Affirmed and Majority and Dissenting Opinions filed July 16, 2020.

In The

Fourteenth Court of Appeals

NO. 14-17-00685-CR

NELSON GARCIA DIAZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 1555099

M A J O R I T Y O P I N I O N

Appellant Nelson Garcia Diaz appeals his conviction for burglary of a habitation while committing the offense of aggravated assault with a deadly weapon. Appellant's sole challenge is to the trial court's denial of his motion to suppress evidence obtained from appellant's three cell phones. Because we conclude that the trial court did not err in denying the motion to suppress, we affirm the trial court's judgment.

Background

Troy Dupuy, a Houston Police Department officer, was at home with his wife around 10:00 p.m. when he heard a loud bang, which sounded like "somebody was trying to kick in the back door of the house." Dupuy retrieved a handgun and went to investigate. Dupuy heard voices on the front porch and then saw his front door flung open. When the door opened, Dupuy heard an individual on the front porch say "police police police." Dupuy testified that, based on his experience as a police officer, "it didn't really sound like something the way a policeman would probably do that when they breach a door," and he immediately thought that the individual on his front porch was not a police officer.

Two men entered Dupuy's house. One of the intruders wore a pair of sunglasses on the top of his head and carried a gun. Once Dupuy realized that the intruders were not law enforcement officials, he "immediately fired two rounds." The intruder with the gun fell to the floor while the other intruder ran back outside. The intruder on the floor exchanged several rounds of gunfire with Dupuy, and Dupuy was shot in the thigh. After the intruder escaped the house, police responded and recovered the back cover of a cell phone, a cell phone battery, and a pair of sunglasses, none of which belonged to Dupuy or his wife.

One of the intruders shared information about the incident with an acquaintance, who, coincidentally, served as a confidential informant for the federal Drug Enforcement Agency (DEA). A few days after the incident, the confidential informant contacted the DEA and provided Special Agent Robert Layne with a description of the suspect in the home invasion. The informant told Agent Layne that the suspect was known as "Jessie." Agent Layne shared this information with DEA Special Agent Ray Thompson, who in turn discovered that "Jessie" was in fact appellant. Agent Thompson confirmed appellant's identity by

contacting an agent involved in investigating appellant on other outstanding warrants. Agent Layne then provided appellant's name to the officer in charge of the home invasion investigation, Sergeant David Angstadt with the Harris County Sherriff's Office. Sergeant Angstadt corroborated information Agent Layne had received from the informant, specifically that the intruder had left behind a cell phone battery and battery cover.

Appellant had outstanding arrest warrants for armed robbery and kidnapping in Georgia, and the Gulf Coast Task Force, a multi-agency coalition, executed those warrants and arrested appellant in Houston. Once appellant was in custody, the Task Force contacted Sergeant Angstadt. Sergeant Angstadt took possession of effects obtained from a search of appellant's person and clothing, including three cell phones.[1] The State then charged appellant with the present offense, and a Harris County grand jury indicted appellant.[2]

Harris County District Attorney's Office Investigator Tuan Pham submitted an affidavit in support of a search warrant for the three cell phones. The affidavit stated that Sergeant Angstadt had received "an anonymous tip that an individual known as 'Jessie' was involved in the home invasion." The "tipster" provided two phone numbers for the suspect. The affidavit also asserted that, based on Sergeant Angstadt's training and experience, he "knew persons who commit home invasions are commonly involved in the illegal narcotics trade," so Sergeant Angstadt requested the DEA to run the phone numbers through its database. One of the phone numbers was registered to appellant. In reciting these facts in support of the

[1] Sergeant Angstadt also took possession of two other cell phones not at issue in this appeal.

[2] *See* Tex. Penal Code § 30.02(a)(3) ("A person commits an offense if, without the effective consent of the owner, the person . . . enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.").

search warrant, and as the trial court found following a suppression hearing, the affidavit misrepresented the person who identified appellant as an anonymous source, when in fact the person who identified appellant was likely known by Sergeant Angstadt to have been the DEA confidential informant.

