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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. 1973CR00199

BRISTOL, SS SUPERIOR COURT  
FILED

MAY 21 2024

JENNIFER A. SULLIVAN, ESQ.  
CLERK / MAGISTRATE

COMMONWEALTH

vs.

MIGUEL MARTINEZ

**MEMORANDUM OF DECISION AND ORDER**  
**ON DEFENDANT'S MOTION TO SUPPRESS**

On June 27, 2019, a Bristol County grand jury returned indictments charging the defendant, Miguel Martinez, with trafficking in fentanyl, 36 grams or more, trafficking in cocaine, 18 grams or more, and unlawful possession of suboxone with intent to distribute. The defendant's motion for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), was allowed by the court (Yarashus, J.), on September 28, 2023. In the motion, the defendant alleged that his former girlfriend, Carly Medeiros, planted illegal narcotics on him at the behest of the search warrant affiant, Detective Kevin Barbosa, and a fellow police officer, Jared Lucas, in order to assist Ms. Medeiros in ending her romantic relationship with the defendant.

The court conducted an evidentiary hearing over three days: January 26, 2024, February 1, 2024, and February 5, 2024. Three witnesses testified, and ten exhibits were introduced. The defendant requested time to file a post hearing memorandum which was received by the court on February 21, 2024. Now, based on the evidence from the hearing, the defendant moves to

suppress the evidence seized during the execution of the search warrants. For the following reasons, the motion to suppress is ALLOWED.

### FINDINGS OF FACT

The court heard from three witnesses in this matter, Detective Kevin Barbosa, Sergeant Kevin Lawless, and Carly Medeiros. Based on the credible evidence<sup>1</sup> admitted and the reasonable inferences drawn therefrom, the court makes the following findings of fact. Additional facts are reserved for the discussion.

On April 3, 2019, Detective Kevin Barbosa of the New Bedford Police Department applied for and was granted three search warrants. The search warrants indicated that the defendant operated a cocaine distribution service out of 472 Cottage Street in New Bedford, utilized a black 2006 Jeep Commander for the sale of cocaine, and that 1430 Pleasant Street Apartment 3 in New Bedford was a “stash house.” The search warrants were based in large part on information provided by a confidential informant, Ms. Medeiros, and two controlled buys conducted by Detective Barbosa via Ms. Medeiros.<sup>2</sup>

In March 2019, Jared Lucas advised Detective Barbosa that he knew someone who could “buy” into the defendant. That individual was Carly Medeiros. Mr. Lucas introduced Ms. Medeiros to Detective Barbosa as a “reliable” confidential informant who had information about

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<sup>1</sup> I find Kevin Barbosa and Kevin Lawless believable witnesses and credit their testimony in its entirety. Carly Medeiros is not a believable witness, although I do find her testimony accurate in some instances. I do not credit her testimony concerning Detective Barbosa’s knowledge of her relationship with Mr. Lucas or her claims that he gave her illegal narcotics to plant on the defendant.

<sup>2</sup> Prior to the commencement of this investigation, on March 8, 2019, Detective Sergeant Andrew Simmons and other members of the narcotics unit had made observations concerning the defendant engaging in suspected narcotics sales in the north end of the city. Sergeant Simmons observed what he believed were two sales made by the defendant. The suspected purchasers were stopped, narcotics were seized, and those individuals were charged by way of summons. The police lost the defendant in traffic on March 8, 2019, therefore he was not arrested. The police applied for a criminal complaint against the defendant based upon the March 8, 2019, observations, which ended that particular investigation.

the defendant being involved in illegal narcotics sales. At the time, Mr. Lucas was an officer in the New Bedford Police Department, assigned to the Gang Unit. Detective Barbosa was assigned to the Organized Crime and Intelligence Bureau, colloquially called the narcotics unit. Mr. Lucas told Detective Barbosa that Ms. Medeiros provided information in the past in an investigation that led to the seizure of fentanyl and the arrest of the target. Mr. Lucas provided a docket number for that case, which was ultimately included in the search warrant application. The defendant in that case was arrested and charged with serious drug offenses which were committed on November 10, 2018, several months before Mr. Lucas introduced Ms. Medeiros to Detective Barbosa as a confidential reliable informant.

