IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	ID No. 2302010297
	)	
ROBERT FRANKS,	)	
	)	
Defendant.	)	
	)	

Date Submitted: July 24, 2024
Date Decided: August 1, 2024

Upon Consideration of Defendant's Motion to Suppress:
GRANTED in part and DENIED in part

MEMORANDUM OPINION

Kathleen A. Dickerson, Esquire, and Angelica Endres, Esquire, Deputy Attorneys General, Delaware Department of Justice, Georgetown, Delaware. Attorneys for the State.

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JURDEN, P.J.

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I. INTRODUCTION

Defendant Robert Franks ("Franks") seeks to exclude evidence seized by law enforcement during a warrantless search of his residence.[1] Franks argues the warrantless entry was a violation of the Fourth Amendment,[2] and all evidence stemming from the warrantless entry should be suppressed.[3] The State maintains that the warrantless search was legal because the third-party consent, emergency, and inevitable discovery doctrines apply.[4] Alternatively, the State argues Franks' statement to the police is admissible under the attenuation doctrine.[5] For the reasons set forth below, Franks' Motion to Suppress ("Motion") is **GRANTED in part and DENIED in part**.

[1] D.I. 28.
[2] *Id.* Franks brings this challenge under federal and state constitutional law.
[3] *Id.*
[4] D.I. 35.
[5] *Id.*

II. FACTS AND PROCEDURAL HISTORY

A. Facts[6]

1. The initial phone call

On Friday, February 17, 2023, at approximately 7:50 a.m., Officer Brandon Dodd ("Officer Dodd") of the Bridgeville Police Department received a call from Kimberly Moss ("Kimberly") who expressed concern for her sister Cynthia Moss-Franks' ("Cynthia")[7] wellbeing.[8] Kimberly informed Officer Dodd that she had not heard from her sister in two days, which was unusual because they typically exchanged texts or phone calls every day.[9] Officer Dodd told Kimberly he would respond to Cynthia's house (the "Residence") to conduct a welfare check and advise her of what he found.[10]

2. Officer Dodd arrives at the Residence

Upon arriving at the Residence at 8:12 a.m., Officer Dodd observed a silver Honda Civic parked on the street in front of the Residence.[11] He knocked on the

[6] The following facts are drawn from the testimony presented during the suppression hearing held on April 10, 2024, and the executed warrants. D.I. 32, Ex. 2, 3; D.I. 28, Ex. A. The record does not contain specific times of all the relevant events. The Court discusses the facts in chronological order based on the testimony.
[7] The Court uses Cynthia Moss-Franks' first name in order to avoid confusion between Cynthia and Robert Franks.
[8] D.I. 39 (herein "Tr. of Suppression Hr'g") at 3:23-4:02.
[9] *Id*. 5:20-6:1.
[10] *Id*. 6:5-10.
[11] *Id*. 7:5-9; D.I. 28, Ex. A.

front door and,[12] receiving no response, he knocked again.[13] Officer Dodd noticed a Ring doorbell camera and pushed the button but received no response.[14] He observed a keypad to unlock the deadbolt on the front door.[15] Officer Dodd walked the perimeter of the Residence to see if there were any broken windows, screens, or doors with damage, but found nothing out of place.[16] He knocked on the front door one more time, but no one answered.[17]

3. Officer Dodd speaks with the neighbors

Officer Dodd next sought information from the neighbors and made contact with a woman who lived with her husband next door at 86 Champions Drive.[18] The woman explained that her husband had spoken with Franks—Cynthia's husband—a couple of nights earlier.[19] On that night, sometime after 11:00 p.m., Franks asked her husband for money to get to work.[20] Franks seemed incoherent and gave them the impression that Cynthia was away in Philadelphia caring for a sick family member.[21] Her husband gave Franks $20.00.[22] The couple told Officer Dodd that

[12] Tr. of Suppression Hr'g 7:13-23.
[13] *Id*.
[14] *Id*.
[15] *Id*. 8:20-22.
[16] *Id*. 8:3-12.
[17] *Id*. 9:3-5.
[18] *Id*. 9:8-10.
[19] Tr. of Suppression Hr'g 9:19-23; 10:13-14. The Residence is located at 84 Champions Drive.
[20] *Id*. 9:13-18; 9:21-10:7.
[21] *Id*.
[22] *Id*.

the silver Honda parked on the street in front of the Residence was Franks', and it had not moved in several days.[23] They also told Officer Dodd that Cynthia drove a Mercedes SUV.[24] The couple gave Officer Dodd Cynthia's cellphone number.[25] When Officer Dodd returned to his squad car, he attempted to call Cynthia, but no one answered.[26]

4. Officer Dodd calls Kimberly

Following his attempt to contact Cynthia, Officer Dodd called Kimberly.[27] Kimberly was adamant that it was unlike her sister not to answer the door because Cynthia worked from home.[28] When Officer Dodd told Kimberly about the next door neighbors' impression (based on what Franks said) that Cynthia was caring for a sick relative in Philadelphia, Kimberly stated that was not true and that she would know if Cynthia was caring for a sick relative because they were a small family and lived close to each other in Philadelphia.[29] Kimberly confirmed that Cynthia drove a white Mercedes SUV and told Officer Dodd that Cynthia and Franks had been in an argument about Franks' drug use the last time she spoke with Cynthia.[30] She mentioned it was odd that Franks' vehicle was parked outside the Residence since

[23] *Id*. 10:18-22.
[24] *Id*.
[25] Tr. of Suppression Hr'g 12:18-21.
[26] *Id*.
[27] *Id*. 12:1-9.
[28] *Id*.
[29] *Id*.
[30] *Id*. 12:12-14; 12:18-21; D.I. 35.

he should have been working during the day.[31] Kimberly asked Officer Dodd to make a forced entry into the Residence.[32] Officer Dodd said he would check with administration to see if forced entry was warranted.[33]

5. Officer Dodd contacts Corporal Willey

Prior to checking with administration, Officer Dodd called Corporal Dalton Willey ("Corporal Willey") of the Greenville Police Department for advice on whether he should make a forced entry into the Residence.[34] Corporal Willey suggested that Officer Dodd check with administration because administration had the final say over what actions Officer Dodd could take.[35] Corporal Willey added that he probably would have already made forced entry into the Residence if he was worried there was a medical condition that needed treatment.[36]

6. Officer Dodd contacts administration

Officer Dodd then called Lieutenant James ("Lt. James"), an administrator at the Bridgeville Police Department, and explained the situation.[37] Lt. James suggested Officer Dodd look in the garage to see if Cynthia's vehicle was inside.[38]

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[31] D.I. 35.
[32] Tr. of Suppression Hr'g 13:20-22.
[33] *Id*.
[34] *Id*. 15:10-16:3. Officer Dodd testified it is typical for officers in different police departments in Sussex County to assist each other due to limited resources. *Id*. 14:18-15:1.
[35] *Id*. 15:19-23.
[36] *Id*.
[37] Tr. of Suppression Hr'g 16:11-22.
[38] *Id*.

