[Cite as *State v. Tolbert*, 2026-Ohio-3878.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	No. 116018
v.	:	
QEYEON TOLBERT,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 1, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-689572-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Owen W. Knapp, Assistant Prosecuting Attorney, *for appellant*.

Brian M. Fallon and Daniel Tirfagnehu, *for appellee*.

Kessler Defense LLC and Stephanie Kessler, Sixth Circuit Vice-Chair, Amicus Committee, National Association of Criminal Defense Lawyers, *for amici curiae* American Civil Liberties Union Foundation, American Civil Liberties Union of Ohio Foundation, National Association of Criminal Defense Lawyers, and Innocence Project.

American Civil Liberties Union of Ohio Foundation, Amy R. Gilbert, and Freda J. Levenson, *for amici curiae* American Civil Liberties Union Foundation, American

Civil Liberties Union of Ohio Foundation, National Association of Criminal Defense Lawyers, and Innocence Project.

Nathan Freed Wessler, pro hac vice, *for amici curiae* American Civil Liberties Union Foundation and American Civil Liberties Union of Ohio Foundation.

EMANUELLA D. GROVES, J.:

{¶ 1} Plaintiff-appellant the State of Ohio ("the State") filed this second appeal challenging the judgment entry issued following remand in *State v. Tolbert*, 2025-Ohio-4469 (8th Dist.) ("*Tolbert I*"), which granted defendant-appellee Qeyeon Tolbert's ("Tolbert") motion to suppress evidence. The State raises one assignment of error for review:

The trial court erred in granting [Tolbert's] motion to suppress.

Upon review, we reverse the trial court's decision and remand the matter for further proceedings.

I. Procedural Posture and Scope of This Appeal

{¶ 2} At the outset, we note that this appeal begins where *Tolbert I* ended. Rather than restate the facts, procedural history, and legal analysis set forth in *Tolbert I*, we build on that decision and address only those matters necessary to resolve the present appeal.

{¶ 3} Further, we note the limited scope of this appeal by emphasizing two critical parameters. First, this case does not involve the search of an individual; a property — not a person — was the subject of the search warrant at issue. Second,

this decision does not contemplate the use of artificial intelligence in criminal investigations or the unique issues that such technology presents.

{¶ 4} With these considerations in mind, we turn to our discussion.

II. Facts and Procedural History

{¶ 5} This appeal arises from the trial court's suppression of all evidence obtained after a search warrant was executed at 403 E. 152nd Street, Apartment #1 ("the Apartment") in connection with the investigation into the homicide of Blake Story. The search warrant included an affidavit signed by Cleveland Homicide Detective Michael Legg ("Detective Legg"). Therein, Detective Legg averred that

> he has reasonable cause to believe and does believe, that within the premises described as 403 E 152nd Street, Apartment #1, City [of] Cleveland, Cuyahoga County, Ohio . . . there is now being unlawfully kept, concealed and possessed the following [list of specific items] and/or any and all evidence pertaining to the violations of the State of Ohio, to wit: R.C. 2903.01 Aggravated murder, R.C. 2903.02 Murder.

The warrant affidavit contained the following 24 paragraphs, detailing the facts upon which Detective Legg based his beliefs:

> 1. Affiant avers that on Thursday, February 15, 2024, Officers responded to the location of 15704 School Avenue for a male deceased.
>
> 2. Affiant avers that EMS Medic 40 responded to the scene and pronounced the victim deceased at 1325hrs.
>
> 3. Affiant avers that upon the arrival of Esposito Mortuary Services it was found that the victim had suffered, what appeared to be, a gunshot wound to the back.
>
> 4. Affiant avers that members of the Homicide unit responded to the scene and began their investigation.

5. Affiant avers that the Cuyahoga County Medical Examiner's Office confirmed the victim had suffered two (2) gunshot wounds upon completing a Preliminary Post[m]ortem Examination.

6. Affiant avers that he, along with other members of the Homicide unit, as well as the [Real Time Crime Center ("RTCC")] analyst, were able to view RTCC video and located the victim on video February 14, 2024.

7. Affiant avers that upon reviewing the surveillance video they observe the victim exiting the plasma center located at E 156th and Lakeshore Blvd at 1900hrs.

