STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2025-001933

THE STATE,

Appellant,

vs.

LEON LEE HARRIS, JR.,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge reversibly err by granting Harris's motion to suppress the illegal drugs and other incriminating evidence discovered during the warrant-based search of Harris's home when: (1) the search warrant was supported by probable cause and properly issued by the magistrate judge; (2) the officers did not exceed the scope of the search authorized by the search warrant; and (3) the officers acted in good faith by relying on the judicially-approved search warrant such that application of the exclusionary rule could not have been warranted even if probable cause had somehow been lacking?

STATEMENT OF THE CASE

In November of 2023, Respondent Leon Lee Harris, Jr. was arrested after illegal drugs and other incriminating items were found during a warrant-based search of his residence that was conducted just two days after he had been involved in an incident at a gas station. Between April of 2024 and August of 2025, the Laurens County Grand Jury indicted Harris for manufacturing crack cocaine, possession of methamphetamine with intent to distribute, possession of cocaine with intent to distribute, second-degree assault and battery, possession of a firearm by a person convicted of a violent offense, and pointing and presenting a firearm. Prior to trial, Harris filed a motion seeking suppression of the evidence discovered during the search, and an in limine hearing was commenced on the matter on September 2, 2025, in the Laurens County Court of General Sessions with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. At the conclusion of the two-day hearing, the trial judge granted Harris's motion and suppressed the evidence discovered during the search. Thereafter, the State timely moved for reconsideration of that ruling, and the trial judge conducted a hearing on the matter on September 16, 2025. At the conclusion of the hearing, the trial judge denied the State's reconsideration motion, and that ruling was confirmed through a written order issued on September 16, 2025. The State then timely filed a notice of appeal.[1]

[1] Because the trial judge's suppression of the drugs and other evidence substantially impairs the State's ability to prosecute Harris for the indicted offenses, the State can properly appeal the trial judge's suppression ruling. See State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) ("A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable[.]").

STATEMENT OF FACTS

On the night of November 5, 2023, Richard Anthony Mixon reported he had just been accosted and threatened at gunpoint at a gas station by an individual he knew only as "Bug." (Search Warrant). Deputies from the Laurens County Sheriff's Office responded to the scene to investigate, and Mixon proceeded to provide a face-to-face, non-anonymous account of what had transpired to them. (Search Warrant). Notably, that account was consistent with footage captured by the gas station's surveillance system. (Tr. I pp. 20-21; Search Warrant).

As the investigation into the incident continued, Mixon advised deputies "Bug" was a drug dealer who sold "a lot of drugs" and, significantly, also candidly admitted he *personally* had assisted "Bug" with his illicit drug activity by serving as a "middleman" during *more than one* drug transaction. (Search Warrant). Mixon further reported "Bug" threatened him during the incident at the gas station because "Bug" was holding him responsible for a drug debt owed by someone he had vouched for and introduced to "Bug." (Search Warrant).

After making those self-incriminating admissions, Mixon escorted deputies to the address at which "Bug" resided. (Search Warrant). However, neither "Bug" nor anyone else appeared to be home at the time. (Search Warrant).

On the following day, narcotics investigators took over the investigation based on the troubling information Mixon had provided. (Search Warrant). Through their efforts, the investigators identified Harris as "Bug," discovered he owned a vehicle consistent with the description of the one involved in the incident at the gas station, and confirmed his address was the same one Mixon had identified as being associated with "Bug." (Tr. I p. 21; Search Warrant). Beyond that, investigators were able to verify Harris had a "lengthy" prior history of being involved in criminal activity, including drug activity, and the residence itself was also

connected to drug activity based on an earlier incident that had occurred just outside it in which a suspected hand-to-hand drug transaction was observed. (Tr. I pp. 16-18; p. 21; Search Warrant).

Based on everything that had been uncovered up to that point, Investigator Charles Nations from the Laurens County Sheriff's Office promptly sought a search warrant for Harris's residence on November 7, 2023. (Tr. I p. 14; Search Warrant). In seeking that warrant, the investigator provided the following description of the premises to be searched:

> Single occupancy dwelling, tan in color, with a detached garage located on the right side of the residence and a privacy fence located on the left side of the residence. This property is identified as having the mailing address of [a particular address in Gary Court, South Carolina] and is listed as being apart of the Parcel 158-00-00-024. This search warrant is to include all persons, outbuildings, vehicles and any and all locked storage containers associated with the property at the time of the execution.

(Search Warrant). Additionally, Investigator Nations prepared a lengthy multi-page affidavit setting out the reasons for which he was seeking the search warrant. (Search Warrant). Specifically, through that affidavit, Investigator Nations provided the following information to the magistrate judge:

> On November 5, 2023, the Laurens County Sheriff's Office was dispatched to 8314 Highway 14, in the Gray Court area of Laurens County, regarding an person with a gun threatening to kill the victim. Upon arrival, deputies came in contact with Richard Anthony Mixon, the victim.
>
> Mixon expressed to deputies that while he was at the gas pump, a male named "Bug" approached him from behind and stated he would kill him right there in the parking lot. Mixon stated that he could see the pistol grip of a handgun in "Bug's" hand, which was in the right side of his waistband. Mixon advised that he was able to convince "Bug" to let him go into the gas station to pay for diesel fuel, once inside he told the clerk that he was being threatened with a gun and he locked himself in the bathroom of the gas station. Mixon was unable to provide an actual name for "Bug" but stated that on this night "Bug" was driving a black in color Honda car.

ln continuance of the investigation, deputies were able to speak with Mixon in regards to how he knows "Bug" and what the situation was about. Mixon tells deputies that "Bug" is a known drug dealer and that he sells a lot of drugs. Mixon stated that he has been known to "middleman" some illegal transactions between "Bug" and other people. Mixon stated that he had introduced someone to "Bug" and "vouched" for them. Mixon stated that the other person obtained drugs from "Bug" but didn't pay for them. Mixon stated that "Bug" is holding him accountable for the money.

Deputies did review the store's surveillance video. The video show the victim to be parked at the diesel pump, when a black in color passenger car pulls into the parking lot near the gas pumps. A black male wearing a black hooded jacket/shirt, a black beenie, gray pants and black shoes approached the victim. The suspect can be seen with his right hand near his waistband, and the suspect forces the victim into the area between the driver's open door and the interior of the vehicle. During this time, it is observed that the suspect is acting in an aggressive manner and both hands can be seen in the victim's face/chest area. However, due to the quality of the video, deputies are unable to identify if there is anything in the suspect's hand, at this time. The victim is observed the[n] being able to walk away from the vehicle and enters into the store. The suspect waits in the parking lot a few minutes before going back to the black car and leaving the parking lot.

Mixon stated that he knows "Bug" lives in Gray Court off Currys Lake Road and offered to take the deputies to "Bug's" residence. Mixon rode in Deputy Simpson's patrol vehicle and pointed out the residence at [a particular address in Gray Court, South Carolina]. Deputies attempted to make contact with anyone at the residence but was unable to do so. Deputies also noted that there was a black passenger car at the residence but it was not the suspect vehicle that was described.

