Children's Fast Track

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: Y.W.-B.	:	1 EAP 2021
Consolidated Appeals of: J.B.,	:	1642 EDA 2019
Mother	:	CP-51-DP-00002108-2013
	:	FID# 51 -FN -004204-2013
IN RE: N.W.-B.,	:	2 EAP 2021
Consolidated Appeals of: J.B.,	:	1643 EDA 2019
Mother	:	CP-51-DP-002387-2016
	:	FID# 51 -FN -004204-2013

BRIEF OF APPELLEE THE CITY OF PHILADELPHIA DEPARTMENT OF HUMAN SERVICES

Appeal from the Order of the Superior Court of Pennsylvania (Judges Nichols and Murray, and Senior Judge Colins) entered October 8, 2020, for the case at No. 1642 and 1643 EDA 2019, Affirming in part and Reversing in part the trial court's order of June 11, 2019, entered by the Honorable Joseph Fernandes.

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COUNTER-STATEMENT OF THE STANDARD AND SCOPE OF REVIEW

"The standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but does not require the appellate court to accept the lower court's inferences or conclusions of law." In the Interest of L.Z., 111 A.3d 1164, 1174 (Pa. 2015).

Furthermore, regarding the probable-cause analysis in particular, "the reviewing court must accord deference to the [trial court's] probable cause determination." Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010).

COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

1. Did Superior Court correctly consider the totality of the circumstances in holding that the Fourth Amendment permits the grant of a petition to compel a routine home inspection pursuant to the Child Protective Services Law where: a child protective services agency received and investigated a report that children might not be receiving adequate shelter and food at their home; their mother was evasive in answering questions about their well-being; there was a prior history where children in the home did not receive adequate shelter; and a social worker observed a boarded-up window from the exterior of the home where Mother claimed she resided, which supported an allegation of potential fire damage inside the home?

Answered below: yes; suggested answer: yes

2. Should this Court reject Mother's claim under Article I, Section 8 of the Pennsylvania Constitution, where: Mother failed to properly preserve that claim with either the trial court or Superior Court; and, alternatively, on the merits Article I, Section 8 permits the grant of a petition to compel a routine home inspection pursuant to the Child Protective Services Law when (as above) a child protective services agency received and investigated a report that children might not be receiving adequate shelter and food at their home?

Answered below: not raised; suggested answer: yes

COUNTER-STATEMENT OF THE CASE

I. Procedural History

Mother and Father are the parents of Y.W.-B., born in June 2012, and N.W.-B., born in January 2015 (collectively, Children). On May 22, 2019, the Philadelphia Department of Human Services (DHS) received a General Protective Services ("GPS") report regarding the family which alleged "homelessness and inadequate basic care." Testimony of 6/11/19 at 5.

Later that day, Mother and Father refused DHS entry into their home for a home-safety assessment. DHS petitioned to compel cooperation on May 31, 2019. The trial court (the Honorable Joseph Fernandes) held a hearing on June 11, 2019, with testimony from Mother and the DHS investigator.

The Court found that there was "more than enough probable cause" for the home assessment. See Testimony of 6/11/19 at 18. The Court entered an order requiring a home assessment. Later on June 11, 2019, Mother appealed to Superior Court.[1]

Mother moved to stay the home assessment, but the trial court denied the motion on June 13, 2019, and Superior Court denied the emergency motion on June 14, 2019. The home assessment occurred later on June 14, 2019 and, after a post-assessment hearing to evaluate the details of the assessment, the trial court closed the case on June 18, 2019, see Testimony of 6/18/19 at 20.

[1] Although Mother and Father filed separate notices of appeals to Superior Court, only Mother pursues this appeal.

On October 8, 2020, Superior Court unanimously affirmed (per Judge Nichols, with Judge Colins and Judge Murray) in a precedential opinion (Opinion). Interest of Y.W.-B., 241 A.3d 375 (Pa. Super. 2020). This Court accepted review on January 5, 2021.

II. Factual History

We first explain the factual background. We then discuss the statutory and regulatory provisions governing DHS's assessment of reports of neglect. Finally, we describe the lower court rulings.

A. DHS Received A GPS Report Alleging Homelessness And Inadequate Basic Care; DHS Sought To Interview The Children And Perform A Minimal Home Assessment But Mother Refused

DHS received a GPS report that alleged "homelessness and inadequate basic care" of Mother's Children on May 22, 2019. Testimony of 6/11/19 at 5 (Richardson). The anonymous reporter asserted that, on approximately May 1, 2019, Mother and her Children were sleeping outside of the Philadelphia Housing Authority (PHA) office located at 2103 Ridge Avenue. Petition to Compel Cooperation, ¶ j.

The reporter further alleged that on May 21, 2019, the reporter observed Mother standing outside the PHA office between the hours of noon and eight p.m. with one of her Children, and that it was unknown if Mother was feeding the Child during this extended time period. Mother also acknowledged that there had been a fire in her home. Petition to Compel Cooperation, ¶ j.

Project HOME, a prominent Philadelphia organization whose mission is to alleviate homelessness, dispatched an outreach worker to assess the family. Id.

From Mother's perspective, Mother claimed that she was outside the PHA office because she was protesting PHA, and that she had a residence. Petition to Compel Cooperation, ¶ j.

Prompted by the GPS report, DHS investigative social worker Tamisha Richardson (Richardson) obtained the home address through a Department of Public Welfare (DPW) search and attempted later that day (May 22) to assess the family's home. Petition to Compel Cooperation, ¶ l. She planned to check the home to make sure that Mother had utilities, food, and beds. Testimony of 6/11/19 at 6 (Richardson).

However, Mother and Father refused her entry to the home or access to Children, ages six and four at the time. Petition to Compel Cooperation, ¶ l. Richardson claimed that the Children appeared to be upset, and that Mother made it very clear that Richardson was unwelcome. Petition to Compel Cooperation, ¶ l. Richardson explained that she had "no idea if they were living at the address because I was not allowed to access the home." Testimony of 6/11/19 at 10.

Moreover, when the Court asked Mother about whether she could provide necessities for the Children such as food and medical care, she did not directly answer. Testimony of 6/11/19 at 13 (Mother: "THE COURT: Okay. Do you receive benefits still, or do you have a job? What kind of income do you receive now? THE MOTHER: What's the relevancy of that to this case? THE COURT: Well, because the relevancy is this: I have to make sure the children are safe and they're fed.").

Richardson also observed from the outside of the home that one of the

home's windows was boarded, perhaps from damage from the previously referenced fire, further calling the adequacy of the home's interior into question. Petition to Compel Cooperation, ¶ l. Richardson attempted to enter the home again later that day with police but Mother again refused entry. Petition to Compel Cooperation, ¶ m.

DHS and the judge also had a prior involvement with this family. In 2013, DHS received an ultimately validated GPS report explaining, among other things, that the family's home was in deplorable condition in that it was flea-infested, had holes in the walls, and lacked heat. Petition to Compel Cooperation, ¶ c. In 2016, Judge Fernandes granted a petition to compel a home inspection based upon alleged lack of water service. Testimony of 6/11/19 at 4, 12.

Concerned about Mother's unwillingness to confirm the Children's well-being, DHS filed the Petition to Compel at issue here, which the trial court granted. The assessment occurred on June 14, 2019, and the trial court closed the case on June 18, 2019. Testimony of 6/18/19 at 20.

B. The Statutory And Regulatory Background Governing DHS's Assessment Of Reports Of Neglect

The Child Protective Services Law ("CPSL"), 23 Pa. C.S. §§ 6301–6386, generally provides for two types of reports: there are reports of suspected child abuse, or child protective services (CPS) reports, and reports of suspected serious neglect, called general protective services (GPS) reports. Cumberland v. DPW, 611 A.2d 1339, 1342 (Pa. Commw. 1992). This case started with a general protective services report, which is intended to identify, and provide services for,

those families whose children are at risk of neglect, akin to dependency. See 55 Pa. Code § 3490.223; 42 Pa. C.S. § 6302; see also 23 Pa. C.S. § 6373(a)(3); 23 Pa. C.S. § 6375(a), (f); 55 Pa. Code § 3490.231.

Reports can come from either mandatory reporters, such as health care professionals or teachers, or from permissive reporters. 42 Pa. C.S. § 6312. If an individual witnesses a child at risk of neglect or dependency, that witness should submit a GPS report to the county, which is obligated to "ensure" that it has a procedure in place for receiving GPS reports from citizens who observe children at risk, 23 Pa. C.S. § 6375(b); 55 Pa. Code § 3490.232(a).

When an agency receives a GPS report specifying that the child is not receiving proper care, the agency must then assess the report within 60 days. 23 Pa. C.S. § 6375(c)(1); 55 Pa. Code § 3490.232(e). Whereas the consideration of CPS allegations of abuse is called an investigation, 23 Pa. C.S. § 6368; 55 Pa. Code § 3490.55, the evaluation of GPS allegations of neglect is called an "assessment." 55 Pa. Code. § 3490.223. Counties will perform an initial review to screen out facially insufficient reports.