The magistrate issued the warrant, and law enforcement officials performed a forensic search of the cell phones. Prior to trial, appellant moved to suppress all evidence obtained as a result of the search, arguing that the magistrate could not have found probable cause when issuing the warrant. After a hearing, the trial court denied appellant's motion, and the State introduced several pieces of evidence obtained from the phones at the guilt-innocence phase of appellant's trial. According to appellant, the admitted evidence "included damaging information to the defense, including: 1) a photograph of Appellant holding a gun; 2) a photograph of Appellant holding a fictitious police badge; 3) call history confirming communications with the DEA informant's phone number; 4) a downloaded media report about Officer Dupuy's shooting; and 5) several texts from Appellant, subsequent to the incident, indicating that Appellant could not find his sunglasses."

The jury found appellant guilty as charged in the indictment, found two enhancement allegations for previous convictions true, and assessed punishment at thirty-two years' confinement. Appellant timely appealed.

Analysis

Appellant argues that the trial court erred in denying his motion to suppress evidence obtained from the three cell phones and offers three independent reasons why the court should have suppressed the evidence: (1) the affidavit and warrant failed to establish that the specifically described property or items to be searched constituted evidence of the offense or evidence that appellant committed the

offense; (2) the warrant impermissibly allowed a general search of the phones; and (3) the search warrant misrepresented the nature of the information leading the State to investigate appellant, including that Sergeant Angstadt incorrectly characterized the DEA confidential informant as an "anonymous" source, which the trial court found was made with reckless disregard for the truth.

1. Misidentification of Informant

We begin with appellant's challenge based on Sergeant Angstadt's representation of the confidential informant as an anonymous source. Appellant argues that the misrepresentation and other related assertions constitute a violation of *Franks v. Delaware*, 438 U.S. 154 (1978). Under *Franks*, an arrest warrant must be voided—and any evidence obtained pursuant to the arrest warrant suppressed—if (1) the defendant can establish by a preponderance of the evidence that the affidavit supporting the warrant contains a material misstatement that the affiant made knowingly, intentionally, or with reckless disregard for the truth, and (2) excising the false statement, the affidavit's remaining content is insufficient to establish probable cause. *Id.* at 155-56; *see also Janecka v. State*, 937 S.W.2d 456, 462 (Tex. Crim. App. 1996).

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Lerma v. State*, 543 S.W.3d 184, 189-90 (Tex. Crim. App. 2018). We review the trial court's factual findings for an abuse of discretion but review the trial court's application of the law to the facts de novo. *Id.* Our deferential review of the trial court's factual determinations also applies to the trial court's conclusions regarding mixed questions of law and fact that turn on credibility or demeanor. *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012); *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). We review mixed questions of law and fact that do not turn on credibility and

demeanor, as well as purely legal questions, de novo. *State v. Woodard*, 341 S.W.3d 404, 410 (Tex. Crim. App. 2011).

The trial court is the sole trier of fact and judge of witness credibility and the weight to be given their testimony. *Valtierra*, 310 S.W.3d at 447. When the trial court makes explicit findings of fact, as here, we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports the fact findings. *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). We afford the prevailing party the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. *State v. Duran*, 396 S.W.3d 563, 571 (Tex. Crim. App. 2013). We will uphold the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014).

Agent Thompson, Agent Layne, and Sergeant Angstadt testified at the suppression hearing. The court found Agent Layne's testimony and Agent Thompson's testimony credible and found Sergeant Angstadt's testimony credible at times and not credible at other times. The trial court made the following relevant findings:

> 10. . . . The confidential informant provided SA Layne with a description of the suspect in the aggravated assault and told him the suspect was known as "Jessie." The confidential informant also provided SA Layne with two telephone numbers for the suspect. . . .
>
> 14. SA Thompson ran the telephone numbers provided for the suspect given to SA Layne by the confidential informant (CI-01) through DEA databases. SA Thompson learned those numbers were connected to a case in Georgia in which the suspect was listed as "Jessie" Last Name Unknown (LNU). After learning this information, SA Thompson made contact with SA Chris Mueller in Georgia.

15. SA Mueller provided SA Thompson with information identifying "Jessie LNU" as the defendant, Nelson Garcia Diaz. SA Thompson confirmed that the phone numbers provided by the confidential informant belonged to the defendant, Nelson Garcia Diaz. Not only did SA Mueller provide SA Thompson with "Jessie's" true name, he also advised SA Thompson that Nelson Garcia Diaz had outstanding warrants. . . .