On November 6, 2023, the Laurens County Sheriffs Office Narcotics Unit was requested to review the case as the suspect was identified as being a "drug dealer" by the victim. Upon review, investigators were familiar with the residence at [the previously-identified address] and knew this residence was the location of an individual named "Bug" based upon previous investigations and were also familiar with "Bug" driving a dark gray in color Dodge Ram truck. Investigators identified that the property is listed as part of parcel number 158-00-00-024 in the Laurens County GIS mapping system. This system identifies that one Michael

Adolphus Thomas is the registered owner of the property, but it also shows a mailing address of [a different address on the same road]. Investigators used SCDMV to obtain vehicles that are registered to Thomas, and found that he does not own a Dodge Ram or a Honda car.

ln continuing the investigation, investigators checked reports concerning the address of [the particular address that had been identified as "Bug's" address] and found that in April of 2021, a male . . . identified as Leon Lee Harris Jr. was residing at the residence.

Deputies then utilized SCDMV to obtain any vehicles registered to Harris and found that he owns a 2007 Honda Accord with active plates. Investigators also found that Harris is the owner of a dark gray in color 2019 Dodge Ram 1500 with active plates, matching what investigators had identified previously.

Investigat[ors] then obtained the criminal history for Leon Lee Harris Jr., for investigative purposes. Upon review, the history established that Harris has been identified as using the alias of "Bug Harris" and "Junebug Harris". Additionally, it is found that Harris has been charged and convicted of numerous drug related offenses, assault offenses and resisting arrest offense from the early 1990's to present date. It is also identified that Harris is prohibited from possessing or acquitting a firearm or ammunition pursuant to the Federal Gun Control Act of 1968, on both Federal and State jurisdictions.

Investigators then reached out to the victim to speak with him about the incident a second time. Mixon reiterates the statement provided on the night before. Investigators also obtain "Bug's" cell phone number as [a particular ten-digit phone number]. Mixon stated that he had spoken to "Bug" on this number as recent as with in the week before the incident. Investigators utilized investigative tools and found that the phone number is registered to Leon Lee Harris Jr.

Based upon the facts provided in this affidavit, it is believed that probable cause has been met to execute a search warrant at the property identified as [the previously-identified address in Gray Court, South Carolina] to obtain additional evidence that would further this investigation. This search warrant shall include the search of all persons, vehicles, outbuildings and any and all locked storage containers associated with the property at the time of execution.

(Tr. I p. 16; Search Warrant). Furthermore, Investigator Nations provided a thorough description of the property sought that included drugs, drug paraphernalia, money, and transactional records *along with* the articles of clothing worn by the suspect during the incident at the gas station and any guns, including any that may have been utilized during that incident. (Search Warrant).

After reviewing the affidavit and receiving sworn supplemental testimony from Investigator Nations, the magistrate judge issued the search warrant for the property described. (Tr. I p. 16; p. 21; Search Warrant). On the same date, the magistrate judge also issued a warrant for Harris's arrest for second-degree assault and battery based on the incident at the gas station in which he accosted and threatened Mixon. (Arrest Warrant).

A few hours later, Investigator Nations and other officers arrested Harris and executed the search warrant at his residence. (Tr. I p. 16; Search Warrant). During the search, the officers located numerous firearms, ammunition, more than $5,000 in cash, plastic baggies, digital scales, and—most significantly—multiple containers with suspected narcotics inside. (Search Warrant). Based on what was uncovered during the search, Harris was indicted for numerous offenses, including a variety of drug charges. (Indictments).

Prior to trial on those charges, Harris's defense counsel moved for all the evidence discovered during the search of Harris's residence to be suppressed. (Supp. Mot. pp. 1-9). As support for that motion, defense counsel maintained the challenged search was unconstitutional because the admittedly-"lengthy" search warrant affidavit presented to the magistrate judge purportedly failed to include any information establishing Harris dealt illegal drugs out of his residence, stored illegal drugs at his residence, or participated in any illegal drug activity at his residence. (Supp. Mot. p. 5). Based on that, defense counsel contended the search warrant lacked *any* indicia of probable cause for the search and, thus, the good faith exception to the

exclusionary rule could not be applicable and suppression of the recovered evidence was purportedly warranted. (Supp. Mot. pp. 5-6). Furthermore, even if probable cause existed, defense counsel asserted the search of the residence's septic tank that resulted in the discovery of at least some of Harris's drugs exceeded the scope of what was authorized by the search warrant because: (1) the septic tank was not "explicitly" mentioned in the search warrant; (2) nothing in the search warrant suggested drugs would be found in the septic tank; and (3) Section 44-2-20 of the South Carolina Code of Laws[2] excluded septic tanks from its definition of "underground storage tank," which—in defense counsel's view—"suggest[ed] that septic tanks are treated as distinct entities under the law and not as part of general property infrastructure[.]" (Supp. Mot. p. 8). Resultantly, based on those factors and because "no indication of exigent circumstances" purportedly existed, defense counsel contended the evidence found in the septic tank had to be suppressed even if probable cause otherwise had been established. (Supp. Mot. p. 8).

In response to defense counsel's motion, the trial judge conducted an in limine hearing on the matter prior to trial.[3] (Tr. I p. 3). During that hearing, the trial judge was presented with a copy of the search warrant itself, and Investigator Nations offered testimony about how he obtained and executed that warrant. (Tr. I pp. 14-26).

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[2] Notably, that particular statutory provision is part of the State Underground Petroleum Environmental Response Bank Act of 1988, and its definitions are only applicable "[w]hen used in th[e] chapter" containing the provisions that Act, which—as might be expected from its name—is focused on the regulation of underground storage tanks *containing petroleum and petroleum products* as opposed to septic tanks in general. S.C. Code Ann. § 44-2-20; cf. Worsley Cos., Inc. v. S.C. Dep't of Health & Env't Control, 351 S.C. 97, 100, 567 S.E.2d 907, 909 (Ct. App. 2002) ("Worsley Companies, Inc. filed this action against the South Carolina Department of Health and Environmental Control (DHEC) seeking a determination that it was entitled to reimbursement pursuant to the State Underground Petroleum Environmental Response Bank (Superb) Act, S.C. Code Ann. § 44-2-10 et seq. (2002), for a payment it made in settlement of a claim arising out of the release of petroleum product from an underground storage tank it owned.").

[3] By that point, a jury had already been selected but had not yet been sworn. (Tr. I p. 10; p. 48).

Through his testimony, Investigator Nations confirmed he presented his sworn search warrant affidavit *along with* additional sworn testimony to the issuing magistrate judge, whom he indicated routinely tended to ask questions before issuing any warrants. (Tr. I pp. 16-17; pp. 25-26). As to the supplemental information orally provided, the investigator—over defense counsel's objection[4]—confirmed he advised the magistrate judge about the nature of law enforcement's earlier investigation of the targeted address, which had been generally referenced in the search warrant affidavit. (Tr. I pp. 17-18; p. 21; Search Warrant). Regarding the details provided to the magistrate judge, Investigator Nations confirmed officers—during the earlier investigation of Harris's residence—had observed two individuals, including one driving a Dodge Ram truck, meet "in front of the roadway" there and engage in what appeared to be a "hand-to-hand" transaction. (Tr. I p. 18). Investigator Nations further explained the officers then allowed the driver of the truck to leave the area, initiated a traffic stop once the driver had done so, and located illegal narcotics during the traffic stop after that. (Tr. I p. 18).

