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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chesterfield County

Honorable Paul M. Burch, Circuit Court Judge

Opinion No. 6143 (S.C. Ct. App. Filed March 25, 2026)

Lower Court Case No. 2018-GS-13-00424

THE STATE,

RESPONDENT,

V.

JAMES MONROE BROWN,

PETITIONER.

APPELLATE CASE NO. 2021-000469

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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[1] Franks v. Delaware, 438 U.S. 154 (1978).

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued on March 25, 2026, the Petition for Rehearing was filed on April 9, 2026, which was denied by the Court of Appeals on April 23, 2026.

QUESTION PRESENTED

Did The Court of Appeals err in upholding the trial judge's denial of the motion to suppress the defective search warrant in the case per the rationale that all requirements under Franks[2] were not met in the case because to the contrary, the defense satisfied the two-pronged criteria by establishing via a preponderance of the evidence that the false information included in the affidavit was procured from police recklessness/deliberateness, and that there was insufficient probable cause information in the warrant affidavit sans the falsehood presented therein, all of which meant that the denial of the evidence seized as a result of the execution of the search warrant constituted reversible error in the case?

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[2] Franks v. Delaware, 438 U.S. 154 (1978).

STATEMENT OF THE CASE

Petitioner was indicted at the July 24, 2018, term of the Chesterfield County grand jury for the offense of murder. R. 364. His case was called to trial on April 21, 2021, before the Honorable Paul M. Burch, and a jury. Grant Smaldone represented petitioner. Kernard Redmond was the deputy solicitor.

On April 22, 2021, the jury found petitioner guilty of murder. R. 346, ll. 13-17. Judge Burch sentenced petitioner to thirty-five years imprisonment. R. 361, ll. 9-11.

This appeal follows.

ARGUMENT

The Court of Appeals erred in upholding the trial judge's denial of the motion to suppress the defective search warrant in the case per the rationale that all requirements under Franks[3] were not met in the case because to the contrary, the defense satisfied the two-pronged criteria by establishing via a preponderance of the evidence that the false information included in the affidavit was procured from police recklessness/deliberateness, and that there was insufficient probable cause information in the warrant affidavit sans the falsehood presented therein, all of which meant that the denial of the evidence seized as a result of the execution of the search warrant constituted reversible error in the case.

On the night of January 21, 2017, numerous males appeared at the decedent's home demanding that he materialize in front of them, and when the decedent did so he was shot by gunfire several times. Thereafter, Jamarius Sellers, Brenton Davis, and petitioner were charged with the murder of the decedent. Sellers died before any adjudication on the murder charge. The recovery of the decedent's cell phone led to the discovery of threats communicated to the decedent from Davis' cellphone. As a result, on January 24, 2017, police presented the magistrate with a request to obtain the cellphone records of petitioner and Davis on the basis that the information would aid in the investigation process in the case. However, there was no probable cause basis to obtain cellphone records from petitioner because petitioner never called the decedent on the night of the shooting. The threatening calls were made by Davis only.

The issue raised on appeal follows:

> The court erred by refusing to suppress evidence seized pursuant to a search warrant for appellant's phone since the warrant affidavit was vague and overbroad and the state stipulated that the one specific allegation in the affidavit that appellant's phone called

[3] Franks v. Delaware, 438 U.S. 154 (1978).

> the decedent's phone before the murder was false since that state failed to produce the probable cause necessary for a search warrant.

BOA at 5.

As seen below, the state stipulated during the suppression hearing that petitioner's phone *did not call the decedent's phone* as alleged in the search warrant affidavit. The search warrant affidavit (State's Exhibit 1) contained only one supporting allegation and that allegation was false. R. 364. Furthermore, the state stipulated during the suppression hearing that petitioner did not call the decedent, and the decedent did not call petitioner.

