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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Thomas J. Rode, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIE LEO DARBY,

APPELLANT

APPELLATE CASE NO. 2025-001941

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting evidence obtained pursuant to various search warrants for Appellant's phone, cell phone data, and car where the search warrants were defective?

STATEMENT OF THE CASE

Appellant was indicted during the September 2024 term of the Charleston County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. (Indictments). The state called the case to trial on September 8, 2025, before the Honorable Thomas J. Rode and a jury. Ashleigh A. Brown and Jordan A. Norvell represented the state; Appellant was represented by Rodney D. Davis and Katherine E. Mangan. Tr. 1.

Appellant was found guilty as indicted on September 12, 2025. Tr. 744, ll. 5-17. Judge Rode sentenced Appellant to forty years for murder and five years for the weapons charge, sentences to run consecutively for an aggregate term of imprisonment of forty-five years. Tr. 757, ll. 12-20. Appellant timely appealed his convictions and sentences.

This appeal follows.

STATEMENT OF THE FACTS

On November 12, 2021, 9-1-1 was called for a report of possible shots fired at the Palmetto Grove apartment complex in North Charleston, South Carolina. Officers responded and briefly canvassed the area but did not find any evidence of a shooting. Tr. 305, ll. 5-6; Tr. 309, ll. 1-23. The following day, Karen and Jerry Keitt, the parents of Michael Warren (Decedent), performed a welfare check on him after they had not heard from him for a day. Tr. 297, ll. 3-10. The decedent was found by his parents in his apartment at Palmetto Grove with what appeared to be a gunshot wound to the head. Tr. 297, l. 11 – 298, l. 15; Tr. 361, ll. 6-9. While the parties were still on scene and police were actively investigating the incident, Karen received a call from Appellant inquiring about the decedent, and her phone was taken by a detective. Tr. 299, ll. 1-6; Tr. 517, ll. 18-20.

Decedent was married to Appellant, and the two shared the apartment as the marital home. Tr. 316, ll. 10-17; Tr. 338, ll. 6-18. At the time of the shooting, the couple was going through a separation, and Appellant had moved out of the marital home approximately two weeks before the incident. Tr. 362, ll. 4-7; Tr. 508, ll. 13-18. The couple had two cars; a silver Toyota Corolla driven by Decedent and a red Chevy Cruze driven by Appellant. Tr. 363, ll. 3-9. Police were able to obtain surveillance footage from the entrance of the apartment complex that purported to show the red Chevy Cruze driven by Appellant enter the apartment complex at 2:41

p.m. and leave the complex at 3:04 p.m. on November 12. Tr. 364, ll. 4-6; Tr. 511, l. 23 – 516, l. 22; State's Exhibit 44 (Disc Surveillance)(on file with this Court).¹

At 2:45 p.m. on November 13, Appellant met with detective George Vantine for an interview. R. *(State's Pre-trial Exhibit 3). Appellant arrived at the police station in a red Chevy Cruze. Tr. 520, ll. 1-10. Police questioned Appellant for just over three hours, placing him under arrest roughly two hours into the interview. Tr. 129, ll. 15-21. When asked about his activities on November 12, 2021, Appellant said:

He had driven to work, he works in Charleston off of Virginia, Thompson Industrial. He said that he got to work at 7:00 a.m., that he stayed -- this off of Virginia Avenue, that he stayed on the site the entire time, that he did not take a lunch break, that he never left the site and that he worked a shift. It varies, he said either eight to nine-hour shift and then he drove straight from work back to Orangeburg.

Tr. 525, ll. 12-19.

Dr. Erin Presnell, a forensic pathologist, testified that Decedent died from three gunshot wounds to the head. Tr. 385, ll. 7-9. She further testified that her findings were consistent with the theory that Decedent had died a day-and-a-half before he was found. Tr. 395, ll. 12-22.