In addition to that, Investigator Nations discussed the search of the residence's septic tank, which had a visible above-ground cap that allowed it to be accessed simply by unscrewing the cap's bolts, and confirmed he believed it was included in the scope of the search warrant since it was an accessible container on the property situated approximately eighteen to twenty feet from Harris's residence. (Tr. I p. 23). Moreover, as to why it was searched, the investigator explained they checked the septic tank because a person inside the residence at the time they arrived to execute the search warrant witnessed their arrival and had approximately five minutes

[4] Defense counsel objected to any testimony about the oral supplementation that had been provided but conceded it was "certainly" appropriate for a magistrate judge to ask questions of an officer before issuing a warrant. (Tr. I pp. 17-18). The trial judge overruled defense counsel's objection. (Tr. I pp. 17-18). Obviously, that particular ruling was a correct one. See State v. Rutledge, 373 S.C. 312, 317, 644 S.E.2d 789, 791 (Ct. App. 2007) ("Oral testimony may be used to supplement search warrant affidavits.").

to potentially destroy evidence before they made entry into the residence. (Tr. I p. 24). Meanwhile, Investigator Nations did not directly testify as to how the septic tank was searched aside from unscrewing its cap, but defense counsel alleged the officers flushed the toilets inside the residence to get the drugs to come through the plumbing into the septic tank for retrieval. (Tr. I pp. 11-12; pp. 23-24).

Following the presentation of that testimony and evidence, defense counsel reiterated his request for the evidence found during the search of Harris's residence to be suppressed. (Tr. I pp. 27-28). As support for that request, defense counsel contended "[t]here's just not probable cause" because there was nothing in the search warrant that indicated drugs would be found on the property and explained the defense's "argument really is purely they didn't have probable cause at this point." (Tr. I pp. 27-28). Defense counsel further maintained a septic tank was not "necessarily" a storage container and expressed skepticism about Investigator Nations's testimony about the additional information he provided to the magistrate judge via his supplemental oral testimony because it was not in the affidavit itself. (Tr. I pp. 27-28).

Conversely, the solicitor argued the suppression motion should be denied. (Tr. I pp. 28-34). In so arguing, the solicitor explained Mixon, the victim of Harris's attack at the gas station, had direct knowledge of Harris's involvement in drug dealing, had—by his own candid admission—participated in Harris's drug activity in the past, and had identified drug activity as the motive for the attack, which directly connected the incident at the gas station to narcotics. (Tr. I pp. 28-29; p. 34). And, because Mixon's admissions of personal involvement in drug activity were against his penal interests, the solicitor pointed out those admissions were inherently reliable and could reasonably be credited and relied upon by the officers. (Tr. I p. 29). In addition to that, the solicitor noted Mixon led the officers to Harris's address, which was the

location for which the search warrant was obtained, while also providing information about Harris's vehicle and the officers were able to corroborate the provided information, including by reviewing the surveillance footage from the gas station. (Tr. I p. 29). Furthermore, the solicitor argued the search warrant permitted a search of the entire parcel and, thus, included the septic tank located at that address. (Tr. I p. 29).

After listening to the arguments of counsel, the trial judge indicated the search warrant was focused on searching Harris's residence for drugs, which he believed was a "big jump" from an assault and battery case in which someone was attacked at a convenience store. (Tr. I p. 31). In his view, the trial judge stated he felt the drug case and the assault and battery case involving Harris did not "seem to go together." (Tr. I pp. 33-34). The trial judge further indicated there was no mention of any drugs being bought out of the house in the search warrant, and he stated—incorrectly—nothing in the description of the property sought through the search warrant arose from the assault and battery incident. (Tr. I pp. 31-32).

In response, the solicitor swiftly corrected the trial judge and pointed out the search warrant expressly authorized a search for the clothing worn by the perpetrator of the attack upon Mixon along with any firearms that might have been involved in that incident. (Tr. I p. 33). The trial judge responded "that search warrant, if that's what it included, would seem very reasonable." (Tr. I p. 33). Nevertheless, the trial judge indicated he believed the assault and battery incident was "relatively minor" since Mixon was neither shot nor stabbed during it. (Tr. I p. 34). Following that, the trial judge indicated he was taking the matter under advisement overnight because he was "perplexed" by it. (Tr. I p. 36).

On the following day, the suppression hearing was resumed, and the solicitor reiterated the information provided by Mixon directly linked the incident at the gas station to drug dealing,

established Harris was actively engaged in *ongoing* drug activity at that time, and was corroborated through other information, including the information about Harris's prior record for drug crimes. (Tr. I p. 37). Moreover, the solicitor argued the good faith exception to the exclusionary rule would be applicable in Harris's case because the information provided in the search warrant was not barebones or conclusory. (Tr. I pp. 37-38). Furthermore, the solicitor contended it was reasonable for the officers to believe the residence's septic tank fell within the scope of the warrant under the circumstances involved. (Tr. I pp. 38-39).

In rebuttal, defense counsel alleged the search warrant was "defective [o]n its face" and suggested the officers were not acting in good faith because the search was purportedly a "fishing expedition." (Tr. I pp. 39-40). Likewise, defense counsel contended Mixon's admissions "might be self-serving" because he could potentially have been trying to get out of a debt he owed by making the accusation against Harris. (Tr. I p. 39).

After listening to those remarks, the trial judge—despite what had been introduced, including Investigator Nations's testimony about the supplemental information orally provided to the magistrate judge—indicated no specific information was presented about any sales of drugs occurring in or around the residence or coming from the residence. (Tr. I p. 41). Likewise, the trial judge noted no surveillance was conducted on traffic coming from the home. (Tr. I p. 41). Meanwhile, while conceding Harris was identified as a drug dealer based on the information provided, the trial judge indicated he did not "think there was any evidence proffered to the magistrate that they had any known sales to anyone." (Tr. I p. 41). Based on the lack of sales or purported sales of drugs, the trial judge concluded the search warrant's description was "hugely broad" and the information about Harris's drug dealing was "vague" and "insufficient." (Tr. I p. 42; p. 44).

Additionally, as his ruling continued, the trial judge indicated he believed the length of the search warrant affidavit was "misleading" due to its breadth. (Tr. I p. 43). The trial judge further explained he believed "it's exaggerated" because, in his view, it would be "inconceivable" for law enforcement officers to investigate an assault and battery in which there was no evidence the victim was bleeding, injured, or in need of medical attention by obtaining a search warrant to search for the clothing worn by the perpetrator.[5] (Tr. I pp. 43-44).

