

AGNIFILO INTRATER

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VIA EMAIL

The Honorable Gregory Carro
Supreme Court of the State of New York
100 Centre Street – Part 32
New York, NY 10013

Re: *People v. Mangione*, Ind. No. 75657-24

Dear Judge Carro:

We write to briefly reply to the prosecution's response to Mr. Mangione's post-hearing submissions.¹

1. The Warrantless McDonald's Search was Improper

In Mr. Mangione's opening brief, counsel argued that the evidence recovered from Mr. Mangione's backpack should be suppressed because Altoona law enforcement's backpack search was not justified as a search incident to a lawful arrest, as a search for a bomb or an inventory search. In its response, the District Attorney's Office asks this Court not to suppress the evidence recovered during the warrantless McDonald's search² because the exclusionary rule should not apply as it "would not deter unreasonable searches and seizures to require Pennsylvania police officers to understand and apply a foreign jurisdiction's case-law when conducting a search in Pennsylvania of a defendant arrested in Pennsylvania for committing a Pennsylvania crime." (Response at 43.) The prosecution further claims that suppression is not appropriate because Altoona law enforcement "followed Pennsylvania search-and-seizure law reasonably and in good faith while carrying out an arrest in Pennsylvania for violations of Pennsylvania law." (*Id.*) These arguments fail.

First, Patrolman Detwiler testified at the suppression hearing that he knew from the moment Mr. Mangione lowered his mask that he was the New York City shooter. From that

¹This reply will only address issues raised in the prosecution's response relating to the warrantless searches of Mr. Mangione's backpack. Counsel relies on the arguments in Mr. Mangione's opening brief to address the issues related to suppression of Mr. Mangione's statements.

²The prosecution claims that the McDonald's search does not "implicate the red notebook, which officers handled as they were feeling around the backpack for a bomb, but which officers never opened at the McDonald's." (Response at 42 n.16.) The record reflects, however, that Patrolman Fox did more than just "handle" the red notebook in the backpack; he purposefully removed it from a separate pouch that was inside of Mr. Mangione's backpack and placed it on the table. (Ex. 6E.1 at 09:59:05.) The prosecution is hard pressed to argue that removing a notebook from a pouch that was inside a backpack is not a search.

moment, Altoona law enforcement knew that their actions would have consequences under New York search and seizure law because Mr. Mangione would ultimately be prosecuted in New York for an alleged murder that occurred in New York. This was certainly clear to Altoona law enforcement when Lieutenant Hanelly reached out numerous times to New York law enforcement while he was at the McDonald's. Consequently, the prosecution's claim that Altoona law enforcement cannot be expected to "anticipate which state's search-and-seizure law will govern an interaction with a particular defendant" (*Id.* at 47) has no merit, as they knew—while at the McDonald's—that their conduct would implicate New York law. Altoona police officers were in near constant contact throughout the day with elite, experienced New York law enforcement experts who are intimately familiar with New York law, and who advised them, thus there was no need for them to have any knowledge of New York law.

Second, law enforcement's actions at the McDonald's cannot be described as a reasonable and good faith application of Pennsylvania law. The hearing testimony established that it was Altoona law enforcement policy to search all bags when a defendant is arrested without consideration for whether the bag was in the immediate control of the defendant at the time of the arrest or what the defendant was arrested for. This is not a reasonable application of Pennsylvania law, which limits a search incident to a lawful arrest to the person arrested and "the area within his immediate control." *See, e.g., Commonwealth v. Williams*, 305 A.3d 89, 97 (Pa. Super. 2023) ("The search incident to arrest exception allows arresting officers, in order to prevent the arrestee from obtaining a weapon or destroying evidence, to search both the person arrested and the area within his immediate control." (citation and quotation omitted)); *see also Commonwealth v. Wright*, 742 A.2d 661, 665 (1999) ("A warrantless search incident to an arrest is valid 'only if it is substantially contemporaneous with the arrest and confined to the immediate vicinity of the arrest.'" (quoting *Shipley v. California*, 395 U.S. 818, 819 (1969))).

