

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Martha Rivers, Circuit Court Judge

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Lower Court Case Nos.  
2024-GS-32-00867 and 2024-GS-32-02893

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The State, Respondent,

v.

Michael Anthony Dolan, Jr., Appellant.

Appellate Case No. 2025-001053

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INITIAL BRIEF OF APPELLANT

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Adam Sinclair Ruffin  
SC Bar No. 101350  
1320 Main Street, Suite 300  
Columbia, SC 29201  
(803) 470-5629  
adam@ruffinappeals.com

Attorney for Michael Dolan

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**SC Court of Appeals**

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in denying Mr. Dolan's request for a pretrial hearing pursuant to *Franks v. Delaware* where Mr. Dolan adequately alleged Agent Gray's reckless disregard for the truth and lack of probable cause without the tainted information?

## STATEMENT OF THE CASE

This is an appeal from a jury verdict finding Michael Dolan guilty of trafficking methamphetamine and possession with the intent to distribute marijuana and the trial judge's imposition of a sentence of twenty-eight years imprisonment for the trafficking and five-years imprisonment for the PWID.

Mr. Dolan was indicted by the Lexington County Grand Jury for trafficking methamphetamine and possession with the intent to distribute marijuana. His trial was held before the Honorable Martha Rivers and a jury from February 24 – 27, 2025. Mr. Dolan was represented by Tav Swarat. The State was represented by Jordan Cox, Lucas Pincelli, and Melissa Byars. Tr. 1. The jury found Mr. Dolan guilty as charged and the trial judge sentenced him to twenty-eight years for the trafficking and five-years for the PWID.

## **STANDARD OF REVIEW**

“Entitlement to a *Franks* hearing is a matter of law subject to de novo review.” *State v. Porch*, 417 S.C. 619, 626, 790 S.E.2d 440, 444 (Ct. App. 2016) (citing *United States v. Tate*, 524 F.3d 449, 455 (4th Cir. 2008)).

## STATEMENT OF FACTS

On September 5, 2023, SLED executed a search warrant at Michael Dolan’s residence in Lexington County. (Tr. p. 200, l. 14 – p. 201, l. 6). When law enforcement officers arrived, they blared their sirens and loudly announced their presence. Mr. Dolan exited the residence from the front door to greet them. (Tr. p. 244, l. 1 – p. 245, l. 2). Mr. Dolan was not hostile to the officers, cooperated with their search, and did not try to resist. (Tr. p. 257, ll. 19 – 25).

The officer who prepared the search warrant was Special Agent Alex Gray with SLED and the basis for the search warrant was that law enforcement believed that a “chop shop” was being operated out of Mr. Dolan’s residence. (Court’s Ex. 1 – Search Warrant). During the search, law enforcement forced entry into a shed in the backyard—a shed that turned out to be unlocked. (Tr. p. 207, ll. 14 – 24).

Agent Gray admitted that he did not see any evidence of drugs in the shed when he searched it. (Tr. p. 227, l. 15 – p. 228, l. 1). Agent Gray also testified that he didn’t find any drugs inside of the house either. (Tr. p. 230, ll. 6 – 15). Agent Gray recalled that Mr. Dolan had a security system with cameras at his property and that SLED disabled those cameras before conducting their search. As a result, no video evidence from those cameras was preserved. (Tr. p. 232, l. 16 – p. 233, l. 13).

During SLED’s initial search for evidence of a “chop shop,” Agent Jesse Johnson with SLED claimed that he found “a container in the bathroom of the master suite” which contained “suspected narcotics.” (Tr. p. 250, l. 17 – p. 251, l. 8). Agent Johnson notified Investigator Gietz with Lexington County Sheriff’s Department of this discovery. (Tr. p. 252, ll. 12 – 24).

Investigator Gietz testified that it was his job to “get[] poison off the street.” (Tr. p. 278, ll. 12 – 21). Gietz was also present for the search warrant, ostensibly to look for evidence of a chop shop, and claimed that “marijuana . . . and marijuana paraphernalia” was found. Based on that,

Gietz obtained a second search warrant for Mr. Dolan's property. (Tr. p. 279, l. 21 – p. 280, l. 4). However, the State's expert in drug analysis, Margaret Walker, admitted that she could not determine whether the green plant material seized from Mr. Dolan's residence was marijuana or merely industrial hemp—instead referring to her results as finding “cannabis.” (Tr. p. 390, l. 4 – p. 391, l. 24). Walker admitted that not all cannabis products are illegal in South Carolina and that her analysis, known as “qualitative analysis,” could not determine the percentage of THC present in the cannabis which is necessary to determine whether the cannabis is legal or illegal to possess. (Tr. p. 403, l. 14 – p. 404, l. 9).