Furthermore, on his own initiative, the trial judge brought up the United States Supreme Court's decision in Franks v. Delaware, 438 U.S. 154 (1978), and suggested the officers exaggerated the severity of the assault and battery incident by characterizing it as a first-degree assault and battery[6] in an effort "to mislead the judge."[7] (Tr. I p. 43). Based on that, the trial judge indicated he believed "that's *a violation of Franks v. Delaware*, misleading a magistrate by exaggeration or false information." (Tr. I pp. 43-44) (emphasis added).

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[5] Despite that ruling, the trial judge did acknowledge the officers were also searching for the gun utilized during the assault and battery incident. (Tr. I p. 42).

[6] Notably, the lone reference to first-degree assault and battery in the search warrant affidavit appeared in the description of the property sought as opposed to in the investigator's explanation of the probable cause basis for the search. (Search Warrant). Notwithstanding that fact, it remains unclear why the trial judge believed evidence Harris threatened to kill Mixon "right there" at the gas station while he had his hand on a firearm that was visibly tucked into his waistband would be insufficient to at least provide probable cause to believe Harris was guilty of all the necessary elements of first-degree assault and battery. See S.C. Code Ann. § 16-3-600(C)(1)(b) (establishing a person commits first-degree assault and battery if the person—amongst other things—"offers . . . to injure another person with the present ability to do so" and the act "is accomplished by means likely to produce death or great bodily injury").

[7] That finding is particularly puzzling because the same magistrate judge who issued the search warrant for Harris's residence issued an arrest warrant for second-degree assault and battery on the same date, which demonstrates he was most certainly *not* misled by the single reference to first-degree assault and battery in the search warrant affidavit. (Search Warrant; Arrest Warrants).

Likewise, the trial judge expressly affirmed the basis for his ruling was *not* the search of the septic tank. (Tr. I p. 45). Nevertheless, he affirmed the scope of the search was "increased" by the officers' "manipulation of the plumbing system to flush it." (Tr. I p. 46).

Finally, the trial judge found "it would have been proper to knock on the door for [second-degree assault and battery] with a search warrant looking for weapons or clothes" in Harris's case. (Tr. I pp. 46-47). However, he further concluded the officers would have needed to stop and obtain a second search warrant if they had observed evidence of other crimes in plain view during the execution of that warrant. (Tr. I pp. 46-47). Since that was not done, the trial judge found that "create[d] a failure on the fairness to that search warrant." (Tr. I p. 47).

For those reasons, the trial judge ruled the search warrant was "improper," granted defense counsel's suppression motion, and ordered all the evidence discovered during the search of Harris's residence to be excluded. (Tr. I pp. 46-47). However, in doing so, the trial judge expressly affirmed the issue was "a close, close call" and "not a slam dunk." (Tr. I p. 47). Based on that, he encouraged the State to appeal his ruling and indicated he would be "disappointed" if the State did not do so. (Tr. I p. 48).

Ultimately, the solicitor did appeal the trial judge's ruling. (Notice of Appeal). However, before doing so, the solicitor first sought reconsideration. (Recon. Mot. pp. 1-10). In seeking reconsideration, the solicitor raised three primary points. (Recon. Mot. pp. 1-10). First, the solicitor challenged the trial judge's apparent finding a Franks violation had occurred because no evidence in the record supported such a finding and because the trial judge did not conduct an actual Franks hearing before making his finding in that regard. (Recon. Mot. pp. 3-5). Second, the solicitor argued the information presented to the magistrate judge did, in fact, support a finding of probable cause and the officers did not exceed the scope of the warrant by

flushing the toilet during their search. (Recon. Mot. pp. 5-8). Third, the solicitor contended the officers were acting in good faith by executing the detailed judicially-approved warrant and the trial judge erred by failing to address or rule upon that argument. (Recon. Mot. pp. 8-10).

In response, the trial judge conducted a hearing on the State's motion. (Tr. II pp. 3-4). During that hearing, the trial judge expressly disavowed making any findings pursuant to Franks, reiterated he did *not* find anything the investigator who obtained the search warrant did to be misleading, and indicated there was no way for him to even determine whether anything in the search warrant was intentionally misleading since no Franks hearing had been conducted. (Tr. II pp. 5-6; pp. 10-11; p. 14). The trial judge further clarified Franks "really wasn't part of [his] ruling" and "was just something [he] mentioned." (Tr. II p. 7). Nevertheless, the trial judge declined to reconsider his ruling granting the suppression motion. (Tr. II p. 13; Order).

As to why, the trial judge explained his ruling—which he described as "discretionary"—was based on his belief there was "a[n] absence of that gap from the gas station to [Harris's] house." (Tr. II pp. 7-8; p. 11). More specifically, the trial judge indicated he believed there was a "gap" between the reported drug activity and Harris's residence, and he confirmed he had ruled there was not a nexus between the assault and battery incident and the search for the drugs. (Tr. II pp. 8-9; p. 10). The trial judge further indicated he did not believe the officers really had a reason to go look for the weapon used during the assault and battery incident because they had nothing with which to compare it.[8] (Tr. II pp. 9-10). Aside from that, the trial judge provided no further substantive clarification about his ruling, and his written order summarily denied the State's reconsideration motion without further explanation. (Tr. II p. 13; Order).

[8] In response to that remark, the solicitor aptly pointed out the presence of the gun used in the assault and battery incident inside Harris's home could have corroborated the victim's account of the incident. (Tr. II p. 10).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a ruling on a constitutional search-and-seizure issue on appeal, the appellate court will "review the trial court's factual findings for any evidentiary support" and treat "the ultimate legal conclusion" as "a question of law subject to de novo review." State v. Frasier, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022).

However, when the specific search-and-seizure issue raised on appeal involves a challenge to a judge's decision to issue a search warrant, the reviewing court's role is simply to determine whether the issuing judge had a *substantial basis* for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Therefore, when conducting that particular analysis, the reviewing court should and must afford great deference on appeal to the issuing judge's probable cause determination. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007).

And, due to required and necessary substantial deference, "after-the-fact scrutiny by courts of the sufficiency of [a search warrant] affidavit should *not* take the form of de novo review." Illinois v. Gates, 462 U.S. 213, 236 (1983) (emphasis added); see State v. Huynh, 683 S.W.3d 803, 810 (Tex. App. 2023) ("A court's review of an affidavit supporting a search warrant is not de novo. Instead, the reviewing court's task is to determine whether a *reasonable reading* of the affidavit provides a substantial basis for the magistrate's conclusion that probable cause existed." (emphasis added and citations omitted)). Significantly, by eschewing de novo review in favor of affording substantial deference to the issuing judge's probable cause determination, the reviewing court incentivizes law enforcement officers to use the warrant process and makes it more likely they will do so, which is a policy goal consistent with the constitutional preference

for warrant-based searches. State v. Kinloch, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014); see Ornelas v. United States, 517 U.S. 690, 699 (1996) ("[P]olice are more likely to use the warrant process if the scrutiny applied to a magistrate's probable-cause determination to issue a warrant is less than that for warrantless searches. Were we to eliminate this distinction, we would eliminate the incentive."); cf. Massachusetts v. Upton, 466 U.S. 727, 732-733 (1984) ("The Supreme Judicial Court also erred in failing to grant any deference to the decision of the Magistrate to issue a warrant. Instead of merely deciding whether the evidence viewed as a whole provided a substantial basis for the Magistrate's finding of probable cause, the court conducted a de novo probable-cause determination. We rejected just such after-the-fact, de novo scrutiny in Gates. A grudging or negative attitude by reviewing courts toward warrants . . . is inconsistent both with the desire to encourage use of the warrant process by police officers and with the recognition that once a warrant has been obtained, intrusion upon interests protected by the Fourth Amendment is less severe than otherwise may be the case. A deferential standard of review is appropriate to further the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." (citations, footnote, and internal quotations omitted)).