Brian Malanio, a forensic scientist in the firearms department of the South Carolina Law Enforcement Division (SLED), testified regarding the bullets recovered from Decedent and the shell casings recovered from the apartment. Tr. 473, ll. 1-5; Tr. 475, l. 18 – 476, l. 6. Of the three fired bullets, only two were of sufficient quality to be identified as being “most consistent with bullets loaded into some nominal .22-caliber cartridges, which included .22 long or long

¹ No one from Palmetto Grove testified as to the accuracy of the surveillance system and time stamps. The surveillance footage shows the red vehicle entering at 5:19 p.m. and leaving at 5:42 p.m. – police asserted that when they reviewed the footage the day after the incident, the live feed was off by two hours and thirty-eight minutes, and they applied that time difference to the footage from the prior day which placed the car coming and going within the suspected time period of the shooting. Tr. 512, ll. 14-23.

rifle calibers.” Tr. 479, ll. 1-5. It could not be determined whether those two bullets consistent with a .22 caliber were fired from the same gun. Tr. 479, ll. 6-22.

Malanio was able to determine that the two shell casings from the scene were fired from the same gun “based on matching individual identifying characteristics.” Tr. 481, ll. 2-5. Both fired shell casings were “.22 long or .22 long rifle caliber cartridge cases.” Tr. 481, ll. 6-9. He testified that .22 caliber “is the most common modern ammunition on the market today.” Tr. 490, ll. 11-16. He confirmed that the bullets could have been fired from any manner of firearm, from a long rifle to a shotgun combo to a bolt action weapon to a pistol. Tr. 491, l. 6 – 492, l. 17. Law enforcement did not recover the firearm used in the shooting. However, they executed a search warrant and recovered three .22 caliber Remington bullets from the red Chevy Cruze that Appellant was driving. Tr. 370, l. 2 – 371, l. 6. R. *(Search Warrant- Chevy Cruze)

Law enforcement also obtained search warrants for Appellant’s phone and cellphone data. R. *(Search Warrants- November 13, 2021 iPhone and TMobile Records). At trial, detective Parker Busch testified to message logs, search logs, and call logs recovered from Appellant’s phone over defense objection. Tr. 621, l. 17 – 622, l. 23; R. *(State’s Exhibits 57-60). Detective Jerome De Sheers testified to the cellphone data obtained pursuant to a search warrant sent to T-Mobile. From the data, he created a report of the phone’s apparent movements based on its connectivity to cellphone towers. R. *(State’s Exhibit 64). His testimony and the report were entered over defense objection. Tr. 652, ll. 6-14.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. “[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis.” State v. Frasier, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022). “This dual inquiry means we review the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review.” Id. at 633-34, 879 S.E.2d at 766.

ARGUMENT

The trial court erred in admitting evidence obtained pursuant to various search warrants for Appellant's phone, cell phone data, and car where the search warrants were defective.

Relevant Facts

Search Warrants Dealing with Appellant's Phone and Cellphone Records

On November 13, 2021, officers obtained a search warrant for Appellant's cellphone.

The probable cause portion of the affidavit stated:

On November 13, 2021 at approximately 8:52 AM, North Charleston police officers responded to [REDACTED] Saint Ives Rd Apt [REDACTED] in reference to the victim's parents locating him inside the apartment deceased with a gunshot wound to the head. On November 12, 2021 at approximately 3:05 PM (North Charleston call number 202100748782) regarding gunshots being heard in the area. Detectives located neighboring tenants who also confirmed that they heard gunshots at this time within their unit. Family members of the victim advised that the victim's husband, Willie Darby, and a vehicle registered to the victim were missing. Mr. Darby responded to North Charleston to speak with detectives. Mr. Darby advised he was in Orangeburg, SC, however the vehicle he was occupying was located on video leaving the apartment complex shortly after the shots fired call yesterday. Detectives believe that information on his phone, a black Apple phone (photo attached), will help determine his location and other information regarding this homicide.