18. After SA Layne debriefed the confidential informant, he spoke with Sgt. Angstadt by telephone and confirmed Sgt. Angstadt was working the aggravated assault case. SA Layne told Sgt. Angstadt he was working with a confidential informant who provided him with information on the case, including identifying the suspect as "Jessie", and providing telephone numbers associated with the suspect. During the same telephone conversation, SA Layne told Sgt. Angstadt the confidential informant met with the suspect and learned that the suspect had apparently dropped a cell phone battery and a cell phone battery cover at the scene of the aggravated assault. . . . During SA Layne's telephone conversation with Sgt. Angstadt, Sgt. Angstadt confirmed that a battery and battery cover were in fact left at the scene of the aggravated assault. SA Layne further advised Sgt. Angstadt that DEA had confirmed the telephone numbers provided by the confidential informant belonged to the defendant, Nelson Garcia Diaz, and that Mr. Garcia Diaz had active warrants.

19. Since the DEA could not pay the confidential informant for the information he provided, SA Layne attempted to find out whether the Harris County Sheriff's Office could pay the confidential informant for providing information on the aggravated assault case to DEA. Sgt. Angstadt advised SA Layne that the homicide division did not have funds to pay the confidential informant.

20. SA Layne was concerned about keeping the identity of the informant confidential. He was very concerned about the safety of the confidential informant since the investigation was focused on violent cartel members.

21. Sgt. Angstadt recommended to SA Layne the confidential informant could get paid by calling crime stoppers as an anonymous tipster and reporting his information.

22. Because SA Layne was upset that the county never paid the confidential informant, the inference from SA Layne's testimony is

> credible that the confidential informant followed Sgt. Angstadt's recommendation and reported his information concerning the aggravated assault case as an anonymous tipster through crime stoppers.
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> 23. The court finds that in an effort to get paid the DEA confidential informant also reported his information concerning the aggravated assault "anonymously" and he is also the anonymous tipster referenced in the search warrant affidavits. . . .
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> 25. The information the confidential informant provided to SA Layne and included in the cell phone search warrant[] . . . was confirmed and found to be true by SA Layne or SA Thompson. . . .
>
> 32. The Court finds Sgt. Angstadt's characterization of the DEA confidential informant as an anonymous tipster was incomplete and not completely accurate.

In its conclusions of law, the court noted that "the manner in which an officer receives information from a confidential informant is not material as it pertains to probable cause," so long as the information was essentially true. For this reason, the court concluded that Sergeant Angstadt's failure to identify the anonymous source as a confidential informant was not a *Franks* violation, relying on the Court of Criminal Appeals' decision in *Janecka*. *See Janecka*, 937 S.W.2d at 463 ("As we understand *Franks*, a fabrication intended solely to obscure the identity of an informant for his or her protection is not the type of misrepresentation which offends the Fourth Amendment.").

Agent Layne explained why the confidential informant reported the information anonymously—i.e., to receive compensation otherwise unavailable. The trial court found Agent Layne's testimony credible, and we defer to that determination. Moreover, whether attributed to a confidential informant or to an anonymous source, the crucial information identifying appellant and appellant's involvement in the home invasion was essentially true and independently corroborated by Agents Layne and Thompson. The record therefore supports the

conclusion that Sergeant Angstadt's misidentification was not material to the magistrate's probable cause finding. *See id.* ("Deferring to the trial court's acceptance of Bonds' explanation that the purpose of the misrepresentation was not to deceive the trial court, and noting that the crucial information was in fact true, we think that this is not a misrepresentation of the type contemplated in *Franks*.").

The crux of the parties' arguments during the suppression hearing was the misidentification of the confidential informant, but appellant further argued in his motion to suppress that "S.A. [Layne] did not run 'phone numbers' through any databases to connect Mr. Garcia to the offense." Appellant similarly argues in this court that the affidavit misrepresented the nature of the DEA's involvement in the investigation—i.e., the affidavit stated that Sergeant Angstadt initially reached out to the DEA when in fact the trial court found that the DEA initially reached out to Sergeant Angstadt as a result of information received from the confidential informant. The trial court did not specifically address this part of appellant's argument in its findings and conclusions, but we determine that the record supports the implied conclusion that the affidavit's misrepresentation of the DEA's initial involvement was not material to the probable cause finding. As noted above, the crucial information identifying appellant and appellant's involvement in the home invasion was essentially true and independently corroborated.

We agree with the trial court that appellant has not shown a *Franks* violation on these facts.

2. Connection of Phones to Offense

Appellant challenges the magistrate's probable cause finding because the affidavit failed to establish a nexus between the cell phones and the offense.

