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Case Name: ***The State of Texas v. John Wesley Baldwin***

- **OFFENSE**: Capital Murder / Suppression of Evidence
- **COUNTY**: Harris
- **COURT OF APPEALS**: Houston [14th] 2020
- **C/A CITATION**: 614 S.W.3d 411
- **C/A RESULT**: Trial Court Reversed
- **CCA. CASE No**. PD-0027-21 **DATE OF OPINION**: May 11, 2022
- **DISPOSITION**: Court of Appeals Affirmed
- **OPINION**: Judge Jesse McClure **VOTE**: 5-4
- **TRIAL COURT**: 208th D/C; Hon.
- **LAWYERS**: Mandy Miller (Defense); Cory Stott (State)

(**Background Facts**): While committing a robbery, two masked gunmen shot and killed a homeowner. The homeowner's brother witnessed the offense and said the offenders were Black men who fled the scene in a white, four-door sedan. Around that time, a neighbor observed a white, four door sedan exiting the neighborhood at a "very high rate of speed." Investigators obtained security footage from a nearby residence which showed a white sedan in the neighborhood on the day before (and on the day of) the murder and obtained descriptions of the vehicle's passengers from neighbors. Investigators located the sedan at an apartment four days after the murder. Appellee eventually drove away in the sedan, and investigators followed him in unmarked units but requested a marked unit to develop probable cause to stop Appellee for a traffic violation. Officers in a marked unit eventually pulled Appellee over for making an unsafe lane change. Appellee was arrested for the traffic violation, for driving with an expired license, and for failing to show identification on demand. Investigators also impounded the sedan. After his arrest, Appellee gave a statement and consented to a search of the sedan.

[31.024 Search & Seizure / Warrantless Searches / Probable Cause]: A cell phone was found in the sedan, but Appellee would not consent to a cell phone search. Investigators applied for a warrant to search the cell phone and a magistrate issued the search warrant. In a motion to suppress, Appellee objected to the search warrant's supporting affidavit, which contained generic

statements about the use of cell phones. The trial court and the Court of Appeals (see 𝔊&𝔖, Vol. 28, No. 49; 12/14/2020) both concluded that the affidavit [**Ed Note**: set out in the opinion], did not contain sufficient facts to establish a fair probability that a search of the cell phone found in Appellee's vehicle would likely produce evidence in the investigation of the murder.

Holding: We granted review to answer this question: under what circumstances may boilerplate language about cell phones be considered in a probable cause analysis? We hold that boilerplate language may be used in an affidavit for the search of a cell phone, but to support probable cause, the language must be coupled with other facts and reasonable inferences that establish a nexus between the device and the offense. ******* As applied to cell phones and boilerplate language, the holding in ***State v. Duarte***, 389 S.W.3d 349 (Tex.Cr.App. 2012)(see 𝔊&𝔖, Vol. 20, No. 37; 09/17/2012), has been interpreted by a few intermediate courts to stand for the proposition that the affidavit must contain particularized facts demonstrating a fair probability that evidence relating to the offense would be located in the mobile phone. ******* Although only a handful of cases address this specific issue, the courts below seem comfortable with the use of boilerplate language in affidavits for warrants to search mobile phones, so long as the generic language is coupled with "other facts." Certainly, this holding seems consistent with article 18.0215(c)(5) of the Texas Code of Criminal Procedure, which requires an affidavit offered in support of a warrant to search the contents of a cell phone to "state the facts and circumstances that provide the applicant with probable cause to believe . . . searching the telephone or device is likely to produce evidence in the investigation of . . . criminal activity." ******* Which brings us to the issue we seek to resolve in this case: Is generic, boilerplate language about cell phone use among criminals sufficient to establish probable cause to search a cell phone? We hold it is not. Instead, specific facts connecting the items to be searched to the alleged offense are required for the magistrate to reasonably determine probable cause. To hold otherwise would condone the search of a phone merely because a person is suspected to have committed a crime with another person. Put another way, all parties suspected of participating in an offense would be subject to having their cell phones searched, not because they used their phones to commit the crime, but merely because they owned cell phones. ******* In the instant case, the parties and the justices of the Court of Appeals disagree as to whether there were sufficient "other facts" present. The majority found that the only "other fact" in this case is that two black men committed the offense together and that this was insufficient to connect the mobile phone to the offense. For the dissent, that fact was sufficient to establish that the men might have used their cell phones to coordinate. The majority thinks the dissent's conclusion goes too far. We agree with the majority. While we defer to all reasonable inferences that the magistrate could have made, there are simply no facts within the four corners of the affidavit that tie Appellee's cell phone to the offense. The affidavit before us indicates nothing more than that neighbors saw a certain white sedan with a black driver circling their neighborhood the day before the offense occurred, a similar sedan was seen quickly leaving the neighborhood after the offense, and that Appellee, a black man, was driving the very same vehicle four days after the offense, and that this coincidence somehow necessarily connects Appellee's phone to the offense. That witnesses affirm the description and license plate number of the white sedan, as well as its registration to Appellee's father, are facts that support the nexus of the vehicle to the offense, they have no bearing on whether Appellee's phone is connected

with the offense. The affidavit contains nothing about the phone being used before or during the offense. Suspicion and conjecture do not constitute probable cause, and "the facts as recited in the affidavit in this cause evidence nothing more than mere suspicion." ***Tolentino v. State***, 638 S.W.2d 499 (Tex.Cr.App. 1982). Therefore, the magistrate erred by substituting the evidentiary nexus for the officer's training and experience and generalized belief that suspects plan crimes using their phones. The boilerplate language in itself is not sufficient to provide probable cause in this case, nor does the remaining affidavit set forth details in sufficient facts to support probable cause. Considering the whole of the affidavit, there is no information included that suggest anything beyond mere speculation that Appellee's cell phone was used before, during, or after the crime. ******* The record, while viewed in the light most favorable to the magistrate's ruling, supports the trial court's conclusion that the affidavit contained insufficient particularized facts to allow the magistrate to determine probable cause for a warrant to search the phone. Insofar as the Court of Appeals affirmed the trial court's order granting the motion to suppress evidence obtained from the cell phone found in Baldwin's vehicle, we affirm.

Concurring / Dissenting Opinions: Presiding Judge Sharon Keller filed a dissenting opinion in which **Judge Kevin Yeary**, **Judge Mary Lou Keel**, and **Judge Michelle Slaughter** joined, and in which she disagreed with the Court's conclusion that the affidavit in this case failed to establish a nexus. She would hold that "the particularized facts described above, coupled with what we know about how cell phones are used, were sufficient to establish probable cause to search the cell phone" and would affirm the trial court. Judge Kevin Yeary filed a separate dissenting opinion, pointing out that "'Boilerplate' is not a dirty word," that nothing in the warrant affidavit in this case that "appears to have been pre-printed," and that it seems the Court uses the descriptor "boilerplate" interchangeably with "generic." He believes that the Court's opinion in this case will serve only to significantly inhibit otherwise perfectly constitutional future investigative activities by law enforcement. "Neither the law nor the people will be served by this decision, but criminals and their enterprises will benefit."