Based on the presence of “marijuana,” Lexington County obtained a second search warrant specifically to search for drugs. (Tr. p. 208, ll. 17 – 25). After obtaining the second search warrant, Geitz testified that the officers found “things that would indicate that the manufacturing of marijuana was . . . occurring . . . as well as evidence of the trafficking of methamphetamine.” (Tr. p. 280, ll. 8 – 16). Even though multiple law enforcement officers present for the search were wearing body cameras, Geitz testified that there was no body camera footage from the search that took place after the second search warrant was obtained. There was no footage of the discovery of the drugs. Geitz explained this by testifying that he removed his body camera during the search because “[i]t's cumbersome to wear an outer-worn vest during the execution of a search warrant.” (Tr. p. 347, l. 7 – p. 349, l. 11).

## ARGUMENT

The trial court erred in denying Mr. Dolan's request for a pretrial hearing pursuant to *Franks v. Delaware* because Mr. Dolan adequately alleged Agent Gray's reckless disregard for the truth and lack of probable cause without the tainted information.

### **Relevant Facts**

#### **Written Motion to Suppress**

Mr. Dolan through counsel filed a pretrial motion to suppress the evidence that was seized from the search of his property. Mot. In the motion, Mr. Dolan's Counsel argued that the search warrant lacked probable cause due to the affiant's reckless disregard for the truth. Mot. at 1. Thus, Counsel asserted that law enforcement's search of Mr. Dolan's property was illegal and requested that the court suppress all evidence seized from that search. Mot. at 1.

First, Counsel argued that SLED Agent Alex Gray had not developed "any nexus between Michael Dolan and Cody Sitton" by the time he applied for the search warrant and therefore acted in reckless disregard for the truth in violation of *Franks v. Delaware*, 438 U.S. 154 (1978). Mot. at 5–6. Specifically, Agent Gray had evidence linking a stolen motorcycle to Sitton. But Sitton lived forty miles away from Mr. Dolan's house in Gaston. Mot. at 5. Agent Gray then relied on an anonymous tip that was made to the Lexington County Sheriff's Department that Mr. Dolan operated a "chop shop" at his property in Gaston. And although the Lexington County Sheriff's Department conducted surveillance on Mr. Dolan's property, this occurred well before the traffic stop of Sitton during which the stolen motorcycle was discovered in his possession. Furthermore, Lexington County did not investigate the tip any further, nor did they request assistance from other agencies due to the lack of evidence of criminal activity. Mot. at 5–6.

Even though Agent Gray heard that Sitton went to Mr. Dolan's property after his arrest, nothing in the months-long investigation corroborated the allegation that Mr. Dolan was operating a "chop shop," nor was any evidence discovered that tied Sitton to Mr. Dolan or Mr. Dolan's property. Mot. at 6. Agent Gray's search of the Department of Motor Vehicles records also showed no connection between Sitton and Mr. Dolan. Mot. at 6. Thus, Dolan's Counsel argued that under *Franks v. Delaware*, the search warrant was void and all evidence that was seized from Mr. Dolan's property should be excluded. Mot. at 6–7.

Second, Counsel for Mr. Dolan argued that the good faith exception was inapplicable because the search warrant affidavit failed to supply a sufficient basis for probable cause. Mot. at 7. Because Agent Gray "falsely asserted that Cody Sitton had ties to the address to be searched, mentioning Sitton multiple times in the search warrant affidavit, including mentioning Sitton and Dolan in the same sentence in a portion of the affidavit," Counsel argued that probable cause did not exist. Mot. at 7–8. More specifically, Agent Gray omitted the time frame of the anonymous tips and surveillance of Mr. Dolan's property, the investigation that had already occurred into the "chop shop" allegations in June 2022, and the lack of connection between the stolen motorcycle found on Sitton and evidence connecting Sitton to Mr. Dolan. Mot. at 8. Counsel for Mr. Dolan requested a hearing on his motion to suppress. Mot. at 8.

