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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the State Grand Jury

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW D. MCCOY,

APPELLANT

APPELLATE CASE NO. 2025-001323

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in refusing to suppress Appellant's Facebook messages, when the search warrant for Appellant's Facebook account was facially invalid?

II. Whether the trial court should have declared a mistrial when multiple members of the jury witnessed Appellant and his co-defendants being led into the courthouse wearing prison attire and surrounded by heavily armed guards?

STATEMENT OF THE CASE

At its December 14, 2023 term in a sixth superseding indictment, the state grand jury indicted Appellant and several co-defendants for, *inter alia*, trafficking methamphetamine 400 grams or more conspiracy. R.* (Indictment). The state abandoned all indicted charges except trafficking methamphetamine 400 grams or more conspiracy. On June 23, 2025, the state called Appellant, Darrell Foster McCoy a/k/a "DJ" and Randall Gene Posey a/k/a "RJ" to trial in Pickens County before the Honorable R. Scott Sprouse and a jury. Tr. 1. Scott Hayes represented Appellant; assistant attorney general Savanna Goude represented the state. Tr. 1.[1] On June 27, 2025, the jury convicted Appellant as indicted. Tr. II. 104, ll. 1-4. Judge Sprouse sentenced Appellant to life imprisonment, pursuant to the recidivist statute.[2] Tr. II. 120, ll. 9-11.

This appeal follows.

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[1] The trial is transcribed on two different transcripts with independent pagination. All citations to "Tr" are to the transcript dated June 23-26, 2025; all citations to "Tr. II" are to the transcript dated June 27, 2025.

[2] S.C. Code Ann. § 17-25-45.

STATEMENT OF FACTS

The state alleged that for a nearly three-year period, Appellant and his brother DJ were the leaders of a large methamphetamine distribution conspiracy. R.* (Indictment); Tr. 218. Their trial was the culmination of the state grand jury "Las Señoritas" investigation, which was named for a group of women who fled from South Carolina to Mexico to evade criminal charges and facilitated the distribution of methamphetamine while there. Tr. 789, l. 20 – 790, l. 10.

Pre-trial motions

A significant part of the state's evidence were Facebook messages purportedly between Appellant, DJ, and other people the state alleged to be part of the methamphetamine distribution network. Tr. 699-726; R.* (State's Exhibits 19-35). These Facebook messages were obtained pursuant to a search warrant. Tr. 155; R.* (Court's Exhibit 3). Prior to trial, defense counsel moved to suppress the messages. Tr. 155. The first part of the search warrant affidavit was a biographical paragraph about the affiant, which contains no information relevant to this case. The remainder of the search warrant affidavit read as follows:

> From February 1, 2021, until the present, [SLED] along with local and federal law enforcement agencies have been investigating the drug trafficking activities of MATTHEW MCCOY and his associates. During this investigation, multiple undercover controlled purchases of trafficking quantities of methamphetamine were made from MATTHEW MCCOY. These drug deals were facilitated by MCCOY, who is an inmate of the South Carolina Department of Corrections, by utilizing a contraband cellphone from inside the prison.[3] MCCOY also used Facebook Messager to facilitate between confidential informants and co-conspirators of MCCOY that are not in prison to sell trafficking quantities of methamphetamine at his direction. MCCOY also communicated with his suppliers to arrange for drug couriers to travel from South

[3] Agent Sexton, however, testified: "I never saw any cellphone extractions from SCDC. We had nothing to do with SCDC seizing or extracting cellphones." Tr. 160, ll. 14-16.

> Carolina to Georgia to collect large quantities of methamphetamine, which was brought back to South Carolina and distributed at MCCOY's direction. Through information provided by confidential sources, informants, cooperating defendants, and other investigative methods, MATTHEW MCCOY's Facebook accounts were identified as [URL omitted].

R* (Court's Exhibit 3). The remainder of the affidavit identified Meta Platforms, Inc., as the owner and operator of Facebook and explained what was sought. *Id.* Defense counsel asserted that search warrant affidavits that rely on confidential informants must establish the reliability of those informants, and this warrant did not do so. Tr. 156, ll. 12-21. Counsel specifically relied on *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 525 S.E.2d 872 (2000). Tr. 156, ll. 12-16.