Nevertheless, the prosecution argues that the search was a valid search incident to arrest because the backpack was in Mr. Mangione's possession when the police had probable cause to make the arrest, even though the backpack was no longer in his possession at the time of the actual arrest. In making this argument, the prosecution relies on an unpublished opinion from the Superior Court of Pennsylvania in *Commonwealth v. Dunbar* that noted that a search incident to a lawful arrest can be valid if the bag was in the defendant's immediate area at the time the police had probable cause to arrest him. (Response at 54–55, quoting and citing *Dunbar*, 2023 Pa. Super. Unpub. LEXIS 1637, *6 (July 6, 2023).) Notably, this case specifically notes that it is a "non-precedential decision." Moreover, to the extent *Dunbar* would permit searches incident to a lawful arrest even when the defendant's bag is not on the defendant's person or in the area within his immediate control at the time of his arrest, this decision is not consistent with Supreme Court precedent set in *Chimel v. California*, 395 U.S. 752 (1969), *United States v. Chadwick*, 433 U.S. 1, 15 (1977) and *Arizona v. Gant*, 556 U.S. 332, 339 (2009)—all cited in Mr. Mangione's opening brief (pp. 49–51).

Third, Altoona law enforcement's reliance on Pennsylvania law is irrelevant because, as argued in Mr. Mangione's opening brief (pp. 38–39), New York search and seizure law applies where New York is the forum state, which it undoubtedly is here. In response, the prosecution argues that the numerous cases cited by Mr. Mangione are distinguishable because those cases

only held that evidence was admissible in New York when it was properly obtained under New York law but in violation of another state's search and seizure law. (Response at 50–51.) That, however, is a distinction without a difference, as the cases cited by Mr. Mangione unambiguously stand for the proposition that “[s]uppression issues, including those arising out of a defendant's constitutional rights, are generally governed by the law of the forum, and New York has a paramount interest in the application of its laws to this case.” *See, e.g., People v. Espinal*, 161 A.D.3d 556, 557 (1st Dep't 2018). This statement of law is true whether applying New York search and seizure law leads to suppression or whether it leads to admitting the evidence. Here, for all the reasons stated in Mr. Mangione's opening brief, applying New York law leads to suppression.

The prosecution next argues that the warrantless search at the McDonald's was not improper because the officers were reasonably concerned that the backpack contained explosives. (Response at 57.) This argument is belied by the officers' own actions. As argued more fully in Mr. Mangione's opening brief (pp. 54–57), the totality of the circumstances demonstrates that the officers' claim about a bomb was a blatantly false and pretextual justification for conducting an evidentiary search. For example, during this alleged bomb search, Patrolwomen Wasser and Patrolman Fox purposefully searched items that they knew could not have contained a bomb—such as a small bag containing Mr. Mangione's passport, an envelope, a wallet and a cardboard container admittedly too small to contain a bomb.³ Moreover, law enforcement never cleared the McDonald's and instead allowed customers and employees to walk freely through the back area of the McDonald's where the supposed bomb would be located. Most tellingly, Patrolwomen Wasser and Patrolman Fox stopped their alleged bomb search once they found the gun magazine, even though they had not searched the entire backpack. For these and the other reasons stated in Mr. Mangione's opening brief, this Court should find that the alleged bomb search was nothing more than a false and pretextual justification for an evidentiary search of Mr. Mangione's backpack.