ARGUMENT

The trial judge reversibly erred by granting Harris's motion to suppress the illegal drugs and other incriminating evidence discovered during the warrant-based search of Harris's home because: (1) the search warrant was supported by probable cause and properly issued by the magistrate judge; (2) the officers did not exceed the scope of the search authorized by the search warrant; and (3) the officers acted in good faith by relying on the judicially-approved search warrant such that application of the exclusionary rule could not have been warranted even if probable cause had somehow been lacking.

Following an in limine suppression hearing, the trial judge ruled the illegal drugs and other incriminating evidence discovered during the warrant-based search of Harris's home should be excluded during trial. In reaching that conclusion, the trial judge concluded the search warrant was improperly issued because probable cause for the search was purportedly lacking. Although not completely clear from the trial judge's ruling, the trial judge also *may* have found the officers exceeded the scope of the search authorized by the warrant by looking inside the residence's septic tank and flushing the residence's toilets. For multiple reasons, the trial judge's ruling was wrong. First and most significantly, the search warrant was, in fact, properly issued because the information presented to the magistrate judge provided him with a substantial basis for concluding probable cause existed to believe drugs and other incriminating evidence would be found at Harris's address at the time of the search. Second, to the extent the trial judge did actually find the officers exceeded the scope of the authorized search, the officers did not actually do so, and the manner in which they carried out their search was reasonable and fully consistent with what was authorized by the search warrant. Third and finally, the trial judge's decision to apply the exclusionary rule in Harris's case was erroneous because the officers acted in good faith by relying on a judicially-authorized search warrant when conducting their search and the search warrant was not so lacking in indicia of probable cause that belief in and reliance

on its validity was objectively unreasonable. The trial judge's suppression ruling should be reversed, and Harris's case should be remanded for trial.

A. When affording the substantial deference to the issuing judge's probable cause determination as required, the search warrant was—contrary to the erroneous conclusion reached by the trial judge—properly issued in Harris's case because the information presented to the magistrate judge, including the investigator's sworn oral testimony, provided him with a substantial basis for concluding probable cause existed to believe drugs and other incriminating evidence would be found at Harris's address at the time of the search.

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution provide protections to our citizens against unreasonable searches and seizures. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]"); S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]"). Significantly, based on their plain wording, the touchstone of those constitutional provisions is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."). As a result, *only* unreasonable searches and seizures are impermissible. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see also Heien v. North Carolina, 574 U.S. 54, 60 (2014) ("To be reasonable is not to be perfect[.]"); Illinois v. Rodriguez, 497 U.S. 177, 185 (1990) ("It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable.").

For constitutional purposes, warrantless searches are typically considered to be unreasonable per se *unless* they fall under an exception to the general warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978); see Kentucky v. King, 563 U.S. 452, 462 (2011) ("[W]arrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement."). Meanwhile, searches conducted pursuant to a valid judicially-issued warrant are generally considered to be constitutionally reasonable. Riley v. California, 573 U.S. 373, 382 (2014); see Wells v. Fuentes, 126 F.4th 882, 891 (4th Cir. 2025) ("The typical reasonable search or seizure happens within the boundaries of a valid warrant.").

Pursuant to South Carolina law, an affiant seeking to obtain a search warrant must present a sworn affidavit to a judge presenting grounds sufficient to establish probable cause in order to justify the issuance of the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348-349 (1999); see S.C. Code Ann. § 17-13-140 ("A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant."). In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974), our Supreme Court explained probable cause as it relates to the issuance of a search warrant:

> In order to justify the issuance of a search warrant, probable cause must be shown, but the term 'probable cause' does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citation omitted).

Simply put, probable cause means "a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical *probability* that a crime is being committed or has been committed and incriminating evidence is involved." State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995) (emphasis added); see Gates, 462 U.S. at 238 (identifying probable cause as "a fair probability that contraband or evidence of a crime will be found"). Importantly, the probable cause standard is *not* a high bar, and all that it requires is the kind of fair probability upon which a reasonable and prudent person—and not a legal technician—would act. Florida v. Harris, 568 U.S. 237, 244 (2013); State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing the probable cause standard "is not a high bar"); see also Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard).

When deciding whether to issue a search warrant, the issuing judge must "make a practical, *common-sense* decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238 (emphasis added). In making the probable cause determination, "[issuing judges] are concerned with probabilities and not certainties." State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976). Importantly, the issuing judge must view the search warrant affidavit in a common-sense and realistic fashion and give consideration to the fact such affidavits are typically prepared by non-lawyers in the haste of criminal investigations. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995).

And, when reviewing an issuing judge's probable cause determination, the question before the reviewing court is—as previously explained—simply whether the issuing judge had a *substantial basis* for concluding probable cause existed. Dupree, 354 S.C. at 683, 583 S.E.2d at 441. On review, the *issuing judge's* probable cause determination should and must be afforded great deference. Rutledge, 373 S.C. at 316, 644 S.E.2d at 791. Significantly, "[s]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." Arnold, 319 S.C. at 260, 460 S.E.2d at 405. "Suppression is appropriate in only a few situations, including when an affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (citation and internal quotations omitted).

In the case sub judice, the trial judge—in finding the search warrant was not supported by probable cause—erred by failing to afford the required deference to the issuing magistrate judge's probable cause determination and, instead, appeared to conduct de novo review before reaching his own conclusion probable cause did not exist under the circumstances involved. Critically, when the appropriate deferential standard is applied, the totality of the information presented to the magistrate judge through both the search warrant affidavit and Investigator Nations's supplemental oral testimony provided the magistrate judge with a substantial basis for concluding probable cause existed to believe drugs and other incriminating evidence would be found at Harris's address at the time of the search. No more was required.