### **Pretrial Arguments on *Franks* Hearing**

Prior to the start of Mr. Dolan's trial, the trial court asked Counsel to address the motion to suppress. (Tr. p. 55, ll. 16 – 22). Counsel noted that he filed the motion to suppress because of the information in the search warrant affidavit that "was either outright false or at least recklessly included in disregard for the truth." (Tr. p. 55, l. 24 – p. 56, l. 6). As was pointed out in his written

motion, Counsel explained to the judge that the investigation in this case began with a traffic stop of Cody Sitton where Sitton was driving a stolen motorcycle. (Tr. p. 56, l. 7 – p. 58, l. 3).

The traffic stop of Sitton was conducted by Lieutenant Marzol with the Gaston Police Department. Marzol made no mention of Mr. Dolan or Mr. Dolan's property in his report regarding the traffic stop of Sitton. However, Counsel pointed out that the search warrant affidavit indicated that Chief Watkins—the Gaston Chief of Police—advised that Sitton had ties to Mr. Dolan's property. (Tr. p. 58, ll. 13 – 23). Counsel argued that there was no evidence to corroborate that statement and that it was false or made in reckless disregard for the truth. (Tr. p. 58, l. 24 – p. 59, l. 2). Counsel also pointed out that the anonymous tips alleging Mr. Dolan was operating a “chop shop” were from fourteen or fifteen months prior to the search of the property but that fact was omitted from the search warrant affidavit. (Tr. p. 59, ll. 9 – 19).

Counsel further indicated that he had spoken to the magistrate judge who signed the search warrant and that he was present and available to testify. Counsel informed the trial judge that the magistrate would testify that he did not know about the staleness of the information regarding the tips and that if he had known he would not have signed the search warrant. (Tr. p. 59, l. 20 – p. 60, l. 8). According to the magistrate's notes, the officers who sought the search warrant of Mr. Dolan's property also told the magistrate that there were “twenty-five motorcycles connected to gang members . . . that they were investigating, which gave more reliability or credibility toward this investigation; however, that information was not true.” Again, Counsel maintained that the information in the search warrant affidavit was false and that a *Franks* hearing was warranted to determine whether the evidence seized because of the search of Mr. Dolan's property should be suppressed. (Tr. p. 61, l. 24 – p. 62, l. 17). Counsel for Mr. Dolan argued that without any connection between Sitton and Mr. Dolan, there was no probable cause. (Tr. p. 62, ll. 18 – 25).

The trial court wanted “to make sure [it] underst[ood]” and asked, “So your problems with the affidavit on the search warrant pertains to the fact that it was not dated as to Chief Watkins’ anonymous tips regarding a potential chop shop on Mr. Dolan’s property being from 2022?” (Tr. p. 63, ll. 2 – 8). Mr. Dolan’s Counsel agreed, stating that the omission “would have indicated the staleness of the information.” (Tr. p. 63, ll. 14 – 15). Counsel also reiterated that the search warrant incorrectly placed Sitton near Dolan’s property and tied Sitton and Mr. Dolan together in the same paragraph. (Tr. p. 64, ll. 8 – 25).

The State responded with a different timeline, asserting that the beginning of Agent Gray’s investigation into the alleged “chop shop” was in March of 2023, after the traffic stop of Sitton. (Tr. p. 66, ll. 3 – 11). The 2022 information, the State claimed, “played a key part into Agent Gray’s investigation” and helped support “the rest of his probable cause for this search warrant.” (Tr. p. 66, l. 18 – p. 67, l. 3). The State also pointed out that the burden to receive a *Franks* hearing is on the defendant and that he must “make a substantial preliminary showing that the affiant . . . made a knowingly and intentionally false statement or provided a false statement to the magistrate with a reckless disregard for the truth and what’s included in those false statements was necessary for a finding of probable cause.” (Tr. p. 67, ll. 7 – 17). Despite the defendant’s burden, the State said, “what I could tell is that the only false statement that he is alleging that Investigator Gray made was that Cody Sitton had ties to the address to be searched,” but “[t]here’s been nothing that the defense has provided to support that that statement is false.” (Tr. p. 67, l. 21 – p. 68, l. 3).