Based on the information provided by Ms. Medeiros, Detective Barbosa started this investigation. Utilizing Ms. Medeiros, Detective Barbosa conducted two controlled buys for cocaine, which were documented and recorded.<sup>3</sup> Thereafter, on April 3, 2019, three search warrant applications were granted and executed for the defendant's residence, a suspected "stash house," and the defendant's Jeep. As a result of the searches, narcotics were seized from the defendant's residence, and this indictment followed.

Mr. Lucas retired from the New Bedford police department in August 2021. In July of 2022, Carly Medeiros identified herself publicly as a person involved in at least two New Bedford police investigations, this one and another involving a different romantic interest of Ms. Medeiros, Steven Ortiz. After contacting the Boston Globe to determine the newspaper's interest in the story, Ms. Medeiros documented and compiled information in a binder related to her involvement with Mr. Lucas and the New Bedford police and provided it to a Boston Globe

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<sup>3</sup> Ms. Medeiros was paid by police to perform both controlled buys.

reporter and Mr. Ortiz's defense attorney.<sup>4</sup> In the binder, she alleged that she was in a sexual relationship with Mr. Lucas for at least seven years, starting in 2013, when he was a patrol officer. She was seeing him in an on-again-off-again fashion. In 2013, Ms. Medeiros was also dating Mr. Ortiz. Ms. Medeiros claimed that when she began her relationship with Mr. Lucas, he exploited their relationship to gather information for a narcotics investigation into Mr. Ortiz which resulted in his arrest on June 7, 2017, for trafficking in heroin in excess of 200 grams and other significant charges. That case is still pending. Mr. Ortiz is facing a mandatory minimum sentence of twelve years in state prison, if convicted. Her relationship with Mr. Ortiz subsequently ended. Her relationship with Mr. Lucas continued and later, in 2018 and early 2019, Ms. Medeiros was dating both Mr. Lucas and the defendant. After the defendant was arrested and charged in this case, Ms. Medeiros resumed her relationship with Mr. Ortiz.

As evidence of her relationship with Mr. Lucas, Ms. Medeiros included in the binder photos of text messages and messages from social media.<sup>5</sup> Despite the ongoing seven-year relationship, the only text messages Ms. Medeiros included in her binder were text messages from an approximately two-week period at the end of March, beginning of April of 2020, allowing only a very limited snapshot of their relationship. Ms. Medeiros initiated contact with Mr. Lucas<sup>6</sup> and secured very graphic and incriminating proof of her sexual relationship with him.

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<sup>4</sup> Ms. Medeiros did not give the binder to the New Bedford Police Department or the Bristol County District Attorney's Office, although both agencies received copies of it through other means.

<sup>5</sup> The social media messages are from Snapchat and Instagram for accounts that Ms. Medeiros claims belong to Jared Lucas and appear to be offered by her to prove that they had a relationship. There is only sixteen pages of these photos. One photo on each page. The year is not reflected on all of them. Some of the messages are not clear enough to read. They offer little to the analysis.

<sup>6</sup> It appears that Ms. Medeiros reached out to Mr. Lucas in a text. Her text is missing from the photograph, but Mr. Lucas texted Ms. Medeiros at 6:16 P.M. on Tuesday, March 24 saying "What's up?" Several days later, on Thursday, April 2, at 12:01 A.M., Ms. Medeiros responded to his text by saying "Just wanted to check in with you and tell u I love you and I hope you staying [sic] safe." "And I am thinking of you but I'm sure u know that." "Wow already typing[.]" Mr. Lucas responded by texting "I love you."

She preserved the messages by taking pictures of her phone screen with her sister's phone and then saving them to her computer. I find from her conduct, in initiating contact, and taking the extraordinary steps of taking photographs of the text messages with her sister's phone and saving them to her personal computer that Ms. Medeiros intentionally sought to gather and preserve evidence for use at some future date. Ms. Medeiros was back in a relationship with Mr. Ortiz whose charges were still pending when she obtained and preserved the text messages.