Looking to the totality of the circumstances presented to the magistrate judge in support of the search warrant, Harris accosted and threatened Mixon two days before the search *over a drug debt*, which established the existence of a clear logical connection between the incident at

the gas station and recent ongoing drug dealing on Harris's part. Beyond that, Harris's involvement in drug activity was not isolated since Mixon candidly reported he personally had served as a middleman for Harris in multiple drug transaction*s* leading up to the encounter at the gas station. And, importantly, that information was reliable and could be credited by both the investigating officers and the magistrate judge because the source of that information—Mixon—was known to the officers, engaged in face-to-face communications with them on more than one occasion, and made admissions against his own penal interest by directly admitting his own active participation in illegal drug activity. See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct."); State v. Driggers, 322 S.C. 506, 511, 473 S.E.2d 57, 60 (Ct. App. 1996) ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false."); cf. Milbin v. State, 792 So. 2d 1272, 1274 (Fla. Dist. Ct. App. 2001) ("A witness who provides information to a police officer through 'face to face' communication is deemed to be sufficiently reliable."); State v. Fudge, 42 S.W.3d 226, 232 (Tex. App. 2001) (finding a law enforcement officer possessed sufficient reasonable suspicion to justify an investigatory detention based on the fact he received unsolicited information about criminal activity in a face-to-face manner from an individual who was neither connected to

police nor a paid informant, which made the information provided "inherently reliable"). Beyond that, the responding officers were able to corroborate Mixon's account of what occurred at the gas station by reviewing the surveillance footage, and their investigation revealed Harris had a prior record that included drug offenses, which further corroborated the information about his involvement in ongoing drug activity. See Gates, 462 U.S. at 244-245 ("It is enough, for purposes of assessing probable cause, that corroboration through other sources of information reduced the chances of a reckless or prevaricating tale, thus providing a substantial basis for crediting the hearsay." (citation and internal quotations omitted)). Moreover, since Harris's drug activity was *not* isolated but, instead, was something he had been involved in on multiple prior occasions, the repetitive nature of his drug crimes supported a conclusion they were still likely to be ongoing. See State v. Thompson, 363 S.C. 192, 207, 609 S.E.2d 556, 564 (Ct. App. 1992) ("Although isolated sales of narcotics unquestionably occur, it is generally recognized that narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness." (citations and internal quotations omitted)); see also United States v. Farmer, 370 F.3d 435, 439 (4th Cir. 2004) (holding it is reasonable to conclude an ongoing, extended criminal scheme will not simply be abandoned or discontinued); United States v. Ortiz, 143 F.3d 728, 732-733 (2nd Cir. 1998) ("[I]n investigations of ongoing narcotics operations, intervals of weeks or months between the last described act and the application for a warrant did not necessarily make the information stale. Indeed, narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness." (citations and internal quotations omitted)); United State v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984) ("In some circumstances, the very nature of the evidence sought may suggest that probable cause is not

diminished solely by the passage of time."). Thus, the information contained in the search warrant affidavit clearly established a fair probability Harris himself was involved in drug activity at the time the search warrant was sought.

Beyond establishing Harris's repetitive and ongoing involvement in drug activity, the information presented in the search warrant affidavit also directly linked both Harris *and* drug activity to the address to be searched. Specifically, Mixon identified that particular address as Harris's residence and guided the responding officers to it, and the investigators were able to corroborate that information through an earlier report identifying the address as Harris's and an earlier investigation targeting that address. See United States v. Grossman, 400 F.3d 212, 217 (4th Cir. 2005) (instructing "a sufficient nexus can exist between a defendant's criminal conduct and his residence even when the affidavit supporting the warrant contains no factual assertions directly linking the items sought to the defendant's residence" (citation and internal quotations omitted)). Furthermore, notwithstanding the logical link to drug activity established by the fact the address was a known drug dealer's address, the investigators established an additional link between the address and drug activity through the information about the hand-to-hand transaction that was observed outside of it during the earlier drug investigation, which was alluded to in the search warrant affidavit before being directly communicated to the magistrate judge via Investigator Nations's supplemental testimony. See Kinloch, 410 S.C. at 618, 767 S.E.2d at 156 (recognizing the observation of parties conducting hand-to-hand transactions outside a residence can help establish a probable cause basis for a search of the residence); see also Grossman, 400 F.3d at 218 (4th Cir. 2005) (recognizing it is reasonable to suspect a drug dealer stores drugs in his home); cf. State v. Jenkins, 790 So. 2d 626, 627 (La. 2001) (holding a search warrant authorizing a search of a residence was properly issued and supported by

probable cause where the investigating officers included information in the search warrant affidavit establishing they observed what appeared to be a hand-to-hand transaction take place on the porch of the targeted residence, they stopped a person involved in the transaction after that person left the residence, and they seized a plastic bag containing vegetable matter from that person). Thus, contrary to the conclusion reached by the trial judge, the information presented to the magistrate judge in support of the search warrant did, in fact, establish a logical nexus between Harris's drug activity and the targeted residence, which was Harris's.

Viewing the totality of all the circumstances collectively as required, those circumstances—when presented to the magistrate judge through the search warrant affidavit and supporting testimony—provided the issuing judge with a substantial basis to find there was a fair probability drugs and other incriminating evidence, including the evidence connected to the incident at the gas station, would be found at Harris's address at the time of the search. Cf. United States v. Williams, 974 F.2d 480, 481-482 (4th Cir. 1992) ("The affidavit submitted to the magistrate clearly establishes that Williams was a drug dealer. The affidavit also contains evidence that Williams was currently residing in the Statesman Motor Lodge. With this evidence before him, the magistrate must consider, in the light of all of the surrounding circumstances, the likelihood that drug paraphernalia would be found in the motel room of a known drug dealer. The magistrate concluded that there was a fair probability that drug paraphernalia would be found in Williams' motel room and issued the search warrant. The affidavit submitted to the magistrate fully supports this conclusion."). Significantly, no more was required for a search warrant for Harris's address to be validly issued, and, therefore, the trial judge erred by reaching a contrary conclusion based on his own assessment of the information provided. See Gates, 462 U.S. at 236 ("Reflecting this preference for the warrant

process, the traditional standard for review of an issuing magistrate's probable cause determination has been that so long as the magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more." (citation, brackets, ellipses, internal quotations omitted)); State v. Crummey, 443 S.C. 94, 107, 902 S.E.2d 391, 398 (Ct. App. 2024) (recognizing a reviewing court's task is simply "to decide whether the magistrate had a substantial basis for concluding probable cause existed"); cf. Dupree, 354 S.C. at 691, 583 S.E.2d at 445 (finding a suppression motion was properly denied because "a substantial basis existed to support the magistrate's finding of probable cause" based on the facts presented). And, the trial judge's error in that regard was magnified by the fact he failed to afford the requisite deference to the magistrate judge's probable cause determination in a case that—by the trial judge's own estimation—was a "close, close call." See State v. Robinson, 415 S.C. 600, 605, 785 S.E.2d 355, 357 (2016) (instructing a reviewing court must give "*great* deference to the issuing judge's probable cause determination" (emphasis added)); Dupree, 354 S.C. at 683-384, 583 S.E.2d at 441 ("Searches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause."); cf. United States v. Ventresca, 380 U.S. 102, 108 (1965) ("[W]here these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.").

For all those reasons, the trial judge's ruling granting the suppression motion should be reversed, and Harris's case should be remanded for trial.