R. *(Search Warrant November 13, 2021 iPhone). Two days later, on November 15, 2021, police issued a search warrant to T-Mobile for data that the company stores detailing Appellant's phone usage. The probable cause portion of the affidavit read:

On November 13, 2021 at approximately 8:52 AM, North Charleston police officers responded to [REDACTED] Saint Ives Rd Apt. [REDACTED] in reference to the victim's parents locating him inside the apartment deceased with a gunshot wound to the head. Detectives were advised that on November 12, 2021 at approximately 3:05 PM patrol officers had responded to 7927 Saint Ives Rd regarding gunshots being heard in the area, but were unable to locate anything. Detectives located neighboring tenants

who also confirmed that they heard the gunshots on November 12, 2021 at approximately 3:00 PM within the apartment complex. Family members of the victim advised that the victim's husband, Willie Darby, and a vehicle registered to the victim were missing. Mr. Darby responded to North Charleston to speak with detectives. Mr. Darby advised that he drove to Orangeburg SC on November 12, 2021 and never went to the victim's apartment complex, however the vehicle he was occupying was located on video leaving the victim's apartment complex shortly after the shots fired call. Mr. Darby stated that his phone number is 854-212-0658 and that he last communicated with the victim a few days prior to the incident.

R. *(Search Warrant T-Mobile). On August 26, 2025, thirteen days before the state called the case to a date-certain trial, the state obtained a second search warrant for Appellant's phone. This warrant contained significantly more information in the probable cause affidavit. R.* (Search Warrant August 26, 2025 iPhone).

Pre-trial, defense counsel challenged the first search warrant for Appellant's cellphone and the search warrant for Appellant's cellphone records as lacking in probable cause and being misleading. He challenged the second search warrant of Appellant's phone on grounds that it could not save the insufficient initial warrant, and it was untimely disclosed by the state, noting the second search warrant had produced almost fourteen megabytes of data. Tr. 157, ll. 6-19. Prior to hearing defense counsel's argument, the state informed the court:

The State does not intend to go forward with remote testimony. That's the basis of the second search warrant of the defendant's phone. After the August 25 -- August 23 review of the technology, our phone expert had already had the back surgery and at that time was not able to sufficiently prepare for trial. So we proceeded on August 25 with the case agent retrieving a second subsequent search warrant of the phone.

In full [sic] candor, the State is not going to be able or willing to proceed on the first search warrant. It would -- if the second search warrant were to be excluded for bases that the defense has forward, that would substantially impair our ability to go forward.

So we would not -- one, we couldn't go forward on the first search warrant because the second search warrant has changed the hash value of the data extraction. The software has been updated since 2021 when the first search warrant was executed. In 2021, the extraction that was able to be done is called an advanced logical extraction, that's a mirroring image.

In 2025, the software has evolved to where a full file system, a retrieval of all of the file contents of the device is able to be retrieved. Based on that, the hash value, which is what the forensic analyst would need to verify their initial report, is different. And so one, the analyst is still out on FMLA on medication and being treated for this back surgery. And two, the hash value is different. And three, it would substantially deter the state's ability to go for [sic] a grant.

Tr 168, l. 12 – 169, l. 14.

Regarding the first search warrant for Appellant's phone, defense counsel argued the affidavit lacked sufficient probable cause. The affidavit mischaracterized facts, stating Appellant and the vehicle he drove were missing when neither were. Defense counsel argued that the affidavit was nothing but assertions and conclusory statements that did not show any connection or nexus that Appellant was involved in the crime or that evidence of a crime would be found on Appellant's phone. Tr. 170, l. 14 – 173, l. 8. Regarding the second search warrant for Appellant's phone, defense counsel noted that the probable cause affidavit was much more detailed four years later. He asserted the state had sought the second search warrant to remedy the faulty affidavit of the initial search warrant, and anything from the second warrant should be suppressed as fruits of the poisonous tree. Tr. 174, ll. 4 – 175, l. 7.