After the initial review, the county will then evaluate whether the remaining reports are founded or unfounded. This assessment includes many steps, including visiting the child, 55 Pa. Code § 3490.232(f), and applying a pre-determined set of objective risk-assessment standards, 55 Pa. Code § 3490.321(e). These neutral factors include considerations such as the family's prior DHS history, and the conditions of the home. 55 Pa. Code § 3490.321.

Accordingly, the regulations also state that a county agency is required to do

at least one home visit as part of its assessment." 55 Pa. Code § 3490.232(f); see also 23 Pa. C.S. § 6375(g) ("The county agency shall … conduct in-home visits."). Courts have held, of course, that such visits must be consistent with the Fourth Amendment. Petition to Compel Cooperation With Child Abuse Investigation, 875 A.2d 365, 374 (Pa. Super. 2005).

The regulations also state that the county agency may initiate court proceedings if "a home visit … is refused by the parent." 55 Pa. Code § 3490.232(j); see also 23 Pa. C.S. § 6375(j). DHS initiated such a proceeding here.

C. Lower Court Opinions

The trial court acknowledged that DHS was required to establish probable cause, but the Court also explained that the probable-cause analysis in the criminal context was distinct from the analysis in the child-protection context. Trial court opinion at 6. The trial court ultimately applied its discretion -- after acknowledging the family's prior involvement with DHS -- to find that there was "more than enough probable cause." Testimony of 6/11/19 at 18.

The Court first explained that Mother "refuse[d] to answer the trial court's questions regarding Mother's ability to care for Children, including questions regarding Mother's income, Mother's employment status, Mother's ability to feed Children, and where Children received medical care." Trial court opinion at 7. The Court also found credible DHS's witness Tamisha Richardson, who testified that she just wanted to give the home a quick check for basic necessities. Trial court opinion at 8 (citing Testimony of 6/11/18 at 5-8). Given the routine search, the past history with DHS, Mother's refusal to answer the Court's questions, plus

the fact that DHS had also received a report that Mother slept outside of PHA with Children, the trial court concluded that DHS had probable cause to assess whether Mother had stable and adequate housing for her Children.[2]

On appeal, Superior Court upheld the trial court's view that the probable cause analysis in the criminal context was distinct from the analysis in the child-protection context. Opinion at 14. Superior Court first explained that, unlike in the criminal context where an affidavit of probable cause is evaluated on an ex parte basis by a magistrate, the petition to compel in the child-protection context is contested. Accordingly, the Court noted, the reviewing court can go beyond the four corners of the affidavit and instead can review not only the petition to compel, but also can consider other evidence, such as the hearing testimony as well as the Court's prior history with the family. Opinion at 17.

Looking to the totality of the circumstances, Superior Court ultimately affirmed the trial court's ruling that DHS had established ample evidence of probable cause, based upon the contents of the petition to compel, the evidence presented at the hearing, the trial court's prior experiences with the family, and Mother's demeanor at the hearing. Opinion at 22.

Specifically, the petition to compel and the hearing testimony confirmed the

[2] The trial court also concluded that the issue was moot (because the inspection already occurred) and, separately, that Mother did not have a First Amendment right to record the DHS officials as they searched her home. On appeal to Superior Court, we agreed that the case was not moot, and that Mother had a First Amendment right to record, see DHS Superior Court Brief at 14, and those issues are not before this Court.

initial report that Mother slept outside the PHA office with her Children. Opinion at 23. Furthermore, Superior Court accepted that there was "at least some [fire] damage to Mother's current residence," which was supported by the fact that one of the windows was boarded. Opinion at 23.

Finally, Superior Court held the trial court had properly considered the family's past experiences with DHS, "as well as Mother's demeanor at the hearing," where the trial court found that Mother was trying to avoid his questions regarding her ability to care for the Children. Opinion at 24.

Accordingly, Superior Court concluded that the trial court had not "abused its discretion when weighing the totality of the circumstances." Therefore, Superior Court held that there was no violation of either the Fourth Amendment, or Article I, Section 8 of the Pennsylvania Constitution, and it affirmed the trial court's conclusion that there was "probable cause to believe that an act of child abuse or neglect has occurred and evidence relating to such abuse will be found in the home." Opinion at 16.

SUMMARY OF ARGUMENT

We first address the Fourth Amendment and then Article I, section 8.

Fourth Amendment. While the parties agree that the Fourth Amendment governs home assessments and DHS cannot enter without a finding of probable cause, Mother asks this Court to rigidly import various criminal-law concepts into this child-protection case to invalidate the lower courts' probable cause finding. However, the probable-cause determination is a totality-of-the-circumstances, all-things-considered analysis that grants broad deference to the issuing authority.

Applying that proper test, the trial court and Superior Court correctly concluded that the following four factors amply supported the probable cause finding here, notwithstanding Mother's request to formalistically apply criminal-law rules of particularity, nexus and confidential-informant invalidity that do not always apply even in criminal matters.

There was a fundamental need to search Mother's home. Child protection is perhaps the most essential societal interest. Moreover, where, as here, there are neglect allegations related to the conditions of the home (including whether the home was fire damaged), county agencies cannot adequately ensure that parents are providing children with basic care – such as food, utilities, and bedding – without a quick assessment of the home itself. It is a necessary and irreplaceable part of confirming whether the parents are providing basic necessities to the children, and the searches protect the needs of dependent children, who are the least capable of protecting themselves.

In seeking to invalidate the inspection order, Mother inappropriately applied the criminal-law particularity requirement here. However, given that there was no other way to assess the adequacy of Children's living conditions without seeing the general conditions of the home, Mother's suggestion that the trial court's order here was insufficiently particular makes no sense.

Mother also sought to import a rigid criminal-law nexus requirement but again ignored the context of this child-protection case, where there is almost always a nexus between the home and potential allegations of neglect.

The search at issue here was minimally intrusive. Contrary to Mother's

suggestion that the trial court ordered a wide-ranging inspection, the trial court ordered a spot-check search, allowing a search for necessities such as bedding, food, and utilities. There was no exploratory rummaging, and there was no search for evidence of a crime but only evidence of neglect. The trial court here even negotiated a time for the home assessment that was convenient for Mother, and allowed Father to limit which rooms were searchable.

The trial court evaluated Mother's demeanor and found her evasive. The trial court asked Mother whether she was able to care for Children, and Mother did not respond. It was well within the trial court's discretion to conclude Mother was evasive, and to include that conclusion as one factor within the totality of the circumstances that supported the need for DHS to investigate further to confirm her Children were receiving adequate care.

Mother had a substantiated history of difficulties with maintaining safe and adequate living conditions. DHS previously established that Mother and Child lived in a home that was flea-infested, lacked numerous interior walls, and lacked heat and hot water. Again, in a totality-of-the-circumstances analysis, a parent's prior involvement with DHS is an appropriate and even critical component of the probable-cause calculation in child-protection matters.

Accordingly, there was probable cause here.

In response to the probable-cause finding, Mother again tries to rigidly apply a criminal law concept, contending that the trial judge should not have relied upon an anonymous informant, which is allegedly less reliable. But Mother ignores that anonymous child welfare reporters are not at all similar to anonymous criminal

informants. In any event, neither DHS nor the trial court relied solely upon the initial reporter. Rather, DHS attempted to verify the allegations, and the trial court considered the report (and its allegations of inadequate care and fire damage), along with Mother's evasive demeanor; Mother's history of similar issues; and the subsequent inspection evidence.

Finally, Mother contends that Superior Court's probable-cause standard – which refers to requiring probable cause to find a child "in need of services," Opinion at 24 -- was too vague and could apply to any child. She is wrong. Specifically, Superior Court's phrase "in need of services" was merely invoking the statutory concept repeatedly used in the CPSL concerning children "in need of general protective services," meaning that a Court should only grant a petition to compel where there is probable cause that a general protective services report (of neglect) was founded.

Article I, Section 8. Mother waived her claim under the Pennsylvania Constitution by failing to argue -- at either the trial level or the Superior-Court level – why the state-law claim should depart from the Fourth Amendment. Commonwealth v. Bishop, 217 A.3d 833, 838 (Pa. 2019).

On the merits, the four Edmunds factors demonstrate that there is no reason here to read Article I, Section 8 more broadly than the Fourth Amendment. The text of the two provisions is virtually identical; the history of Article I, Section does not require extra protection here because the probable-cause requirement already protects individual privacy interests; Mother failed to identify other states that require extra protection; and our proffered policy of protecting innocent children is

paramount.

Although we acknowledge Mother's point that the child-welfare system in general may disproportionately affect the poor and persons of color, systemic safeguards prevent a disproportionately inappropriate number of home assessments based upon race or economics – neutral risk-assessment criteria, followed by the judicially-determined probable-cause analysis.

ARGUMENT

The parties agree that the Fourth Amendment applies to require DHS to establish probable cause before it can enter the home of a parent unwilling to admit a social worker to investigate allegations of abuse or neglect. Unquestionably in all child protection matters, courts must balance the constitutional rights of parents with the statutory obligation to protect children from abuse and neglect.

Both the trial and Superior Courts properly balanced those concerns here. Before permitting DHS to enter the home, the trial court gave Mother the opportunity to testify and refute the evidence put forth by DHS; set the parameters of the inspection to focus upon whether basic needs of the children were being met; permitted Mother to bring a witness; negotiated a convenient time in advance for the inspection to occur; and even excluded certain rooms of the home at Father's request. This was hardly the massive intimidating intrusion on Mother's rights suggested by Mother in her Brief.