B. The officers did not exceed the scope of the search warrant or otherwise engage in any unreasonable conduct by looking inside the residence's septic tank and flushing the residence's toilets in an effort to locate any concealed narcotics since the search warrant authorized a search of the residence, its curtilage, and any containers associated with it that could have held the objects of the search, which included illegal drugs.

"A search conducted pursuant to a warrant is limited in scope by the terms of the warrant's authorization." United States v. Phillips, 588 F.3d 218, 223 (4th Cir. 2009). However, as a fundamental matter, "[a] lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search." United States v. Ross, 456 U.S. 798, 820-821 (1982). Thus, when a search warrant authorizes a search of a home, an officer executing that warrant is necessarily authorized to open closets, chests, drawers, or other containers in which the object of the search might be found, and that authority extends to the residence's curtilage, too. Id.; see Brown v. State, 425 S.E.2d 856, 857 (Ga. 1993) ("[A] search warrant for a residence authorizes a search of the curtilage of that residence, which includes yards and grounds and buildings.").

With those principles in mind, the officers executing the search warrant in Harris's case did *not* exceed the scope of that warrant by unscrewing the removable above-ground cap of the residence's septic tank, looking inside it, and flushing the residence's toilets to recover any drugs that may have been—and, in fact, were—concealed within the home's plumbing system. That is true because the search warrant authorized a search of Harris's residence, which necessarily included the residence's curtilage, along with any storage containers associated with it that could

have contained the objects of the search. See Oliver v. United States, 466 U.S. 170, 180 (1984) (instructing a home's curtilage is considered to be part of the home itself for constitutional purposes).

Obviously, Harris's residence's plumbing system was an integral part of the residence itself and constituted an area in which one of the objects of the search—illegal narcotics—could have been concealed. See, e.g, Washington v. Whitaker, 317 S.C. 108, 122, 451 S.E.2d 894, 902 (1994) (Littlejohn, J., dissenting) ("Drug dealers are known to conceal drugs which may not be found and have been known to flush drugs down the commode or toss them out a window. Police officers know this."). Meanwhile, the residence's septic tank was directly connected to the residence via that plumbing system, was located on the same parcel of property only eighteen to twenty feet away from the home, and constituted a container falling within the residence's curtilage. Cf. Fine v. United States, 207 F.2d 324, 325 (6th Cir. 1953) (concluding a shed located "some" twenty feet behind a residence fell within the residence's curtilage and, thus, was included within the scope of a search warrant for the residence).

In light of that, the search warrant, which unquestionably authorized a search of the residence and any storage containers associated with it, permitted the officers to look inside the septic tank and check the plumbing for one of the delineated objects of their search by performing the routine act of simply flushing the toilets. See State v. Cauthen, 447 S.C. 45, 51-52, 923 S.E.2d 655, 659 (Ct. App. 2025) (concluding officers did not exceed the scope of a search warrant authorizing a search of a residence by digging up a filed hole discovered in the residence's backyard); cf. United States v. Becker, 929 F.2d 442, 446 (9th Cir. 1991) ("The concrete slab was located within and was part of the yard and, thus, searching beneath it was clearly within the scope of the warrant."). And, by doing so, the officers did nothing even

remotely unreasonable. See United States v. Ramirez, 523 U.S. 65, 71 (1998) ("The general touchstone of reasonableness which governs Fourth Amendment analysis . . . governs the method of execution of the warrant. Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search are not subject to suppression." (citation omitted)).

Accordingly, to the extent the trial judge's ruling conceivably *could* be construed as including a finding the search of the septic tank exceeded the scope of the search warrant,[9] the officers did not do anything improper or unreasonable by conducting their warrant-based search of the residence in the manner they did, and there are no valid grounds upon which it could be concluded their search exceeded the scope of what was authorized by the search warrant simply by looking inside the residence's septic tank or flushing the residence's toilets. See Ross, 456 U.S. at 821 ("[A] warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." (footnote omitted)); see also Dalia v. United States, 441 U.S. 238, 257-258 (1979) ("Often in executing a warrant the police

[9] Again, in granting the suppression motion, the trial judge explained the basis of his ruling was *not* the search of the septic tank but nevertheless indicated he believed "the manipulation of the plumbing system to flush it . . . increased the scope of the search[.]" (Tr. I pp. 45-46).

may find it necessary to interfere with privacy rights not explicitly considered by the judge who issued the warrant. . . . Similarly, officers executing search warrants on occasion must damage property in order to perform their duty. It would extend the Warrant Clause to the extreme to require that, whenever it is reasonably likely that Fourth Amendment rights may be affected in more than one way, the court must set forth precisely the procedures to be followed by the executing officers. Such an interpretation is unnecessary, as we have held—and the Government concedes—that the manner in which a warrant is executed is subject to later judicial review as to its reasonableness." (citations omitted)). The trial judge's ruling granting the suppression motion should be reversed, and Harris's case should be remanded for trial.

C. Even assuming the search warrant affidavit was insufficient to establish a probable cause basis for the search of Harris's home, the trial judge reversibly erred by failing to find the good faith exception to the exclusionary rule was applicable since the law enforcement officers relied on the judicially-issued search warrant in good faith and the search warrant was not so lacking in indicia of probable cause that belief in and reliance on its validity was objectively unreasonable.

When an unreasonable search or seizure occurs, any evidence seized as the result of that unconstitutional action generally must be excluded from trial pursuant to the exclusionary rule, a judicially-created remedy designed *solely* to serve as a deterrent sanction against unconstitutional conduct. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); see State v. Carter, 445 S.C. 157, 163, 912 S.E.2d 264, 267 (2025) (emphasizing the exclusionary rule's sole purpose is to deter misconduct by law enforcement); State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) ("The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment." (citation

omitted)). Importantly though, the exclusion of evidence following an unconstitutional search "is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search." Davis v. United States, 564 U.S. 229, 236 (2011) (citations and internal quotations omitted). Due to the heavy costs exacted by the exclusion of evidence on both the judicial system and society as a whole, application of the exclusionary rule is only appropriate when the deterrent benefits of the rule outweigh the heavy costs its application would exact. Brown, 401 S.C. at 88, 736 S.E.2d at 266. As a result, judicially-created exceptions to the exclusionary rule have been established, including the good faith exception first recognized by the United States Supreme Court in United States v. Leon, 468 U.S. 897 (1984). Id. at 88-89, 736 S.E.2d at 266; see also State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987) ("Exclusion of evidence is not the only means available to insure that warrants are properly issued.").

In Leon, officers received information from an informant of unknown reliability about drug activity occurring at a particular residence and initiated a narcotics investigation as a result. United States v. Leon, 468 U.S. 897, 901 (1984). During their investigation, they observed cars registered to individuals with criminal records come to and leave from the residence and saw individuals enter the residence and leave a short time later with small paper sacks. Id. They also located a small quantity of marijuana at an airport in the belongings of two individuals connected to the targeted residence when those individuals returned from a trip to Miami. Id. at 902. Thereafter, a narcotics investigator prepared a search warrant affidavit recounting those details, obtained a search warrant, searched a variety of locations connected to Leon and his accomplices, and discovered large quantities of cocaine and other evidence. Id. Subsequently, during trial, Leon and his accomplices sought the suppression of the evidence discovered during

the searches, and the district court judge granted the suppression motion after finding the warrant affidavit contained insufficient information to establish probable cause. Id. at 903. Following that ruling, the State appealed, and the Ninth Circuit Court of Appeals affirmed the district court judge's decision. Id. at 904-905. The State then filed a petition for a writ of certiorari in the United States Supreme Court, and the Supreme Court granted that petition to address the issue of whether the exclusionary rule should be applied to evidence "obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause." Id. at 900.