When reviewing a magistrate's decision to issue a warrant, appellate courts apply a highly deferential standard of review because of the constitutional preference for searches conducted pursuant to a warrant over warrantless searches. *State v. McLain*, 337 S.W.3d 268, 271-72 (Tex. Crim. App. 2011). When ruling on a motion to suppress evidence obtained pursuant to a search warrant, a trial court is limited to the four corners of the warrant and affidavit supporting the warrant. *Id.* at 271. The affidavit is interpreted in a non-technical, commonsense manner drawing reasonable inferences solely from the facts and circumstances contained within the four corners of the affidavit. *See State v. Elrod*, 538 S.W.3d 551, 554 (Tex. Crim. App. 2017); *Bonds v. State*, 403 S.W.3d 867, 873 (Tex. Crim. App. 2013). "When in doubt, we defer to all reasonable inferences that the magistrate could have made" that are supported by the record. *Bonds*, 403 S.W.3d at 873; *see also Barrett v. State*, 367 S.W.3d 919, 922 (Tex. App.—Amarillo 2012, no pet.) (citing *Rodriguez v. State*, 232 S.W.3d 55, 61 (Tex. Crim. App. 2007)). Probable cause is a "flexible and non-demanding standard," *Bonds*, 403 S.W.3d at 873, and "[a]s long as the magistrate had a substantial basis for concluding that probable cause existed, we will uphold the magistrate's probable cause determination." *McLain*, 337 S.W.3d at 271.

The Fourth Amendment mandates that "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." *See* U.S. Const. amend. IV. "Probable cause exists when, under the totality of the circumstances, there is a fair probability or substantial chance that contraband or evidence of a crime will be found at the specified location." *Bonds*, 403 S.W.3d at 873. In other words, there must be "a sufficient nexus between criminal activity, the things to be seized, and the place to be searched." *Id.* As applicable to a cell phone search

warrant, the application must state the facts and circumstances providing the applicant with probable cause to believe that searching the telephone or device is "likely to produce evidence in the investigation" of specific criminal activity described in the affidavit. Tex. Code Crim. Proc. art. 18.0215(c)(5). Further, this court has stated that an affidavit offered in support of a warrant to search the contents of a cell phone must usually include facts that a cell phone was used during the crime or shortly before or after. *See Foreman v. State*, 561 S.W.3d 218, 237-38 (Tex. App.—Houston [14th Dist.] 2018, pet. granted) (en banc) (citing *Walker v. State*, 494 S.W.3d 905, 908-09 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); *Humaran v. State*, 478 S.W.3d 887, 893-94 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd)).

Here, appellant argues that nothing, "other than the officer's generalized assumptions" that criminals utilize cellular telephones to communicate and share information regarding crimes they commit, connected the specified offense with the phones to be searched. We disagree because, excluding any reliance on Sergeant Angstadt's assertion that generally criminals use cellular telephones and other electronic devices to facilitate criminal activity, other facts in the affidavit establish a sufficient nexus between the cell phones and the alleged offense. The affidavit stated that two men were involved in the home invasion and that police recovered several parts of one or more cell phones at the scene. From this, the magistrate reasonably could infer that the perpetrators possessed or utilized one or more cell phones before or during the planning or commission of the offense and that any recovered cell phones could have evidence of the offense.[3] For instance,

[3] According to appellant, police searched his apartment subsequent to his arrest and found a cell phone missing its battery and back cover, but that particular cell phone was not a subject of the challenged search warrant. Appellant suggests that probable cause may exist for the specific cell phone that was missing the battery and plastic backing police recovered from the scene, but there was no probable cause to search the three cell phones police took from appellant's

the magistrate reasonably could infer that the intruders' scheme of pretending to be police officers necessitated planning, which could have been orchestrated by telephonic communication. The affidavit also stated that DNA testing could not exclude appellant as a source of DNA on the sunglasses left at the scene, thus directly tying appellant to the crime scene. From this, the magistrate reasonably could infer that appellant was the owner of both the sunglasses and the cell phone or phones from which pieces detached during the offense and were left at the scene. Further, the affidavit provided that appellant was associated with at least two phone numbers and that police recovered a total of five cell phones in appellant's immediate possession or control upon his arrest. The magistrate reasonably could infer that appellant utilized these phones interchangeably and that evidence of criminal activity on one phone could have been transferred to another.