Officer Dodd used his phone to look through the top window of the garage and told Lt. James he did not see a vehicle.[39] Lt. James instructed Officer Dodd not to make forced entry into the Residence in case Cynthia "happened to be out of the house."[40]

7. Officer Dodd returns to the police department

Next, Officer Dodd returned to the Bridgeville Police Department and conducted CJIS inquiries on Cynthia and Franks in an effort to locate telephone numbers or additional addresses.[41] Through CJIS, Officer Dodd discovered that Franks was being monitored by Georgetown Probation and Parole.[42] Per Franks' probation conditions, he was subject to the search of his Residence by a probation officer without a warrant.[43]

8. Kimberly calls Officer Dodd again

Officer Dodd then received another call from Kimberly.[44] Kimberly advised Officer Dodd that she had spoken to Cynthia's adult daughter and son who said they were unable to reach their mother.[45] Kimberly told Officer Dodd that Cynthia worked for the IT department at the VA.[46]

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[39] *Id*. 17:1-7, 17:10-12.
[40] *Id*.
[41] *Id*. 17:19-18:1.
[42] *Id*. 18:12-14.
[43] D.I. 35.
[44] Tr. of Suppression Hr'g 19:14-17.
[45] *Id*.
[46] Tr. of Suppression Hr'g 18:17-19:20.

9. Officer Dodd contacts Cynthia's place of employment and a local hospital

Officer Dodd called the VA and left a voicemail asking about Cynthia.[47] He also called Nanticoke Hospital to see if Cynthia or Franks were admitted, but there was no information for either of them in the emergency department.[48]

10. Cynthia's son calls Officer Dodd

Next, Cynthia's son, Michael Moss ("Michael"), called the police station and requested a welfare check on his mother.[49] He stated that he and the rest of the family lived in Philadelphia, so they were not able to respond down to the area to check on their mother.[50] From Michael, Officer Dodd learned that the last time he spoke with Cynthia was the previous Monday (February 13, 2023).[51] Michael said that he did not trust Franks[52] and no one else in this family did either.[53] He provided Officer Dodd with three possible codes for the keypad to the front door of the Residence[54] and confirmed that it was abnormal for Cynthia not to answer anyone.[55]

11. Cynthia's daughter calls Officer Dodd

[47] *Id*. 19:23-20:8.
[48] *Id*. 20:18-21:4.
[49] *Id*. 21:15-21.
[50] *Id*. 22:11-14.
[51] *Id*. 22:11-18.
[52] Tr. of Suppression Hr'g 22:21-23:3.
[53] *Id*.
[54] Michael received the codes from his sister, Kayla Whaley. *Id*. 24:4-5.
[55] Tr. of Suppression Hr'g 23:14-18, 24:11-13.

Following Michael's call, Cynthia's daughter, Kayla Whaley ("Kayla"), called Officer Dodd and confirmed that it was odd for Cynthia not to answer anyone.[56] Kayla said she typically had steady communication with her mother but had not been able to reach her in two days.[57] She stated that Franks had recently been released from drug rehabilitation.[58] Officer Dodd asked if Cynthia had any medical issues, and Kayla said she was not aware of any.[59]

12. Officer Dodd contacts Georgetown Probation and Parole

Officer Dodd called Georgetown Probation and Parole to see if he could obtain Franks' employer information because he was growing increasingly concerned about Cynthia's and Franks' health and wellbeing.[60] He spoke with Officer James Timmons ("Officer Timmons"), Franks' probation officer, and informed him of the ongoing situation.[61] At this point, approximately two hours had passed since Kimberly's initial phone call.[62] Officer Timmons reported that Franks had an extensive domestic violence history but that it did not involve Cynthia.[63] The

[56] *Id*. 25:2-8.
[57] *Id*.
[58] D.I. 35.
[59] Tr. of Suppression Hr'g 26:2-7.
[60] *Id*. 26:14-22.
[61] *Id*. 27:2-6.
[62] Tr. of Suppression Hr'g 27:12-19; 27:22-28:1.
[63] *Id*. 28:4-9.

last time Officer Timmons had seen Franks for an office visit was February 7, 2023, and Franks was not due for another visit until March.[64]

13. Officer Timmons attempts to contact Franks and obtains approval for a home visit

Officer Timmons then called Franks' cellphone.[65] When Franks did not answer the phone, Officer Timmons and his supervisor reviewed Franks' case file.[66] Officer Timmons told his supervisor he was worried about Franks and Cynthia given Franks' domestic violence history.[67] Officer Timmons' supervisor gave him permission to conduct a home visit with a second probation officer.[68]

14. Police officers and probation officers decide to visit the Residence

Officer Timmons called Officer Dodd and said he was going to conduct a home visit.[69] Officer Dodd offered to accompany him.[70] Officer Dodd then called Corporal Willey and asked him to respond to Cynthia's house with him.[71] Officer Dodd attempted to call Franks, but Franks did not answer.[72]

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[64] *Id*. 75:18-76:1; 76:23-77:4.
[65] *Id*. 79:1-4.
[66] *Id*. 77:16-19.
[67] Tr. of Suppression Hr'g 77:9-15.
[68] *Id*. 78:22-23.
[69] *Id*. 30:15-2; 81:14-18. There is no evidence to suggest Officer Timmons considered seeking authorization for an administrative search.
[70] *Id*.
[71] *Id*. 30:18-21.
[72] *Id*. 28:16-21.

15. Kimberly calls Officer Dodd a third time

Kimberly called Officer Dodd a third time and told him that Cynthia's cellphone was active because Facebook Messager indicated she was online.[73] Kimberly attempted to call Cynthia through Facebook but did not receive an answer.[74] Kimberly told Officer Dodd that on Tuesday, February 14, 2023, Cynthia had emailed a copy of her will to Kimberly, Michael, and Kayla, which was out of the ordinary.[75]

16. Corporal Willey and Officer Dodd speak with the neighbors

Officer Dodd and Corporal Willey arrived at the Residence before Probation and Parole.[76] While waiting for Officer Timmons to arrive, Officer Dodd decided to speak to the neighbors to gather more information about Cynthia and Franks.[77] Cynthia's neighbor across the street advised Officer Dodd that the last time he saw Franks was on Wednesday (February 15, 2023),[78] but he had not seen Cynthia in over a week.[79]

[73] *Id*. 29:7-13.
[74] *Id*. 29:13-15.
[75] Tr. of Suppression Hr'g 29:20-30:2.
[76] *Id*. 31:1-6.
[77] *Id*.
[78] *Id*. 31:20-22. Officer Dodd did not record the neighbors' contact information because he thought he was conducting a welfare check. *Id*. 31:9-22.
[79] *Id*.

17. Probation officers and law enforcement enter the Residence

Once Officer Timmons and another probation officer arrived, the four of them approached the Residence.[80] Officer Dodd relayed the information about Cynthia's will to the probation officers which concerned them given Franks' criminal history.[81] Officer Dodd knocked on the front door numerous times but no one answered.[82] He then donned gloves and entered the door codes Michael provided earlier.[83] The third code unlocked the deadbolt, and they were able to enter the Residence.[84] While announcing his presence, Officer Dodd opened the door and immediately saw a left leg facing down on the floor to the left of the doorway.[85] He contacted the dispatch center via radio and reported that Cynthia's body was on the floor of the entryway.[86] After clearing the Residence, the officers considered it a crime scene and contacted the EMTs and Delaware State Police, and waited to collect any evidence.[87]

18. Detective Grassi of the homicide unit collects the evidence

Shortly after discovering Cynthia's body at approximately 11:23 a.m. (three and a half hours after Kimberly's initial call to the police), Officer Dodd contacted the Delaware State Police who assigned Detective Dan Grassi ("Detective Grassi")

[80] Tr. of Suppression Hr'g 32:18-33:2.
[81] *Id*. 32:8-11.
[82] *Id*. 83:1-8.
[83] *Id*.
[84] *Id*.
[85] *Id*. 33:18-22.
[86] Tr. of Suppression Hr'g 34:2-5.
[87] *Id*. 34:11-21.