At the opposing end of this fulcrum, there is no question that a home inspection is a key component to ensuring that children's basic needs are being met when circumstances indicate they may not be. Contrary to Mother's argument,

principles applied in factually distinct criminal matters did not categorically prohibit the judge from considering certain pieces of evidence (here, for example, Mother's demeanor and prior involvement with DHS, the proof of a possible fire in the residence, and the fact that Mother slept outside PHA with Children) or prevent issuance of an order allowing a general inspection of the home's condition. Probable cause is a flexible concept that logically applies differently to assess a parent's home for proof that the parent is not meeting a child's basic needs than it does to search a criminal defendant's home for a weapon used in a homicide.

We first address Mother's Fourth Amendment claim, and we discuss the Article I, Section 8 claim below.

I. The Trial Court Acted Well Within Its Broad Discretion In Concluding That The Totality Of The Circumstances Supported A Finding Of Probable Cause To Allow DHS To Conduct A Minimally Intrusive Assessment Of Mother's Home

The parties agree that probable-cause analysis governs home assessments, but Mother seeks to formalistically apply various criminal-law concepts in this child-protection case to rigidly invalidate the lower courts' probable cause finding. We first discuss the probable-cause law and how its all-things considered approach eschews this type of rigid rulemaking and bestows great deference upon the issuing authority.

We then demonstrate how this contextual analysis demonstrates that the trial court acted within its wide discretion in finding probable cause and that Mother's mechanistic attempt to vitiate probable cause based upon inapposite criminal-law concepts is mistaken.

A. Probable Cause Requires An Analysis Of All Of The Surrounding Circumstances And Reviewing Courts Must Accord Broad Deference To The Issuing Authority

The parties agree that, in order to search a home for evidence of child neglect or abuse, an agency "must file a verified petition alleging facts amounting to probable cause to believe that an act of child abuse or neglect has occurred and evidence relating to such abuse will be found in the home." Petition to Compel, 875 A.2d at 377-78.

"The issue of probable cause is a commonsense determination of reasonableness." Commonwealth v. Hall, 317 A.2d 891, 894 (Pa. 1974). Probable cause to search means "a fair probability that contraband or evidence of a crime will be found in a particular place." Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010). As this Court emphasized, and as the words themselves imply, "probable cause is based on probability, not a prima facie case of criminal activity." Commonwealth v. Housman, 986 A.2d 822, 843 (Pa. 2009). Probable cause necessarily exists as a matter of law even where criminality is only one of many reasonable inferences: "the fact that other inferences could be drawn does not demonstrate that the inference that was drawn by the police and the magistrate was unreasonable." Commonwealth v. Burno, 154 A.3d 764, 781 (Pa. 2017); Jones, 988 A.2d at 656 (noting that probable cause exists even though "[r]easonable minds … may differ on the question whether a particular affidavit establishes probable cause).

This Court has "adopted the totality of the circumstances test for purposes of making and reviewing probable cause determinations." Jones, 988 A.2d at 655.

Accordingly, courts should "reject[] rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach." Florida v. Harris, 568 U.S. 237, 244 (2013). Probable cause "determinations must be based on common sense non-technical analysis." Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985).

Moreover, this Court has similarly emphasized the "limited quantum of proof required for probable cause as well as the practical, realistic nature of the probable cause inquiry." Commonwealth v. Thompson, 985 A.2d 928, 940 (Pa. 2009); see also Illinois v. Gates, 462 U.S. 213, 232 (1983) ("probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules").

Given this totality-of-the circumstances flexible approach, "[i]t is the duty of a court reviewing an issuing authority's probable cause determination to ensure that the magistrate had a substantial basis for concluding that probable cause existed." Jones, 988 A.2d at 655. Notably, a "grudging or negative attitude by reviewing courts towards warrants ... is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." Id.

Therefore, in evaluating whether the issuing authority's decision is supported by a substantial basis – and here, the issuing authority is the Court of Common Pleas – "the reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner." Id. Indeed, mere deference is not enough; "the preference for warrants is most appropriately

effectuated by according great deference to a magistrate's determination." Id. at 656; see also Commonwealth v. Rega, 933 A.2d 997, 1013 (Pa. 2007).

B. The Trial Court Acted Within Its Wide Discretion In Finding Probable Cause And Mother's Rigid Reliance Upon Inapposite Criminal-Law Principles Fails To Account For The Totality Of The Circumstances Surrounding The Child-Protection Home Assessment At Issue Here

Looking to the totality of the circumstances, the trial court and Superior Court correctly concluded that there was probable cause to search for neglect, based upon the following four factors: (1) there was a fundamental need to search this home to assess the neglect allegations; (2) the search was minimally intrusive; (3) the trial court evaluated Mother's demeanor and found her evasive; and (4) Mother had a substantiated history of difficulties with maintaining safe and adequate living conditions.

We address each of the four factors, responding to Mother's mistaken pleas that concepts applied in certain criminal law matters (such as strict particularity and nexus) automatically apply to undermine these factors. We also explain why -- contrary to Mother's contention that the initial anonymous report was less reliable -- the trial court properly considered that report, along with the corroborative evidence from the hearing, as part of the totality of the circumstances. Next, we discuss why the Petition to Compel case, which found no probable cause in a case where the agency presented essentially no evidence in support of its Petition, is distinguishable from the current case. Finally, we address Mother's additional complaint that Superior Court's probable-cause standard was too vague.

At the outset, though, we emphasize that both the Superior Court and the U.S. Supreme Court agree that, based upon the totality of the circumstances, the probable-cause analysis in the context of a non-criminal home assessment searching for neglect is distinct from the probable-cause analysis in the criminal-law context.

In Petition To Compel, Judge Beck explained (in a concurring opinion joined by the other two panel members) that "it would be unwise to apply the standard notion of probable cause in criminal law to [child-protection] cases," and that "what constitutes probable cause in the child protective arena is far different from what constitutes probable cause in the criminal law." 875 A.2d at 380. She concluded by explaining that social service agencies "should not be hampered from performing their duties because they have not satisfied search and seizure jurisprudence developed in the context of purely criminal law." Id.

In Camara v. Municipal Court, 387 U.S. 523 (1967), the U.S. Supreme Court reached a similar result in the civil administrative context. There, the plaintiff-tenant challenged a city code provision that allowed health and safety inspectors to conduct warrantless administrative searches of his apartment without probable cause.

The U.S. Supreme Court held that warrants were required, but that the probable-cause analysis in such non-criminal cases was distinct from the criminal probable-cause analysis because administrative searches "would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts," and "a routine inspection of the physical condition of private

property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime." Id. at 531, 537.

Therefore, "the facts that would justify an inference of 'probable cause' to make an inspection [in the administrative context] are clearly different from those that would justify such an inference where a criminal investigation has been undertaken." Id.; cf. Griffin v. Wisconsin, 483 U.S. 868, 878 n.4 (1987) (in the administrative context, "probable cause" "refer[s] not to a quantum of evidence, but merely to a requirement of reasonableness").

Considering the specific facts in this child-protection case, the totality of the circumstances here (most notably the four factors of fundamental need to search, minimal intrusiveness, evasive demeanor, and past involvement with DHS) demonstrate that the trial court acted within his broad discretion in finding probable cause to search, and the Court ruled correctly in rejecting Mother's formalistic request to apply criminal-law concepts without consideration of those circumstances.

1. There Was A Fundamental Need To Search This Home

The need to search this home was apparent. Child protection is an essential societal value; assessing a family's home is a key part of an investigation; and here the home assessment was absolutely necessary where the neglect allegations related to the condition of home (including whether they had one at all and whether it was fire damaged), Mother refused to grant DHS entry, and Mother was evasive about whether the Children's needs were met.

The need to search here is fundamental, for three reasons.

First, the interest served -- protecting children -- is critical. Wyman v. James, 400 U.S. 309 (1971) demonstrates as much. There, a New York program for aid to families with dependent children conditioned child-welfare assistance upon a home inspection. The plaintiff refused visitation, lost benefits, and sued under the Fourth Amendment. After holding that the voluntary inspection was not a Fourth-Amendment search (a finding we do not pursue here), the Court held in the alternative that even if there were a coercive element to these inspections, nevertheless these home inspections did not run afoul of the Fourth Amendment.

Pertinent to our purposes, the Court explained in upholding the search that "the dependent child's needs are paramount," that "there is no more worthy object of the public's concern," and that those needs should be relegated to the mother's needs only with hesitancy. 400 U.S. at 318.

Similarly, the purpose of providing general protective services to children here is "to protect the rights and welfare of children so that they have an opportunity for healthy growth and development," 23 Pa. C.S. § 6374, and to "prevent abuse, neglect and exploitation," 23 Pa. C.S. § 6373.