In the text exchange, both Mr. Lucas and Ms. Medeiros talk about their seven-year relationship. The texts are sexually explicit and verify that the two had an intimate relationship. Ms. Medeiros and Mr. Lucas talked over text about setting up a video call where they could watch each other perform sexual acts. To that end, Ms. Medeiros suggested that she would start a fight with "him" (presumably Mr. Ortiz) to justify her sleeping in the living room. Ms. Medeiros cautioned Mr. Lucas that the video call would have to be at 3:00 or 4:00 A.M. when Ms. Medeiros knew "he" would be "completely knocked out."

In the binder and during her testimony, Ms. Medeiros made several claims pertaining to this case. She maintained that she never served as a confidential informant in the way that term is commonly understood. Rather, she alleged that Mr. Lucas and other members of the New Bedford police department had her plant drugs on the defendant, her then boyfriend. She had grown tired of her relationship with the defendant. She claimed he was abusive, controlling and stole from her. When she mentioned this to Mr. Lucas, Ms. Medeiros claimed that he became angry and offered to take care of the situation. She alleged that members of the police department were aware of her long-term sexual relationship with Mr. Lucas. She also alleged that Mr. Lucas would get her out of traffic stops and bail her out of jail.

On September 19, 2022, Sergeant Kevin Lawless of the New Bedford police department's Division of Professional Standards was made aware of the binder and was directed to investigate the matter. Sergeant Lawless reached out to Ms. Medeiros to interview her. The police department offered to hire an outside agency to conduct the interview. After initially agreeing to meet with him, Ms. Medeiros declined to be interviewed. Sergeant Lawless made attempts to interview Mr. Lucas but was unsuccessful due to Mr. Lucas' retirement in 2021.

I do not find Ms. Medeiros a believable witness. While I do find that Ms. Medeiros was having a sexual relationship with Mr. Lucas, I base that finding upon the tangible evidence introduced in the form of uncontroverted text messages which contain a suggestive picture of Mr. Lucas and sexually graphic communications. In the messages, Mr. Lucas acknowledges that they have been in a relationship for seven years. Ms. Medeiros' description of the details of the relationship, including when it was "on" and when it was "off," and the relationship's interpersonal dynamics in some instances ring hollow. On the one hand, she portrays herself as a vulnerable young woman struggling with a heroin addiction who was manipulated by Mr. Lucas to give him information about Mr. Ortiz. On the other hand, she brags boastfully about how she had Mr. Lucas "wrapped around her little finger," able to command him to perform any act she desired by virtue of his hopeless infatuation with her. She acknowledged using Mr. Lucas to keep tabs on Mr. Ortiz and also claims to have used Mr. Lucas to get herself out of trouble with the department. On the whole, the evidence indicates that Ms. Medeiros and Mr. Lucas engaged in mutual use of one another in order to achieve their goals.

Ms. Medeiros's testimony was replete with inconsistencies and falsehoods. Ms. Medeiros' demeanor on the witness stand was not one of an individual trying to be truthful and report her knowledge accurately. She harbors great animosity toward Mr. Lucas and the New

Bedford Police Department. She bluntly, with a touch of braggadocio, admitted to an encounter with two New Bedford police detectives in January of 2023, wherein she chastised them by saying "You guys are fucked. Do you know who I am?" She warned them that a news article was going to soon be published about the gang unit that would ruin several detectives' careers. She bragged, "I already took one of you guys down", apparently in reference to Mr. Lucas's early retirement. She is aware of the potential impact of her personal relationship with Mr. Lucas in pending criminal cases. She appears to relish causing the most damage, frequently shading the facts in her efforts to do so.

Contrary to the defendant's argument that Ms. Medeiros has no motive to lie about her conduct in this case, she has many reasons to lie. She has a bias against, if not hatred for, Mr. Lucas and the New Bedford police department. At the time she reached out to Mr. Lucas, in March and April of 2020 and secured the texts, she was re-involved with Mr. Ortiz. Her sexual relationship with Mr. Lucas has since been raised as the basis of motions to dismiss Mr. Ortiz's case, which is currently pending. The more damage that can be inflicted on the New Bedford Police Department, the more favorable it will be for her boyfriend, Mr. Ortiz.<sup>7</sup>