Interpreting the affidavit in a common sense and realistic manner and recognizing that the magistrate may draw reasonable inferences, we hold that the affidavit supports a probable cause finding that searching the cell phones was likely to produce evidence in the investigation of the criminal activity described in the application. Tex. Code Crim. Proc. art. 18.0215(c)(5). In so holding, we do not rely on Sergeant Angstadt's assertions that "the majority of persons, especially those using cellular telephones, utilize electronic and wire communications almost

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possession upon arrest because they could not be connected to the home invasion. We disagree. The fact that the intruder had one or more cell phones before, during, and after the commission of the offense is a sufficient basis from which the magistrate could conclude that a fair probability existed that evidence of criminal activity would be found on a cell phone in appellant's possession; the magistrate did not have to be certain of the specific cell phone. *State v. Cantu*, 785 S.W.2d 181, 183 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd) ("The probable cause standard is not technical, it is practical, and deals with *probabilities*, not hard certainties.") (emphasis in original); *accord also Johnson v. State*, Nos. 11-17-00240-CR, 11-17-00241-CR, 2019 WL 4786152, at *4 (Tex. App.—Eastland Sept. 30, 2019, no pet.) (mem. op., not designated for publication) ("in an increasingly technology-dependent society," magistrate could infer that records or communications of criminal activity would be on appellant's cell phone).

daily" or that "individuals engaged in criminal activities utilize cellular telephones and other communication devices to communicate and share information regarding crimes they commit." Excluding those statements, the facts contained in the affidavit and reasonable inferences therefrom as described above provided a sufficient basis from which the magistrate reasonably could conclude that a "fair probability or substantial chance" existed that evidence of the home invasion would be found on appellant's cell phones. *Bonds*, 403 S.W.3d at 873. Further, consistent with our holding in *Foreman*, the facts show or support a reasonable inference that a cell phone or phones were "used during the crime or shortly before or after." *Foreman*, 561 S.W.3d at 237.

3. General Search

Finally, appellant argues that the search warrant affidavit impermissibly "sought a sweeping, unrestricted search . . . in the speculative hope that some evidence, somewhere . . . might be found."

Under the Fourth Amendment, law enforcement may not embark on "a general, evidence-gathering search, especially of a cell phone which contains much more personal information . . . than could ever fit in a wallet, address book, briefcase, or any of the other traditional containers" for the storage of personal information. *State v. Granville*, 423 S.W.3d 399, 412 (Tex. Crim. App. 2014) (internal quotation omitted); *see also Butler v. State*, 459 S.W.3d 595, 601 n.3 (Tex. Crim. App. 2015) (acknowledging that both United States Supreme Court and Texas Court of Criminal Appeals have recognized that cell phone users have reasonable expectation of privacy in content of their cell phones). A warrant was required in this instance, *see Granville*, 423 S.W.3d at 417, and law enforcement obtained one. To comply with the Fourth Amendment, a search warrant must describe the things to be seized with sufficient particularity to avoid the possibility

of a general search. *Thacker v. State*, 889 S.W.2d 380, 389 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd). The Fourth Amendment's particularity requirement prevents general searches, while at the same time assuring the individual whose property is being seized and searched of both the lawful authority and limits of the search itself. *Groh v. Ramirez*, 540 U.S. 551, 561 (2004). "The constitutional objectives of requiring a 'particular' description of the place to be searched include: 1) ensuring that the officer searches the right place; 2) confirming that probable cause is, in fact, established for the place described in the warrant; 3) limiting the officer's discretion and narrowing the scope of his search; 4) minimizing the danger of mistakenly searching the person or property of an innocent bystander or property owner; and 5) informing the owner of the officer's authority to search that specific location." *Long v. State*, 132 S.W.3d 443, 447 (Tex. Crim. App. 2004).

The particularity requirement may be satisfied by cross-referencing a supporting affidavit that describes the items to be seized, even though the search warrant contains no such description. *See United States v. Richards*, 659 F.3d 527, 537 (6th Cir. 2011); *see also United States v. Triplett*, 684 F.3d 500, 505 (5th Cir. 2012) (noting that law permits affidavit incorporated by reference to amplify Fourth Amendment particularity requirement). However, "the requirements for the particularity of the description of an item may vary according to the nature of the thing being seized." *Thacker*, 889 S.W.2d at 389.