8. Affiant avers that the victim walks west on Lakeshore Blvd. and continues south on E 152nd Street.

9. Affiant avers that a male walks from in between the apartment buildings located at 375 and 371 E. 152nd Street and begins walking in front of the victim.

10. Affiant, avers that in the area of 403 E. 152nd Street, the unidentified male walks into a driveway located on the east side of the street, the same side the victim was still walking south on and allows the victim to pass by him.

11. Affiant avers that the unidentified male then begins walking behind the victim as they continue south on E. 152nd Street.

12. Affiant avers that the unidentified male, wearing a dark colored Adidas sweatshirt and dark colored Adidas pants, approached the victim from the back as they neared Upton Avenue.

13. Affiant avers that the unidentified male suspect then produced a firearm and pointed it at the side of the victim while holding onto the victim with his other hand.

14. Affiant avers the suspect male then shot the victim twice and the victim fell to the ground at which time the suspect begins running north on E. 152nd Street.

15. Affiant avers that the suspect ran south on E. 152nd Street and then went northeast onto Shiloh Avenue. The victim then gets up from the

ground and continues walking south on E. 152nd Street and is believed to have walked to his residence located at 15704 School Avenue.

16. Affiant avers that the suspect returned to the scene of the shooting approximately five (5) to ten (10) minutes later after having changed his pants and appeared to be looking for something on the ground.

17. Affiant avers that the suspect is then observed walking back and then running towards the address of 403 E. 152nd Street.

18. Affiant avers that on February 20, 2024, while watching live video of 403 E. 152nd Street, believed to be the address where the unidentified suspect ran into, he observed a male matching the description of the suspect walking from the area of 403 E. 152nd Street and continue to the store located at 15208 Lakeshore Blvd. This male having the same build, hair style, clothing and walking characteristics as observed on the suspect on February 14, 2024.

19. Affiant avers that he, along with other members of the homicide unit, as well the Cleveland Division of Police video specialist, Tom Ciula, responded to the Lakeshore [F]ood Market at 15208 Lakeshore Blvd. and downloaded surveillance video showing the suspect male enter the store at approximately 1053hrs.

20. Affiant avers that utilizing the Fusion [C]enter they received an identification of the, as of yet, unidentified male suspect, based on the recovered surveillance video, and it was learned this male was currently paroled to the address 403 E. 152nd Street, Apartment #1.

21. Affiant avers that this same male suspect was observed, in real time, on February 20, 2024, exiting and re-entering the front (west) entrance of 403 E. 152nd Street, located at the northeast corner of the dwelling.

22. Affiant believes that evidence may still be present inside of the residence based on interviews conducted after the premises was sealed by law enforcement personnel on November 13, 2022.

23. Affiant avers that it is necessary for members of the Cleveland Division of Police to conduct an in-depth search of the residence located at 403 E. 152nd Street, Downstairs first floor, for any evidence pertaining to the homicide of Blake Story in violation of Ohio Revised Code 2903.01, Aggravated murder and/or any offense against the Ohio Revised code which may be related to this investigation.

> 24. Based on the above facts, Affiant has probable cause to believe and does believe that the above-described items and/or persons will be found within the above premises.

{¶ 6} Tolbert challenged the search warrant by filing a contested motion to suppress all evidence collected from the Apartment. Many of those challenges were premised on the investigation's utilization of the Fusion Center — which employs Clearview AI facial recognition technology as an investigative tool — to "identify" Tolbert. Tolbert's arguments were summarized in *Tolbert I* as follows:

> In the motion to suppress, Tolbert first argued that paragraph 20 of the warrant affidavit was a false or misleading statement or omission because it states that "utilizing the Fusion [C]enter they received an identification," while the Northeast Ohio Regional Fusion Center ("Fusion Center") disclaimer states that "[t]hese search results are not intended or permitted to be used as admissible evidence in a court of law or any court filing." Second, he argued that "any person or magistrate reading the affidavit would believe that the Fusion [C]enter identified the defendant based on the recovered surveillance video." Next, Tolbert argued that paragraph 17 was misleading because it states that the male suspect is observed walking back and then running towards the address of 403 E. 152nd Street, but it does not say he is seen going into the dwelling at that address. He argues that the assumption is that the male suspect is running towards that address but that the video does not show that he ran into the dwelling at 403 E. 152nd Street. Lastly, Tolbert's motion argued that the warrant affidavit included undisclosed inferences because it withheld the disclaimer and affirmatively claimed an identification was made by the Fusion Center.