Similarly, the prosecution's claim that Altoona law enforcement was justified in searching the backpack because they were concerned that it contained a gun is meritless and not supported by the record. The evidence at the suppression hearing included hours-worth of body-worn camera footage from seven different officers. At no point in any of this footage is there any statement from any law enforcement member that they were searching the backpack because they were concerned that it might contain a gun. Instead, the only stated concern Patrolwoman Wasser and Patrolman Fox gave for searching the backpack at the McDonald's was to make sure it did not contain a bomb. Accordingly, as noted in Mr. Mangione's opening brief (p. 57), the prosecution's argument

³In their response, the District Attorney describes Patrolman Fox's opening the cardboard as follows: “Officer Fox then retrieved from the backpack two pieces of cardboard that were taped together, separated them, and found a piece of computer equipment inside.” (Response at 24.) In reality, Patrolman Fox took out a tactical knife and spent more than a minute trying to cut open the cardboard container that he admittedly knew did not contain a bomb. If this truly were a search for a bomb, Patrolman Fox would not have wasted time trying to pry open a small cardboard container that he knew did not contain a bomb.

about a gun in the backpack is merely “a post hoc excuse that law enforcement advanced at the suppression hearing to attempt to now justify the warrantless search of the backpack.”

2. The Precinct Searches were Improper

The prosecution argues that Patrolwoman Wasser’s search of the backpack on a metal chair in the corner of the intake area of the Altoona precinct was proper. In making this argument, the prosecution ignores what everyone else in the courtroom (including this Court) saw from her body-worn camera footage; as noted in Mr. Mangione’s opening brief:

She started her search by briefly unzipping then quickly re-zipping the middle compartment of the backpack, which she had already searched at the McDonald’s but stopped looking through once she found the loaded magazine. Patrolwoman Wasser immediately closed the middle compartment and unzipped the front compartment, which she claimed to have not searched before. Instantaneously, Patrolwoman Wasser found a loaded firearm clearly visible in the front compartment.

(Opening Brief at 59.) This conduct was not consistent with an inventory search and demonstrated that she knew where the gun would be located before she even opened that portion of the backpack.⁴ This is also evident from the fact that Patrolwoman Wasser started this search on a metal chair in a corner where there was limited space and no room to conduct an actual inventory search. She also started this alleged inventory search without any evidence bags or tags, despite knowing from her warrantless McDonald’s search that the backpack was filled with a large amount of Mr. Mangione’s personal property.

The prosecution next claims that Patrolwoman Wasser’s continued search in the precinct hallway was a proper inventory search because she was separating evidentiary items from personal property. (Response at 73.) However, as the New York Court of Appeals has ruled, “[w]hile incriminating evidence may be a consequence of an inventory search, it should not be its purpose.” *People v. Johnson*, 1 N.Y.3d 252, 256 (2003). Here, as the prosecution admits, Patrolwoman Wasser’s hallway search was done with the specific intention of locating and separating out incriminating evidence. This intention was further demonstrated by the fact that Patrolwoman Wasser did not catalog any of the non-evidentiary items and just crammed them back into the backpack after she separated out what she believed was incriminating evidence. That is not a proper inventory search.

⁴In Mr. Mangione’s opening brief (pp. 61–62), counsel noted that Patrolwoman Wasser had the opportunity to search the backpack in her car on the way back to the precinct. The prosecution retorts that it is “difficult to fathom why, knowing that they would soon be able to lawfully search the backpack, they would first search it in secret on the side of the road.” (Response at 72.) The answer is obvious. Patrolwoman Wasser wanted to be the one to get credit for finding the alleged murder weapon in a case that had captivated the country for nearly five days. That is also why she made sure that her audio was working on her body-worn camera before “finding” the gun on a metal chair in the corner of the intake area.

3. The Search in Patrolman Featherstone's Office

The prosecution claims Sergeant Heuston, Sergeant Burns and Patrolman Featherstone properly conducted an inventory search in Patrolman Featherstone's office and then the roll call room. Counsel will not repeat all the arguments made in Mr. Mangione's opening brief (pp. 66–73) as to why this search was not a proper inventory search under the Altoona General Orders. Counsel will note, however, that to the extent the prosecution relies on Judge Garnett's finding that “the search of the Backpack at the Altoona police department was consistent with the written regulations and standard practices for an inventory search” (Response at 83, quoting Judge Garnett's decision), Judge Garnett conducted only a limited hearing relating to the parameters of the Altoona Patrol Guide and only analyzed the Altoona inventory procedures under federal law and not New York state law.