Likewise, when Ms. Medeiros outed herself as the individual working with the police in this case, she ran the risk of angering other individuals on whom she may have informed including the individual listed in the affidavit in this case to establish her reliability under *Aguillar-Spinelli*. The information she reportedly provided, if believed, led to his arrest for trafficking in fentanyl and a committed state prison sentence of not less than five, nor more than four years, concurrent with the same sentence imposed on another unrelated case. Distancing herself from her role as a regular reliable confidential informant for the New Bedford police and

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<sup>7</sup> Mr. Ortiz accompanied Ms. Medeiros to court for the hearing on this motion and was present in the courtroom during the testimony.

claiming to have only planted drugs on the defendant at the behest of police officers, if believed, could shield her from retaliation, and thus provide a motive to lie.

Conversely, I credit Detective Barbosa's testimony in its entirety. Specifically, I credit that he believed Mr. Lucas' assertion that Ms. Medeiros was a reliable confidential informant and that he had no knowledge of the fact that they were in an intimate relationship. Detective Barbosa had no reason to question her reliability because Mr. Lucas provided him with the docket number from a case he claimed Ms. Medeiros provided information on that led to an arrest for trafficking in fentanyl. Mr. Lucas consciously withheld the nature of his relationship with Ms. Medeiros because it was both against police department policy and likely that Detective Barbosa would have declined to use Ms. Medeiros as a confidential informant if he had known of the affair and her motive to cooperate in the investigation.

I also credit Detective Barbosa's testimony that he conducted two controlled buys utilizing Ms. Medeiros, which were documented. Detective Barbosa testified that he searched Ms. Medeiros to the best of his ability prior to each controlled buy. He asked Ms. Medeiros whether she had any money or contraband on her person. He also asked her to empty her pockets in his presence. The police watched as Ms. Medeiros called the defendant, arranged to meet him, and as she and he travelled separately to the location of the meet. Once at the location, Detective Barbosa watched as Ms. Medeiros entered the defendant's Jeep and stayed in the vehicle briefly. After she left the vehicle, she met again with the police where she produced a small glassine bag containing cocaine, which she claimed she purchased from the defendant.<sup>8</sup>

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<sup>8</sup> Given the small size of the glassine bag containing cocaine produced by Ms. Medeiros, it would not have been difficult for her to have secreted it on her person prior to meeting up with the police. When questioned by defense counsel about the insufficiency of the type of search conducted in guarding against confidential informants' manipulation of controlled buys, Detective Barbosa candidly replied that a police officer has to have a certain level of trust in their confidential informant. Had Detective Barbosa been aware of Ms. Medeiros' animosity toward the defendant, her sexual relationship with Mr. Lucas, and her motive for participating in the investigation, he would not have had that level of trust.



Detective Barbosa's testimony concerning the controlled buys, which I specifically credit, directly contradicts Ms. Medeiros' testimony. Additionally, Detective Barbosa's testimony is supported by Ms. Medeiros' description of their interaction, detailed in her binder, on the day of one of the controlled buys. In her testimony, Ms. Medeiros described meeting up with Mr. Lucas, Detective Kubik, and Detective Barbosa who were in a vehicle. Ms. Medeiros acknowledged that prior to this meeting, Detective Barbosa had no idea about her intimate relationship with Mr. Lucas. According to her, she met Detective Barbosa only once before the meeting in the vehicle. Ms. Medeiros testified that Detective Barbosa knew about the relationship because he was in the front seat of the vehicle when she exchanged an embrace and kiss with Mr. Lucas in the back. However, Ms. Medeiros' written statement in the binder conflicts with the version of events she provided on the stand. With reference to Detective Barbosa, Ms. Medeiros wrote:

"I got the feeling like he (Mr. Lucas) wasn't being completely honest with [sic] about our relationship with him because any other time it didn't matter what partner he was with he would get out of the car and hug me and kiss and this was the only time he did not do that and the way he was acting was like I was just someone who he had a cop relationship with and that wasn't the case. I get in the car and he introduces me to [Detective Barboza]." Exhibit 5 page 55.