Second, child-protection searches have an important history of public and judicial acceptance. Wyman specifically told us that "the visit is the heart" of child-protection legislation, and that "[t]he home visit is an established routine" in many states. 400 U.S. at 320. This is particularly true in Pennsylvania, where the governing regulations state that "the county agency shall visit the child's home." 55 Pa. Code § 3490.55(i); see also Michael R. Beeman, Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits, 89 Colum. L. Rev. 1034,

1041–42 (1989) ("most state statutory and administrative schemes governing child abuse investigations include provisions that either mandate or permit investigatory home visits"). We understand, of course, that the search must be based in probable cause; but a search supported by probable cause is a core historical component of child-protection investigations.[3]

Finally, there is often no other way to adequately ensure child safety without a home inspection. The Camara Court gave a straightforward example of why home-safety inspections were required there: "Many such conditions -- faulty wiring is an obvious example -- are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself." 387 U.S. at 537.

Similarly, here, DHS cannot check for neglect without seeing the home's conditions. For example, there was a specific allegation here of a prior fire and a claim that the family slept out. Petition to Compel Cooperation, ¶ j. Much like the government in Camara could not check for a faulty wire without an in-home spot-check, DHS could not check if the home was safe here without a comparable assessment.

Put differently, neglect frequently comes from the failure to provide basic life necessities in the home, such as utilities, food, and bedding. Given that the GPS report here alleged inadequate basic care, the home assessment was irreplaceable. See W. LaFave, § 3.9(d) CRIMINAL PROCEDURE, Welfare

[3] Thus, we are not arguing for the standard rejected in Petition to Compel, where the government claimed the right to inspect the home based entirely upon the Code.

Inspections, (4th ed.) ("it is not possible ordinarily to show probable cause upon the basis of information available outside the home to be inspected"); Mark Hardin, Legal Barriers in Child Abuse Investigations: State Powers and Individual Rights, 63 Wash. L. Rev. 493, 530 (1988) ("child abuse and neglect can be particularly difficult to detect"); see also Wyman, 400 U.S. at 320.

Furthermore, Mother refused to let Richardson even talk to the Children, who were ages six and four at the time, and who seemed "upset" to Richardson. Petition to Compel Cooperation, ¶ l. Without talking to the Children, the only way to realistically assess potential neglect was to observe the home.

According to Pennsylvania DHS's Office of Children, Youth & Families (OCYF) Bulletin, which provides guidance to county agencies on how to assess GPS reports of neglect, one of the important risk factors is the "condition of the home." OCYF Bulletin 3490-20-08 at 6 (located at https://www.paproviders.org/wp-content/uploads/2020/09/OCYF-Bulletin-3490-20-08-Statewide-General-Protective-Services-GPS-Referrals_issued-091120.pdf).

And according to a reference manual elaborating on the proper method of evaluating risks of neglect during CPSL assessments, investigators must look for "[i]nadequate … sleeping provisions," "[l]ack of … heating," and "[i]nsufficient … food." University of Pittsburgh, A Reference Manual for the Pennsylvania Model of Risk Assessment, at 42 (Rev. April 2015) (located at http://www.pacwrc.pitt.edu/Curriculum/1300_Risk%20Assessment_A%20Closer%20Look/HO07_ARfrncMnlFrThPAMdlOfRskAssssmnt_CPSLRevision2015%20(2).pdf). The manual also recommends other quick-search assessments, such as

looking for bare wires or excess garbage, which likewise cannot be evaluated without in-home access. Id.; 55 Pa. Code § 3490.321(e) (risk-assessment factors include the child's living environment).

Mother argues (at 26) that permitting a home inspection here failed to comport with a criminal law principle that a warrant must identify the to-be-searched items with particularity. Respectfully, that principle makes no sense in the context of a home inspection to investigate allegations a child's basic needs are not being met. The purpose of the particularity requirement is to prevent "the seizure of one thing under a warrant describing another." Andresen v. Maryland, 427 U.S. 463, 480 (1976). But the very nature of a home assessment to determine whether a child is receiving adequate care requires a general review of a home – not a look at any one room or item. Put differently, where the allegation in a GPS report is a lack of care in the home, an order to inspect the general conditions of the home is sufficiently particular.

Mother's argument that the home inspection permitted here lacked a "nexus" to the allegations of neglect (32) within the meaning of certain criminal cases is similarly flawed. Once again Mother ignores the specific context of this child-protection case, where there is almost always a nexus between the home and potential allegations of neglect. Without searching the home, DHS has no way to ensure that life-sustaining staples such as utilities, food, and bedding are being provided.

2. The Child-Protection Home Assessment Here Was A Minimally Invasive Spot-Check

Contrary to Mother's suggestion (17) that the trial court ordered a wide-ranging inspection, the trial court ordered a minimal intrusion, allowing a search for necessities and even scheduling the assessment with Mother in advance. There was no exploratory rummaging, and there was no search for evidence of a crime but only evidence of neglect.

Moreover, before discussing the specific search in this case, we emphasize that child-protection searches in general take place "without the kind of rummaging through private papers and effects that frequently occurs during a police search for evidence." W. LaFave, § 10.3(a) SEARCH AND SEIZURE, Inspections concerning welfare and other benefits, (6th ed.).

The same is true of the specific search here.

a. The Scope Of The Search Was Minimal

Mother (at 17) contends that the "scope of the intrusion" here was "significant." She relies primarily upon an out-of-context statement from the trial court that the inspector should "see all of the rooms in the house." Mother's Brief at 9 (citing Testimony of 6/11/19 at 24). She also claims (26-27) that Richardson did not limit her search request at all, conducting an "exploratory rummaging."

Mother's suggestion of undue intrusiveness is flawed.

Richardson stated that she only planned to check the home to make sure that Mother had the basic utilities, food, and beds, not to rummage through the entire home. Testimony of 6/11/19 at 6. This is a minimally intrusive, and absolutely

necessary, search for evidence of neglect.

The Court, likewise, specifically informed Mother that DHS would be checking for working utilities and windows, a stove and food, and beds for the Children, Testimony of 6/11/19 at 32, not that it would be conducting a broad search.

Put in context, there is no evidence that the Court's order to "see all of the rooms" was unreasonably intrusive. The Court ordered that the inspectors would "need to make sure that [the] windows are appropriate, there's heat or air conditioning… That the kids have a bed, okay. They need to see all the rooms in the house, okay. And then they have to make sure there's enough food in the home and so forth." Testimony of 6/11/19 at 24-25 (emphasis added).

Clearly, the Court was focused on the basics -- utilities, food, and bedding -- and was not worried about a detailed search. There was no suggestion of significant intrusion into the house, or an exploratory rummaging through papers and drawers. There was no suggestion of significant intrusion upon individuals, such as a strip search. The search here was a spot-check for basic care.

And far from intruding upon Mother, the Court specifically negotiated an inspection time that was convenient for Mother, Father, and Mother's proposed witness (whom the Court specifically allowed to make Mother feel more comfortable). Testimony of 6/11/19 at 18-32. Furthermore, the Court allowed Father to limit the scope of the search. During the home assessment itself, Father prevented DHS from inspecting either the living room or the basement, and DHS complied. Testimony of 6/18/19 at 5 (DHS inspector John Paxon). And Mother

specifically testified that the inspector, John Paxon, "had a good attitude."[4]

Thus, the search here was a "relatively limited invasion." Camara, 387 U.S. at 537.

In Wyman, moreover, the Court explained that the home assessment there was not particularly invasive because the mother "received written notice many days in advance of the intended home visit." 400 U.S. at 320. Furthermore, the mother "present[ed] no specific complaint of any unreasonable intrusion of her home, … [s]he complain[ed] of no proposed visitation at an awkward or retirement hour, … [and she] describe[d] no impolite or reprehensible conduct of any kind." Id. at 321.

There, the search was reasonable where the agency informed the mother of the time of the search, and there was no affirmative evidence of reprehensible conduct. Here, the Court negotiated the time of the search to comply with Mother's schedule, DHS allowed Father to limit the reach of the search, and Mother specifically agreed that the DHS inspector had a good attitude. This search was far less intrusive than Wyman, which was already reasonable.

In response, Mother claims (at 18) that a DHS "investigation can be terrifying for a family," especially for children. Initially, we note that the Children were not even present for the inspection here, Testimony of 6/18/19 at 3 (Paxon), negating any potential terror on that front.

[4] Mother testified that Richardson had "a negative air," but Richardson did not inspect the home. Testimony of 6/18/19 at 14.

Mother could only offer two citations in general support of her slippery-slope argument. If anything, though, those two citations show how relatively non-invasive this assessment was.

First, Mother's only case citation (at 19 n.7) was to Good v. Dauphin County, 891 F.2d 1087, 1090 (3rd Cir. 1989), which described that the inspection left the family "shocked and shaken." Surprisingly, however, Mother omitted the fact that, in the sentence preceding the shocked-and-shaken description, the Court noted that the police "stripped and inspected" the child's body, even though there was "no indication that the child was injured." Id. A strip search is obviously qualitatively different than the search here. Mother's reliance upon Good as an analogy here is confusing at best.