Counsel will address the prosecution's claim that the officers properly read through Mr. Mangione's writings as part of the inventory process. As part of Mr. Mangione's opening brief (p. 69), counsel argued that, even assuming the Altoona General Orders authorized an inventory search of Mr. Mangione's backpack, it would have only authorized officers to remove the journal from the backpack and note that a journal was recovered; it would not allow officers to read through the journal. The District Attorney's Office does not respond to this argument. Instead, the prosecution only responds (albeit ineffectively) to counsel's argument in Mr. Mangione's opening brief (pp. 69–71) that reading Mr. Mangione's writing violated New York law. The prosecution claims that Mr. Mangione did not have an expectation of privacy in his journal because Patrolwoman Wasser “had already surveyed its contents in order to assess whether it should be processed as personal property or as evidence.” (Response at 79–80.) This argument is puzzling on several levels. First, a review of Patrolwoman Wasser's body-camera footage demonstrates that Wasser flipped through the journal for less than twenty seconds (Ex. 6F.2 at 10:22:51–10:23:09) before stating “it's like a journal.” She did not read through all the journal entries like Sergeant Heuston and Sergeant Burns did. Second, to the extent Patrolwoman Wasser read any part of the journal in those eighteen seconds, she also exceeded her authority under the Altoona General Orders.

The prosecution next tries to distinguish *People v. Sommerville*, 170 Misc. 2d 1024 (S. Ct. Kings Cty. 1996) and *United States v. Santos*, 961 F. Supp 71 (S.D.N.Y. 1997)—analyzed on pp. 69–71 of Mr. Mangione's opening brief—by arguing that, in this case, “the review of defendant's backpack's contents in Officer Featherstone's office and the roll-call room yielded comprehensive documentation of every item in that backpack, regardless of any apparent evidentiary value.” (Response at 80.) This argument deliberately misses the point. In *Sommerville* and *Santos*, the courts suppressed the writings because the officers exceeded the parameters of a permissible inventory search by reading the contents to help with their investigation. That is exactly what Sergeants Burns and Heuston did in this case, as they admitted at the hearing that they read portions of the journal because they believed those portions were relevant to the New York investigation. (Hr. 1101–03 (Sergeant Burns testified that he read some of the journal “just out of curiosity,” saw pages “labeled blog” and others with “miscellaneous writings” and photographed pages that he thought were relevant to the New York investigation); (Hr. 1234–35) (Sergeant Heuston admitting that he read some of the writings—including the journal—and photographed the pages of the

journal that he thought might be pertinent to the New York investigation).⁵ Accordingly, Mr. Mangione's writings should be suppressed.

4. The Subsequent Search Warrant Did Not Cure the Illegal Searches

The prosecution claims that whether the warrantless searches were proper or not, the backpack evidence should be admissible under the independent source doctrine because Sergeant Heuston obtained a search warrant for the contents of the backpack at 6:00 p.m. on the day of his arrest (more than eight hours after Altoona law enforcement started conducting the warrantless searches of the backpack). (Response at 83–86.) As the Court of Appeals has ruled, however, the “presence of an independent source for a warrant and subsequent search . . . does not automatically immunize an initial warrantless search and [e]nsure the admissibility of evidence eventually seized pursuant to the warrant.” *People v. Burr*, 70 N.Y.2d 354, 362 (1987). This is certainly true in this case.

The principal New York case addressing the independent source exception to the exclusionary rule is *People v. Arnau*, 58 N.Y.2d 27 (1982). In *Arnau*, an undercover officer purchased cocaine from the defendant's apartment. While at the apartment, the undercover officer observed a large quantity of cocaine. Thirty-five minutes later, officers entered the building and arrested the defendant. At that time, the officers did not search for evidence, and no evidence was discovered or seized. Forty minutes later, other officers responded to the scene to secure the apartment while officers met with the District Attorney's Office to prepare a search warrant application. The search warrant application “reflected only information obtained from the undercover officer with respect to the type, quantity and location of the contraband which he observed in defendant's apartment,” and “[n]othing observed by the officers upon their initial entry into defendant's apartment was mentioned in the affidavit.” *Id.* at 30. Based on this warrant, officers searched the defendant's apartment and recovered a plastic bag of cocaine, a large amount of marijuana and a drug scale.