The state argued that the first search warrant lacking probable cause would not impact the second search warrant, and it was the state's position that probable cause existed as "there are clear both affidavits, but certainly the second one." Tr. 176, l. 22 – 177, l. 11. The court found

that both affidavits “substantially establishes and meets probable cause standard” and denied the defense motion to suppress on that basis. Tr. 178, ll. 3-10.

Regarding the T-Mobile search warrant for Appellant’s phone data, defense counsel again argued the affidavit lacked probable cause as it was general, conclusory, and misleading under Franks v. Delaware.² Tr. 178, l. 12 – 179, l. 22; Tr. 181, l. 2 – 182, l. 8. The court again found the affidavit “creates and meets the probable cause standard which is all that’s required” and denied the motion to suppress. Tr. 182, ll. 9-15. The court did not rule on the separate Franks issue regarding the misleading statements in any of the affidavits.

Defense counsel then moved to suppress the results of the second search warrant as late disclosures that unfairly surprised and prejudiced the defense. R.* (September 5, 2025 Defense Motion to Exclude). The first extraction was performed by detective Sam Reidel on November 17, 2021, and was provided to defense counsel on March 17, 2022. The original search warrant extraction provided 482 messages and 1,781 search and web results. On August 5, 2025, the state requested consent to allow Reidel to testify virtually, in anticipation of back surgery that he was scheduled to have on August 20, 2025. The defense consented to remote testimony, on the caveat that evidentiary matters could be handled remotely. At the suggestion of the trial court, the parties gathered on August 22, 2025 to test the remote system. Once they confirmed the system’s capabilities, all parties agreed to the remote testimony of Reidel. R.*(Motion to Exclude)

The second search warrant was obtained by the state on August 26, 2025. A secondary extraction pursuant to the second search warrant was conducted on August 28, 2025. The results were provided to defense counsel on August 29, 2025. The second search warrant extraction

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

revealed 2,322 messages, 14,956 search and web results, and an entirely new data category labeled “social media” containing 416 items. R.* (Motion to Exclude). Defense counsel argued that the state should be bound to its agreement that Reidel would testify remotely to the original warrant and that Appellant’s ability to be fully prepared for trial and present a full defense was violated by the late disclosure of “a mountain of new, detailed evidence” that the state waited to obtain from August 5 until August 26 and did not disclose to defense until the August 29, 2025. R. (Motion to Exclude). Tr. 191, l. 10 – 195, l. 20; Tr. 202, l. 13 – 203, l. 12.

After reviewing the totality of the circumstances, the court excluded the results from the second search warrant as late disclosure and unfair surprise because the state could or should have obtained the information in the second warrant when it ran the initial extraction. Tr. 218, l. 5 – 219, l. 22. The following day, the state moved to reconsider the ruling and asked the court to narrowly tailor its ruling if upheld. Tr. 250, l. 17 – 251, l. 5. The state argued that “the Court’s ruling yesterday to suppress the contents of the second search warrant functionally suppresses the contents that the State would seek to introduce through the first search warrant.” Tr. 251, l. 23 – 252, l. 1. The state sought to enter evidence from the second search warrant that it asserted was identical to evidence obtained from the first search warrant, arguing that evidence was not new and would not qualify as unfair surprise. The state conceded:

One analyst is not able to testify as to the process that another analyst completed. So we are faced with a foundational admissibility issue and in order to cure that foundational admissibility issue that we don’t think the Court intended, we are seeking to introduce that identical evidence retrieved from both the first and second search warrant through the analyst who completed the second examination.

Tr. 252, l. 5 – 253, l. 14. The state further explained that performing the second extraction prevented Riedel from verifying his work and testifying as to the results, so the suppression of the second warrant functionally suppressed³ the first warrant. Tr. 255, ll. 15-18.