Amici make a similar mistake, see Home School Brief at 7-8; ACLU Brief at 24, relying upon caselaw and law-review authority that analyzed abuse (not neglect) investigations and considered, among other things, the psychological impact of a "visual body cavity search and pictures." Roe v. Texas, 299 F.3d 395, 402 (5th Cir. 2002); Calabretta v. Floyd, 189 F.3d 808, 817 (9th Cir. 1999) (strip search); see also Doriane Lambelet Coleman, Storming the Castle to Save the Children: The Ironic Costs of A Child Welfare Exception to the Fourth Amendment, 47 Wm. & Mary L. Rev. 413, 504–05 (2005) (opines that "[s]trip searches … have been found to be particularly intrusive").

Indeed, one of Amici's articles specifically distinguished between strip searches, which it deemed "a more intrusive search" that will "usually be unreasonable," and "limited searches," which could "uncover the most severe

abuse or obvious neglect while still respecting the Fourth Amendment's protections." Teri Dobbins Baxter, Constitutional Limits on the Right of Government Investigators to Interview and Examine Alleged Victims of Child Abuse or Neglect, 21 Wm. & Mary Bill Rts. J. 125, 168 (2012).

Second, Mother's only record citation in this case (at 18-19) was to claim that the "trial judge in this case went so far as to tell the family that they were breaking the law." The implication here is that the trial court, by telling Mother that she was breaking the law, rendered the search more intrusive by scaring Mother into thinking this was a criminal proceeding. But the law-breaking reference was related to the First Amendment recording issue, which is no longer part of this appeal, and there was certainly no suggestion that Mother broke the law by refusing entry. Testimony of 6/11/19 at 35.

b. The Search Here Was Not Designed To Uncover Evidence Of Criminal Conduct

The Wyman Court emphasized that one of the reasons the child-protection home inspection implicated fewer privacy concerns was because it was not geared toward criminal prosecution. 400 U.S. at 323. The Court explained: "As has already been stressed, the program concerns dependent children and the needy families of those children. It does not deal with crime or with the actual or suspected perpetrators of crime." Id. The Court concluded that the "home visit is not a criminal investigation, does not equate with a criminal investigation, and … is not in aid of any criminal proceeding." Id.

Because the police were not involved in the ultimate search here and it was

not a criminal investigation, but instead was designed to see if the Children needed services for neglect, Mother had less privacy interests at stake. And this was a neglect case, not an abuse case. Even in abuse cases, where discovery of criminal conduct is possible, "relatively few reports of abuse result in criminal prosecution." Investigating Child Abuse, supra, 89 Colum. L. Rev. at 1050. Here, regarding neglect, there was virtually no chance a search could result in a criminal prosecution.

Accordingly, Mother's reliance upon rigid criminal-law concepts such as strict particularity and nexus is misplaced here. See also O'Connor v. Ortega, 480 U.S. 709, 725 (1987) (applying different scrutiny in government-employment context because police were not involved); New Jersey v. T.L.O., 469 U.S. 325, 326 (1985) (applying different scrutiny to school officials); S.L. v. Whitburn, 67 F.3d 1299, 1309 (7th Cir. 1995) (allowing home inspection in child-welfare context because search was not part of a "criminal investigation or made in aid of any criminal proceeding"); Wildauer v. Frederick, 993 F.2d 369, 372 (4th Cir. 1993) ("investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context").[5]

[5] As a probable-cause alternative, our search was justified by the "special needs" doctrine. Commonwealth v. Cass, 709 A.2d 350, 369 (Pa. 1998) (citing T.L.O.). Mother claims (at 35) that the special-needs doctrine is inapposite because that doctrine (1) is inapplicable to homes, and (2) does not apply when the search's purpose is regular law enforcement. But the Court has applied the "special needs" doctrine to home inspections. See Griffin v. Wisconsin, 483 U.S. 868, 870 (1987) (warrantless search of probationer's home). Moreover, courts have held that child-protection home searches constitute special needs beyond normal law enforcement. Sanchez v. San Diego, 464 F.3d 916, 926 (9th Cir. 2006).

Finally, it is worth noting that the trial court only found there was probable cause to allow a search, not that the Children were ultimately dependent. If the search revealed material evidence of neglect, then allowing the search was critical, and further proceedings would have followed, to which various due process protections of the family's rights attached. Accordingly, allowing a search makes sense. New Jersey v. Wunnenburg, 408 A.2d 1345, 1348 (N.J. Super. App. Div. 1979) (allowing search because the probable-cause "inference merely provides the basis of an investigation, not a severance of parental rights").

3. The Trial Court Evaluated Mother's Demeanor And Found Her Evasive

The issuing authority -- in this case, the Court of Common Pleas -- properly found it significant for the need to assess the home that Mother "refuse[d] to answer the trial court's questions regarding Mother's ability to care for Children." Trial court opinion at 7 (citing Testimony of 6/11/19 at 13). When the trial court asked Mother about the single most important question at issue in this case – her ability to care for the Children – Mother refused to even assure the Court with her own testimony that the Children were receiving adequate care. Based largely upon this interaction, trial court opinion at 7, the trial court found probable cause and ordered a (minimally intrusive) home assessment.

As explained in more detail above, the reviewing court must "accord[] great deference" to the issuing authority's determination. Jones, 988 A.2d at 656. Thus, this Court must defer to the issuing authority's conclusion. This point is particularly salient regarding questions of credibility and demeanor. Green v.

Schuylkill, 772 A.2d 419, 434 n.11 (Pa. 2001) ("credibility as a matter of personal veracity" is "unreviewable by an appellate court").

Superior Court correctly deferred to the trial court's finding, see Opinion at 24, and this Court should too. For this (essentially non-reviewable) reason alone, not to mention the trial court's belief that DHS's witness was credible, see trial court opinion at 8, this Court should affirm. See also Commonwealth v. Lloyd, 948 A.2d 875, 882 (Pa. Super. 2008) ("the observations of [defendant's] demeanor and behavior by the police at the scene of [defendant's] arrest were, of themselves, adequate to support the probable cause"); Sharrar v. Felsing, 128 F.3d 810, 818 (3d Cir. 1997) ("it was reasonable for Sgt. Felsing to assess Gannon's demeanor").

Amici contend that the demeanor evidence is not probative because Mother, in failing to answer the Court, was not being evasive, but instead might have "felt threatened, frustrated, and hostile toward her adversaries and even the Court." ACLU Brief at 15-16. But that determination is not Amici's call; it is the trial court's unreviewable decision, comprising one important factor within the totality of the circumstances that supported the need for DHS to investigate further.

4. Mother Had A Substantiated History Of Difficulties With Maintaining Safe And Adequate Living Conditions

DHS previously established that Mother and Child lived in a home that was flea-infested, lacked numerous interior walls, and lacked heat and hot water. In a totality-of-the-circumstances analysis, a parent's prior involvement with DHS concerning similar allegations is an appropriate and even critical component of the probable-cause calculation. Superior Court agreed, concluding that the trial court

was "entitled to consider its prior experiences with the family." Opinion at 24.

Mother and ACLU (at 14) contend that such consideration was improper, but they are wrong.

As Judge Beck explained in her concurrence, "an agency's awareness of previous conduct on the part of parents would be relevant, indeed vital, information to include in a request for a court-ordered home visit." Petition To Compel, 875 A.2d at 380; cf. In re G.T., 845 A.2d 870, 871 (Pa. Super. 2004) (child may be adjudicated dependent based on evidence that a parent has engaged in neglect in the past); 55 Pa. Code § 3490.321(e)(1) (agency can take history of neglect into account during assessment).[6]

Other courts have reached similar results. In Wunnenburg, 408 A.2d at 1348, the Court upheld a home search, even though there was no evidence of neglect with respect to the particular child at issue, because the parents had been deemed unfit with respect to different children in the past: "evidence of unfitness 22 months before the entry based upon the facts of unfitness found in that prior adjudication provides a more than sufficient justification for an investigation of the

[6] Superior Court also correctly concluded that the trial court, unlike a magistrate considering an affidavit of probable cause in a criminal case, is not confined to the four corners of the petition to compel. Opinion at 15. A magistrate assessing a search-warrant application is limited to the four corners of the affidavit. The ex parte nature of the application provides a justification for a "four-corners" approach to determining probable cause that is absent from a petition to compel cooperation, which necessarily involves an adversarial hearing and an opportunity for the parties to offer testimony and evidence regarding the existence of probable cause. In re D.R., 216 A.3d 286, 292-293 (Pa. Super. 2019).

child's circumstances." See also Application of L.L., 653 A.2d 873, 881 (D.C. 1995) ("Parental unfitness is a personal characteristic which, ordinarily, does not vanish overnight."); Matter of L.R., 97 N.Y.S.3d 394, 401 (N.Y. Fam. Ct. 2019) (finding probable cause to search a home for evidence of neglect because, among other reasons, "the testimony at the hearing showed that [the mother] has previously engaged in similar child-jeopardizing behavior"); cf. Commonwealth v. Gullett, 329 A.2d 513, 518 (Pa. 1974) (prior history relevant to probable cause analysis).

Therefore, the trial court's past experience with the family is an important factor. Asking the trial court to simply ignore its past experience (coupled with its current experience of finding Mother evasive) belies common sense and the totality of the real-world practicalities. "Simply put, as the frequency of known prior abuse/neglect increases, so does the risk of harm to the child." A Reference Manual for the Pennsylvania Model, supra, at 22. Indeed, "[i]t is critical that county agencies seek information regarding the child and family's prior history of child welfare involvement." OCYF Bulletin 3490-20-08 at 4 (emphasis added).

