overdose or other drug- or alcohol-related medical emergency shall not be charged or prosecuted for any crime related to the possession of a controlled substance or drug paraphernalia, or the operation of a drug-involved premises, if the evidence for the charge was gained as a result of the seeking of medical assistance." Section 21-28.9-4(a).

Mr. Colebut's actions are not protected by the Good Samaritan Overdose Prevention Act because Mr. Colebut is not being prosecuted for a drug-related crime. The crimes with which he is charged are not protected by the statute. Thus, the Good Samaritan Overdose Prevention Act does not provide a basis for suppressing any evidence in this case.

I. *Franks* Motion

Mr. Colebut argues that he is entitled to a *Franks* hearing because Officer Sisto and Detective Silva made false statements in their police narratives, before the grand jury, and in the criminal complaint. The State avers that Mr. Colebut has not made a substantial showing that Officer Sisto or Detective Silva made a false statement with the requisite intent and that Mr. Colebut has not sufficiently identified which warrant or affidavit contains a false statement.

"In *Franks*, the United States Supreme Court established a procedure for challenging warrants alleged to have been obtained through the use of affidavits containing 'false statement[s] made knowingly and intentionally, or with reckless disregard for the truth.'" *State v. Patino*, 93 A.3d 40, 59 (R.I. 2014) (quoting *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)). *Franks* created a process where a defendant may seek a hearing to "challenge the veracity of factual statements made in affidavits supporting the issuance of Fourth Amendment search warrants." *Id.* However, "[b]efore a hearing is required . . . the defendant must vault over two hurdles." *Id.* "First, he must make a 'substantial preliminary showing that a false statement [was made] knowingly and intentionally, or with reckless disregard for the truth . . .'" *Id.* (quoting *Franks*, 438 U.S. at 155). "Secondly, the defendant must show that the allegedly false statement is necessary to the finding of probable cause." *Id.* (citing *Franks*, 438 U.S. at 156).

Mr. Colebut argues that he is entitled to a *Franks* hearing because Officer Sisto made false statements in his narrative, on the Domestic Violence/Sexual Assault Form, and in his grand jury testimony. Further, Mr. Colebut alleges that Detective Silva made false statements in the criminal complaint and before the grand jury. Neither of these statements are substantiated and, even if true, would not initiate a *Franks* hearing. The *Franks* hearing is to address false statements made in affidavits attached to warrants. Mr. Colebut does not make any allegations

regarding statements made in affidavits submitted along with any search or arrest warrants in this case. Further, Mr. Colebut must make a substantial preliminary showing that a false statement was made knowingly and intentionally or with reckless disregard for the truth, and he has not provided any evidence that Officer Sisto or Detective Silva made a false statement. Thus, Mr. Colebut is not entitled to a *Franks* hearing because he has not made a substantial showing that a false statement was made in either a warrant or affidavit associated with his case.

IV

Conclusion

For the foregoing reasons, Mr. Colebut's Motion to Suppress is **GRANTED in part** and **DENIED in part**. Mr. Colebut's statements in the back of the police cruiser and the first six minutes and forty seconds of the recorded interview are inadmissible, and for those specific statements Mr. Colebut's Motion to Suppress is **GRANTED**. With regard to all the other arguments in support of Mr. Colebut's Motion to Suppress, the Motion to Suppress is **DENIED**.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Victor Colebut**
CASE NO:	**P1-2020-1991ADV**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 24, 2025**
JUSTICE/MAGISTRATE:	**Montalbano, J.**
ATTORNEYS:	
For Plaintiff:	**Jonathan E. Burke, Esq.** **Shannon Signore, Esq.**
For Defendant:	**Victor Colebut, *pro se*** **Elizabeth Payette, Esq. (*standby counsel)***