During the suppression hearing, the state called SLED special agent William Sexton. Tr. 158. He testified that several cooperating co-defendants had sent Facebook messages to Appellant and DJ in his presence. Tr. 160, ll. 6-10. The informant that SLED used was Matthew Moody, who had been an informant for more than a year. Tr. 163, ll. 3-6. Moody had performed around ten controlled drug buys. Tr. 160, ll. 17-19. Agent Sexton admitted that the search warrant had not been orally supplemented, and all information presented to the issuing judge was within the warrant. Tr. 168, ll. 11-14. The trial court denied the motion to suppress. Tr. 181. While the search warrant was vague as to the reliability of the informants, the trial court held that the totality of the circumstances established probable cause. Tr. 182, ll. 18-22.

Next, defense counsel moved for a mistrial. Tr. 183. Defense counsel asserted that, that morning, Appellant had been brought into the Pickens County courthouse in a prison jumpsuit surrounded by SCDC staff wielding large firearms. Tr. 183, ll. 5-16. He asserted that he saw two jurors in the parking lot who would have seen Appellant entering. Tr. 183, ll. 5-16. This was

prejudicial because it was obvious to anyone who had seen Appellant entering the courthouse that the government considered him a big threat. Tr. 183, ll. 17-22. The state responded that "SCDC does have a reason to believe that they are very dangerous. We have received information that they're planning an escape attempt on the way to court. We have one person who was threatened in the case. We have another incident where someone's house was shot at during the case." Tr. 184, l. 25 – 185, l. 5. DJ testified to the trial court about the events of the morning. He stated that he was dressed in a yellow jumpsuit, was surrounded by armed guards, and that those guards had long rifles and shotguns. Tr. 187, ll. 3-12. He further stated that he was leashed, shackled, belly chained, and was made to wear "black box and cuffs." Tr. 187, l. 19. RJ's attorney stated that SCDC could have implemented other plans to prevent the jury from seeing this sight, such as "driv[ing] them down the hill so people couldn't see it" or having the jury arrive and come into the courthouse first. Tr. 190, ll. 17-21.

The trial court found the following:

> Well, the statement has been made by Defense Counsel that if I question the jury that that's going to…call attention to the issue, which I'm not inclined to do that. I will give an instruction to them if the Defense would request it that they're to draw no conclusions on the case by the fact that there are law enforcement officers in the courtroom. However, I don't know that – again, that may just draw more attention to the issue than it would solve.
>
> Logistically, there has to be a way for the Defendants to get into the courthouse. This facility is what it is. And the way into the facility complicates this when we have defendants who are in the custody of the Department of Corrections.
>
> These are serious charges. There are a number of witnesses. The State has concerns about security, which I understand the Defense contest that. And the Court's not making any judgment regarding those allegations. But when an inmate is being brought from the Department of Corrections to the courthouse, the Court has a

> responsibility to see that the inmate is brought in safely and that the public is safe while the inmate is being brought in.
>
> So I'm not going to order the sheriff's department of Pickens County to set up a security perimeter around the courthouse and prohibit people from entering during that time period. I don't see how logistically that could work in this situation. And, unfortunately, the entrance to the courthouse is the same for everyone. The front's not used. You go in the back where all the jurors go in. That's where the Court goes in the entrance in the back, the back parking lot there. So I don't know of a practical solution for this.
>
> And Defense Counsel, we made great effort yesterday to ensure that your clients could sit with you and not be in jail clothing and where their restraints were removed. Again, the clerk's office worked very hard to get that set up.
>
> So I'm going to deny the motion for mistrial. If there is some specific juror that is affected and the Court gets a message of that, I will question that. But I think at this point it would cause more problems and draw more attention to it if I questioned them than if we just moved on.

Tr. 191, l. 13 – 193, l. 6.

Trial

Appellant, DJ, and RJ were tried together. DJ was represented by Monier Abusaft; RJ was represented by Alex Kornfield. Tr. 1. At trial, the state primarily relied upon the testimony of cooperating co-defendants.

Sabrina Rochester testified that she made several trips to Atlanta to pick up methamphetamine and that Appellant or DJ would instruct her where to go. Tr. 237, ll. 17-20. She made these trips two-to-three times per week for two-to-three months. Tr. 238, ll. 9-15. Each time, Appellant or DJ told her what to do with the methamphetamine she picked up. Tr. 239, ll.

7-12. She communicated with Appellant and DJ over WhatsApp[4] and video calls. Tr. 240, ll. 18-23. She further testified that she sold between nine ounces and a pound of methamphetamine to RJ. Tr. 241, l. 18 – 242, l. 9. Rochester admitted that she was addicted to methamphetamine, and at the time of her testimony she was charged with trafficking meth 400 grams or more, money laundering, trafficking meth 28-to-100 grams, possession of a weapon during the commission of a violent crime, and felon in possession of a firearm. Tr. 232, ll. 8-14. A major factor behind her decision to testify was that she faced twenty-five years in prison. Tr. 243, ll. 14-22.