Because probable cause is a common-sense, totality-of the circumstances inquiry, it does not require the trial court to park this common-sense relationship between prior and current potential neglect at the door. Notably, the trial court here understood, and relied upon the fact, that Mother faced a history of allegations of terrible home conditions. Testimony of 6/11/19 at 18.

In October 2013, DHS received a report that Mother's home: was flea infested (which in turn left the Child infested as well); lacked numerous interior

walls; had holes in the few walls that did exist; lacked heat and hot water; and appeared to be structurally unsound. Petition to Compel Cooperation, ¶ c. This report was ultimately validated, so the trial court adjudicated Y.W.-B. dependent and committed him to DHS. Petition to Compel Cooperation, ¶ d-e.

Subsequently, in 2016, DHS believed that there was no water service in Mother's home, so it filed a prior petition to compel inspection. Judge Fernandes held a hearing and granted that petition to compel. Testimony of 6/11/19 at 4, 12; Letter of June 25, 2019 from Judge Fernandes to Superior Court. (The record contains no indication that DHS commenced any dependency proceedings. Opinion at 3 n.3.).

Accordingly, by the time DHS received the current GPS report in this case, a reasonable person could already conclude that Mother had difficulties maintaining a safe home for her children. The Petition and hearing evidence only further corroborated the probable cause.

5. The Trial Court Properly Considered The Initial Anonymous Report, Along With The Corroborative Evidence From The Hearing, As Part Of The Totality Of The Circumstances

Mother, once again importing strict criminal-law concepts, claims (at 28-30) that it was inappropriate to rely upon the GPS report's "account of an anonymous reporter," who is "akin to a confidential informant." She argues that our probable-cause contention was undermined because we relied upon an anonymous informant, which is allegedly less reliable. However, the full context yet again reveals that reliance upon the anonymous informant was appropriate -- distrust of criminal informants is misplaced in the context of a non-criminal case; and, in any

event, the informant's assertions were independently corroborated here by the demeanor, past-history, and subsequent-inspection evidence anyway.

Initially, the report here is from an anonymous citizen in a non-criminal case, not a criminal confidential informant. The latter are frequently less reliable, either because they are "unnamed underworld character[s] who habitually witness[] and report[] criminal activity to police," State v. Barrilleaux, 620 So. 2d 1317, 1320 (La. 1993), or because "[i]nformation supplied to officers by the traditional police informer is not given in the spirit of a concerned citizen, but often is given in exchange for some concession," State v. Paszek, 184 N.W.2d 836, 842 (Wis. 1971).

Further, anonymous reports are an irreplaceable part of child-protection investigations: "Anonymous callers are often family members who have sensitive information and who are only willing to give anonymous reports. If reliance on such anonymous reports is not permitted and the parent refuses to cooperate and third parties contacted have no knowledge of any abuse, the child is left [to] the mercy of the caretaker." E.Z. v. Coler, 603 F. Supp. 1546, 1560 n.18 (N.D. Ill. 1985); see also State v. Boggess, 340 N.W.2d 516, 524 (Wis. 1983) (similar).

"Those in the best position to ascertain whether a parent or other caretaker is abusing a child are usually relatives or friends of the alleged abuser; without the cloak of anonymity, those persons would be much less likely to report abuse in the first instance. In many cases of abuse, such reporting is the state's only means of discovery." Investigating Child Abuse, supra, 89 Colum. L. Rev. at 1063.

Therefore, in the child-protection context in general, anonymity is a critical

part of a totality-of-the-circumstances probable-cause determination.

In any event, magistrates in criminal cases frequently rely upon confidential informants, and anonymous reports are sufficient if, as here, the totality of the other circumstances otherwise indicate that the report is reliable.

For example, in Commonwealth v. Harlan, which Mother relies upon (at 30; Mother labels the case as Commonwealth v. Good), the Court explained that "[t]he uncorroborated hearsay of an unidentified informant may be accepted as a credible basis for issuing a search warrant," as long as "the affidavit of probable cause avers circumstances that support the conclusion that the informant was credible." 208 A.3d 497, 506 (Pa. Super. 2019) (citing Commonwealth v. Torres, 764 A.2d 532, 537–538 (Pa. 2001)); see also Commonwealth v. Clark, 28 A.3d 1284, 1288 (Pa. 2011) (cited by Mother (29) but ultimately upholding probable cause because informant's "veracity and basis of knowledge are but factors among the totality of the circumstances"); Commonwealth v. Sanchez, 907 A.2d 477, 488 (Pa. 2006) (similar).

Here, the anonymous reporter specifically alleged that there had been a fire at Mother's home, that Mother and her Children were recently observed sleeping outside a PHA office, that they had spent an "extended period" there another time as well, and that Project HOME dispatched a worker to assess Mother. Petition to Compel Cooperation, ¶ j. The report -- viewed alongside all of the remaining evidence (namely Mother's trial demeanor, the prior-neglect evidence, and the subsequent inspection evidence supporting a fire allegation) -- reinforced the trial court's finding of probable cause.

Mother suggested that her previous residence had burned down, Petition to Compel Cooperation, ¶ j, but DHS reasonably believed that there had been a fire in Mother's current home. As Superior Court reasoned, "the trial court was under no obligation to credit Mother's alleged [past-residence] explanation, particularly since [Richardson] ultimately observed at least some damage to Mother's current residence, namely the boarded-up window, which was consistent with damage from a fire." Opinion at 23. Mother even subsequently conceded that there had been a fire in the current house and that one of the rooms had been "gutted." Testimony of 6/18/19 at 10.

Accordingly, Mother's sky-is-falling contention (at 37) – i.e., that "any allegation from any anonymous source would be sufficient to trigger [an agency's] ability to enter and search a family's home" – is belied by the fact that anonymous child-protection reports are inherently more reliable than criminal confidential informants, and by the fact there was independent indicia of reliability here anyway.

Perhaps recognizing that the anonymous report supports probable cause here, Mother seeks out statutory support to undermine the viability of an anonymous report. She asserts that, although "[t]he CPSL contains a provision stating that the identity of a reporter of child abuse [is confidential]," Mother's Brief at 29 (citing 23 Pa. C.S. § 6340(c)), "[t]here is no corresponding statutory provision regarding GPS reports," id.

Mother is wrong.

The CPSL specifically provides that "[i]nformation related to reports of a

child in need of general protective services shall be available to individuals and entities to the extent they are authorized to receive information under section 6340." 23 Pa. C.S. § 6375(o). Therefore, CPS and GPS reports are confidential "to the [same] extent."

Finally, Mother contends (at 31-32) that common sense dictates that there was no probable cause to investigate whether the Children were homeless because DHS saw the family at their home. Ultimately, however, DHS was concerned with both "homelessness and inadequate basic care." Testimony of 6/11/19 at 5 (emphasis added).[7]

Further, without entering the home, Ms. Richardson testified she could not actually confirm residency. Testimony of 6/11/19 at 10. The mere fact that Mother and Father were physically present outside the house did not necessarily mean that they lived there. DHS has encountered parents who claim to have a residence but do not. Accordingly, there was probable cause for the home visit.

[7] Amicus asserts that "[t]here is no reason why the investigating agency's immediate response to the allegation that children were being kept outside of the home too long was to demand entry into the family home." ACLU Brief at 15 (emphasis original). Like Mother, however, ACLU misunderstands that, as the assessment progressed, DHS was more concerned with inadequate care inside the home, making the home assessment critical.

6. Petition To Compel Is Distinguishable And Does Not Undermine The Lower Courts' Probable-Cause Finding

Mother (at 22, 39-40) counters the finding of probable cause by pointing to Petition to Compel. There, the only relevant allegation was that the agency received a referral of possible child abuse and medical neglect. The trial court, without a hearing, granted a petition to compel the home inspection, but Superior Court reversed, finding no probable cause.

Petition to Compel is twice distinguishable. First, the agency there claimed that it was permitted to search, independent of any case-specific probable cause, "because a home visit [was] required under the Code." 875 A.2d at 378. The trial court, as issuing authority, agreed, and even granted the petition to compel without a hearing. Here, by contrast, we acknowledge that the CPSL must conform to the Fourth Amendment, meaning there must be case-specific probable cause to find evidence of neglect – authorized by the issuing authority after an adversarial hearing – before we can conduct a nonconsensual home assessment.

We agree with Judge Beck that, although county agencies "should not be hampered from performing their duties because they have not satisfied search and seizure jurisprudence developed in the context of purely criminal law," those agencies nonetheless "should be held accountable for presenting sufficient reasons to warrant a home visit." Petition to Compel, 875 A.2d at 380.

Here we did that. There is case-specific proof of probable cause to find evidence of neglect – the report that Mother slept outside with the Children, combined with the family's past history, the fact that Mother was evasive, and the

fact that there was an allegation of fire damage corroborated by a boarded-up window.