The state assured the court that it would not present any “new information” from the second search warrant, as it understood that the new information had been suppressed. Tr. 265, ll. 6-15. The court clarified:

Again, I want to be clear. It's not the suppression of the new information, the Court ruled that the product of the second search warrant is not admissible because of the surprise. You have now indicated and argued that a portion of the second search warrant should not be considered a surprise because it is the same information as before. But that's -- that is a different thing, and I want to keep clarifying what the Court's ruling on that was. I understand your argument, but my ruling was not that the new evidence is not admissible, my ruling was the product of the second search warrant is not admissible.

So here we are left to have to answer the question of what is identical between the first one and the second one, because your position is that's not a surprise. And how we do that, I am not quite clear given the fact that you have in your motion stated that Detective Busch cannot testify as to the initial production or the initial dump from the first search warrant. So who is it that's going to come in here and be able to say this stuff in the second search warrant was in the first search warrant, if we don't have somebody who can say what was in the first search warrant?

Tr. 265, l. 16 – 266, l. 12. The court determined that it would proffer the testimony of the analyst involved with the second search warrant prior to the state offering his testimony at trial. Until that proffer, the court stated the product of the second search warrant was not admissible. Tr. 266, l. 18 – 267, l. 1.

³ The trial court noted that Detective Riedel was unable to verify the contents of the first extraction effective August 28 when the state performed the second extraction – thus it was the state's own actions that functionally suppressed the first search warrant. Tr. 256, ll. 12-24.

Later in the trial, the state proffered the testimony of Detective Parker Busch and submitted States Pre-Trial Exhibits 4-15 (Cellebrite Reports) for the court's review. R. *. Busch testified that the initial extraction was an advanced logical extraction and that he completed "a different type of extraction" because the software had evolved. Tr. 558, ll. 1-14. He testified that the two extractions retrieved the same data "as close as possible." Tr. 559, ll. 11-21. He testified that the verification process "is where the examiner would go into the source files of these particular artifacts and verify that what is recorded off the device in fact matches what you're seeing in the reports generally." Tr. 560, ll. 11-23. He explained that sometimes the examiner would have to go in and manually update the data depending upon the program changes:

So a common example that is used in the digital forensics community, several years ago Apple changed how they recorded timestamps and the tools at the time presented *that there was no timestamps* in that database. Despite the database still containing a matching entry that can be converted to a timestamp, the tool did not understand that conversion and *it required examiners going in and viewing that and confirming that is in fact a timestamp.*

Tr. 561, ll. 2-11 (emphasis added). He explained that advanced logical extractions do not retrieve every single database file, so there may be some missing information from the original extraction that was revealed in the second extraction. Tr. 566, ll. 17-19. He conceded that he cannot verify any information from the original extraction and that he was just comparing the exhibits presented to him for matching and that he did not know what work the first analyst did to get the information contained in the exhibits referring to the first extraction, thus if there was an error in the original extraction, he would not know it was an error. Tr. 583, l. 8 – 584, l. 15. At the end of Busch's testimony, the court allowed the state to enter what would become State's

Exhibits 57-60. Tr. 598, l. 16-600, l. 16. Defense counsel renewed his objection to the admission of the cellphone records evidence. Tr. 622, ll. 14-23.

Search Warrant for Appellant's Car

On November 13, 2021, law enforcement also obtained a search warrant for the Chevy Cruze driven by Appellant. The probable cause affidavit read:

On November 13, 2021 at approximately 852 AM, officers responded to [REDACTED] Saint Ives Rd Apt [REDACTED]. North Charleston, SC 29406 in reference to the parents of the registered owner of the above vehicle deceased with a gunshot wound to his head inside the apartment. On November 12, 2021, officers responded to the apartment complex regarding shots being heard around 3:05 PM (North Charleston call number 202100748782). Detectives spoke with neighboring tenants who confirmed that they heard shots yesterday around this time and that it came from somewhere within their building. The registered owner's vehicle, a 2014 Chevy Cruze bearing VIN [REDACTED], and husband, Willie Darby, were missing. Mr. Darby responded to meet with detectives at City Hall (2500 City Hall Lane). He advised he was in Orangeburg, SC yesterday around the time believed the incident occurred, however his vehicle was located on video in the City of Hanahan at 1:55 PM.