The affiant was Lieutenant Wayne Jordan. The affidavit stated that Jordan was a graduate of the South Carolina Criminal Justice Academy who had received training on cellular phones and analysis of cellular phone data and records. R. 364. The affidavit continued:

> The affiant knows through training and experience that physical evidence such as cell phone records and usage is crucial and often one of the only links to a suspect and other perpetrators of the crime. The affiant knows that cell phone records are a valuable investigative tool, and can link an offender to a crime scene or a particular location. Cell phones are commonly used for email, text messaging, video, and photos, and this data, in addition to the records of calls made, may provide evidence of the crimes being investigated or leads into the identities of the perpetrators.
>
> Through experience and training, your affiant knows cellular phone services that includes text messaging and e-mail services, such as cellular service provider, maintain records related to subscriber information, account registration, credit information, billing and airtime records, outbound and inbound call detail, connection time and dates, Internet routing information (Internet Protocol numbers), GPS and tower locations, and message content, that may assist in the identification of person/s accessing and utilizing the account. Through experience and training, your affiant knows that the cellular service provider maintains records that include cell site information and GPS location. Cell site information shows which cell site a particular cellular telephone was within at the time of the cellular phone's usage. Some model cellular phones are GPS enabled which allows the provider and user to determine the exact geographic position of the phone. Further, the cellular service provider maintains cell site maps that

> show the geographical location of all cell sites within its service area. Using the cell site geographical information and GPS information, officers would be able to determine the physical location of the individual using the cell phone number 843-439-7060
>
> That on January 21st, 2017 James Henderson Jr was shot and killed at his home in Cheraw, South Carolina and during this incident he received several phone calls from the target number minutes before his murder. This is an ongoing Murder investigation.
>
> This search warrant must be faxed out of state, and due to factors beyond the control of the affiant, it is highly likely the records will not be provided by Verizon within the 10 days required. The affiant asks the court to extend the time limit to whatever period of time is reasonable necessary for Sprint to produce the records sought. As part of this search warrant, the affiant requests the court direct Verizon and its employees/authorized agents and representatives to not disclose the existence of this search warrant to the account holder as the release of this information could impede the investigation by alerting the suspect(s) of the progress and focus of the investigation.

R. 365. (emphasis added).

Wayne Jordan of the Chesterfield Sheriff's Department was the only witness during the suppression hearing. R. 10, ll. 15-22. Jordan was the supervisor of the detective unit. R. 10, l. 25 – 11, l. 2. Jordan identified State's Exhibit 1 as the "search warrant I had signed by the magistrate." R. 11, ll. 21-25; R. 364. The target was petitioner's cell phone. R. 12, ll. 1-3.

The Court of Appeals held as follows regarding the issue raised on appeal:

> "*Franks* outlined a two-prong test for challenging the veracity of a search[-]warrant affidavit." *Gore*, 408 S.C. at 244, 758 S.E.2d at 721 (citing *Franks*, 438 U.S. at 155-56). "First, to mandate an evidentiary hearing, there must be 'allegations of deliberate falsehood or of reckless disregard for the truth [as to statements included in the warrant affidavit], and those allegations must be accompanied by an offer of proof.'" *Id.* (alteration in original) (quoting *Franks*, 438 U.S. at 171). "At the hearing, the accused has

the burden of proving the allegations of perjury or reckless disregard for the truth by a preponderance of the evidence." *Id.*

"Second, if a deliberate falsehood or a reckless disregard for the truth has been established, the court must exclude the false material and consider the remainder of the affidavit to determine if it is sufficient to establish probable cause." *Id.* at 245, 758 S.E.2d at 721. "If the court determines no probable cause exists after the false material is omitted from the analysis, 'the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.'" *Id.* (quoting *State v. Davis*, 354 S.C. 348, 360, 580 S.E.2d 778, 784 (Ct. App. 2003)).

The *Franks* Court provided, "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 . . . ." *Missouri*, 337 S.C. at 554, 524 S.E.2d at 397 (quoting *Franks*, 438 U.S. at 171). "If these requirements are met, and if, when [the] material that is [the] subject of the alleged falsity or reckless[] disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required." *Id.* (quoting *Franks*, 438 U.S. at 171-72).

In this case, Brown argues the search-warrant affidavit did not establish probable cause because the one specific allegation in the affidavit—that Brown's phone called Victim's phone before the murder—was false. The State does not dispute the search-warrant affidavit included a statement that the State later stipulated was not true—that Victim had received several phone calls from that phone number minutes before his murder. The State stipulated during the pretrial hearing that Brown's phone number never called Victim. However, when an affidavit contains a statement the defendant alleges should be excluded because it is false, the proper avenue to make that challenge is through a *Franks* hearing. *See Gore*, 408 S.C. at 244, 758 S.E.2d at 721 ("*Franks* outlined a two-prong test for challenging the veracity of a search[-]warrant affidavit." (citing *Franks*, 438 U.S. at 155-56)). Brown made no showing the false information was provided intentionally or recklessly. See *Robinson*, 415 S.C. at 606, 785 S.E.2d at 358 ("In order to obtain relief, the defendant must prove the affiant knowingly and intentionally, or with reckless disregard for the truth, included false statements in the search-warrant affidavit."); *Gore*, 408 S.C. at