The trial court asked, “How would you prove a negative in that scenario?” (Tr. p. 69, ll. 1 – 2). The State responded that Mr. Dolan’s Counsel could have gone to Chief Watkins, who made the statement to Agent Gray, since *Franks* applies to the affiant. (Tr. p. 69, ll. 3 – 16). When the trial court asked whether the timing of the information was relevant, the State conceded that it was,

but argued that there was no proof that the anonymous tips came from 2022. (Tr. p. 71, l. 12 – p. 72, l. 2). The State continued, arguing that Mr. Dolan’s Counsel also failed to provide proof that Agent Gray’s statement that Sitton got a ride back to Dolan’s house was false. (Tr. p. 72, ll. 20 – 25). The State claimed that probable cause existed because of false motorcycle identification numbers created by the chop shop, four motorcycles being linked to Dolan’s name and address, Sitton being at the address, and anonymous tips regarding a chop shop operation at Dolan’s home. (Tr. p. 74, ll. 7 – 18).

The trial court stated, “I must admit there’s not much in there to deal with Agent Gray and what his knowledge or information was at the time for corroboration as to whether he knew those statements were false or otherwise had a reason to question them as the affiant to the search warrant.” (Tr. p. 76, ll. 6 – 11). Counsel for Mr. Dolan acknowledged that law enforcement might have had probable cause to obtain a search warrant of *Sitton’s address*, “[b]ut they’re trying to shoehorn this thing into a case about Michael Dolan in order to get on his property and there’s nothing in this entire affidavit that indicates that stolen property is located on Mr. Dolan’s property.” (Tr. p. 76, l. 12 – p. 77, l. 10). When Mr. Dolan’s Counsel looked at the VIN numbers for the motorcycles, “they appear to be different” with Sitton’s stolen motorcycle starting with 4C9PD08 and Dolan’s motorcycle starting with 4CPPB05. (Tr. p. 77, l. 21 – p. 78, l. 3). Also, Counsel for Dolan noted that Sitton’s arrest report never mentioned Mr. Dolan and that Lieutenant Marzol told him that law enforcement never conducted surveillance at Mr. Dolan’s residence. (Tr. p. 78, l. 24 – p. 79, l. 15).

The trial court asked if Mr. Dolan’s Counsel was “saying Agent Gray had a duty to corroborate or otherwise redo an investigation that Chief Watkins did.” (Tr. p. 79, ll. 17 – 20). Mr. Dolan’s Counsel disagreed, instead simply arguing that “it is important for the magistrate to

understand as a judicial officer that this information is from more than a year back from the arrest.” (Tr. p. 80, ll. 1 – 4). The trial court asked how Counsel knew that that’s the only time Chief Watkins got those anonymous tips. (Tr. p. 80, ll. 5 – 7). While Counsel for Mr. Dolan conceded that he did not know any other date and did not know a timeframe, he stated that it appeared that that was the only time an investigation occurred. (Tr. p. 80, ll. 8 – 16).

The State, however, replied that it “would caution the Court, again, and all of us to just assume that the structure of this sentence [in the agent’s report] means that June 2022 was the date that all of this stuff happened.” (Tr. p. 80, ll. 9 – 12). In fact, the State pointed out that the report included multiple dates, and “the only thing locking onto June of 2022 was that the members of the Lexington County Sheriff’s Office told Chief Watkins that they had reason to believe that there was a chop shop.” (Tr. p. 80, l. 13 – p. 81, l. 9). As a result, “to assume that all of this happened within the one conversation or on the same day I don’t think is fair to Agent Gray.” (Tr. p. 82, ll. 13 – 15).

Counsel for Mr. Dolan, however, responded that he did not “think it’s incumbent on the defense to have to investigate what they provide in discovery to prove it’s not true.” (Tr. p. 82, ll. 22 – 24). Counsel also proffered that the magistrate judge would testify that “if he would have known that Sitton had no ties to this property, then the first part of this affidavit has no merit.” (Tr. p. 86, ll. 15 – 19).

The trial court denied the motion to suppress. (Tr. p. 87, ll. 14 – 15). “There’s no indication that Agent Gray had any knowledge of falsehood or potential reckless disregard for the truth.” (Tr. p. 87, ll. 17 – 19). The trial court noted that the standard for a *Franks* hearing was whether the investigating officer made a false statement which would call into question the veracity of the search warrant affidavit. (Tr. p. 87, ll. 20 – p. 88, l. 7). The trial court also found that Mr. Dolan’s

Counsel was correct that the DMV records would not have come into play without Sitton’s arrest, “but I don’t know that his arrest in and of itself is the only factor involved.” (Tr. p. 88, ll. 8 – 14). The trial court noted that it did not have any statements from Chief Watkins regarding whether Dolan was a person of interest in the community. (Tr. p. 88, ll. 16 – 20).