to the case.[88] Detective Grassi arrived on scene at 12:23 p.m. and performed a walkthrough of the Residence.[89] While awaiting a search warrant for the Residence, Detective Grassi returned to his headquarters and called Michael.[90] Michael told Detective Grassi that Cynthia and Franks had a troubling relationship and that there were domestic issues.[91] Michael was the one who set up the Ring cameras throughout the house for his mother.[92] At some point later, Detective Grassi spoke with both Michael and Kayla who reported they had access to the home, had been there, had spent the night there, and felt they could pop in whenever they wanted.[93] He also spoke to Kimberly who told him that Cynthia could access her Ring camera footage from her cellphone or laptop.[94] Detective Grassi sent a law enforcement request for the Ring footage directly through Ring's portal, but Ring denied the request for unknown reasons.[95] Detective Grassi then prepared a search warrant for the Ring footage.[96]

[88] *Id*. 91:17-20.
[89] *Id*. 94:3-13; 94:22-97:14.
[90] *Id*. 99:1-8.
[91] *Id*. It is difficult for the Court to determine from the record exactly when these phone calls occurred.
[92] Tr. of Suppression Hr'g 99:12-17.
[93] *Id*. 99:20-100:4.
[94] *Id*. 100:17-18.
[95] *Id*. 101:3-14.
[96] D.I. 28, Ex. A.

After the search warrant for the Residence was obtained, the Homicide Unit took photos and videos of the interior and exterior of the Residence;[97] swabbed blood found at the scene; and collected cellphones (including Cynthia's) and blood-stained clothing.[98]

Two days later, on February 19, 2023, Detective Grassi was able to review the interior and exterior Ring footage from Cynthia's cellphone.[99] The exterior footage shows that at 12:16 a.m. on Thursday, February 16, 2023, the silver Honda pulls up to the front of the Residence[100] and Franks walks up to the house.[101] When Franks begins to enter the Residence, the indoor Ring starts recording audio and video showing Cynthia standing at the kitchen counter.[102] She grabs a knife and walks toward the front door (which was captured by the Ring audio but not the video).[103] Although the audio is muffled, two people can be heard talking.[104] Cynthia's voice is raised and she can be heard saying, "No, no, no, stop."[105] Her voice then grows muffled, and nothing can be heard after that.[106] The Ring audio

[97] Tr. of Suppression Hr'g 97:7-11, 14-23. One of the officers on scene requested a search warrant for the Residence which was prepared at 2:23 p.m. and signed at 2:30 p.m. *Id*. 95:22-96:20.
[98] *Id*. Detective Grassi obtained a search warrant for the contents of Cynthia's cellphone prior to viewing the Ring footage. *Id*. 104:3-8.
[99] *Id*; 104:1-8.
[100] *Id*. 104:11-105:10.
[101] Tr. of Suppression Hr'g.
[102] *Id*.
[103] *Id*.
[104] *Id*.
[105] *Id*.
[106] *Id*.

cuts off shortly thereafter.[107] That same day, Cynthia's autopsy revealed her cause of death was strangulation, and her death was ruled a homicide.[108]

After reviewing the Ring footage, Detective Grassi sought and obtained an arrest warrant for Franks for murder in the first degree on February 20, 2023.[109] Franks was arrested in Philadelphia on February 21, 2023.[110] After his arrest, photographs were taken of his body which showed multiple stab wounds.[111]

19. Franks is extradited and gives a statement

On March 9, 2023, Franks was extradited to Delaware from Pennsylvania.[112] Once in custody in Delaware, and after being read his Miranda rights, Franks was interviewed by Detective Mark Csapo ("Detective Csapo") of the Delaware State Police.[113] During this interview, Franks confessed to killing his wife after he arrived home around midnight.[114] He recounted their argument, Cynthia stabbing him, and him strangling her.[115] He expressed remorse for killing her and said he wanted to

[107] Tr. of Suppression Hr'g.
[108] *Id*. 103:20-23; D.I. 28, Ex. A.
[109] Tr. of Suppression Hr'g 105:15-17; D.I. 28, Ex. A.
[110] Franks was transported to a hospital after resisting arrest and injuring two troopers in Philadelphia. Tr. of Suppression Hr'g 106:16-19; 107:12-13. According to the State and defense counsel at oral argument, Franks spoke to the Philadelphia police when he was initially arrested and gave a statement. There is no evidence that Franks was read his Miranda rights prior to giving the statement and it is the Court's understanding that the State does not intend to introduce that statement at trial. D.I. 47 (herein "Tr. of Second Suppression Hr'g") 28:3-20.
[111] Tr. of Suppression Hr'g 108:2-4.
[112] D.I. 35.
[113] *Id*.
[114] *Id*.
[115] *Id*.

plead guilty to spare her family from the negative effects of trial.[116] He stated that he deserved to be in prison and not in society.[117]

B. Procedural History

On June 13, 2023, Franks was indicted for Murder First Degree.[118] On March 1, 2024, Franks filed this Motion,[119] seeking to suppress the following evidence: Cynthia's body and all forensic testing, all clothing seized from Cynthia, all physical evidence seized from the Residence and photographs taken, including all Ring video and audio footage, and his statement.[120]

On March 19, 2024, the State submitted its response to Franks' Motion, arguing, (1) the police officers had the children's consent to search the Residence, (2) the emergency doctrine exception to the warrant requirement applies, and (3) the inevitable discovery exception to the warrant requirement applies.[121] The State argues in the alternative that if the evidence is suppressed, Franks' statement is admissible separately under the inevitable discovery doctrine and/or the attenuation doctrine.[122] On April 10, 2024, the Court heard oral argument on the Motion.[123] On

[116] *Id*.
[117] *Id*.
[118] D.I. 6.
[119] D.I. 28.
[120] *Id*.
[121] D.I. 35.
[122] *Id*; s*ee generally*, Tr. of Second Suppression Hr'g.
[123] D.I. 32.

June 28, 2024, the Court held a second oral argument focused on the admissibility of Franks' statement.[124]

III. TIMELINE

For ease of reference, the Court has constructed a timeline based upon the testimony[125]:

Friday, February 17, 2023, 7:50 a.m. – 8:12 a.m.

1. Kimberly Moss asks Officer Dodd to conduct a welfare check on Cynthia

Sometime after 8:22 a.m. – 9:50 a.m.

2. Officer Dodd responds to the Residence, walks around the perimeter, finds nothing out of the ordinary, and notices a car parked out front
3. Officer Dodd speaks with Cynthia's neighbors at 86 Champions Drive who tell him about their interaction with Franks on Wednesday night (February 15, 2023) that they had not seen Cynthia for a few days, the car in front of her house was Franks' which had not moved for a few days, and Cynthia drove a Marcedes SUV
4. Officer Dodd returns to his squad car to call Cynthia, and she does not answer
5. Officer Dodd calls Kimberly who asks him to make a forced entry
6. Officer Dodd calls Corporal Willey to ask if he should make a forced entry, and Officer Willey tells him that he (Corporal Willey) would have gone in already if he thought it was an emergency
7. Officer Dodd calls Lt. James who tells Officer Dodd not to make a forced entry in case Cynthia happens not to be at home
8. Officer Dodd returns to the police department and conducts CJIS inquiries into Cynthia and Franks
9. Officer Dodd learns Franks is being monitored by Probation and Parole

[124] D.I. 44.
[125] The record does not provide specific time for these events. The timeframes have been collected from the warrant for Franks' cellphone. D.I. 28, Ex. A.