Stephanie Lipe was charged with trafficking meth 400 grams or more conspiracy and trafficking meth 400 grams or more. She testified in hopes of obtaining a lighter sentence. Tr. 299, l. 23 – 300, l. 10. She testified that she went to Tracy Posey's—RJ's aunt's—house on June 9, 2021. Tr. 301, l. 19. While there, Tracy asked her to go to her cousin Stacy's house to pick something up in exchange for $1,000. Tr. 304, ll. 4-5, 17-23. Lipe knew that she was going to pick up "something illegal." Tr. 305, l. 6. She got lost on the way to Stacy's house, and Appellant called her on Tracy's phone to give her the address. Tr. 305, l. 19 – 306, l. 3. When Lipe arrived at the house, two unknown men placed something in the trunk of the car. Tr. 306-307. As soon as she left, she was pulled over by an unmarked police car. Tr. 307, ll. 20-24.

Investigator Joel Rivera was the officer that pulled over Lipe. Tr. 327, ll. 4-9. Police had been surveilling the house where Stacy Brooks lived after police had received a tip. Tr. 320; 326, ll. 5-8. Lipe consented to a search of the car, and Investigator Rivera found methamphetamine in the truck and center console. Tr. 327, ll. 4-18. This traffic stop led police to obtain a search warrant for the house, and Master Deputy Brenda Kowaleski testified that a toolbox was found

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4 WhatsApp is a messaging service featuring end-to-end encryption for additional privacy. Privacy, WhatsApp, https://www.whatsapp.com/privacy (last accessed March 30, 2026).

buried in the backyard which contained a large amount of methamphetamine and a gun. Tr. 339, ll. 13-14, 341, ll. 8-10.

Tracy Fore was charged with trafficking meth 400 grams or more conspiracy, money laundering, and two counts of trafficking meth 100-to-200 grams. Tr. 383, ll. 1-5. At the time of her testimony, she had a pending plea offer for fifteen-to-twenty years' imprisonment, contingent on her cooperation with the state. Tr. 383, ll. 6-11. For her testimony, she hoped for a better plea offer. Tr. 383, ll. 19-21. She addicted to methamphetamine and has been since 1996. Tr. 396, ll. 16-19. She testified that she first met Appellant and DJ in 1996, and she became close friends with them in 2002. Tr. 384, ll. 8-25. After she lost her job, Appellant offered to give her some work. Tr. 385, ll. 12-17. At first, the work was picking up money or giving money to whoever she was instructed to, but it later turned into her picking up drugs for DJ and Appellant. Tr. 386, ll. 2-6. She went to Atlanta to drop off money and supervise the picking up of drugs. Tr. 387, ll. 3-23. She also sold methamphetamine to various people who Appellant and DJ sent to her. Tr. 388, ll. 2-9. DJ and Appellant sent her to pick up methamphetamine from RJ two or three times. Tr. 388, l. 21 – 389, l. 4. She testified that Appellant's username on Facebook was "'Stackin Abbit' or something like that. I know it was stack something." Tr. 389, ll. 18-21.

Matthew Moody was the confidential informant that had worked with SLED during the investigation. He became an informant after being charged with trafficking and previously spent five years in prison for that charge. Tr. 434, ll. 1-8. He had used methamphetamine since he was a teenager and had been selling methamphetamine since at least 2016. Tr. 434, ll. 13-23. He testified that he met Tracy Posey in 2019, and he purchased large quantities of methamphetamine from her. Tr. 435, ll. 8-22. After some time, Tracy Posey introduced Moody to DJ over FaceTime because "that's who you call to get it." Tr. 436, ll. 15-18, 20. After that, whenever

Moody needed methamphetamine, he called DJ who would send Moody somewhere to get the methamphetamine. Tr. 436, l. 25 – 437, l. 1. Moody contacted DJ through Facebook; DJ's username was "Perro Grande." Tr. 437, ll. 9, 17. Most of the time he spoke to DJ, it was only DJ on the phone; however, "maybe five times" Appellant was there, too. Tr. 441, ll. 9-11, 17. He performed ten controlled drug buys for law enforcement, and he was directed where to go for most of those buys by DJ. Tr. 444, ll. 12-14. Through Special Agent Scott Gardner, the state entered videos of several of Moody's controlled buys. Tr. 515-547. Agent Gardner testified on cross-examination that only two of the buys were attributable to Appellant. Tr. 590, ll. 19-22.