## **Discussion**

### **A. Mr. Dolan was entitled to a *Franks* hearing because he sufficiently alleged that Agent Gray recklessly disregarded the truth and did not include enough information otherwise to establish probable cause.**

The trial court erred in denying Mr. Dolan a *Franks* hearing because he adequately asserted that Agent Gray failed to include an explicit link between Sitton and Mr. Dolan and instead recklessly disregarded the truth by relying on hearsay in his search warrant affidavit. Accordingly, this Court should reverse.

“A search warrant may [be issued] only upon a finding of probable cause,” that an affiant swears is true before a magistrate. *State v. Bellamy*, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999) (quoting S.C. Code § 17-13-140). Probable cause only exists “if, given the totality of the circumstances, there is a fair probability that . . . evidence of a crime will be found in a particular place.” *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014).

Although a search warrant affidavit enjoys a presumption of validity, *Franks v. Delaware*, 438 U.S. 154, 171 (1978), a defendant has the right to challenge the veracity of a warrant affidavit in a *Franks* hearing. *State v. Missouri*, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999). Specifically, a defendant can properly challenge an affidavit when it included false information or omitted exculpatory material. *Missouri*, 337 S.C. at 554, 524 S.E.2d at 397.

To mandate a *Franks* hearing, (1) “[t]here must be allegations of deliberate falsehood or reckless disregard for the truth, and those allegations must be accompanied by an order of proof;”

and (2) there is insufficient “content in the warrant affidavit to support a finding of probable cause” without the false or reckless material. *Franks*, 438 U.S. at 171–72. The allegations of falsity only require a preponderance of the evidence. *State v. Robinson*, 415 S.C. 600, 606, 785 S.E.2d 355, 358 (2016).

In *State v. Sampson*, a search warrant affidavit stated that a reliable confidential informant told the police officer that drugs were at the defendant’s location. 317 S.C. 423, 425, 454 S.E.2d 721, 722 (Ct. App. 1995). However, the defendant argued in a motion to suppress that the informant had neither seen the drugs nor been inside the defendant’s residence and instead reiterated a comment from someone else who had allegedly spotted the drugs. *Id.* Because the defendant made a sufficient showing of the affiant’s reckless disregard for truth, this Court remanded for a *Franks* hearing. *Id.* at 427, 454 S.E.2d at 723.

More recently in *State v. Trapp*, this Court considered a situation where the defendant asserted that the affiant of the search warrant failed to conclusively establish the timing of the photograph that showed a pill bottle. 420 S.C. 217, 241, 801 S.E.2d 742, 755–56 (Ct. App. 2017). This Court noted that it found “the apparent discrepancies in the photos troublesome” and was “not overly persuaded” by the State’s argument that the photos occurred before the search warrant. *Id.* at 241, 801 S.E.2d at 755. This Court, however, ultimately decided that probable cause existed regardless of the omitted timeline only because the magistrate never viewed the photographs. Accordingly, this Court affirmed the trial court’s denial of a *Franks* hearing. *Id.*

Here, Mr. Dolan met his burden in alleging Agent Gray’s recklessly disregarded the truth in his search warrant affidavit. In his motion to suppress and the subsequent hearing, he specifically argued that a five-month investigation failed to place Sitton at Dolan’s property and that Agent Gray’s DMV search failed to link Sitton and Dolan. (Mot. At 5–6). Indeed, Dolan explicitly stated

that Agent Gray “falsely asserted that Cody Sitton had ties to the address to be searched.” (Mot. at 7–8). In fact, the magistrate who signed the search warrant was present in court and available to testify that this lack of connection would have changed his determination of probable cause. (Tr. p. 86, ll. 15–19).

Moreover, like *Sampson*, Mr. Dolan adequately alleged that Agent Gray did not have personal knowledge of Sitton’s connection to Dolan. Indeed, Dolan asserted that Agent Gray relied on hearsay that Dolan operated a “chop shop” in Gaston and that Sitton went to that property after his arrest. (Mot. at 5–6). Mr. Dolan also credibly argued that Agent Gray did not himself see Sitton go to the property, just like the informant in *Sampson*. Instead, Agent Gray merely reiterated another person’s rumor that Mr. Dolan operated a “chop shop,” just as the affiant in *Sampson* did. Therefore, by highlighting the lack of corroboration and threadbare accusations in the search warrant affidavit, Mr. Dolan established that Agent Gray was at least reckless in his disregard for the truth.