R. (Search Warrant for 2014 Chevy Cruze). Counsel moved to suppress the warrant as lacking in probable cause because the detective was "summarizing grandly and omitting grandly" and citing facts that did not apply to the incident and as violating Franks because it contained misleading information. Tr. 186, l. 24 – 188, l. 15. The court upheld the warrant, finding it met the probable cause standard. Tr. 191, ll. 5-9.

Discussion

The state's own actions invalidated the results of the first search warrant for Appellant's phone. By running a second extraction, there was no ability for Detective Reidel to verify and authenticate the information for admission at trial. Thus, anything gained from the first warrant was wholly inadmissible, separate and apart from the fact that the warrant lacked probable cause and

contained misleading statements. The court properly ruled that the second search warrant and massive amounts of data it produced came too late and could not be admitted. The court then walked back that ruling to allow the state to get into parts of the second warrant that were purportedly in the first. However, the court had no way of verifying the information from the first warrant and could not properly declare the evidence was not new or different. Further, the second search warrant was tainted by the lack of probable cause in the first warrant. Finally, the search warrants for Appellant's cell phone records and car lacked probable cause and contained misleading information. The court erred in allowing any information gained from the search of Appellant's phone, his phone records, and his car to be entered at trial.

The three original warrants for Appellant's phone, his cellphone records, and his car all lacked probable cause.

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure . . . [from] unreasonable searches and seizures." U.S. Const. amend. IV. The South Carolina General Assembly has imposed stricter requirements than federal law for issuing a search warrant. "Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued." State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (2000); U.S. Const. amend. IV. The South Carolina Code mandates that a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record . . ." S.C. Code Ann. § 17-13-140 (1985). Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court. See State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

“The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. State v. Philpot, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995). A magistrate may issue a search warrant only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued.” State v. Dupree, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003). Sufficient information must be presented to the magistrate to allow that official to determine probable cause for issuance of a search warrant; his action cannot be a mere ratification of the bare conclusion of others. Illinois v. Gates, 462 U.S. 213 (1983).

In determining whether probable cause exists, the crucial question is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched. Zurcher v. Stanford Daily, 436 U.S. 547, 556 & n. 6 (1978). “A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that ... evidence of a crime will be found in a particular place.” State v. Brown, 447 S.C. 617, 637, 929 S.E.2d 415, 425 (Ct. App. 2026).

The warrants in this case, on their face, do not indicate that evidence of a crime will be found in Appellant’s phone, phone records, or car. The warrants are broad, conclusory statements and do not indicate in any way why Appellant or his belongings would be connected to the crime. The facts before the magistrate at most demonstrated suspicion of Appellant’s movements the day of the incident, but that did not amount to sufficient cause to breach Appellant’s constitutionally and statutorily protected rights to be free from unreasonable searches. For the warrants to have sufficient probable cause, they needed to explain *why* these

general observations noted in the warrant would lead to evidence of the crime being found on Appellant's phone or in his vehicle. The warrants do not pass muster. This is most apparent when comparing the probable cause affidavit in the first and second search warrants for Appellant's phone. The second search warrant contains actual probable cause, though defective for other reasons, and highlights the deficiencies of the other warrants in this case. The trial court's ruling that the search warrant affidavits contained sufficient probable cause is not supported by the record. Thus, there was no basis for the court to admit evidence pursuant to these warrants.

The three original warrants for Appellant's phone, his cellphone records, and his car all contained misleading information.