In denying the defendant's suppression motion, the Court of Appeals noted that the evidence was obtained based on a search warrant that was “based solely on information obtained prior to and independent of the illegal entry”—namely, the undercover officer's observations from inside the apartment. *Id.* at 33. The *Arnau* court further noted that the search warrant “was obtained based solely on information obtained by the undercover officer prior to and independent of the illegal entry.” *Id.* The Court added:

⁵The District Attorney's Office describes Sergeant Heuston's conduct as follows: “during the inventory process, he noticed some of defendant's writings, photographed them, and sent them to NYPD officers.” (Response at 81.) As the District Attorney's Office well knows, Sergeant Heuston did not happen to “notice” Mr. Mangione's writings; he purposefully read through the journal looking for incriminating writings, photographed what he deemed to be incriminating writings and forwarded them to the NYPD because he believed these writings would be helpful in the NYPD investigation.

Since there is not the slightest hint that the search warrant was in any way tainted by the illegal entry or that the police exploited the entry in an effort to obtain evidence, we hold that the evidence seized is not the fruit of the poisonous tree and that the exclusionary rule is, therefore, inapplicable to this case.

Id.

The facts here are readily distinguishable. In *Arnau*, “[n]o search for evidence was conducted” and “no evidence was discovered or seized” before the search warrant application. *Id.* at 30. Here, at the time of Sergeant Heuston’s search warrant application on December 9, 2024, at 6:00 p.m., Mr. Mangione’s backpack had been searched several times, and its contents had been discovered and seized by Altoona law enforcement. Indeed, one of the stated purposes of Sergeant Heuston’s search warrant application was to seize the property that Altoona law enforcement had already seized during their warrantless searches. (Ex. 12A at 3 (“Affiant requests this search warrant to seize the items located during the search incident to arrest and inventory of Mangione’s property . . .”).)

Additionally, unlike in *Arnau*, the search warrant in this case relied heavily on the warrantless searches that Altoona law enforcement had conducted hours earlier. In fact, as part of the basis for probable cause for the warrant, Sergeant Heuston’s search warrant application listed the property Altoona law enforcement had recovered through their warrantless searches. (Ex. 12A at 2–3.) Sergeant Heuston even referenced the contents of Mr. Mangione’s writings to establish probable cause in his search warrant application. (*Id.*) Consequently, in this case, there is significantly more than “the slightest hint that the search warrant was in any way tainted” by the prior warrantless searches.

In support of their independent source argument, the prosecution argues that “when police obtain a facially valid warrant after conducting an unlawful search, suppression is required only if the defendant demonstrates that procurement of the warrant ‘was causally related to the illegal police conduct.’” (Response at 84, citing *Arnau*, 58 N.Y.2d at 32). The prosecution argues that Mr. Mangione cannot meet that burden here because the search warrant application supported probable cause even without the information from the warrantless searches. Specifically, the prosecution notes that Sergeant Heuston’s affidavit relied, *inter alia*, on information he had received from NYPD Detective Oscar Diaz. (Response at 84 (noting that Sergeant Heuston “had learned from NYPD Detective Oscar Diaz how those surveillance stills showed Brian Thompson’s shooter; that he had learned from Detective Diaz about the markings on the shell casings from the shooting, about the victim’s position as a health-insurance CEO, and about the shooter’s flight on a bicycle.”). Sergeant Heuston only learned this information **after** the warrantless searches. As *Arnau* and other cases make clear, however, the subsequent warrant must be “based solely on information obtained **prior to** and independent of” the improper police conduct. *Arnau*, 58 N.Y.2d at 33 (emphasis added); *see also* *People v. Silverstein*, 74 N.Y.2d 768, 770 (1989) (“The undisturbed factual determination of the suppression court that the warrant application was based solely on information obtained **prior to** and independent of the initial entry is supported in the record by evidence of the victim’s account of the crime and the crime scene.” (emphasis added)); *People v. Vazquez*, 159 A.D.3d 517, 69 N.Y.S.3d 801 (1st Dep’t 2018) (“The police **already had**