Also contrary to her testimony, in the binder, Ms. Medeiros wrote that an individual named Brian was driving, that Detective Barbosa was in the rear seat with her, and that Mr. Lucas was in the front passenger seat. Ms. Medeiros' testimony at the hearing was very different from what she wrote in the binder in 2022. Her testimony was more targeted toward Detective Barbosa than it was in 2022 when she was focused on bringing Mr. Lucas down and helping Mr. Ortiz. She lied to the court about Detective Barbosa's knowledge of her relationship with Mr. Lucas in order to further her agenda, which at this particular moment, in this particular case, is discrediting Detective Barbosa, the affiant of the search warrants. Her version of the events in

the binder confirms Detective Barbosa's testimony regarding the controlled buy and his lack of knowledge of the relationship.

The court has a one-sided version of the relationship between Carly Medeiros and Jared Lucas because Mr. Lucas did not testify, nor did anyone else familiar with the relationship between Ms. Medeiros and Mr. Lucas. The only perspective provided to the court is by Ms. Medeiros, who is not a credible witness. There are many possible permutations as to what the actual relationship between Mr. Lucas and Ms. Medeiros was during the time Detective Barbosa was investigating the defendant. It appears from the evidence before me that the two used one another and others, including Detective Barbosa, to achieve their goals.

Keeping in mind the applicable standard of proof, while I do not find Ms. Medeiros credible in her claim that she planted drugs on the defendant at the behest of Mr. Lucas and Detective Barbosa, I find it more likely than not, that she was in a sexual relationship with the defendant at the time, she was angry with him and no longer wished to be in the relationship, and that she was trying to get the defendant arrested to easily extract herself from the situation. I also find that Mr. Lucas knew that Ms. Medeiros was in a sexual relationship with the defendant when he introduced her to Detective Barbosa as a "reliable" confidential informant.<sup>9</sup>

I also find it more likely than not that when Mr. Lucas introduced Ms. Medeiros to Detective Barbosa to use as a confidential informant in the investigation involving the defendant, Mr. Lucas was either himself motivated by personal animus, because of his personal interest in Ms. Medeiros or aware that Ms. Medeiros was participating as a confidential informant out of personal vengeance, or a combination of both.

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<sup>9</sup> Ms. Medeiros freely told Detective Barbosa that she dated the defendant "previously".

It was gross misconduct for Mr. Lucas to have a sexual relationship with his informant. That gross misconduct was exacerbated when Mr. Lucas, motivated by his own personal animus or in order to assist Ms. Medeiros in her personal vendetta, presented Ms. Medeiros to Detective Barbosa as a "reliable" confidential informant to be used to support search warrants targeting the defendant without informing Detective Barbosa of the true nature of his or the defendant's relationship with Ms. Medeiros. Such misconduct cannot go unaddressed.

### RULINGS OF LAW

"When the Fourth Amendment demands a factual showing sufficient to comprise 'probable cause,' the obvious assumption is that there will be a *truthful* showing" (emphasis original, citation omitted). *Franks*, 438 U.S. at 164-165. For a warrant to be voided and the fruits of a search excluded, the defendant must demonstrate by a preponderance of the evidence that (1) the affiant included "a false statement knowingly or intentionally, or with reckless disregard for the truth or intentionally or recklessly omitted material in the search warrant affidavit;" and (2) "the allegedly false statement is necessary to the finding of probable cause, . . . or that the inclusion of the omitted information would have negated the magistrate's probable cause finding" (quotations and citations omitted). *Andre*, 484 Mass. at 407-408. "If there is an intentional misrepresentation of a fact that greatly strengthens an affidavit which is otherwise marginally sufficient, there are strong policy reasons for invalidating the warrant." *Commonwealth v. Nine Hundred and Ninety-Two Dollars*, 383 Mass. 764, 768 n. 5 (1981).