Abygail Taylor pleaded guilty to charges stemming from this case and was awaiting sentencing at the time of her testimony. Tr. 628, ll. 12-19. She is addicted to methamphetamine and has been using it for the previous ten years. Tr. 628, l. 24 – 629, l. 1. She testified that she began selling methamphetamine when she reached out to Appellant, who was her friend Nicole Welborne's boyfriend. Tr. 629, ll. 16-23. She reached out to him on Facebook; his username was "Still Stackin." Tr. 630, ll. 1, 11-12. She originally reached out to him after Nicole was arrested and she wanted to help her get out of jail. Tr. 630, ll. 15-17. Appellant instructed Taylor to drive to an address to pick up money. Tr. 630, ll. 15-17. After that, Appellant began sending her to Atlanta to pick up methamphetamine. Tr. 631, ll. 9-11. Taylor and Appellant spoke on video calls "probably everyday" for six-to-eight months. Tr. 631, ll. 21-25. She went to Atlanta at Appellant's direction on two occasions picking up a total of fifteen kilograms of methamphetamine. Tr. 633, ll. 10-11. She dropped the methamphetamine off with Appellant and DJ's uncle Tony McCoy on at least twenty occasions. Tr. 633, ll. 12-21; 634, ll. 20-25.

Michael Payne testified that he was DJ and Appellant's cousin through adoption. Tr. 645, ll. 6-11. He pleaded guilty to trafficking methamphetamine 28-to-100 grams; at the time of his

testimony, he had not yet been sentenced. Tr. 644, ll. 7-14. He was released from prison in March of 2022, and he reached out to Appellant and DJ to get started selling drugs. Tr. 645, l. 19 – 646, l. 1. He testified that Appellant's Facebook username was "Stackin," and DJ's was "Big Red Dog." Tr. 646, ll. 4-5. Appellant directed him to do various tasks, such as riding around on drug deals with Monica Bearden to "make sure she got paid" and traveling to Georgia to addresses given to him by Appellant. Tr. 647, ll. 1-21, 649, ll. 13-15. He testified that he personally witnessed Facetime calls between Appellant, DJ, and other people in Mexico: Marcy, Kelly Edwards, and Nicole. Tr. 652, ll. 10-25.

Special Agent Tyler Sexton was Matthew Moody's police contact. Tr. 668, ll. 15-19. During his testimony, the state entered pictures of Matthew Moody's cell phone, which depicted Facebook messages between Moody and "Perro Grande." Tr. 673, ll. 7-19; See State's Exhibit 6 (Photograph)(on file with this Court). In the messages with "Perro Grande," Moody was provided a phone number. See State's Exhibit 6 (Photograph). The state then entered pictures of Moody's conversation with that phone number. Tr. 673, l. 11 – 675, l. 5; See State's Exhibits 7-10 (photographs)(on file with this Court).

SLED obtained a search warrant for Appellant and DJ's Facebook accounts. Tr. 677, ll. 3-8. The state attributed a Facebook with username "Still Stackin Alatapaper" to Appellant and "Perro Grande" to DJ. Tr. 678, ll. 10-14; 679, ll. 2-3. The state entered several conversations between Appellant, DJ, and various other people. R.* (State's Exhibits 19-35). Some of these conversations were between Appellant and DJ and appeared to discuss drug deals. R.* (State's Exhibits 21; 30; 34; 35). After Agent Sexton's testimony, the state rested. Tr. 798, ll. 2-3.

The jury convicted Appellant, DJ, and RJ, as indicted. Tr. II. 103, l. 21 – 104, l. 8. The trial court sentenced Appellant to life imprisonment. Tr. II. 120, ll. 9-11.

STANDARD OF REVIEW

As to issue I, this Court will sustain the trial court's factual findings if there is any evidence to support them but reviews the trial court's legal conclusions *de novo*. *State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

As to issue II, this Court reviews a trial court's decision on a motion for mistrial for abuse of discretion. *State v. Benton*, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024).

ARGUMENTS

I. The trial court erred in refusing to suppress Appellant's Facebook messages, because the search warrant for Appellant's Facebook was facially invalid.

The search warrant that led to the discovery of Appellant's Facebook messages provided the issuing judge with no information whatsoever, beyond conclusory assertions. This lack of information is fatal to the validity of the search warrant. Therefore, Appellant's Facebook messages were entered in violation of the Fourth Amendment. This Court should reverse.