Mr. Dolan also pointed out the problems with Agent Gray’s timeline in the affidavit—namely, that there was not one. Dolan explicitly argued that Agent Gray omitted the time frame of the anonymous tip and surveillance of Dolan’s residence and subsequently failed to include integral information in the search warrant affidavit. (Mot. at 8). Even if the anonymous tips were not from 2022, Dolan noted in the hearing that the lack of a timeline falsely implied that Agent Gray’s findings were recent. (Tr. p. 80, ll. 8–16). Accordingly, Mr. Dolan sufficiently alleged that Agent Gray recklessly disregarded the true timeline of events in his search warrant affidavit.

Furthermore, because this Court has previously expressed its concern over allegations that a search warrant affiant excluded the timeline of information, Dolan’s allegations entitle him to a *Franks* hearing. Like *Trapp*, Mr. Dolan asserted that the search warrant affidavit omitted important

dates. Unlike *Trapp*, however, the magistrate knew of the anonymous tips and investigations and erroneously inferred that the information was not stale. Therefore, this Court has precedential authority to order a *Franks* hearing because Mr. Dolan asserted the omission of important dates.

Additionally, Mr. Dolan met his burden in asserting that the search warrant lacked probable cause without the reckless information. Specifically, Mr. Dolan pointed out that the only direct evidence that Agent Gray supplied was the connection between the stolen motorcycle and Sitton, who lived forty miles from the house of the search warrant. (Mot. at 5). Dolan also explicitly argued that “there’s nothing in this entire affidavit that indicates that stolen property is located on Mr. Dolan’s property.” (Tr. p. 76, ll.23–25 – 6–10). Thus, Mr. Dolan sufficiently alleged that probable cause would not exist without Agent Gray’s reckless information related to Dolan.

Consequently, Dolan established the two-part test that entitled him to a *Franks* hearing. This Court, therefore, should hold that the trial court erred in denying him a *Franks* hearing.

**B. This Court should exclude all evidence seized from the search of Mr. Dolan’s house because the warrant was not supported by probable cause.**

In addition to its error in denying Mr. Dolan a *Franks* hearing, the trial court also erred in denying Mr. Dolan’s motion to suppress because Agent Gray failed to establish probable cause by not proffering sufficient evidence that connected Sitton to Dolan and purposefully omitting the timeline for the anonymous tips and investigation into Dolan. Accordingly, this Court should reverse and exclude all evidence gathered from the search warrant.

If a defendant in a *Franks* hearing establishes an affiant’s false statement or reckless disregard for the truth by a preponderance of the evidence and an affiant’s lack of probable cause under the totality of the circumstances, the court should void the warrant and exclude all evidence gathered from it. *United States v. Colkley*, 899 F.2d 297, 298, 300 (4th Cir. 1990). Under the fruit of the poisonous tree doctrine, “the exclusionary rule also prohibits the introduction of derivative

evidence . . . that is otherwise acquired as an indirect result of the unlawful search, up to the point at which the connection with the unlawful search becomes so attenuated as to dissipate the taint.” *Murray v. United States*, 487 U.S. 533, 536-37 (1988) (internal quotations omitted). Moreover, the good faith exception as articulated in *United States v. Leon*, 468 U.S. 897 (1984) is inapplicable to a warrant that violates *Franks*. *Id.* at 300.

In *State v. Jones*, a law enforcement officer described his informant as an “agent” in the affidavit he submitted for a search warrant. 332 S.C. 228, 232, 500 S.E.2d 499, 501 (Ct. App. 1998). Using the *Franks* framework, this Court found that the term was “undeniably false” and determined that the affidavit had no basis for probable cause outside of the false information. *Id.* at 232–33, 500 S.E.2d at 502. This Court remanded for a new trial, excluding all evidence seized from the defective warrant. *Id.* at 234, 500 S.E.2d at 502.