Tolbert I, 2025-Ohio-4469, at ¶ 8 (8th Dist.). However, Tolbert did not challenge paragraph 21 of the warrant affidavit.

{¶ 7} The trial court conducted a suppression hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) ("*Franks* hearing"). During the *Franks* hearing, Detective Legg and the RTCC analyst involved in the case offered testimony about

the entire investigation and the results received from the Fusion Center, which they described as an "investigative lead" within the "totality" of the investigation. The defense also admitted the following exhibits: the search warrant, the Fusion Center's disclaimer and results, the search warrant inventory sheet, an Ohio Law Enforcement Gateway's ("OHLEG") report, and Detective Legg's supplemental report dated February 21, 2024. In addition to the arguments raised in his motion to suppress, Tolbert raised several new arguments during the *Franks* hearing. In *Tolbert I* we summarized the arguments Tolbert presented as follows:

> First, he argued that the warrant affidavit is not clear as to which video was used to make the identification in paragraph 20. Second, Tolbert argued that the [OHLEG] report [admitted into evidence] did not show the Apartment as the address he was paroled to, as averred in paragraph 20. Third, Tolbert argued that the Fusion Center disclaimer should have been disclosed with the warrant affidavit. Lastly, Tolbert argued that the warrant affidavit did not disclose that the male suspect is not seen going into and out of 403 E. 152nd Street on February 14, 2024, the day of the homicide, but that he is seen entering and exiting 363 E. 152nd Street that night.

Tolbert I at ¶ 16. Paragraph 21 of the warrant affidavit was not challenged.

{¶ 8} Relevant to that paragraph — averring that "this same male suspect was observed, in real time, on February 20, 2024, exiting and re-entering the front (west) entrance of 403 E. 152nd Street, located at the northeast corner of the dwelling" — Detective Legg testified that the "same male suspect" referred to "[t]he only individual suspect that we had in the case. There's always been one suspect . . . ." Detective Legg emphasized that this male suspect was identified based on "physical characteristics" and "the whole totality," explaining:

> So that same suspect — the reason we went to the Lakeshore Food Mart is because of the initial RTCC video and this individual matching that suspect. That's what led us to there.
>
> . . .
>
> We believed [the person on the 20th was] the exact same person observed on the RTCC video on the 14th.

Detective Legg also testified that the person in the Lakeshore Food Mart was the same person he saw going into the Apartment because "we tracked that person from the store to go into that [Apartment]."

{¶ 9} Detective Legg's supplemental report provided further context, stating:

> On Tuesday, February 20, 202[4], I, along with . . . Cleveland Division of Police video specialist Tom Ciula, went to the Lakeshore Food Market located at 15208 Lakeshore Blvd. After conferring with store personnel[,] we were granted permission to view/download video from this location. The male suspect is seen entering the store at 1053hrs. The video was downloaded by Tom Ciula[,] and still photos of the male suspect were obtained from the retrieved surveillance video. Continuing to watch the RTCC cameras it was found that this male had exited the front door of 403 E. 152nd Street with, what appears to be, a bag of trash at 1249hrs and the re-enters the front door of 403 E. 152nd Street.

The supplemental report also detailed the investigation into the Apartment building's layout. The report explained that "[d]etectives were able to verify that the front door of 403 E. 152nd Street gave access directly into apartment #1; the apartment where the male subject was observed exiting and entering." Detectives learned this information after "posing as workers from the power company and inquiring as to whether or not any residents had power issues."

{¶ 10} At the conclusion of the *Franks* hearing, the trial court suppressed all evidence recovered during the search of the Apartment — including a Taurus 9 mm firearm, a black Adidas jumpsuit, black and white Nike Dunks, and several cell phones — and briefly explained the reasons for its ruling. The journal entry granting Tolbert's motion to suppress did not include any additional findings of fact or conclusions of law. The State appealed the trial court's decision, resulting in *Tolbert I*. Therein, we determined that additional findings were necessary, reversed the decision, and remanded the matter to the trial court for further proceedings.