A. The search warrant is not supported by probable cause.

A valid search warrant affidavit must include sufficient underlying facts to permit the issuing magistrate to make a determination of probable cause. *State v. Dupree*, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003). Probable cause is determined based on "all of the information available to the magistrate at the time the warrant was issued." *Id.* (*citing, inter alia, State v. Driggers*, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996)). Therefore, when "determining the validity of the warrant, a reviewing court may consider *only* information brought to the magistrate's attention." *Id.* (emphasis added). "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Illinois v. Gates*, 462 U.S. 213, 239 (1983).

When a search warrant affidavit relies upon information gathered from other people, such as informants, the informants' "veracity," "reliability," and "basis of knowledge" are "all highly relevant in determining the value of his report." *Id.* at 230. Thus, "a warrant based solely on information provided by a confidential informant *must* contain information supporting the credibility of the informant and the basis of his knowledge." *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 192, 525 S.E.2d 872, 881 (2000) (emphasis added). After all,

"[i]nformants' tips, like all other clues and evidence coming to a policeman on the scene may vary greatly in their value and reliability." *Adams v. Williams*, 407 U.S. 143, 147 (1972).

Illustratively, in *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997), our Supreme Court analyzed the viability of a search warrant affidavit related to a murder investigation. In that case, the decedent was found lying face down on the floor of his residence with his pants' pockets pulled out and money missing from his wallet. *Id.* at 289, 494 S.E.2d at 802. Several days later, a different witness provided the police with a written statement, accusing the *Weston* defendant of attempting to rob him at gun point. *Id.* Based on that statement, warrants were issued for the defendant's arrest, and the police obtained a search warrant for his car. *Id.* That warrant read:

> On March 18, 1994 at approx 2245 hours the victim (Claude Crumlin) was the victim of an armed robbery and assault with intent to kill at 5126 Farrow Rd. The defendant in this incident is a Kelvin Weston. Kelvin Weston, by S.C. highway depts., is the registered owner of the above listed vehicle. Also investigation revealed through witness in this matter that defendant was driving above vehicle at the time of the incident. The search for the above items are needed to fully complete this investigation.

Id. The resultant search located the gun used to kill the decedent. *Id.* The Supreme Court found that the warrant was not supported by probable cause. *Id.* at 291, 494 S.E.2d at 803. The search warrant had not "set forth any facts as to *why* police believed [defendant] had committed the…crime." *Id.* at 291-92, 494 S.E.2d at 803. The Court described the affidavit's allegations as "mere conclusory statements" and held that such conclusory statements provided "nothing…from which the [magistrate] could have assessed the veracity and basis of knowledge of the informant." *Id.*

In another case, our Supreme Court invalidated a search warrant that read as follows:

> That on [date and time] Reginald Jerome Smith went into the Master Inn located at [address] and he then robbed the manager at knife point. Smith has been staying at the Host of America Room 216 since Jan. 1, 1988 and there is every reason to believe the weapon and clothes used in the robbery will be located in the room. This information was confirmed in person by Sgt. Sherman on [date].

State v. Smith, 301 S.C. 371, 372, 392 S.E.2d 182, 183 (1990). The Court invalidated the warrant because "the affidavit sets forth no facts as to *why* police believed Smith robbed the Master Host Inn." *Id.* at 373, 392 S.E.2d at 183 (emphasis in original).

Smith and *Weston* stand for the proposition that a magistrate must be able to "perform his neutral and detached function and not serve as a rubber stamp for the police." *Weston*, 329 S.C. at 293, 494 S.E.2d at 804 (*quoting United States v. Leon*, 468 U.S. 897, 914-15 (1984)) (internal quotation marks omitted). The judge issuing the warrant must be told both the allegations supporting the warrant and *why* the police believe the allegations. *Smith*, 301 S.C. at 373, 392 S.E.2d at 183. Permitting the issuing magistrate to issue search warrants based on bare allegations alone would constitute a complete abdication of a core judicial function to law enforcement. *See Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 327 (1979) (a magistrate must not act "as an adjunct law enforcement officer").