In reviewing a challenge to the veracity of a search warrant, South Carolina employs the two-prong test outlined in Franks v. Delaware, 438 U.S. 154 (1978). State v. Gore, 408 S.C. 237, 244, 758 S.E.2d 717, 721 (Ct. App. 2014) (*citing* Franks, 438 U.S. at 155–56); State v. Missouri, 337 S.C. 548, 553–54, 524 S.E.2d 394, 396–97 (1999) (applying the two-prong Franks test). First, 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. The burden is on the accused to prove 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 (*citing* State v. Davis, 354 S.C. 348, 360, 580 S.E.2d 778, 784 (Ct. App. 2003)). If the court determines that in light of the false material no probable cause exists, then “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. (citing Franks, 438 U.S. at 155–56).

Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. See State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997); see also State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975). However, “[i]n reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate’s attention.” State v. Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005).

Shortly after police arrived on scene and were actively investigating the shooting, Appellant called Decedent’s mother. He then proceeded to the police station, in the Red Chevy Cruze, to participate in an interview. During that interview, he stated that he was staying in Orangeburg, had been in Charleston all day working, and had returned to Orangeburg that evening. All of these facts were known to officers when they sought the search warrants in this case, yet the warrants do not reflect the officers’ knowledge.

All three warrants stated Appellant and the vehicle he drove were missing. That was a falsehood. There is no evidence in the record to suggest that Appellant and the vehicle were ever missing. Further, Appellant called Decedent’s mother while she was on scene, and detectives were alerted to the fact – thus they were well aware that he was not missing. Appellant arrived to the interview in the red Chevy Cruze, thus it was not missing. In fact, Appellant, his car, and his cellphone were all in police custody at the time the warrants were sought. Officers knew exactly where Appellant and his vehicle were, and they knew that at no point were either missing. This information should have been struck from the warrant.

All three warrants stated that Appellant was in Orangeburg at the time of the incident. This was another falsehood. Appellant informed officers that he was staying in Orangeburg, and he had traveled to Charleston for work. He worked from 7:00 a.m. for eight-or-nine hours before returning to Orangeburg. Appellant's statement placed him in Charleston during the incident timeframe, however that was not presented in the warrant. Instead, the warrant asserted Appellant was not in Charleston at all that day, despite officers having taken his statement to the contrary. This information should have been struck from the warrant.

Removing these two falsehoods from the search warrants further weakens the already bare bones and conclusory affidavits in this case. The trial court, however, did not rule on Appellant's Franks challenge. Appellant asserts that the record sufficiently elucidates that the warrant statements relied on in this matter were false and that the lower court's holding should be reversed as the ruling that the warrants had probable cause is not supported by the record, with or without the misleading statements. However, recognizing that the trial court did not rule on this issue, Appellant would request that this Court at a minimum remand this case to the trial court to conduct a Franks hearing, should the court find the warrants with the misleading information contained sufficient probable cause. See United States v. Tate, 524 F.3d 449, 457 (4th Cir. 2008) (reversing and remanding to the trial court to conduct a Franks hearing).

No information from the second search warrant for Appellant's phone should have been admitted during trial.

Although the trial court found the warrant had sufficient probable cause, it initially ruled the products of the second search warrant as inadmissible on the grounds of untimely disclosure, unfair surprise, and because the state could have obtained the information earlier. The court improperly walked back this ruling to allow the state to enter evidence obtained from the second

search warrant. This was error in three respects: First, the second warrant was tainted by the insufficient first warrant and should have been suppressed as fruit of the poisonous tree. Second, the evidence obtained from the warrant was untimely disclosed, and its admission prejudiced Appellant. Third, the court had no way to verify that any information gathered from the first warrant was valid, as the state's action of running a second extraction rendered the first search warrant inadmissible.