{¶ 11} Following *Tolbert I*, the trial court issued a ten-page journal entry detailing its findings of fact and conclusions of law. The trial court concluded that "Tolbert provided proof by a preponderance of the evidence that the search warrant affidavit contained averments that were deliberately false or showed reckless disregard for the truth" and struck paragraphs 14 through 22. The trial court explained its reasoning for striking each paragraph. In relevant part, the trial court discussed paragraphs 20 and 21 together and struck both after finding that Detective Legg "fail[ed] to include information in the affidavit about the AI identification of Tolbert." After removing paragraphs 14 through 22, the trial court concluded that there was "an insufficient showing of probable cause to issue the warrant" and excluded all evidence obtained from the search. The State filed a second appeal.

III. Law and Analysis

{¶ 12} In its single assignment of error, the State asserts that the trial court erred in granting Tolbert's motion to suppress evidence following the *Franks*

hearing. The State claims that the trial court's factual findings were not supported by competent, credible evidence.

{¶ 13} In *Tolbert I*, 2025-Ohio-4469, at ¶ 21-26, we discussed the legal principles governing search warrants, including the Fourth Amendment of the United States Constitution, Crim.R. 41(C)(1), and probable cause. We also discussed the appellate standard of review applicable to motion-to-suppress rulings and the *Franks* framework — which provides a mechanism for defendants to challenge the veracity of sworn statements made by police when procuring search warrants. *Id.* at ¶ 27-30. We do not restate those discussions here; however, we do reiterate some key principles.

{¶ 14} First, we echo that "[a]ppellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 2003-Ohio-5372, ¶ 8. Since the trial court is in the best position to resolve factual questions and evaluate the credibility of witnesses, an appellate court must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *Id.* The appellate court must then independently determine whether the facts satisfy the applicable legal standard without affording deference to the trial court's conclusion. *Id.*

{¶ 15} Second, we emphasize that Crim.R. 41(C) authorizes the issuance of a search warrant only upon a sworn affidavit establishing probable cause and particularly describing the person, place, or property to be searched. "'To establish probable cause to search a home, the facts must be sufficient to justify a conclusion

that the property that is the subject of the search is probably on the premises to search.'" *State v. Marler*, 2009-Ohio-2423, ¶ 26 (2d Dist.), quoting *State v. Freeman*, 2006-Ohio-5020, ¶ 13 (4th Dist.). Indeed, probable cause requires only a "fair probability that contraband or evidence of a crime will be found in a particular place"; it does not require proof beyond a reasonable doubt, proof by a preponderance of the evidence, or even a prima facie showing of criminal activity. *Illinois v. Gates*, 462 U.S. 213, 235, 238 (1983).

{¶ 16} Third, we summarize the legal standard under *Franks,* 438 U.S. 154. A defendant who seeks to overcome the presumption of validity afforded to a warrant affidavit must (1) make a "substantial preliminary showing" to be afforded a hearing, and (2) establish at the hearing, by a preponderance of the evidence, that the affiant intentionally or recklessly included a false statement in the affidavit. *Id.* at 155-156, 171-172. If the defendant meets their burden of proof, the trial court must redact the false statement from the warrant affidavit and determine whether the remaining allegations are sufficient to support a probable-cause finding. *Id.* If the remaining statements fail to establish probable cause, "the search warrant must be voided and the fruits of the search excluded." *Id.* at 156.

{¶ 17} The State presented many arguments on appeal. However, this decision is premised on one: paragraph 21 of the warrant affidavit establishes probable cause to search the Apartment. According to the State, this paragraph does not rely upon the Fusion Center's results and was not challenged by Tolbert. The State contends that police had probable cause to obtain a search warrant for the

Apartment when they observed an individual matching the description of the shooter from February 14, 2024, entering and exiting the front entrance of 403 E. 152nd Street — which had direct and exclusive access to Apartment #1 — after they already observed that same suspect go to and from that same area around the time of the homicide. The State argues that this case is not about naming Tolbert — the only "meaningful information" the Fusion Center's results added about the already-identified male suspect. Rather, it is about the identification of the place to be searched — the Apartment — based on detectives' observations over the course of the investigation. After thoroughly reviewing the record and relevant caselaw, we agree with the State's assessment and find it dispositive.