The defendant argues that the affiant, Detective Barbosa, recklessly included false statements in his affidavit. The defendant asks the court to credit Ms. Medeiros' testimony thereby finding the following facts as true: (1) Mr. Lucas and Ms. Medeiros were in a long-term

sexual relationship; (2) Detective Barbosa and other officers were aware of the intimate relationship between Ms. Medeiros and Mr. Lucas; (3) Ms. Medeiros never conducted controlled buys that led to arrests or convictions and was not a “reliable informant” as indicated in the affidavit; (4) Ms. Medeiros never purchased cocaine from the defendant; and (5) Ms. Medeiros planted drugs in the defendant’s vehicle at the request of the detectives. As stated above, I do not credit much of Ms. Medeiros’ testimony. However, based on the tangible evidence introduced during the hearings, I find that Ms. Medeiros and Mr. Lucas were in a long-term sexual relationship. I credit Detective Barbosa’s testimony in its entirety, including that he was unaware of the relationship, thus Detective Barbosa did not intentionally or recklessly include false statements in his affidavit. Nevertheless, Mr. Lucas’ misconduct and Ms. Medeiros’ lack of reliability, if included in the affidavit, would have negated the magistrate’s probable cause finding. Accordingly, and for the reasons below, suppression is required. /

Because Detective Barbosa did not either intentionally or recklessly include false statements in his affidavit, the first issue before the court is whether *Franks* applies to a police officer who was not the affiant of the search warrant application. The second issue is whether information was intentionally or recklessly omitted or falsely stated in the affidavit. The third issue is whether the omitted information “would have negated the magistrate’s probable cause finding” such that the warrants should be voided and the fruits of a search excluded.

*Commonwealth v. Andre*, 484 Mass. 403, 407-408 (2020). There is little caselaw on the issues precisely before the court, particularly as it pertains to Mr. Lucas’ relationship with the informant, Ms. Medeiros.<sup>10</sup>

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<sup>10</sup> This is potentially in part because often cases of police misconduct involving confidential informants have been nolle prossed. See generally *Commonwealth v. Perez*, 87 Mass. App. Ct. 278, 284-285 (Commonwealth nolle prossed cases an officer worked on because he was under investigation for misconduct related to using informants).

## **I. *Franks* as applied to Governmental Agents.**

The Supreme Court in *Franks* explained that “police could not insulate one officer’s deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity.” *Franks*, 438 U.S. at 163 n.6. In accord with *Franks*, “[t]he vast majority of courts recognize the *Franks* inquiry should not focus solely on the affiant, because a different rule would permit government officials deliberately to keep from affiants or the court information material to the determination of probable cause and by such conduct avoid the necessity of a *Franks* hearing.” *United States v. Roman*, 311 F. Supp. 3d 427, 435 (D. Mass. 2018), quoting *United States v. DeLeon*, 979 F. 2d 761, 764 (9th Cir. 1992) (collecting cases).

As observed by the Supreme Judicial Court, “We do not limit our inquiry to the misstatements of the affiant where it appears that false information was relayed to the affiant from another law enforcement officer. The fact that the affiant reported truthfully what another law enforcement officer told him should not insulate that other officer’s statements from scrutiny as to their truthfulness or their recklessness. See *Franks v. Delaware*, 438 U.S. 154, 163-164 n. 6 (1978). A police affiant thus cannot become a “bona fide purchaser” of an intentionally or recklessly false statement made to him by another police officer.” *Commonwealth v. Nine Hundred and Ninety-Two Dollars*, 383 Mass. 764, n.5 (1981).

“*Franks* should not be read to apply only to misrepresentations made by the affiant himself, because such a reading would allow the police to slip lies into affidavits with impunity by simply passing them through an officer ignorant of their falsehood” (citation and quotation omitted). *Roman*, 311 F. Supp. 3d at 435.

Accordingly, although Mr. Lucas was not the affiant to the search warrant application, the court will consider his omissions for the purposes of the *Franks* inquiry here. In doing so,

the court notes that this is not a scenario where the defendant is alleging a civilian *informant* made a false statement because Mr. Lucas was a government agent at the times relevant here. See *Commonwealth v. Amral*, 407 Mass. 511, 519 n. 8 (1990) (Franks hearings not designed to impeach veracity of nongovernmental informants). Instead, as a government agent, Mr. Lucas' omissions must be subject to the same scrutiny as the affiant's. *United States v. DeLeon*, 979 F.2d 761, 764 (9th Cir. 1992) ("A deliberate or reckless omission by a government official who is not the affiant can be the basis for a Franks suppression"). Mr. Lucas was directly involved in the investigation and provided information which was relied on by the affiant to establish probable cause. *United States v. Kennedy*, 131 F.3d 1371, 1376 (10th Cir. 1997) ("the government [is] accountable for . . . statements made by other government employees . . . insofar as such statements were relied upon by the affiant").