Here, the search warrant affidavit's information can be defined as five distinct allegations: (1) multiple undercover controlled purchases of meth were made from Appellant; (2) the drug deals were facilitated by Appellant who used a contraband cell phone while an inmate at SCDC; (3) Appellant used Facebook to communicate with confidential informants and co-conspirators regarding the sale of methamphetamine; (4) Appellant communicated with suppliers to arrange for the delivery of methamphetamine to South Carolina; and (5) "Through information provided by confidential sources, informants, cooperating defendants, and other investigative

methods" Appellant's Facebook was the one identified in the warrant. R.* (Court's Exhibit 3). None of the five are sufficient to provide the issuing magistrate with a substantial basis to find probable cause.

Start with the first allegation: multiple undercover drug buys were made from Appellant. The affidavit provides no information whatsoever as to how the police know this fact, who did the drug buys, how they were performed, or any other information as to the "why." *See Smith*, 301 S.C. at 373, 392 S.E.2d at 183. Further, the first allegation is contradicted by the second. The affidavit simultaneously avers that drug buys were made "from" Appellant, which would imply that a confidential informant purchased drugs from Appellant personally, and that Appellant was in prison during the investigation. If by "from," the police meant that Appellant "facilitated" the drug buys—which it alleged in the next sentence—then this allegation is supported by no information other than bare, conclusory assertions. If the police meant that the drug buys were actually made from Appellant personally, then the allegation is simply false and must be disregarded in the probable cause analysis. *See Franks v. Delaware*, 438 U.S. 154, 171-72 (1978).

As to the other allegations, the warrant is wholly composed of conclusory statements lacking any information as to why the police believe what they believe. It simply states that: (1) the police have been investigating, and (2) these things happened. This is no better than the "there is every reason to believe the weapon and clothes used in the robbery will be located in the room" language invalidated in *Smith*. 301 S.C. at 372, 392 S.E.2d at 183. The issuing magistrate cannot be expected to conduct the "neutral and detached" analysis demanded by the Fourth Amendment if the only basis for the police's information is "we have been investigating,"

a statement which provides the same amount of information as "because we said so." *See Leon*, 468 U.S. at 914-15 (the issuing magistrate must "not serve as a rubber stamp for the police.").

Even to the extent that the warrant can be construed as stating that the police gained the information from confidential informants—a quite generous reading[5]—the warrant is defective. The warrant simply avers that the information was gathered "[t]hrough information provided by confidential sources, informants, cooperating defendants, and other investigative methods." R.* (Court's Exhibit 3). Assuming *arguendo* that this language is meant to apply to the entirety of the search warrant, rather than just the last sentence, it is still insufficient. "A warrant based solely on information provided by a confidential informant *must* contain information supporting the credibility of the informant and the basis of his knowledge." *192 Coin-Operated Video Game Machines*, 338 S.C. at 192, 525 S.E.2d at 881 (emphasis added). Here, the warrant states only that the information was "provided by confidential sources, informants, cooperating defendants, and other investigative methods." R.* (Court's Exhibit 3). The warrant is silent as to what "information" was provided, what "confidential sources" means, who the "informants" are, whether the informants are reliable, how the informants know the information they provided, which "cooperating defendants" provided information, whether the cooperating defendants were reliable, the basis of the cooperating defendants knowledge, or what "investigative methods" were used. *Id.*

The search warrant in this case consists wholly of conclusory statements, based only on fly-by references to information gathered "during this investigation." In this way, it is no better

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5 The search warrant *only* uses the qualifying language "through information provided by [sources]," when referring to one single allegation: that the identified Facebook account belongs to Appellant. R* (Court's Exhibit 3). The remainder of the allegations are made in conclusory fashion, with *no* indication of the source of the information.

than the warrants found invalid in *Weston* and *Smith*. The issuing judge, based on this warrant alone,[6] could not have made a "neutral and detached" determination of probable cause. Rather, the issuance of this warrant was "a mere ratification of the bare conclusions of others." *Gates*, 462 U.S. at 239. Accordingly, this Court should reverse.

B. The error was not harmless.

Further, the error was not harmless. "No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial." *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018) (*quoting State v. Byers*, 392 S.C. 438, 447-48, 710 S.E.2d 55, 60 (2011) (alteration in original)). An error is not harmless unless it is demonstrated "harmless beyond a reasonable doubt." *Id.* at 566, 816 S.E.2d at 574; *accord Chapman v. California*, 386 U.S. 18 (1967).