probable cause to search defendant's cell phone based on an independent source, in that the victim told the police that defendant had shown her sexually explicit photographs in the course of his sexual abuse, and this was the basis for the warrant." (emphasis added)); *People v. Richardson*, 9 A.D.3d 783, 788 (3d Dep't 2004) ("applying the more appropriate independent source exception to the exclusionary rule, we find suppression of the physical evidence was not required here, because it was seized pursuant to a valid search warrant which was based upon sufficient untainted information obtained by the State Police **prior to and independent** of the illegal detention." (emphasis in original)).

The prosecution also claims that Mr. Mangione cannot claim that the warrantless searches were "'confirmatory searches' – unlawful searches that the officers carried out 'to assure themselves that there is cause to obtain a warrant.'" (Response at 86, quoting *Burr*, 70 N.Y.2d at 362.) In *Burr*, the Court of Appeals cautioned against the use of confirmation searches:

To permit the police to search first and obtain a warrant only if their search uncovers or "confirms" that there is incriminating evidence would ordinarily violate the warrant requirement. Were such a practice countenanced, the police might easily avoid having to demonstrate lawful "probable cause" as the law demands. They could "instead achieve 'certain cause' by conducting an unlawful confirmatory search, thus saving [themselves] the time and trouble of obtaining and executing a warrant if [they do] not find the evidence." So insulated, the police could safely engage in such conduct because, if evidence were found in the course of an illegal search, they would still be permitted to seize it in a second search under independent color of law and use it at trial. Obviously, such a practice undermines the very purpose of the warrant requirement and cannot be tolerated.

Burr, 70 N.Y.2d at 362 (citations omitted).

In arguing that the warrantless searches here were not confirmatory, the prosecution claims that because Altoona law enforcement "did not think that they needed a warrant to search the backpack, their warrantless searches of the backpack cannot have been designed to assess whether they should later apply for such a warrant." (Response at 86.) The prosecution argues that Sergeant Heuston's testimony "reinforces this conclusion" because he "explained that the reason that APD applied for a search warrant was that it needed judicial authorization to transfer the property in question to NYPD." (*Id.*) Therefore, the prosecution argues the "decision to obtain the warrant was thus not motivated by an interest in justifying APD's previous searches, but rather only to ensure a seamless transfer of the property to another police department." (*Id.*) This argument, however, ignores two key facts. First, as noted in Mr. Mangione's opening brief (pp. 26–27), there were at least two supervising officers (Corporals Garrett Trent and Bryan Miller) that believed the officers needed to obtain a warrant before continuing the warrantless search at the precinct. Second, contrary to the prosecution's claim, Sergeant Heuston did not seek the warrant "only to ensure a seamless transfer of the property to another police department." As noted above, Sergeant Heuston requested the search warrant, in part, "to seize the items located during the search incident to arrest and inventory of Mangione's property to continue the search of the items, maintain possession of, and process the property in relation to the crime of Homicide, Forgery, Firearms not to be carried

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without a license, Possessing Instruments of a crime.” (Ex. 12A at 3.) If Altoona law enforcement truly believed that its previous warrantless searches were proper, Sergeant Heuston would have only sought the warrant to transfer the seized property to the NYPD. Tellingly, he also sought the warrant “to seize the items located during the search incident to arrest and inventory of Mangione’s property,” demonstrating that the earlier searches were confirmatory.

4. Conclusion

For the reasons stated in counsel’s April 30, 2025, omnibus motion, at the December 2025 suppression hearings, in Mr. Mangione’s opening brief and this reply, we respectfully request that this Court grant the requested relief.

Respectfully submitted



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cc: District Attorney’s Office (via email)