10. Kimberly calls Officer Dodd and tells him Michael and Kayla cannot reach their mother
11. Officer Dodd calls Cynthia's employment and the local hospital to see if Cynthia or Franks were admitted
12. Michael calls the police station to request a welfare check on Cynthia
13. Officer Dodd calls Michael back and receives three codes for the front door of the Residence
14. Kayla calls Officer Dodd and states she has not had any contact with Cynthia

9:50 a.m. – 10:54 a.m.

15. Officer Dodd calls Georgetown Probation and Parole and speaks with Officer Timmons who says Franks has an extensive domestic violence history, but not with Cynthia
16. Officer Timmons calls Franks' phone. He does not answer
17. Officer Timmons meets with his supervisor, tells him he is worried about Cynthia and Franks, and receives permission to conduct a home visit
18. Officer Timmons calls Officer Dodd to inform him Probation and Parole is going to conduct a home visit. Officer Dodd offers to accompany them
19. Officer Dodd calls Corporal Willey and asks him to respond to Cynthia's house with him
20. Officer Dodd calls Franks' phone, but he does not answer
21. Kimberly calls Officer Dodd and tells him that Facebook Messenger indicates Cynthia is online, but she is unable to get ahold of Cynthia. She tells Officer Dodd that Cynthia emailed her will to Kimberly, Michael, and Kayla earlier in the week
22. Officer Dodd and Corporal Willey respond to the Residence and wait for Probation and Parole to arrive
23. While they wait, Officer Dodd and Corporal Willey speak with more neighbors regarding the last time Cynthia and Franks were seen
24. Officer Timmons arrives with another probation officer at the Residence and Officer Dodd tells them about Cynthia emailing her will to Kimberly and her children
25. Officer Dodd knocks on the front door of the Residence, but no one answers

26. Officer Dodd begins to enter the codes that Michael provided, and the third code unlocks the deadbolt

10:54 a.m.[126] – 11:22 a.m.

27. Officer Dodd opens the front door of the Residence and discovers Cynthia's body laying to the left of the door

IV. STANDARD OF REVIEW

Under Article 1 Section 6 of the Delaware Constitution, "[t]he people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures."[127] While the Fourth Amendment to the United States Constitution contains similar language: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,"[128] the Delaware Supreme Court has rejected the notion that the two constitutional provisions "mean exactly the same thing."[129] Rather, "Delaware's independent interest in protecting its citizens against unreasonable searches and seizures did not diminish after the adoption of the Fourth Amendment to the federal

[126] D.I. 28, Ex. A.
[127] Del. Const. art. I, § 6.
[128] U.S. Const. amend. IV.
[129] *Juliano v. State*, 254 A.3d 369, 377 (Del. 2020) (internal citation and quotations omitted).

Constitution,"[130] and thus, the Delaware Constitution offers broader protections than the federal corollary.[131]

Central to the protection against unlawful searches and seizures is the illegal search of a person's home.[132] The United States Supreme Court has noted that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[133] Likewise, the Delaware Constitution protects against the same intrusion.[134] "Limiting the warrantless entry into someone's home is the most foundational and important purpose of the Fourth Amendment."[135] However, "[u]nder certain limited circumstances [] police are justified in making a warrantless entry and conducting a search of the premises to provide aid to people or property."[136] The government takes serious action when it decides to step over the threshold into someone's house without the permissible backing of a warrant.[137] The need to balance the severity of a person's Fourth Amendment right to privacy in the home with the occasional need of police to conduct a warrantless entry into the home

[130] *Mason v. State*, 534 A.2d 242, 248 (Del. 1987).
[131] *Jones v. State*, 745 A.2d 856, 866 (Del. 1999). It therefore follows that if the police conduct is afforded an exception to the warrant requirement under the Delaware Constitution, then it also does so under the Fourth Amendment.
[132] *Guererri v. State*, 922 A.2d 403, 406 (Del. 2007).
[133] *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)).
[134] *Juliano*, 254 A.3d at 378.
[135] *State v. Roundtree*, 2017 WL 4457207, at *4 (Del. Super. Oct. 4, 2017).
[136] *Guererri*, 922 A.2d at 406.
[137] *State v. Rizzo*, 634 A.2d 392, 395 (Del. Super. 1993).

requires the Court "take a long and careful look before deciding whether the police in the case *sub judice* had received consent to enter the defendant's home or whether they entered of their own initiative and without authority of law."[138] When a defendant seeks suppression of evidence conducted in a warrantless search, the burden shifts to the State to prove by a preponderance of the evidence that "the challenged police conduct comported with the rights guaranteed [to the defendant] by the United States Constitution, the Delaware Constitution and Delaware statutory law."[139] Here, the State seeks to do so under the third-party consent, emergency, inevitable discovery, and attenuation doctrines.

V. ANALYSIS[140]

A. Third-Party Consent Doctrine

Franks contests the warrantless search of his home on the basis that he has a reasonable expectation of privacy in his home and did not give police consent to search it.[141] While the State concedes that Franks was a resident of 84 Champions

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[138] *Id*.

[139] *State v. Hamilton*, 2017 WL 4570818, at *5 (Del. Super. Oct. 12, 2017) (citing *State v. Kang*, 2001 WL 1729126, at *3 (Del. Super. Nov. 30, 2001)) (internal quotations omitted).

[140] In order to be entitled to protection from illegal searches and seizures under the Delaware Constitution and the Fourth Amendment, Franks must first show that he is entitled to privacy in the home that he contends was illegally searched by police. While the State briefly argues that Franks abandoned the property in conjunction with the inevitable discovery doctrine, the Court interprets this argument to be a portion of its inevitable discovery doctrine argument and not a challenge to Franks' standing. *See* D.I. 35.

[141] D.I. 29.

Drive, it argues that Franks' lack of consent to the search is immaterial because Cynthia's children, Michael and Kayla, gave the police officers consent to enter.[142]

Is it well-established under Delaware law that under certain circumstances a third-party may give consent for a search of a residence.[143] "Actual third party authority to consent is established by possession and equal or greater control, *vis-à-vis* the owner, of the area searched."[144] A person who has common authority over a residence may consent to the search of that residence against "an absent, non-consenting person with whom the authority is shared."[145] The United States Supreme Court in *United States v. Matlock* explained that "common authority" rests on:

> Mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that others have assumed the risk that one of their number might permit the common area to be searched.[146]

To determine whether Cynthia's children had a sufficient privacy right in the Residence to consent, the Court must look at the totality of the circumstances.[147] The factors to be considered include: the child's age, intelligence, maturity, scope of the

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[142] D.I. 35.
[143] *Hamilton*, 2017 WL 4570818, at *7.
[144] *Scott v. State*, 672 A.2d 550, 552 (Del. 1996).
[145] *Hamilton*, 2017 WL 4570818, at *7 (citing *United States v. Matlock*, 415 U.S. 164, 170 (1974)).
[146] *Matlock*, 415 U.S. at 173 n.7.
[147] *Hamilton*, 2017 WL 4570818, at *8 (citing *State v. Tomlinson*, 648 N.W.2d 367, 376 (Wis. 2002)).

seizure to which the child consents, the extent to which the child has been left in charge, whether the child has belongings in the residence, whether the child has a designated room in the residence, and the ability for the child to admit visitors on their own authority.[148]

In support of this argument, the State relies on *State v. Hamilton*.[149] In *Hamilton*, the police were contacted by the victim's sister to conduct a welfare check after she received disturbing messages from the victim the night prior.[150] The police brought the victim's sister and the victim's child to the residence for the welfare check.[151] When they knocked on the door, no one responded.[152] The fourteen-year-old child provided his house-key to the police for the police to search the residence.[153] In determining whether the child had authority to consent to the search, the Court considered the following: the child's minor status; he had a bedroom at the residence; he kept belongings at the residence; and even though he was living with his aunt at the time, he was free to come and go from the residence as he pleased.[154] The State argues that Michael and Kayla possessed the same common authority to consent as the child in *Hamilton* because they had access to the Residence, had been