Here, the state presented the jury with a complicated conspiracy case which allegedly took place in multiple jurisdictions, including a foreign country, taking place over nearly three years. But despite the vast complexity of the case, the Facebook messages unlawfully seized from Appellant's Facebook account were the only credible evidence that Appellant had any role in the conspiracy. Apart from those messages, the state's evidence against Appellant consisted of testimony from six witnesses. Every one of the six had spent time incarcerated for drug offenses. Every one of the six was addicted to methamphetamine. And every one of the six had a strong, self-serving motivation to be untruthful—five of the witnesses were indicted for serious felonies arising from this very case, and the remaining witness Matthew Moody used his position as a confidential informant to avoid justice on his own drug trafficking charges.

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6 *See* Tr. 168, ll. 11-14 (admitting that the warrant was not orally supplemented).

Without the Facebook messages, the jury would have heard a very different story. There was a great deal of physical and documentary evidence implicating the witnesses who testified against Appellant in a substantial amount of drug dealing but none implicating Appellant, save for the self-serving word of self-described drug traffickers and methamphetamine addicts. The state's case would become solely a credibility contest between its witnesses and the presumption of innocence, and the substantial credibility problems borne by every single one of the state's witnesses would surely create reasonable doubt in the mind of at least one of twelve jurors. Therefore, it cannot be said that, in the absence of the Facebook messages, "guilt has been conclusively proven…such that *no other rational conclusion can be reached.*" *State v. McLeod*, 362 S.C. 73, 82, 606 S.E.2d 215, 220 (Ct. App. 2004) (*citing State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989) (emphasis added)). For these reasons, the error in admitting the unlawfully seized Facebook messages was not harmless. This Court should reverse.

II. The trial court should have declared a mistrial when multiple members of the jury witnessed Appellant and his co-defendants being led into the courthouse wearing prison attire and surrounded by heavily armed guards.

Appellant and his co-defendants were led into the courtroom in full view of the arriving jurors in prison garb surrounded by several guards armed with high-powered rifles. Any juror who witnessed this would have been poisoned against Appellant. The trial court should have declared a mistrial.

A mistrial should be declared when "there is manifest necessity for the act, or the ends of public justice would otherwise be defeated." *United States v. Perez*, 22 U.S. (9 Wheat.) 579, 580 (1824); *see Gori v. United States*, 367 U.S. 364, 368 (1961) ("Where, for reasons deemed compelling by the trial judge...the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared...."). The trial court must consider several factors when deciding whether to declare a mistrial, such as whether "not granting a mistrial...could undermine public confidence in the outcome." *State v. Benton*, 443 S.C. 1, 8, 901 S.E.2d 701, 704 (2024) (*citing Wade v. Hunter*, 336 U.S. 684, 689 (1949)).

It is "generally improper for a defendant to appear for a jury trial dressed in readily identifiable prison clothing." *Humbert v. State*, 345 S.C. 332, 337, 548 S.E.2d 862, 865 (2001), *abrogated on other grounds by Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019). Compelling a criminal defendant to appear before a jury in prison attire is violative of due process and incompatible with the presumption of innocence. *Estelle v. Williams*, 425 U.S. 501, 504-05 (1976) (collecting cases); *see also Holbrook v. Flynn*, 475 U.S. 560, 568-69 (1986) (shackling a criminal defendant is "inherently prejudicial"). This rule predates American law; English common law required: "The prisoner...must be brought to the bar without irons, or any

manner of shackles or bonds; unless there be evident danger of an escape...." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 317 (1769); 3 EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND *34 (1644)[7] ("If felons come in judgment to answer, they shall be out of irons and all manner of bonds....").

In this case, Appellant was led into the courthouse in prison garb, surrounded by several armed guards, and in full view of multiple jurors. The moment that jurors who would decide his case witnessed that scene, his due process right to be presumed innocent was violated. There was no way to remedy that violation short of a mistrial.

In *Deck v. Missouri*, 544 U.S. 622 (2005), the United States Supreme Court analyzed a case where a criminal defendant, over objection, was placed in "leg irons and a belly chain" during the penalty phase of a capital murder trial. *Id.* at 625. In that case, the defendant was permitted to be shackled because he "[had] been convicted," and the shackles "[took] any fear out of their minds." *Id.* The Supreme Court held that, generally, a criminal defendant should not be restrained. *Id.* at 632. Ultimately, the Supreme Court held that Missouri had violated Deck's due process rights because, while there are cases where there exist "indisputably good reasons for shackling," the trial court in *Deck* did not make any specific findings of necessity other than that Deck had already been convicted, and the shackles "would take any fear out of the juror's minds." *Id.* at 634-35 (internal quotation marks omitted). Ultimately, "the Constitution forbids the use of visible shackles...*unless* that use is 'justified by an essential state interest'—such as the interest in courtroom security—specific to the defendant on trial." *Id.* at 624 (emphasis in original).