> 244, 758 S.E.2d at 721 ("[T]here must be 'allegations of deliberate falsehood or of reckless disregard for the truth . . . , and those allegations must be accompanied by an offer of proof.'" (emphasis added)(quoting *Franks*, 438 U.S. at 171)); *id.* at 245-46, 758 S.E.2d at 721 (agreeing with a defendant that an affidavit improperly omitted information but noting the omission did not per se invalidate the search warrant and the defendant had to make a preliminary showing that the affiant included a deliberate falsehood or recklessly disregarded the truth to mislead the magistrate). As the defendant, Brown had the burden of making that showing. *See Gore*, 408 S.C. at 244, 758 S.E.2d at 721 ("[T]he accused has the burden of proving the allegations of perjury or reckless disregard for the truth by a preponderance of th evidence."); *see also State v. Porch*, 417 S.C. 619, 627, 790 S.E.2d 440, 444 (Ct. App. 2016) ("A party attempting to demonstrate information was intentionally or recklessly omitted from an affidavit bears a heavy burden of proof." (quoting *State v. Lynch*, 412 S.C. 156, 179, 771 S.E.2d 346, 358 (Ct. App. 2015))). Brown did not attempt to make that showing here; he only demonstrated the statement was false. Accordingly, this court must review the affidavit with the false statement included when deciding whether the magistrate had probable cause to issue the warrant.

State v. James Monroe Brown, Opinion No. 6143 (Heard May 6, 2025 – Filed March 25, 2026) at 12-14.

FIRST REQUIREMENT UNDER FRANKS

Clearly, the first requirement under the two-pronged Franks criteria was satisfied in the case. For example, compare Jordan's direct and cross examination testimony. Jordan's testimony on direct examination regarding the cell phone issue follows:

> Q. [A]nd what did you – to the best that you can recall, what did you tell the Magistrate in support of you getting the search warrant?
>
> A. That this number was also associated with the victim's phone as far as numerous threats and it was part of an ongoing murder investigation. [4]

[4] Jordan said that State's Exhibit 2 was a form letter from Verizon. R. 367. He said that State's Exhibit 3 had the phone number of the cell phone and the account number, and that State's

R. 13, ll. 13-18.

However, on cross-examination, Jordan stated that he was not sure how he initially received petitioner's phone number ending in 7060: "It was not brought to my attention who gave what investigator the information. It was just collected..." Jordan said the information he received as a result of the search warrant went to SLED for further analysis pertaining to cell tower mapping. R. 15, ll. 2-6. R. 15, l. 20 – 16, l. 10. Jordan said he thought he got the information from "some investigator," and he then observed "I believe it all came from the victim's phone." R. 16, ll. 11-18. Jordan added "the victim's phone was recovered. I do not know how it was recovered..." R. 16, ll. 15-25. Jordan's cross-examination testimony continued as follows:

> Q. You obtained the number from a witness or from an investigator that got it from a witness that said it was involved and on the victim's phone; right, essentially?
>
> A. I believe that's correct.
>
> Q. And you later learned that that number, the number ending in 7060 never called the victim in this case; right?
>
> A. I can't say whether it did or didn't. I don't know.
>
> Q. Okay. Did you ever know whether it did or didn't?
>
> A. I never looked at -- like I said, I don't acquire the records. I don't analyze the records. I give them all to SLED and let them analyze it. I cannot say yes or no to that question.
>
> Q. Okay. Can you say yes or no whether that number ending in 7060 texted the victim's phone in this case?
>
> A. Again, I cannot answer that question.

Exhibit 4 was the "incoming and outgoing phone calls that were made during this time." R. 14, l. 1 – 15, l. 1; R. 367. (State's Exhibits 2-4).