[148] *Id*.
[149] 2017 WL 4570818, at *6 (Del. Super. Oct. 12, 2017).
[150] *Id*., at *1.
[151] *Id*.
[152] *Id*.
[153] *Id*.
[154] *Id*., at *7

there before, had a keycode for the Residence, felt as though they were able to come and go as they pleased, and previously stayed overnight there.[155]

The Court, however, finds this case more analogous to *Illinois v. Rodriguez*.[156] In *Rodriguez*, the defendant challenged his ex-girlfriend's authority to consent to a police search of his apartment after she had moved out.[157] The United States Supreme Court found that the ex-girlfriend did not possess the requisite authority to consent, despite the fact she possessed a key to the residence, because she did not live there, only occasionally spent the night there, did not invite friends to stay over, and did not exert joint access or control when the defendant was not at the apartment.[158]

Like the ex-girlfriend in *Rodriguez*, Michael and Kayla did not exert control over the residence when Cynthia was not there.[159] They are Cynthia's adult children and reside in Philadelphia.[160] Michael has a family of his own.[161] Michael did not know the code to the Residence, he obtained three possible codes from Kayla,[162] and only one of the codes worked.[163] In *Hamilton*, the child had a bedroom and personal

[155] Tr. of Suppression Hr'g 99:20-100:4.
[156] *Illinois v. Rodriguez*, 497 U.S. 177 (1990).
[157] *Id*.
[158] *Id*. at 181.
[159] Tr. of Suppression Hr'g 22:11-14.
[160] *Id*.
[161] Tr. of Suppression Hr'g 22:11-18. The transcript is unclear of what Kayla's age is or whether she has her own family, but it is the Court's understanding she is also an adult.
[162] *Id*. 24:4-5.
[163] Tr. of Suppression Hr'g 147:1-2.

belongings in the residence.[164] Unlike the child in *Hamilton*, Michael and Kayla relinquished no privacy rights by giving officers consent to search the Residence.[165] While they felt like they could visit the Residence at any time, it was not their residence.[166] Like the ex-girlfriend in *Rodriguez*, Michael and Kayla did not have common authority to consent to the search.[167] The State has failed to establish by a preponderance of the evidence that the third-party consent doctrine applies. Therefore, under the totality of the circumstances, the Court does not find Cynthia's children had the requisite authority to consent to the search of the Residence.

B. The Emergency Doctrine

Under the emergency doctrine,[168] a warrantless entry into a person's home is not violative of the Fourth Amendment if the three-part test set forth in *Guererri v. State* is satisfied.[169] The *Geurerri* test requires the State show by a preponderance of the evidence that: (1) the police have reasonable grounds to believe there is an ongoing emergency that requires immediate assistance, (2) the search is not motivated by an investigation, particularly the intent to arrest and seize the

[164] *Hamilton*, 2017 WL 45570818, at *7.
[165] *Id*. 22:11-14.
[166] *Id*.
[167] *See generally*, *Rodriguez*, 497 U.S. at 177.
[168] D.I. 35.
[169] 922 A.2d at 406.

defendant, and (3) there is a reasonable basis that approximates probable cause that the emergency is within the area or place to be searched.[170]

Only the first prong of the *Guererri* test is at issue here. The State argues that the facts *eventually* led to an "emergency at hand" and the immediate need for Officer Dodd's assistance, so the first prong is met.[171] According to the State, the situation grew more dire with each new fact Officer Dodd learned throughout his hours-long investigation:[172] (1) Cynthia's "off" behavior—not communicating with her family, randomly providing her family with her will, and not answering the front door when officers knocked despite working from home, (2) the inability to reach or locate Cynthia and Franks, (3) Franks' probation for domestic violence, (4) Officer Timmons' inability to reach Franks, (5) Kimberly, Michael, and Kayla's comments that it was abnormal for Cynthia not to respond to them, (6) Cynthia's missing car, and (7) the neighbors' statements that they had not seen Cynthia in a couple of days.[173] All of these facts taken together, the State contends, support Officer Dodd's testimony that he grew more and more concerned for Cynthia's safety over time, and thus, it became an emergent situation.[174]

[170] *Id*. (string citations omitted).
[171] *See* D.I. 29; D.I. 35.
[172] D.I. 35.
[173] *Id*. 29:20-30:2; 31:13-16.
[174] D.I. 35.

Franks argues that because Officer Dodd did not immediately enter the Residence following his initial visit—when he knocked and received no response—Officer Dodd did not view it as an emergency.[175] For further support, Franks contends that although Corporal Willey told Officer Dodd "he probably would have already made forced entry in case there was a medical emergency that needed to be handled,"[176] law enforcement did not enter the Residence until three and a half hours after Kimberly first called.[177]

In *Blake v. State*, the Delaware Supreme Court affirmed the trial judge's determination that the State satisfied the first prong of *Guererri*[178] where the police entered an apartment after knocking for some time, heard a window crashing, heard footsteps back away from the door, and heard a blood-curdling scream from a baby.[179] The Court concluded in *Blake* that the police had reasonable grounds to believe an emergency was at hand and immediate entry was warranted for the protection of life.[180] But this case is not like *Blake*. This case is more akin to *Garnett v. State*.[181] In *Garnett*, the Delaware Supreme Court affirmed the Superior Court's decision that the police could not rely on the emergency doctrine when an officer

[175] D.I. 29.
[176] Tr. of Suppression Hr'g 15:21-16:3.
[177] *Id*. 91:17-20.
[178] 954 A.2d 315, 318 (Del. 2008).
[179] *Id*.
[180] *Id*.
[181] 308 A.3d 625, 634 (Del. 2023).

testified that had police not been able to enter the residence through the unlocked back door, they would have left the residence and returned later.[182] The Court found this testimony demonstrated there was no emergency at hand.[183]

The record in this case demonstrates there was no emergency at hand or need for immediate assistance for the protection of life or property. Officer Dodd responded to the Residence to conduct a welfare check.[184] When he arrived at the Residence, he knocked, but no one answered.[185] He walked around the perimeter of the Residence and found nothing out of the ordinary.[186] When he knocked again, he received no response.[187] Officer Dodd went and spoke with the next-door neighbors.[188] After speaking with them and hearing about their odd interaction with Franks, he did not enter the Residence.[189] Rather, he called Kimberly, who reiterated that it was odd for Cynthia not to answer and asked again that he make a forced entry into the Residence.[190] He did not. Instead, he called Corporal Willey to ask whether he should make a forced entry.[191] In that conversation, Corporal Willey told Officer

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[182] *Id*.
[183] *Id*. The Court also found that there was no emergency because at the time of the warrantless entry, police were searching for the guardian or parent of the children *for the children's safety*. *Id*. There was no ongoing emergency because the children were safely in police custody. *Id*.
[184] Tr. of Suppression Hr'g 7:5-9.
[185] *Id*. 7:13-23.
[186] *Id*. 8:3-12.
[187] *Id*. 9:3-5.
[188] *Id*. 9:8-10.
[189] Tr. of Suppression Hr'g 9:13-18; 9:21-10:7.
[190] *Id*. 12:1-9; 13:20-22.
[191] *Id*. 15:10-16:3.