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[7] Available at https://wythepedia.wm.edu/library/CokeThirdPartOfTheInstitutesOfTheLawsOfEngland1644.pdf (last accessed March 30, 2026).

By contrast, in *State v. Moore*, 257 S.C. 147, 184 S.E.2d 546 (1971), our Supreme Court considered a trial court's refusal to grant a mistrial in a case where the jury saw the defendants "being shackled and being prepared to be taken to the county jail." *Id.* at 151, 184 S.E.2d at 548. In that case, the Supreme Court found no error in the denial of a mistrial. *Id.* In relevant part, the Court found: "We think that when a jury or members thereof see an accused outside the courtroom in chains or handcuffs the situation is psychologically different and less likely to create prejudice in the minds of the jurors.... People normally expect to see a prisoner under some restraints in situations where he is able to escape if not in restraints." *Id.* at 152-53, 184 S.E.2d at 549 (*quoting State v. Cassel*, 48 Wis.2d 619, 625, 180 N.W.2d 607, 611 (1970)).

In this case, the rule announced in *Deck* controls, not its interpretation in *Moore*. Start with *Moore*. In that case, the jury merely saw the defendants being placed in normal shackles for transport back to the county jail. *Id.* at 151, 184 S.E.2d at 548. Citing to a Wisconsin case, the *Moore* Court found that "People normally expect to see a prisoner under *some* restraints in situations where he is able to escape if not in restraints." *Id.* at 152-53, 184 S.E.2d at 549 (*quoting Cassel, supra*). The key word is "some." Normal shackles and handcuffs are probably an expected sight for any person who observes an inmate being transported by police. However, the same logic cannot apply to a defendant who is surrounded by heavily armed guards as if he is an enemy combatant and placed on a leash as if he is a rabid dog. If the general public is knowledgeable enough to "expect to see a prisoner under some restraints," *id.*, then the general public is knowledgeable enough to know that the typical prisoner is not led into a courthouse wearing a leash and surrounded by guards with assault rifles. The substantial difference in what a

juror would reasonably expect to see and what they did see would cause that juror to believe "the government thinks *this* person is *particularly* dangerous."[8]

Further, the trial court did not make the sort of case-specific finding of necessity sufficient to overcome the *Deck* standard. In fact, the trial court explicitly stated: "The state has concerns about security.... And the Court's *not making any judgment regarding those allegations*." Tr. 192, ll. 3-5 (emphasis added). Rather, the trial court simply found that it had "a responsibility to see that the inmate is brought in safely and that the public is safe while the inmate is being brought in." Tr. 192, ll. 7-10. This logic can be applied to every single defendant brought to trial in South Carolina. But "the Constitution forbids the use of visible shackles...*unless* that use is justified by an essential state interest...*specific to the defendant on trial*." *Deck*, 544 U.S. at 624 (internal quotation marks omitted; second emphasis added). The trial court permitted Appellant and his co-defendants to be treated as if there was "evident danger of an escape," 4 BLACKSTONE, *supra* at 317, without taking evidence or deciding whether that was true.

The trial court expressly did not make any case-specific finding. While the state made some vague allegations of a potential escape plan, the trial court did not adopt those allegations; it refused to pass judgment on them at all. The trial court's denial of Appellant's motion for mistrial was based solely on the proposition that "there has to be a way for the Defendants to get

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[8] Further, in light of *Deck*, it is not clear that *Moore* is still good law. One of *Moore*'s principal holdings was that "the record contains no proof that the aforesaid incident prejudiced the minds of the jurors against the appellants." *Id.* at 153, 184 S.E.2d at 549. This would seem to suggest that the defendant bears the burden to "demonstrate actual prejudice," a position expressly rejected by *Deck*. *See* 544 U.S. at 635 ("where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, *the defendant need not demonstrate actual prejudice to make out a due process violation.* The State must prove beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained." (internal quotation marks omitted; alteration in original; emphasis added)).

into the courthouse." Tr. 191, ll. 22-23. The Constitution demands more from the trial court than throwing up its hands because of courthouse architecture and declaring that there is no solution to an egregious due process violation. Ignoring a Constitutional violation of this magnitude does not serve "the ends of public justice." *Perez*, 22 U.S. (9 Wheat.) at 580. This Court must reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse Appellant's convictions and sentences and remand this case for a new trial.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of March, 2026.