{¶ 18} Crim.R. 47 requires that any pretrial motion "state with particularity the grounds upon which it is made and shall set forth the relief or order sought." The rule's implications have been explained as follows: "'By requiring the defendant to state with particularity the legal and factual issues to be resolved, the prosecutor and court are placed on notice of those issues to be heard and decided by the court and, by omission, those issues which are otherwise being waived.'" *State v. Toran*, 2023-Ohio-3564, ¶ 36 (Gallagher, J., concurring), quoting *State v. Shindler*, 70 Ohio St.3d 54, 58 (1994), and citing *State v. F.O.E. Aerie 2295, Port Clinton*, 38 Ohio St.3d 53, 54-55 (1988) (failure to comply with Crim.R. 47 results in waiver of the argument). This particularity requirement applies with equal force to *Franks* challenges. Under *Franks*, 438 U.S. 154, at 171, a defendant's allegations of deliberate falsehood or reckless disregard for the truth "should point out specifically

the portion of the warrant affidavit that is claimed to be false" and "be accompanied by a statement of supporting reasons."

{¶ 19} Here, Tolbert's motion to suppress focused on the investigation's utilization of the Fusion Center to "identify" Tolbert. Tolbert did not specifically point out paragraph 21 of the warrant affidavit, assert that the statements made therein were false, or claim that it was premised on the Fusion Center's results or its use of Clearview AI. Nor were specific challenges to paragraph 21 raised during the *Franks* hearing. Nevertheless, the trial court struck paragraphs 20 and 21 together, finding that Detective Legg "fail[ed] to include information in the affidavit about the AI identification of Tolbert."

{¶ 20} However, our review of the record reveals that paragraph 21 was not solely connected to the Fusion Center's results "identifying" Tolbert. Rather, Detective Legg testified that the "same male suspect" was identified based on his physical characteristics and the totality of the investigation, which included observing "the only individual suspect" (1) on RTCC footage before, during, and after Story's homicide on February 14, 2024, and (2) exiting and reentering the Apartment on February 20, 2024. According to Detective Legg's supplemental report, the male suspect appeared to be taking out the trash. The supplemental report also offered additional information regarding the investigation, including confirmation that the front entrance of 403 E. 152nd Street — where the male suspect was observed exiting and reentering — led directly into the Apartment. All

this information was gathered through traditional investigative methods — not from the Fusion Center's results.

{¶ 21} Aside from the factual findings related to the Fusion Center and paragraph 20, the trial court did not make any independent findings to support the striking of paragraph 21. Nor does the record before us establish, by a preponderance of the evidence, that statements made in paragraph 21 were intentionally or recklessly false. Thus, even if Tolbert specifically challenged paragraph 21, competent, credible evidence in the record does not support the trial court's finding that the statements were perjured or made with reckless disregard for their truth. Consequently, we find that the trial court erred in striking paragraph 21, and we reincorporate it.

{¶ 22} After reinstating paragraph 21, we conclude that the warrant affidavit's remaining statements established probable cause to search the Apartment, even when affording deference to the trial court's other factual findings and assuming its striking of paragraphs 14 through 20 and 22 was necessary. Indeed, the warrant affidavit's remaining paragraphs establish a nexus between the alleged crime, Story's murder, and the place to be searched, the Apartment: the same male suspect was observed both (1) at the time of Story was shot, walking in the area of 403 E. 152nd Street, approaching Story from behind, producing and pointing a firearm at Story, and holding Story with his other hand, and (2) exiting and re-entering the Apartment days later. Thus, there was a fair probability that contraband or evidence from Story's murder would be found in the Apartment.

Accordingly, the trial court erred in granting Tolbert's motion and suppressing all evidence obtained after the search warrant was executed at the Apartment.

{¶ 23} Judgment reversed and remanded for further proceedings.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EMANUELLA D. GROVES, JUDGE

LISA B. FORBES, P.J., and
EILEEN A. GALLAGHER, J., CONCUR