Dodd that if he (Corporal Willey) thought it was an emergency he would have already gone into the Residence.[192] Officer Dodd did not enter the Residence after that conversation; he instead contacted administration who advised him to go back to the house and see if there was a car in the garage.[193] Upon reporting that Cynthia's car was not in the garage, administration instructed him to return to the police station to continue his investigation.[194] As the chronology makes clear, there is no sense of urgency and no testimony supporting the emergency doctrine. Officer Dodd did not enter the Residence until *three and a half hours* after Kimberly's initial call and after: (1) numerous discussions with Cynthia's family members, (2) discussions with Georgetown Probation and Parole, being unable to contact or locate Franks or Cynthia, (3) learning that Franks had a domestic violence history, and (4) learning Cynthia had sent her sister and children her will out of the blue earlier in the week. The State argues that Officer Dodd grew more concerned as he gathered more information, but when Officer Dodd went back to the Residence a second time (accompanied by Corporal Willey), he did not immediately enter the Residence. Rather, he and Corporal Willey decided to canvas the neighbors for more information *while waiting for probation officers to arrive*.[195]

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[192] *Id*. 15:19-23.
[193] *Id*. 16:11-22.
[194] *Id*. 17:1-7, 17:10-12. Officer Dodd did not testify that he or administration felt, at this point, there was any emergency at hand.
[195] *Id*. 31:1-6.

The record does not support the State's argument. Because the State has failed to satisfy the first prong of *Guererri*, the emergency doctrine is inapplicable here.

C. The Inevitable Discovery Doctrine

Under the inevitable discovery doctrine,[196] evidence will not be excluded if "the evidence found because of a Fourth Amendment violation would inevitably be discovered through lawful means in the absence of the illegality . . . ."[197] In *Cook v. State*, the Delaware Supreme Court explained:

> The majority of the cases employing the inevitable discovery exception involve instances in which the illegal police conduct occurred while an investigation was already in progress and resulted in the discovery of evidence that would have eventually been obtained through routine police investigatory procedure. The illegalities in such cases, therefore, had the effect of simply accelerating the discovery. In general, where the prosecution can show that the standard prevailing investigatory procedure of the law enforcement agency involved would have led to the discovery of the questioned evidence, the exception will be applied to prevent its suppression.[198]

"This exception . . . provides that evidence, obtained in the course of illegal police conduct, will not be suppressed if the prosecution can prove that the incriminating evidence would have been discovered through legitimate means in the absence of official misconduct."[199] In *Garnett*, the Delaware Supreme Court held that in

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[196] D.I. 35.
[197] *Garnett v. State*, 308 A.3d 625, 634-35 (Del. 2023) (herein "*Garnett III*") (citing *Cook v. State*, 374 A.2d 264, 267-68 (Del. 1977)). The Supreme Court in *Garnett III*, cited to the two underlying Superior Court cases as *Garnett I* and *Garnett II*. *Id.*
[198] *Cook*, 374 A.2d at 268.
[199] *Somer v. United States*, 204 A.3d 112 (Del. Feb. 4, 2019).

determining the applicability of the inevitable discovery doctrine, courts must consider "the character of the police misconduct leading to the unlawful discovery and seizure of the challenged evidence."[200] "Invocation of the [inevitable discovery] exception is *particularly appropriate* when routine police investigatory procedures are in progress and the challenged behavior merely accelerates discovery of the evidence."[201] Illegally obtained evidence is admissible if it "would have been discovered through legitimate means or absence of official conduct."[202] The State bears the burden of demonstrating by a preponderance of the evidence that there was "an untainted investigative chain that can be established that would have invariably led police to obtain a warrant."[203] The question of whether evidence would have been discovered is a question of fact.[204]

The State claims Cynthia's body would have been discovered through routine investigatory procedures because Cynthia's family would not have stopped searching for her and Probation and Parole would have continued searching for Franks.[205] The State also argues Franks' statement to the police is admissible under the inevitable discovery doctrine even if the physical evidence is excluded.[206]

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[200] *Garnett III*, 308 A.3d at 646-47.
[201] *State v. Preston*, 2016 WL 5903002, at *4 (Del. Super. Sept. 27, 2016).
[202] *Roy v. State*, 62 A.3d 1183, 1189 (Del. 2012).
[203] *State v. Bradley*, 2011 WL 1459177, at *14 (Del. Super. Apr. 13, 2011).
[204] *Garnett III*, 308 A.3d at 650.
[205] D.I. 28.
[206] *Id*.

Franks counters that the State has not met its burden of showing that the evidence would have been found through lawful means.[207] In support, Franks relies on the following facts: there was no disturbance to the house,[208] one of the cars registered to Cynthia was in front of the Residence,[209] and the police found nothing more suggestive beyond a trip to the grocery store.[210] There is no testimony from the police officers or Franks' probation officer as to what they would have done had they not been able to get into the Residence.[211] Without this, Franks maintains the State cannot establish that the police would have obtained the evidence at issue through routine police investigatory procedures.[212] Franks further argues there are no facts supporting the admissibility of Franks' statement through the inevitable discovery doctrine. The Court now addresses the State's four bases for application of the inevitable discovery doctrine.

1. *Cynthia's body would have been found through routine investigatory procedures*

[207] D.I. 29.
[208] Tr. of Suppression Hr'g 61:19-62:7.
[209] *Id*. 102:17-19.
[210] *Id*. 48:5-9, 144:7-8.
[211] *Id*. 137:7-135:6.
[212] D.I. 29.

Delaware courts have recognized a few scenarios in which the inevitable discovery doctrine applies, such as when (1) police officers testify as to routine investigatory procedures leading to the execution of a warrant, (2) police officers are conducting a saturation investigation, or (3) police officers are in the process of drafting a warrant.[213] The State argues Cynthia's body would have been found through routine investigatory procedures.

In *Garnett*, the Delaware Supreme Court affirmed the Superior Court's decision that the inevitable discovery doctrine applied where a detective testified at the suppression hearing that had police not been able to gain entrance to the house, they would have promptly applied for a search warrant.[214] The facts supporting a warrant were the children's mother was missing, there was blood on the defendant's sock, and the defendant had hidden the victim's social security card in one of the

[213] The inevitable discovery doctrine may apply when there is a saturation investigation taking place. *See Martin v. State*, 433 A.2d 1025, 1031-32 (Del. 1981) (holding the inevitable discovery doctrine applied where an officer conducted a warrantless search of a motel room because the police were investigating a burglary/homicide and the police undertook a "saturation investigation" ("one in which the police might be expected as a matter of course to make an unusually thorough investigation utilizing more available avenues or techniques than they ordinarily might") based upon other executed search warrants and residence searches)). It also has applied in cases where a search warrant was drafted but not yet obtained. *State v. Lambert*, 2015 WL 3897810, at *1 (Del. Super. June 22, 2015) aff'd by *Lambert v. State*, 149 A.3d 227 (Del. 2016) (finding the inevitable discovery doctrine applied when police started searching a residence before the search warrant was faxed and the warrant was issued, holding "had the 'standard prevailing investigatory procedure' continued, it would have inevitably led to the discovery of the evidence" and "[a]t most, the violation hastened the seizure by a handful of minutes."). These examples of police investigatory procedures in which the inevitable discovery doctrine has been applied do not purport to be exhaustive.