After considering the issue, the Supreme Court determined the exclusionary rule should only "rarely" be applied in a case in which an officer reasonably relied upon a subsequently-invalidated search warrant. Id. at 926. Specifically, the Supreme Court concluded suppression of the evidence based on a subsequently-invalidated search warrant was only appropriate in four limited situations: (1) where the affiant misled the issuing judge by including false or misleading information in the warrant affidavit; (2) where the issuing judge wholly abandoned his neutral and detached judicial role; (3) where the warrant affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; and (4) when a warrant was so facially deficient in some technical respect the officer executing the search warrant could not reasonably have presumed it to be valid. Id. at 923 (citation and internal quotations omitted). Thereafter, the Supreme Court reversed the district court judge's decision despite the fact the warrant affidavit had been found not to contain sufficient information to establish probable cause after concluding "the officers' reliance on the magistrate's determination of probable cause was objectively reasonable" under the circumstances. Id. at 926.

Here, just as in Leon, the good faith exception to the exclusionary rule would be applicable even assuming the trial judge was somehow correct in finding the search warrant affidavit was insufficient to establish a probable cause basis for the search. That is true because none of the four limited situations identified in Leon as warranting suppression of evidence based on a subsequently-invalidated search warrant was applicable to Harris's case.

First, Investigator Nations did not—as the trial judge eventually recognized when he disavowed his earlier statements suggesting a Franks violation may have occurred—include any false or misleading statements in his search warrant affidavit. In fact, during the proceedings conducted in Harris's case, Harris never even attempted to suggest the investigator had done so, and, resultantly, no need for a Franks hearing was ever triggered and no hearing was ever conducted to ascertain whether a Franks violation had occurred. See Franks v. Delaware, 438 U.S. 154, 171 (1978) ("To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons."); see also United States v. Otero, 495 F.3d 393, 398 (7th Cir. 2007) (recognizing a defendant must rebut the presumption of good faith that arises when an officer obtains a search warrant).

Second, nothing presented during the in limine hearing suggested the magistrate judge who issued the search warrant in Harris's case wholly abandoned his neutral and detached judicial role. To the contrary, Investigator Nations's testimony established the magistrate judge was *not* merely "a rubber stamp for the police" but, instead, routinely questioned officers to

verify the facts before issuing any warrants.[10] Leon, 468 U.S. at 914. And, Investigator Nations confirmed the magistrate judge conducted just such questioning before issuing the search warrant in the case at bar. See id. ("A magistrate failing to manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application and who acts instead as an adjunct law enforcement officer cannot provide valid authorization for an otherwise unconstitutional search." (citation and internal quotations omitted)).

Third, the warrant affidavit prepared in Harris's case was not—particularly when considered in conjunction with the supplemental oral testimony provided along with it—"so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[,]" which is what was necessary for the officers' reliance on the judicially-issued search warrant to be objectively unreasonable. Id. at 924 (citations and internal quotations omitted); cf. United States v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002) ("[E]ven if Agent Peterson's affidavit does not provide a substantial basis for determining the existence of probable cause, . . . it is not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." (citations and internal quotations omitted)). Specifically, the information in Investigator Nations's "lengthy" warrant affidavit was not in any way "bare bones" or conclusory. Instead, the warrant affidavit was a thorough one and contained information establishing Harris was a drug dealer, information establishing the grounds for why the officer believed drugs would be located at the targeted residence, information regarding the ongoing and continuous nature of Harris's drug activity, and at least some information specifically linking drug activity to the targeted residence. Cf. Leon, 468 U.S. at 926 (finding an officer's reliance on a search warrant was not objectively unreasonable despite the fact the

[10] More specifically, Investigator Nations testified: "Judge Bron is one -- he likes to kind of make sure he understands before he puts his name on something." (Tr. I p. 17).

warrant affidavit did not contain sufficient information to establish probable cause when the warrant was supported by more than a "bare bones" affidavit).

Fourth and finally, the search warrant was not so facially deficient in some technical respect the officers executing it could not reasonably have presumed it to be valid. To the contrary, the search warrant was signed by the magistrate judge and contained everything necessary to constitute a valid search warrant pursuant to South Carolina law. See S.C. Code Ann. § 17-13-140 (setting out the requirements for the issuance of a valid search warrant in our state); see also Messerschmidt v. Millender, 565 U.S. 535, 546 (2012) ("Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in 'objective good faith.' "); cf. State v. Covert, 382 S.C. 205, 208-209, 675 S.E.2d 740, 742 (2009) (explaining the absence of the issuing officer's signature on a search warrant "negates the existence of a warrant").

Under such circumstances, Investigator Nations's and the other officers' reliance on the judicially-approved search warrant was not objectively unreasonable, and the officers acted in good faith when executing the search warrant. See Leon, 468 U.S. at 924 ("When officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time."). Therefore, even assuming the issuing magistrate judge did not actually have a substantial basis for finding probable cause based on the information presented to him, there was no misconduct on the part of law enforcement to deter by suppressing the drugs and other incriminating found in Harris's case. See Herring v. United States, 555 U.S. 135, 144 (2009) ("To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that

such deterrence is worth the price paid by the justice system."); Hamrick v. State, 426 S.C. 638, 654, 828 S.E.2d 596, 604 (2019) ("The [exclusionary] rule does not apply when the police act with an objectively reasonable good-faith belief that their conduct is lawful. Where there is no misconduct, and thus no deterrent purpose to be served, suppression of the evidence is an unduly harsh sanction." (citations and internal quotations omitted)). Despite that, the trial judge erroneously found application of the exclusionary rule was, in fact, warranted, and, in doing so, he wholly failed to rule on the solicitor's good faith argument despite the solicitor's efforts to get him to do so. See Leon, 468 U.S. at 922 ("[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial cost of exclusion."); Weston, 329 S.C. at 293, 494 S.E.2d at 804 ("Suppression is appropriate in only a few situations, including when an affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." (citation and internal quotations omitted)); see also Davis, 564 U.S. at 237 ("Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a 'last resort.' " (citations omitted)). The trial judge's ruling granting the suppression motion should be reversed, and Harris's case should be remanded for trial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the ruling of the circuit court judge should be reversed and the case should be remanded for trial.

Respectfully submitted,

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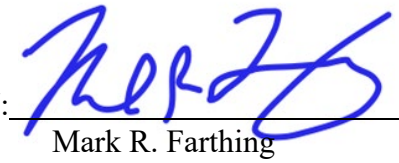
BY: 
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