> Q. Can you say whether the phone number ending 7050 was saved in the victim's phone in this case?
>
> A. Again, I can't tell you about the phone that was saved because, to my knowledge, we never recovered the phone.
>
> Q. Okay.
>
> A. We got the phone records from doing a search warrant because it was an AT&T phone at the time if I remember correctly.
>
> Q. All right. Okay. So you never recovered the victim's actual phone. You just pulled of the his records?
>
> A. To my knowledge I do not know if we recovered the phone. I don't remember. I can't tell you that. All I know is that we did a search warrant and I'm pretty sure it was an AT&T phone because I remember us pinging that phone that night that gave us latitude/longitude coordinates. So I'm pretty sure it was going to be an AT&T phone and that's where we got most of our records from at the time. To tell you that we have the phone in our custody, I cannot tell you that.

R. 17, l. 25 – 19, l. 16.

On redirect examination, the solicitor stated "first of all, *I will actually stipulate for the record that we do not have any phone calls being made between the victim's phone number and to the defendant's phone.*" R. 20, ll. 3-8. (emphasis added). Although seemingly not relevant to obtaining the search warrant, the police apparently learned at some point that petitioner's phone called the decedent's cousin, "S. dot's," phone at 8:37 p.m. on the night of the murder. R. 21, l. 16 – 22, l. 5. It was never made clear to the best of petitioner's knowledge what, if anything, the decedent's cousin allegedly had to do with this crime.

The recklessness associated with the lack of veritable investigative information needed to connect petitioner to the shooting was painfully obvious. The statement in the affidavit that "the decedent received several phone calls from the target number" was a stand-alone statement with no basis to establish that the "target number" was petitioner's number. Again, the solicitor

admitted that no phone calls existed "between the victim's phone number and the defendant's phone." Hence, proof of recklessness on behalf of the police. Additionally, the officer admitted that he was unsure of the information given to him regarding the cell phone requests, and that he could not offer an affirmative answer when asked if petitioner's number showed up as having dialed the decedent's number because he was just given information by others. Hence, additional proof of recklessness on behalf of the police.

Moreover, the objection made by counsel laid the foundation for the argument that the officers acted recklessly (and deliberately) in the case. The original objection contained three declarations that the officer's information in the affidavit was not "accurate," which in turn denoted an inference of recklessness. Defense counsel's objection follows:

> "[I] don't believe there's any probable cause to issue a search warrant for someone's phone. Especially, given the scope of the search warrant. The scope basically asks for anything and everything relating to that number, including call records, data and location. Nothing about why they would want the location. Nothing about why they would want the data. Just saying, this phone called that phone a few minutes before a murder and so we need to know everything about this person. Additionally, your Honor, I don't believe that that is even accurate. We'll get in to that in a minute. But I don't think that that number even called the victim's phone in this case. So I think there's really -- on it's face theirs is probable cause to issue that sort of search warrant. And I don't even think that on it's face, it's accurate. I think that is not an accurate statement that was made to the Magistrate when getting the search warrant."

R. 9, l. 10 – 10, l. 3.

Obviously, the objection made by the defense along with the testimony presented at the suppression hearing proved by a preponderance of the evidence that the officers in the instance case acted recklessly in securing information presented to obtain the search warrant in the case in

the affidavit to obtain the search warrant at issue, and this was proved by a preponderance of the evidence via the objection and the suppression hearing testimony.

SECOND REQUIREMENT UNDER FRANKS

Finally, the search warrant lacked probable cause due to the fact that the warrant affidavit was vague and overbroad, which was argued by defense counsel in the case, which in turn meant that sans the falsehood, there was undoubtedly insufficient proof of probable cause to support the issuance of the search warrant. State's Exhibit #1 simply stated that information obtained from cell phones can be valuable during a criminal investigation, and that Wayne Jordan was allegedly qualified to interpret the cell phone information. R. 364.

The Court of Appeals ruled as follows on the question of whether the warrant affidavit contained information that was vague and overbroad:

> Additionally, Brown argues the search warrant-affidavit was vague and overbroad. Captain Jordan provided in the affidavit that Victim received several phone calls from the phone number minutes before he was shot; the affidavit also provided an explanation of how cell phone records can link a suspect to a crime scene. As described above, this court considers the affidavit on its face including the false statement, and any supplemental testimony given to the magistrate. *See Crummey*, 443 S.C. at 107, 902 S.E.2d at 398 ("Sworn oral testimony is permissible to supplement search[-]warrant affidavits [that] are facially insufficient to establish probable cause." (quoting *Dill*, 423 S.C. at 542, 816 S.E.2d at 562)). Captain Jordan supplemented the affidavit with testimony in front of the magistrate when applying for the warrant. The supplemental testimony added that the specific phone calls mentioned in the affidavit were associated with numerous threats to Victim. The affidavit and supplemental testimony contain what the crime was, when the crime occurred, and some information regarding why Captain Jordan believed that phone number's records would contain evidence about the crime. *See State v. Thompson*, 419 S.C. 250, 256-57, 797 S.E.2d 716, 719 (2017) (providing the magistrate must decide "whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in the particular place to be searched"); *cf. Weston*, 329 S.C. at 291-92, 494 S.E.2d