[214] *Garnett III*, 308 A.3d at 625.

children's pockets.[215] These facts, viewed in conjunction with the statement that pursuant to routine investigatory procedures the officers would have obtained a warrant, satisfied the Delaware Supreme Court that the evidence would have inevitably been discovered.[216]

Here, the State presented no testimony as to what the officers would have done had they been unable to enter the Residence. In response to questioning from the Court, the State conceded during the June 28, 2024 Suppression Hearing, "[W]hen it came to Patrolman Dodd's testimony about [the police investigatory procedures] . . . there was not testimony about what exactly would be done . . . ." The caselaw is clear. The inevitable discovery doctrine cannot be established by speculation.[217] Absent such testimony, the State cannot rely on the inevitable discovery doctrine.[218]

2. Cynthia's family would have kept searching for Cynthia

The State argues that Cynthia's family would not have abandoned the search for Cynthia, so it was inevitable that her body would have been found.[219] The State relies on *Nix v. Williams* in which the United States Supreme Court upheld an Iowa court's finding that the inevitable discovery doctrine could be applied to a volunteer search so long as the State established by a preponderance of the evidence that "the

[215] *Id.*
[216] *Id.*
[217] *State v. Holmes*, 2015 WL 516874, at *10 (Del. Super. Sept. 3, 2015); *Nix v. Williams*, 467 U.S. 431, 443-44, n.5 (1984).
[218] *See id.*
[219] D.I. 35.

information ultimately or inevitably would have been discovered by lawful means."[220] In support of this argument, the State points out that as Officer Dodd's investigation continued more family members became involved; Kimberly spoke with Officer Dodd four times; Michael and Kayla both individually called Officer Dodd requesting a welfare check; and as time wore on, their worry strengthened.[221]

As the Court noted in *State v. Harris*, "It is one thing to show that the incriminating evidence would have been discovered inevitably by lawful means. It is quite another to say that such evidence *could* have been so discovered."[222] According to the State,

> [T]here would be a reasonable inference made based upon the testimony of when [Officer Dodd] was attempting to go to the house . . . that he would have been in contact with the family and that the family would [travel to Cynthia's house] if [the police officers] were unable to get into the house. . . .[223]

But, the State's argument rests on speculation, and speculation is insufficient to establish the inevitable discovery doctrine.[224] There is no testimony establishing what Kimberly, Michael, or Kayla would have done had the police been unable to gain entry.[225] The State has presented no testimony that Kimberly or the children

[220] 467 U.S. at 431 (cited by *Garnett III*, 308 A.3d at 644).
[221] D.I. 28; *See generally*, Tr. Suppression Hr'g.
[222] 642 A.2D 1242, 1251 (Del. Super. 1993) (emphasis in original).
[223] Tr. of Second Suppression Hr'g 11:2-7.
[224] *Holmes*, 2015 WL 516874, at *10 ("Speculation does not establish inevitability.").
[225] The State did not call them to testify at the suppression hearing.

would have traveled to Delaware to check on Cynthia. The State fails to show by a preponderance of the evidence that the inevitable discovery doctrine applies based on the actions of Cynthia's family.

3. Franks' probationary status

On February 17, 2023, Franks was on Level II probation stemming from domestic abuse charges in connection with a Pennsylvania sentence.[226] With a probationary status, probationers are subject to an administrative search of their living quarters without a warrant by a probation officer.[227] Officer Timmons offered no testimony in the suppression hearing that he would have sought permission to conduct an administrative search had police been unable to enter the Residence.[228] Rather, Officer Timmons testified that he had approval for a home visit and, had he been unable to enter the Residence, he would have left.[229] Officer Timmons provided no testimony as to any Probation and Parole routine investigatory procedures or standard prevailing investigatory procedures he would have followed had they been unable to enter the Residence.[230]

The State has failed to establish by a preponderance of the evidence that the inevitable discovery doctrine applies as a result of Franks' probationary status.

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[226] Tr. of Suppression Hr'g 70:6-72:4.
[227] *See Sierra v. State*, 958 A.2d 825, 828 (Del. 2008).
[228] Tr. of Suppression Hr'g 139:8-19.
[229] *Id*. 89:8-12.
[230] *See generally*, Tr. of Suppression Hr'g.

4. Franks' statement

A statement may be admissible under the inevitable discovery doctrine if the State shows by a preponderance of the evidence that "the circumstances leading to [Franks'] statement[] would have been substantially unchanged."[231]

In *Garnett*, the Delaware Supreme Court affirmed the Superior Court's finding that Garnett's statements were admissible under the inevitable discovery doctrine because they were substantially unchanged.[232] While the Delaware courts have not defined what "substantially unchanged" means, the Court finds the facts in *Garnett* instructive.[233] In *Garnett*, the Court found that Garnett's statement would have been substantially unchanged because the victim's body and other physical evidence would have been discovered through inevitable discovery;[234] Garnett would not have been released from custody prior to the discovery of the body because, among other things, he was being held for a domestic incident against one of his children;[235] the timing would have been changed minimally and "not in a way that would have affected the circumstances surrounding Garnett's state of mind";

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[231] *United States v. Mohammed*, 512 F. App'x 583, 590 (6th Cir. 2013) (finding "[t]he testimony elicited at the suppression hearing indicates that officers would have administered the same gun arrest questionnaire that they use with 'anyone that's arrested with a handgun,'" and given that defendant "would have been asked the same questions under substantially similar circumstances, it is highly likely he would have made materially similar answers.").
[232] *Garnett III*, 308 A.3d at 652-654 (affirming *State v. Garnett*, 2022 WL 610200, at *4-6 (Del. Super. Mar. 1, 2022) (herein "*Garnett II*")).
[233] *Id*.
[234] *Garnett II*, 2022 WL 610200, at *6.
[235] *Id*.

and Garnett would have "been questioned in nearly the exact same circumstances as actually occurred and would have made materially the same statements to the officers."[236] All of these facts when considered together, allowed the Court to conclude that Garnett's statements would have been substantially unchanged, and thus admissible under the inevitable discovery doctrine.[237]

Franks was arrested pursuant to an arrest warrant.[238] And, as explained above, the inevitable discovery doctrine does not apply to the evidence found at the Residence. Given this, Franks would not have been in custody but for the illegal search, and it is speculation that Franks would have given the same statement to the police or that it would have happened within the same timeframe. The State has not established by a preponderance of the evidence that the circumstances leading to Franks' statement would have been substantially unchanged. Consequently, the inevitable discovery doctrine does not apply to Franks' statement.

D. The Attenuation Doctrine: Franks' Statement[239]

The State argues that if Franks' statement is not admissible under the inevitable discovery doctrine it is admissible under the attenuation doctrine.[240] Not

[236] *Id*.
[237] *Id*.
[238] Tr. of Suppression Hr'g 103:20-23.
[239] The threshold requirement for the admission of any statement is voluntariness. *Brown v. Illinois*, 422 U.S. 590, 602 (1975). Because Franks does not challenge the voluntariness of his statement, this threshold requirement is established.
[240] *See generally*, Tr. of Second Suppression Hr'g.

all evidence obtained through an illegal search is "fruit of the poisonous tree" simply because it came to light following police officers' unconstitutional actions.[241] The attenuation doctrine

> [P]ermits a court to find that the poisonous taint of an unlawful search and seizure has dissipated when the causal connection between the unlawful police conduct and the acquisition of the challenged evidence becomes sufficiently attenuated.[242]

Even if there is an unconstitutional search under the Fourth Amendment, evidence obtained may still be admissible so long as the taint is sufficiently "purged."[243] The burden of establishing admissibility by a preponderance of the evidence rests with the prosecution.[244]

The Court considers three factors in determining whether Franks' statement is properly attenuated, (1) the temporal proximity between the warrantless search and Franks' statement, (2) any intervening circumstances, and (3) the purpose of the police officers' conduct.[245] All of these factors are to be considered and "no single factor is dispositive in determining whether the evidence should be suppressed."[246] While Miranda warnings "do not alone sufficiently deter Fourth Amendment violations" because they "cannot assure in every case that the Fourth Amendment