In *State v. Lynch*, the affiant failed to include information that the defendant and victim had been in a relationship to potentially explain the reason for eyewitness reports that the defendant had been driving the victim’s car. 412 S.C. 156, 182, 771 S.E.2d 346, 360 (Ct. App. 2015). The affiant, however, included other information in his affidavit that family members told the affiant that DMV records showed that the vehicle belonged to the victim, the defendant was not allowed to take the vehicle, and the defendant told a trooper that he was traveling with his wife despite the victim already being missing for days. *Id.* at 184, 771 S.E.2d at 361. Because of the additional information, this Court affirmed the trial court’s denial of the defendant’s motion to suppress. *Id.*

Here, Mr. Dolan met his burden in establishing that Agent Gray recklessly disregarded the truth in his search warrant affidavit. First, Agent Gray failed to include the date of the anonymous tips and investigation into Dolan. (Tr. p. 63, ll. 2 – 15). The anonymous tips regarding a potential chop shop were from June 2022, which was fourteen to fifteen months before the affidavit. (Tr. p.

59, ll. 15–19). Even though Chief Watkins could have received more anonymous tips at later dates, (Tr. p. 80, ll. 1 – 16), the State conceded that the dates of the information was relevant in determining probable cause, (Tr. p. 71, l. 12 – p. 72, l. 2). Thus, Agent Gray’s decision to omit the timeline was misleading and reckless.

Second, Agent Gray failed to link Sitton to Dolan. No DMV record connected the stolen motorcycle to Dolan. (Mot. at 6). In fact, the VIN numbers for Sitton’s motorcycle and for Dolan’s motorcycles are evidently different, with Sitton’s VIN starting with 4C9PD08 and Dolan’s VIN starting with 4CPPB05. (Tr. p. 77, l. 21 – p. 78, l. 4). Sitton’s arrest report also never mentioned Dolan, (Tr. p. 78, l. 24 – p. 79, l. 6), and the search warrant incorrectly placed Sitton near Dolan’s property, (Tr. p. 64, ll. 8 – 14). In fact, Mr. Dolan’s Counsel informed the trial judge that the magistrate who signed the search warrant conceded that the lack of connection between Sitton and Dolan’s property would have led to a different determination of probable cause. (Tr. p. 86, ll. 15–19). Furthermore, Agent Gray placed the names of Sitton and Dolan in close proximity in the affidavit, creating a reckless inference that the two men had criminal connections despite the lack of evidence. (Tr. p. 62, ll. 18 – 25).

Agent Gray cannot benefit from the independent source doctrine by virtue of law enforcement obtaining a second search warrant either. The second search warrant was based on the discovery of green plant material which occurred during the initial illegal search of Mr. Dolan’s property. Notwithstanding the fact that this green plant material may not have even been illegal to possess, its discovery was the result of an illegal search and therefore the methamphetamine discovered based on the second search warrant should be excluded under the fruit of the poisonous tree doctrine. *See Murray v. United States*, 487 U.S. 533. The good faith exception also cannot be

used to avoid exclusion of the evidence gathered from the search warrant because the search warrant was obtained in violation of *Franks*. See *Colkley*, 899 F.2d at 300.

Like *Jones*, the information Agent Gray included in his search warrant affidavit was false. He incorrectly stated that Sitton went to Mr. Dolan's residence after his post-arrest release, just like the affiant in *Jones* incorrectly called his informant an agent. Similar to the affiant in *Jones* not mentioning that his informant was an informant, Agent Gray also never mentioned that the anonymous tips were from June 2022, not 2023—a significant omission to say the least.

Moreover, unlike *Lynch*, Agent Gray did not include sufficient evidence outside of the false evidence for the magistrate to find probable cause. The only direct evidence was between Sitton and the stolen motorcycle, and unlike *Lynch* nothing else linked Sitton to Dolan or Dolan's residence. This Court, therefore, can and should conclude that the trial court erred in denying Dolan's motion to suppress.

Thus, by showing Agent Gray's lack of evidence and lack of timeline, Mr. Dolan established by a preponderance of evidence that the affiant recklessly disregarded the truth in violation of *Franks*. Accordingly, this Court should reverse and exclude all evidence gathered at Mr. Dolan's residence from the search warrant.

**CONCLUSION**

By reason of the foregoing argument, Mr. Dolan’s convictions should be reversed, and this case remanded to the Lexington County Court of General Sessions for a new trial with instructions for the circuit court to suppress the evidence seized pursuant to the search warrant.

                  s/Adam Ruffin  
Adam Sinclair Ruffin  
SC Bar No. 101350  
1320 Main Street, Suite 300  
Columbia, SC 29201  
(803) 470-5629  
adam@ruffinappeals.com

Attorney for Michael Dolan

This 10th day of December 2025.

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