Second, the Petition to Compel Court observed that there was no link between the alleged abuse or medical neglect and any conditions in the home. 875 A.2d at 378. Here, by contrast, there is a direct link between the allegations of inadequate basic care and the need to search the home. DHS was concerned about a lack of necessities, so the only way to confirm the availability of bedding, food, and utilities was to perform a quick home assessment. Accordingly, there was a clear connection between the home-related allegations and the need to search the home. See Opinion at 24 ("[T]here was a 'link' between the allegations and DHS's petition to enter the home.").[8]

[8] Mother (at 24) also cites to Good v. Dauphin, 891 F.2d 1087, 1089 (3rd Cir. 1989), but the issue there (like Petition to Compel) was whether the CPSL "immunize[d] defendants for any violation of plaintiffs' Fourth Amendment rights." Furthermore, the cases-specific allegations were based entirely upon a conclusory report of a child's bruises. When the government investigated further and interviewed the mother, they "heard nothing during their conversation … that hinted in any way that [the child] was being mistreated." Id. at 1095. Mother's other cited cases are similarly distinguishable. In re D.R., 216 A.3d 286, 295 (Pa. Super. 2019) (rejecting agency's search because "critically, [the agency] did not allege a link between the alleged abuse/neglect and the Parents' home"), aff'd on other grounds, 232 A.3d 547 (Pa. 2020); Walsh v. Erie, 240 F.Supp.2d 731, 751 (N.D. Ohio 2003) (rejecting agency's contention that Fourth Amendment was inapplicable because state law allegedly granted right to enter).

7. Mother's Assertion That Superior Court's Probable-Cause Standard Is Too Vague Is Flawed Because The Standard Only Applies To Children At Risk Of Neglect

Mother (at 32, 40) and Amici (ACLU Brief at 11) claim that Superior Court's alleged probable-cause standard is too vague. In particular, they take issue with Superior Court's statement that the agency may enter if there is a "fair probability that a child is in need of services, and that evidence relating to that need will be found in the home." Opinion at 16-17. Even though the phrases used by the Court evoke specific concepts within both probable-cause jurisprudence and the CPSL -- thereby logically cabining the Court's reach -- Mother incorrectly contends this is a vague standard that "could conceivably apply to almost any child," Mother's Petition for Allowance of Appeal at 11, and "provide[s] no clear guidance" as to when DHS can enter a parent's home. ACLU Brief at 11.

But this straw-man argument fully de-contextualizes Superior Court's statement.

This very case was initiated by a general protective services report, not just any report. Petition to Compel Cooperation, ¶ a. Thus, Superior Court's phrase "in need of services" was merely invoking the statutory concept repeatedly used in the CPSL concerning children "in need of general protective services." 23 Pa. C.S. § 6333; see also 23 Pa. C.S. § 6334.1(4); 23 Pa. C.S. § 6375(o); 55 Pa. Code § 3490.232(a).[9]

And general protective services are a specific term of art, only available to a

[9] Also, Superior Court's reference to "fair probability" stems from basic probable-cause jurisprudence. Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010).

carefully defined group, not just any child, and are designed to protect those children that are at risk of serious neglect, akin to an eventual dependency determination. See 55 Pa. Code § 3490.223 (general protective services designed to prevent potential for harm to a child who is "without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals."); 42 Pa. C.S. § 6302 (defining "dependent child" in virtually identical way); see also Pennsylvania DHS 2019 Child Protective Services Annual Report (Annual Report) at 25, cited at https://www.dhs.pa.gov/docs/Publications/Documents/2019%20child%20prev.pdf (relied upon by Mother (at 17), but explaining that although GPS reports "do not rise to the level of suspected child abuse," they do "allege a need for intervention to prevent serious harm to children").

Accordingly, the phrase "need of services" read within the context of the case means that the Court should grant a petition where there is probable cause that a GPS report of neglect is founded. The statutory framework of the CPSL cabins DHS's ability to obtain an Order to inspect or assess a home, and Mother and Amici's notion that the standard puts any family at risk is mistaken.

Mother (at 17) also seems to contend that even though this standard incorporates known CPSL concepts, it is still too broad because of an alleged "significant" and "troubling" number of GPS reports that could potentially result in a home inspection. In this regard, Mother cites the Annual Report, which explained there were 82,427 GPS reports in 2019.

But Mother fails to consider that there are two layers of protection negating

her assertion that huge numbers of Pennsylvania families are subject to a home inspection under this standard. First, as Mother's document notes, the counties initially screen out reports that "do not allege abuse or neglect." Annual Report at 26-27. Second, of that number, DHS would only seek to enter the home if it had probable cause to do so, and more important, absent exigent circumstances the home inspection cannot occur until the Court conducts an adversarial hearing where parents are able to make the case that DHS lacks probable to enter the home.

Accordingly, far from seeking authorization for some kind of witch hunt that would allow for searches related to almost any child, DHS is only seeking authorization to conduct searches where there is probable cause to believe that the particular child is at risk of neglect or eventual dependency.[10]

[10] Mother (at 17-18) also incorrectly asserts that the percentage of successful expungement appeals in abuse cases also calls this standard into question. Mother's math is off base, but as an initial matter, the fact that there are successful expungement appeals gives no indication that, at the initial investigational stage, these reports were unfounded and should not have been pursued at all at the time. Victims can recant or witnesses fail to appear at the BHA appeals stage, for example. And in any event, as noted above, before DHS can gain entry to a home, parents have the ability to challenge the basis of a report at an adversarial hearing.

In addition, Mother's math is misleading. She cites a two percent figure as the number of appeals in which the agency prevailed. She notes that, out of 293 appeals heard, 108 were overturned and just two upheld (with 183 cases still pending or otherwise resolved). However, Mother fails to explain that in addition to the initial 293 appeals she cites, there were 758 substantiated cases where the perpetrator did not appeal to the BHA at all. Put differently, there were initially 1051 substantiated cases. Out of those cases, there were 758 times where the perpetrator did not appeal at all, and only 293 BHA appeals. Annual Report at 21. Thus, Mother's statistics reveal little about the number of total abuse findings that were not overturned.

II. This Court Should Also Reject The Claim Under Article I, Section 8

Mother claims that, even if she does not prevail under the Fourth Amendment, she should prevail under the allegedly broader protections granted by Article I, Section 8.

This Court has explained that, if a litigant seeks departure from a federal standard, the litigant must affirmatively address: (1) the text of the provision of Pennsylvania's Constitution; (2) the history of the provision, including the caselaw of this Commonwealth; (3) relevant caselaw from other jurisdictions; and (4) policy considerations. Commonwealth v. Edmunds, 586 A.2d 887, 895 (Pa. 1991).

This Court should reject Mother's Article I, section 8 claim, for two reasons. First, Mother failed to assert -- at either the trial level or the Superior-Court level – why the Edmunds factors (or any other factors) demonstrate that the state-law claim should depart from the federal claim; therefore, Mother cannot raise that issue for the first time in this Court. Alternatively, considering the Edmunds factors on the merits, Mother failed to show a reason for departure from the Fourth Amendment, which already requires a judicially-approved finding of probable cause.

A. Mother Waived The Claim That The Court Should Apply Broader Protections Under Article I, Section 8

In Commonwealth v. Bishop, 217 A.3d 833, 838 (Pa. 2019), this Court specifically held that it would not analyze whether the Pennsylvania Constitution provided greater protection than the federal Constitution where the "Appellant never asked the common pleas court or the Superior Court to do so in the first

instance." In such instances, the Pennsylvania Constitution issue was doubly waived.

Regarding the trial court waiver, this Court held that, in cases (like here) where there is no established state court-precedent construing a provision of the state constitution to provide greater protection than its federal counterpart, "a party … must assert in the trial court that the state constitutional provision at issue should be interpreted more expansively than the federal counterpart and provide reasons for interpreting the state provision differently from the federal provision." Bishop, 217 A.3d at 840 (emphasis original) (citing State v. Gomez, 932 P.2d 1, 8-9 (N.M. 1997)).

Here, Mother came nowhere near meeting her obligations. At the trial-court level, she never mentioned Article I, Section 8 at all prior to her appeal, let alone argue that it should be interpreted more expansively than the Fourth Amendment. And even when Mother finally mentioned Article I, Section 8 to the trial court in her post-appeal section 1925(b) statement (and in her post-appeal Motion for Stay), she only mouthed the words "Article I, Section 8," without "provid[ing] reasons" why it should be interpreted differently.

She also committed waiver at the Superior Court level. Although she did mention Article I, Section 8 there, Mother's Superior Court Brief at 34, and she did state that it is interpreted more broadly than the Fourth Amendment, she never gave the reasons in support thereof. As the Bishop Court explained, "Appellant also waived the claim for additional protection under the state constitution in the Superior Court, since he did not develop any supportive reasoning before that

court." 217 A.3d at 842.

Similarly, there is no "supportive reasoning" here either, notwithstanding Mother's conclusory claim that the "Pennsylvania Constitution has been interpreted as providing a higher degree of privacy than its federal counterpart," and that "Article 1, Section 8 embodies a strong notion of privacy, carefully guarded in this Commonwealth for the past two centuries." Mother's Superior Court Brief at 23. Without any further reasoning and without any mention of Edmunds – and it is worth contrasting these two total sentences in her Superior Court brief to the lengthy analysis in her Supreme Court brief, where Mother argues the four Edmunds factors in detail across eleven pages – Mother did not do enough to preserve her Article I, Section 8 claim. Cf. Commonwealth v. Alexander, 243 A.3d 177, 193 n.8 (Pa. 2020) (state-law issue preserved because party not only mentioned state provision to trial court, but argued that it should be interpreted more broadly).