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[241] *Wong Sun v. United States*, 371 U.S. 471 (1963).
[242] *Lopez-Vazquez v. State*, 956 A.2d 1280, 1293 (Del. 2008).
[243] *Id*. (citing *Brown*, 422 U.S. at 602).
[244] *Brown*, 422 U.S. at 604.
[245] *Lopez-Vasquez*, 956 A.2d at 1293 (citing *Brown*, 422 U.S. at 603-04).
[246] *Brown*, 422 U.S. at 603.

violation has not been unduly exploited," the Court should consider the presence of Miranda warnings in addition to these three factors.[247]

1. Temporal proximity

The first factor is temporal proximity. "Typically, temporal proximity is considered assuming the defendant's knowledge of the events, given that time alleviates the stress and influence that illegality has on the defendant to make incriminating statements."[248] Recently, the Court engaged in an attenuation analysis in *State v. Garnett*. With regard to temporal proximity, the Court in *Garnett* found that the seven hours between the illegal entry and the custodial interrogation of Garnett was a "substantial amount of time. . . ."[249] Here, there were 20 days between the illegal entry and Franks' custodial interrogation by the Delaware State Police.[250] Drawing from *Garnett*, the first factor weighs in the State's favor because the Court finds 20 days is a sufficient amount of time to alleviate the stress and influence of the illegality that could impact whether a defendant makes an incriminating statement.

2. Intervening circumstances

[247] *Id*; *see also Garnett I*, 2022 WL 610200, at *7.
[248] *Garnett II*, 2022 WL 610200, at *7.
[249] *Garnett II*, 2022 WL 610200, at *7. The Court in *Garnett II* also considered Garnett's knowledge of the search in its temporal analysis.
[250] D.I. 35.

The second factor is "the presence of intervening circumstances," which is when "the evidence is remote or has been interrupted by some intervening circumstance so that 'the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.'"[251]

The Court in *Garnett* found the second factor weighed in the State's favor because Garnett offered a voluntary and unelicited admission to officers near the beginning of his statement, alerting officers that he was aware of the victim's body.[252] After officers informed Garnett they had been to his residence, Garnett offered his side of the story and no evidence from the illegal search was used to confront Garnett.[253] Rather, a journal which police had lawfully procured was utilized to illicit Garnett's statement.[254] Taking all of these factors into consideration, the Court found Garnett's statement was "remote" from the illegal police conduct.[255]

Here, the State presented no evidence regarding how Franks' statement was obtained or what, if any, evidence was used to illicit it. The State provided no evidence as to whether Franks offered his statement before officers began

[251] *Utah v. Strieff*, 579 U.S. 232, 238 (2016). Examples of intervening circumstances include "release from custody, an appearance before a magistrate, or consultation with an attorney." *Garnett II*, 2022 WL 610200, at *7 (quoting *United States v. Washington*, 387 F.3d 1060, 1073 (9th Cir. 2004)).
[252] *Garnett II*, 2022 WL 610200, at *8.
[253] *Id*.
[254] *Id*.
[255] *Id*.

questioning him or discussing the evidence with him. Because the burden of proof rests on the State to establish grounds for the attenuation doctrine, and there is no evidence of intervening circumstances, this factor weighs against the State.

3. Purpose of the official misconduct

The third factor is "the purpose and flagrancy of the official misconduct."[256] This factor "favor[s] exclusion only when police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant."[257] In *Garnett* the Court found the officer's intent to find the children's mother or guardian weighed heavily in the State's favor.[258]

The Court finds under the totality of the circumstances and by a preponderance of the evidence that the police conduct at issue here was a welfare check, not a criminal investigation into Franks. The record is clear on this. Kimberly spoke over the phone with Officer Dodd four times and requested a welfare check twice; both Michael and Kayla individually called and requested a welfare check; Officer Dodd attempted for hours to locate Cynthia and Franks because he was worried about their wellbeing; he conducted CJIS inquiries to find additional phone numbers and addresses for them; he contacted a local hospital and Cynthia's place of employment; he asked Kayla if Cynthia had any medical issues; and he did not

[256] *Brown*, 422 U.S. at 604.
[257] *Utah*, 579 U.S. at 241.
[258] *Garnett II*, 2022 WL 610200, at *9.

take down the names of the neighbors he interviewed because he did not think he was conducting an investigation.[259] Officer Dodd's purpose was to check on the welfare of two people who could not be located. The Court finds Officer Dodd's testimony credible, and there is no evidence suggesting that when officers opened the front door of the Residence, their purpose was to investigate or incriminate Franks. This factor weighs heavily in the State's favor.

The State has also established by a preponderance of the evidence (and it is undisputed) that Franks was given proper Miranda warnings.[260] While Miranda warnings do not "*per se* alleviate a taint, they are an important factor."[261] This factor weighs in the State's favor.

After careful consideration of the above factors and the record, the Court finds the State has met its burden of showing by a preponderance of the evidence that Franks' statement was properly attenuated from the illegal search and is therefore admissible.[262]

VI. CONCLUSION

[259] *See generally*, Tr. of Suppression Hr'g.
[260] Tr. of Second Suppression Hr'g 3:2-8.
[261] *Garnett II*, 2022 WL 610200, at *9.
[262] *Id*.

The Fourth Amendment protects citizens from the unlawful entry and search into a person's home by limiting governmental intrusion into citizens' private lives.[263] This limitation is imposed by requiring police officers to procure warrants prior to the search of a person's home.[264] "The warrant requirement would be toothless, however, without an enforcement mechanism to provide a remedy for and deter violations of it."[265] Over the years, Delaware courts have recognized carve-out exceptions to justify a warrantless search of a residence. However, those exceptions are not designed to act as replacements to the requirement that police obtain warrants. If the Court found they were, it would become an "accomplice[] in the willful disobedience of a Constitution [that it] is sworn to uphold."[266] Thus, it is with great gravity that the Court reviews the State's assertion that a justification to a warrantless search exists.

While the Court commends Officer Dodd on his sincere concern for Cynthia and Franks' wellbeing and his thoroughness in conducting a welfare check, "the framers of Delaware's first Declaration of Rights and Constitution did not contemplate excusing violations of the search and seizure right if the police acted in 'good faith' . . . ."[267] The warrantless entry violated the Fourth Amendment, and the

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[263] *Garnett III*, 308 A.3d at 642.
[264] *Id*.
[265] *Id*.
[266] *Id*. (quoting *Elkins v. United States*, 364 U.S. 206, 209 (1960)) (internal quotations omitted).
[267] *Garnett III*, 308 A.3d at 676 (J. Valihura and J. Griffiths dissenting (quoting *Dorsey v. State*, 761 A.2d 807 (Del. 2000))).

State has not met its burden of showing by the preponderance of the evidence that the third-party consent doctrine, emergency doctrine, or the inevitable discovery doctrine apply. The physical evidence obtained as a result of the unconstitutional entry into the Residence is fruit of the poisonous tree and therefore inadmissible.[268]

With regard to Franks' statement, the State has met its burden of showing by a preponderance of the evidence that Franks' statement is sufficiently attenuated and thus not fruit of the poisonous tree stemming from the unconstitutional entry and search. Consequently, Franks' statement is admissible.

The Defendant's Motion to Suppress is therefore **GRANTED** as to the physical evidence obtained through the unconstitutional entry and search, and **DENIED** as to Franks' statement to the police.

IT IS SO ORDERED.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge

Original to Prothonotary

[268] *Wong Sun*, 371 U.S. at 471.