“The ‘fruit of the poisonous tree’ doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality.” State v. Moore, 429 S.C. 465, 478-79, 839 S.E.2d 882, 889 (2020) (*quoting* State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996)). “The purpose of the exclusionary rule is to deter law enforcement officers from committing Fourth Amendment violations.” Id. at 478, 839 S.E.2d at 889. In Appellant’s case, the second search warrant for his phone was gotten to remedy the deficiencies in the first. While the state asserted it was due to the analyst’s inability to prepare for trial, the record does not support that assertion. The state was well aware that the analyst was set to have surgery, made a request for remote testimony, and gained the consent of the defense to move forward remotely. The state had from the time of the 2021 extraction through the August 20, 2025 date of surgery to have the analyst verify his work in anticipation of trial. When looking at the face of the warrants, it is apparent that the second warrant contains significantly more information which would establish probable cause. Considering all the steps that had been taken to ensure the first analyst would be able to testify, it is more reasonable that the state sought the second warrant to remedy the lacking probable cause of the first. However, such a warrant cannot stand and the evidence from it should have been suppressed. *See* U.S. v. Hill, 776 F.3d 243 (4th Cir. 2015).

While late disclosure of evidence does not automatically warrant suppression or indicate prejudice, when evidence is disclosed so late that a defendant cannot effectively use or combat it at trial, a due process violation has occurred. *See Generally State v. Greer*, 391 S.C. 179, 192, 705 S.E.2d 441, 448 (Ct. App. 2010). The second search warrant produced nearly 14 megabytes of data. It increased the number of returned messages by 381.74% and the number of returned web pages and searches by 736.93%, while adding on an entirely new category of data. This immense amount of detailed, complex, and technical information was dropped onto defense counsel roughly a week before trial. Despite the effort of counsel, there was no ability to get the defense expert to review the mountain of data in such a short amount of time to be able to either effectively use any exculpatory data or effectively cross-examine and impeach any inculpatory data. Thus, as the trial court found, use of the data of the second search warrant was not admissible and this unchallenged ruling is the law of the case. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (An unappealed ruling is the law of the case and requires affirmance.)

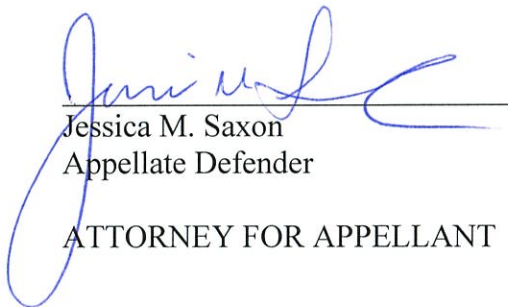
The court erred by allowing information from the second warrant to be admitted because the state asserted it was identical to information in the first warrant. However, the testimony of Detective Busch and the pre-trial exhibits showed that the data is not identical. While it may be similar, there is certainly information contained in the 2025 extraction that was not contained in the 2021 extraction. Further, the state conceded that the first warrant was inadmissible because it could not be verified, therefore there was no way for Busch to testify, or the court to find that the verified information from the second warrant matched the unverified information in the first warrant. The first warrant, because it could not be verified and admitted during trial, should not have been considered when determining the admissibility of anything from the second warrant.

The state asked for reconsideration because the court “functionally suppressed” the results of the first search warrant when it excluded the product of the second. However, that was untrue. As the court noted, the state’s own action of running a second extraction functionally suppressed the first warrant making it inadmissible, and as the court found, the late disclosure of the immense data in the second warrant unfairly prejudiced Appellant, and thus could not be admitted. Therefore, there was no basis to admit any evidence obtained pursuant to the second warrant.

The state made numerous errors in how it obtained evidence to prosecute Appellant and should have been precluded from admitting evidence pursuant to the search warrants for Appellant’s cell phone, his cellphone records, and his car. The trial court’s ruling is not supported by the evidence in the record. This Court should hold the evidence gained pursuant to those warrants inadmissible and remand for a new trial.

CONCLUSION

Based upon the foregoing argument, Appellant respectfully requests that this Court hold the evidence obtained pursuant to the warrants was inadmissible and reverse and remand this matter for a new trial. In the alternative, Appellant requests a remand for a full hearing pursuant to Franks v. Delaware to further establish the falsehoods in the search warrant affidavits.



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Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of September, 2026.