B. Alternatively, Mother Failed To Show A Reason To Interpret The Pennsylvania Constitution More Broadly Than The Federal Constitution Here

We discuss the Edmunds factors momentarily but we note at the outset that because both parties accept the Petition to Compel standard – probable cause to find evidence of neglect – and because Petition to Compel issued its analysis under both the federal and Pennsylvania Constitutions, there is no need to conduct a separate Edmunds analysis.

Moreover, the four factors clarify that, under the circumstances here, the Pennsylvania Constitution does not provide broader protections.

1. The Text

The Fourth Amendment of the U.S. Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 8 of the Pennsylvania Constitution provides:

> The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

For the most part, this Court has held that "there is no substantial textual difference between" the two. Commonwealth v. Gray, 503 A.2d 921, 926 (Pa. 1985); Commonwealth v. Russo, 934 A.2d 1199, 1205 (Pa. 2007) ("textual similarity"); cf. Legal Aid Brief at 4 ("there is little difference between the texts").

And where the Court has identified textual differences, those differences related to the specific case at issue. For example, in Alexander, 243 A.3d at 202 – a case which considered whether the warrant requirement applied to automobile searches – the Court found that Article I, Section 8 provided broader protection against car searches because it contained the word "possessions," but the Fourth Amendment did not. Here, however, the relevant search is of a "house[]," which appears identically in both provisions.

2. History of the provision

The second prong requires a look to the "history of the provision, including Pennsylvania case-law." Edmunds, 586 A.2d at 895. But the challenger must affirmatively establish "that an analogue provision of the state constitution operates differently than its federal counterpart." Commonwealth v. Bishop, 217 A.3d at 841 n.3. Mother cannot support such a distinction here.

In Alexander, 243 A.3d at 190, this Court parted ways with the federal Constitution, and held that both probable cause and exigency are needed under state law to conduct a warrantless automobile search. Notably, however, the point of the historical analysis was that Pennsylvania's history of heightened privacy interests supports a strong warrant requirement: "Based on this rich history, I regard our Constitution's warrant requirement to be one of singular and distinctive importance to Pennsylvania." Alexander, 243 A.3d at 190 (citing Commonwealth v. Gary, 91 A.3d 102, 143-147 (Pa. 2014) (Todd, J., dissenting)). The issue in Alexander analyzed whether Article I, Section 8 required a warrant at all in circumstances where the federal Constitution did not.

But here there is no dispute that the issuing authority must evaluate probable cause before improving the home inspection, under both the state and federal Constitutions. So the heightened warrant requirement does not help Mother here – she already receives such privacy protections.

Moreover, several of Amicus Legal Aid's cited cases (at 10-11) are similar in that they find state-law privacy interests in contexts where federal law did not recognize an interest at all. Commonwealth v. Johnston, 530 A.2d 74, 78 (Pa.

1987) (corridors of leased storage areas); Commonwealth v. DeJohn, 403 A.2d 1283, 1291 (Pa. 1978) (customer's bank records); see also Edmunds, 586 A.2d at 896 (exclusionary rule applies under Pennsylvania Constitution if officer relies on invalidated search warrant, even if in good faith); Commonwealth v. Arter, 151 A.3d 149, 156 (2016) (similar).

Here, however, there is no dispute that both the federal and state Constitutions protect Mother's privacy interests fully – there are no good-faith exceptions and DHS cannot search unless the issuing authority finds probable cause, even under federal law. So Mother has failed to explain why Article I, Section 8's history requires different treatment in the context of child-protection home assessments.

3. Other States

We agree with Mother (at 49) that there is not "a robust body of case law from other states." Amici (Home School at 9-12) contend that there are other states with caselaw on point but those jurisdictions are distinguishable. H.R. v. Alabama, 612 So. 2d 477, 479 (Ala. Civ. App. 1992) (finding insufficient cause to enter because, among other reasons, the county agency did not file a petition to compel until more than two months after receiving initial reports); In re Berryman, -- S.W.3d --, 2020 WL 6065982, at *6 (Tex. App. Oct. 14, 2020) (where caseworker observed child without any injuries, allegation that an 8-month old was crying did not create probable cause: "Nor is it uncommon for a parent to allow an infant to cry herself to sleep"); In re Stumbo, 582 S.E.2d 255, 258 (N.C. 2003) (two-year old child on a driveway unsupervised was insufficient to constitute probable cause for

neglect, because it was isolated incident, and there was no evidence as to how long child was unsupervised).

4. Policy

Mother (50-52) and ACLU (Brief at 17-21) claim that the child-welfare system creates "constitutional inequalities" by disproportionately affecting the poor and persons of color. Mother (51) and ACLU (22-23) also assert that the system conflates poverty and neglect, often punishing families for the former.

Initially, we note that Mother offered none of these disproportionality arguments, or supporting evidence, to the trial court or Superior Court, and therefore waived this contention. The disproportionality statistics, as well as the root cause, are enormously complicated, and it is improper for Mother to raise it for the first time at this level, without the benefit of any factual analysis by the lower courts.

On the merits, although we acknowledge disproportionality in general, there are systemic safeguards preventing a disproportionately inappropriate number of home assessments based upon race or economics – neutral risk-assessment criteria, followed by the judicially-determined probable-cause analysis.

First, the CPSL incorporates neutral risk-assessment criteria to guard against such abuses for home assessments. 55 Pa. Code § 3490.321(e). According to the reports that the ACLU cites (at 17), "[t]he use of risk assessment tools [can] remove some error from the decision-making process." CHILDREN'S BUREAU, Issue Brief: Racial Disproportionality and Disparity in Child Welfare (2016) (https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf);

see also Alan Detlaff & Reiko Boyd, Racial Disproportionality and Disparities in the Child Welfare System: Why Do they Exist, and What Can be Done to Address Them?, 692(1) ANNALS AM. ACAD. POL. & SOC. SCI. 253 (2020) ("[s]tandardized risk assessments may reduce bias and inconsistencies") (https://journals.sagepub.com/doi/full/10.1177/0002716220980329).

Indeed, the OCYF Bulletin, which provides guidance to county agencies on how to neutrally assess GPS reports of neglect, "is meant to help ensure consistent, equitable, and appropriate responses to allegations that may require child welfare assessments," and to help ensure that assessments are "completed in a manner that promotes racial and social equity." OCYF Bulletin 3490-20-08 at 2.

Further, the probable-cause standard, and then ultimately the trial court itself, serve as the final neutral gatekeepers. According to a report Mother cites (at 52), "judges are key partners in the child welfare system." Pennsylvania DHS Racial Equity Report, 2021, at 14 (https://www.dhs.pa.gov/about/Documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf). It is the trial court's role to require probable cause for neglect under all circumstances – regardless of race, regardless of economics.

According to a disparate-treatment report the ACLU cites (at 20), the Court provides a check on bias: "Due process should place a check on the state's … authority…. This offers a judge the opportunity to review the alleged safety concern, and provides the parent an opportunity to find out why the worker believes the child is in imminent risk of harm and to defend against those charges." E. Cloud *et al.*, Family Defense in the Age of Black Lives Matter, 20(1) CUNY L.

REV. 68, 76 (2017).

Therefore, the systemic safeguards are designed to prevent disproportionality in home assessments.

Finally, even though any disproportionality does not affect this case -- the trial court correctly found probable cause based upon neutral factors and there is no evidence in the record of Mother's race -- we also emphasize that DHS is actively engaged in trying to resolve any systemic issues through a variety of methods.

For example, given that disproportionality begins with reports, DHS is seeking to train mandated reporters. See, e.g., https://www.dhs.pa.gov/KeepKidsSafe/Pages/Trainings.aspx. DHS is also seeking to receive money through the Family First Prevention Services Act (FFPSA), 42 U.S.C. § 629 -- intended to enable agencies to help prevent families from entering the child-welfare system in the first place -- and then apply that money to the highest-risk children. Finally, DHS is seeking to provide initiatives to connect families to poverty-alleviation resources, such as the Supplemental Nutrition Assistance Program (SNAP), or the Temporary Assistance for Needy Families (TANF) program.

While we do not deny that disproportionality is a concern, given the CPSL's paramount overriding concern for the well-being of children, this concern is not enough to weaken the probable-cause standard for seeking a home inspection to ensure the well-being of children of all races. Rather, the solution to this policy concern is to do what we are already doing -- investigate and seek to alleviate the multiple complex causes of it.

CONCLUSION

DHS respectfully requests that this Court affirm Superior Court's Order of October 8, 2020, which ruled that DHS had probable cause to search Mother's home.

April 5, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: April 5, 2021

/s/ Craig Gottlieb
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CERTIFICATION OF COMPLIANCE WITH RULE 2135(d)

This brief complies with the type-volume limitation of Pennsylvania Rule of Appellate Procedure 2135, because this brief contains 13,698 words.

Date: April 5, 2021

Craig Gottlieb
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief for Appellee upon counsel of record by electronic filing.

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