> at 803 (concluding a search-warrant affidavit could not have provided a substantial basis for finding probable cause for a search when "the affidavit failed to set forth any facts as to why police believed" the defendant committed the crime); *Smith*, 301 S.C. at 373, 392 S.E.2d at 183 (determining an affidavit was defective because it "set[ ] forth no facts as to why police believed" the defendant had committed the crime). The information combined from the affidavit and the testimony were sufficient to demonstrate probable cause to the magistrate. Accordingly, the trial court did not err in denying Brown's motion to suppress the cell phone records for his phone number.

State v. James Monroe Brown, Opinion No. 6143 (Heard May 6, 2025 – Filed March 25, 2026) at 14-15.

However, the Court of Appeals, in effect, relied on the police officer's false assumption contained in the affidavit regarding calls made to the decedent prior to the shooting as the basis upon which to rule that the warrant was not vague, but rather valid under the totality of the circumstances. To the contrary, this analysis ignored the fact that petitioner placed no calls to the decedent; and therefore, the rationale used to support probable cause, i.e. cellphone data, that would aid in the investigation was inapplicable to petitioner. Thus, the vagueness was apparent and resulted in clear overbreadth that rendered the affidavit and ensuing search warrant defective. Note below the relevant portions of the dissenting opinion acknowledging the overbreadth of the affidavit:

> With the greatest respect to my colleagues, I must write separately because the warrant affidavit in this case was vague, overbroad, and lacking in the specifics necessary to allow the issuing magistrate to make a proper determination of probable cause. As the majority opinion recognizes, this affidavit contained one specific allegation, and the State stipulated during the pretrial hearing that this allegation was false. Captain Jordan's testimony in no way alleviated these concerns—rather, his testimony revealed he lacked the knowledge necessary to have adequately supplemented the defective affidavit with the "sworn oral testimony" contemplated by our jurisprudence. *See, e.g., State v. Warner*, 436 S.C. 395, 404–05, 872 S.E.2d 638, 642–43 (2022)

> (finding affidavit attached with warrant request "provided the magistrate no facts or circumstances whatsoever" to support a finding of probable cause and remanding for determination of whether magistrate properly required requesting detective to supplement with sworn testimony).

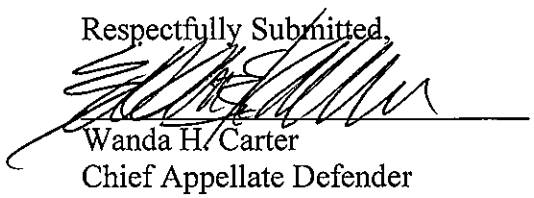
State v. James Monroe Brown, Opinion No. 6143 (Heard May 6, 2025 – Filed March 25, 2026) at 19.

Ultimately, the dissent agreed that the warrant was vague and overbroad (although it was ultimately endorsed on the alleged officers' good faith); however, the record revealed as reflected initially in this petition that the officers acted recklessly (and deliberately) in the gathering and presenting of false information presented to the magistrate to secure the warrant, and that there was insufficient probable cause apparent in the affidavit sans the falsehood, and that good faith was an inapplicable in light of the recklessness/deliberateness associated with the falsehood submitted in the case. **A falsehood by definition is inconsistent and incongruent with good faith.** Therefore, the good faith reliance exception failed to cure the defective affidavit and warrant in the case and the two-pronged criteria under Franks ended up being met in the case.

CONCLUSION

WHEREFORE, based on the foregoing points outlined above, which established that the search warrant in question was obtained in violation of the Fourth Amendment, counsel would respectfully request that this Court grant the petition.

Respectfully Submitted,



Wanda H. Carter
Chief Appellate Defender

This 15th day of June, 2026.

ATTORNEY FOR PETITIONER