Regarding computers and other electronic devices, such as cell phones, case law requires that warrants affirmatively limit the search to evidence of specific crimes or specific types of materials. *Farek v. State*, No. 01-18-00385-CR, 2019 WL 2588106, at *8 (Tex. App.—Houston [1st Dist.] June 25, 2019, pet. ref'd) (mem. op., not designated for publication) (citing *United States v. Burgess*, 576

F.3d 1078, 1091 (10th Cir. 2009)). If a warrant permits a search of "all computer records" without description or limitation, it will not meet Fourth Amendment particularity requirements. *Id.* However, a search of computer records that is limited to those related to the offense set forth in the affidavit is appropriately limited. *Id.*

Here, the warrant permitted the cell phones to be searched for:

- photographs/videos;
- texts or multimedia messages (SMS or MMS);
- any call history or call logs;
- any e-mails, instant messaging, or other forms of communication of which said phone is capable;
- Internet browsing history;
- any stored Global Positioning System (GPS) data;
- contact information including e-mail addresses, physical addresses, mailing addresses, and phone numbers;
- any voicemail messages contained on said phone;
- any recordings contained on said phone;
- any social media posts or messaging, and any images associated thereto, including but not limited to that on Facebook, Twitter, and Instagram;
- any documents and/or evidence showing the identity of ownership and identity of the users of said described item(s);
- computer files or fragments of files;
- all tracking data and way points; and
- CD-ROM's, CD's, DVD's, thumb drives, SD Cards, flash drives or any other equipment attached or embedded in the above described device that can be used to store electronic data, metadata, and temporary files.

Although the general object of the warrant—a "forensic analysis" of specific categories of electronic data stored on appellant's cell phones—"tacitly encompasses electronic data that might, upon a thorough forensic examination, be identified as being non-offense related," we do not construe the warrant and the accompanying affidavit as "allow[ing] an unfettered and unlimited search" of appellant's cell phones. *Roberts v. State*, Nos. 07-16-00165-CR, 07-16-00166-CR, 2018 WL 1247590, at *6 (Tex. App.—Amarillo Mar. 9, 2018, pet. ref'd) (mem. op., not designated for publication). Rather, the warrant authorized a search of cell phone data related to the offense set forth in the attached probable cause affidavit. *See Farek*, 2019 WL 2588106, at *8 (holding that warrant did not authorize overbroad, general search because supporting affidavit sufficiently linked the data to be searched to the described offense); *Roberts*, 2018 WL 1247590, at *6 (same). As discussed above, the required nexus between the facts and circumstances of the investigation and the items to be searched was unquestionably present. Police recovered pieces of one or more cell phones at the scene; the intruders coordinated the invasion posing as police officers, which required planning; and appellant was associated with multiple phone numbers. Thus, Sergeant Angstadt had reason to believe that evidence relating to the investigation would be found on one or more cell phones used or possessed by the suspect. *Cf. United States v. Oglesby*, No. 4:18-CR-0626, 2019 WL 1877228, at *1 (S.D. Tex. Apr. 26, 2019) (finding warrant fatally overbroad when conduct described in the affidavit did not "inherently implicate" the use of a cell phone).

Appellant nonetheless focuses on the warrant's authorization of a search for, *inter alia*, "computer files or fragments of files" and contends that this phrase establishes that the warrant was fatally overbroad. We disagree. The supporting affidavit made clear that the search was for evidence "relevant and material to the

investigation," and the affidavit and warrant listed specific types of data that likely contained relevant evidence. Any ambiguity or potential overbreadth in the phrase "computer files or fragments of files" was cured by the limitation on the search to evidence of specific crimes or specific types of materials. *Farek*, 2019 WL 2588106, at *8; *Burgess*, 576 F.3d 1078, 1091. "Indeed, the type of evidence seized from appellant's phone and introduced against him at trial—pictures and [communications] relating to the offense set forth in the affidavit—was . . . specifically listed in the affidavit" and the warrant. *Farek*, 2019 WL 2588106, at *10. Because the warrant and supporting affidavit directly link the evidence being sought to the offense being investigated at the time the warrant was obtained, the search was not an overbroad general search. *See id.* (rejecting appellant's claim that warrant authorizing search of phone for "any and all other digital data" and "any and all deleted digital data" was overbroad).

For these reasons, we hold that the trial court did not err in denying appellant's motion to suppress, and we overrule appellant's issue.

Conclusion

We affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Justices Christopher, Jewell, and Spain (Spain, J., dissenting).
Publish — Tex. R. App. P. 47.2(b).