Namely, Mr. Lucas introduced Ms. Medeiros to Detective Barbosa as a "reliable informant" who provided information that previously led to an arrest and seizure of fentanyl. Mr. Lucas provided the docket number for that case to Detective Barbosa, which was included in the search warrant affidavit. At the time of the introduction, Mr. Lucas deliberately withheld the true nature of his relationship with Ms. Medeiros and the fact that she was dating the defendant and trying to break off their relationship by getting him arrested. Consequently, even though this court finds that Detective Barbosa unwittingly accepted Mr. Lucas' statements and omissions, they must be subject to *Franks* scrutiny where they were made while Mr. Lucas was a government agent and used to establish probable cause in the search warrant affidavit. See *United States v. Calisto*, 838 F.2d 711, 714 (3d Cir. 1988) ("If [the court] held the conduct of the affiant was the only relevant conduct for the purpose of applying the teachings of Franks, [the court] would place the privacy rights protected by that case in serious jeopardy").

## II. Intentional or Reckless Omission

Next, the court turns to whether the affidavit contained intentional or reckless omissions. “*Franks* protects against omissions that are *designed to mislead*, or that are made in *reckless disregard of whether they would mislead*, the magistrate” (emphasis in original). *United States v. Colkley*, 899 F.2d 297 (4th Cir. 1990). There is little case law on an omission involving an officer-informant relationship such as this one. However, precedent is clear that a confidential informant’s credibility is material to a probable cause determination. Specifically, the foundation of a confidential informant’s knowledge, and her trustworthiness, are significant factors in determining whether information in an affidavit supports a finding of probable cause. See *Illinois v. Gates*, 462 U.S. 213, 233 (1983). “If an informant’s tip is the source of information, the affidavit must recite some of the underlying circumstances from which the informant concluded that relevant evidence might be discovered, and some of the underlying circumstances from which the officer concluded that the information . . . was credible or [their] information reliable” (citation and quotations omitted). *Franks*, 438 U.S. at 165. Thus, it is clear that to the extent Mr. Lucas’ omission of his relationship with Ms. Medeiros, as well as her motive of personal vengeance, implicates her basis of knowledge and trustworthiness, such omissions were material to the determination of probable cause.

This court’s analysis is informed by a Federal District Court’s reasoning in a case where a police officer pursued a romantic relationship with a confidential informant within two months after a search warrant application was submitted. *United States v. Velarde-Pavia*, No. CR 18-2212 KG, 2019 U.S. Dist. LEXIS 128444, at 26 (D.N.M. July 31, 2019). There, the defendant challenged the reliability of the informant on the basis of the inappropriate relationship between the officer and the informant. *Id.* While the Federal court expressed issues with the officer’s

truthfulness and credibility, it concluded that the timing of his conduct did not require suppression because it occurred after the search warrant affidavit was submitted. *Id.* at 27.

In contrast, Mr. Lucas' conduct was contemporaneous with the affidavit and far more egregious than the officer's in *Velarde-Pavia*, therefore requiring suppression. His dishonesty and inappropriate behavior occurred for six years before the search warrant affidavit was submitted in this case. Mr. Lucas did not inform Detective Barbosa that he was in a long-term sexual relationship with Ms. Medeiros. This omission was intentional, considering this relationship was against police department policy and would undermine the investigation into the informant's then-boyfriend. Ms. Medeiros was not a "reliable informant" as Mr. Lucas represented to Detective Barbosa. When Mr. Lucas omitted details about their relationship, Detective Barbosa was unable to fully attest to the foundation of a confidential informant's knowledge and her trustworthiness. He was also unable to assess any animus Mr. Lucas may have had towards the defendant.

Significantly, I do not find that Detective Barbosa had reasonable grounds to disbelieve the information Mr. Lucas provided him – especially here because the falsity was an omission of information. Where Detective Barbosa was unaware of the relationship between Mr. Lucas and Ms. Medeiros, and where Mr. Lucas provided Detective Barbosa with a docket number for a case in which she allegedly assisted, Detective Barbosa did not have a reason to investigate whether Ms. Medeiros was a reliable informant. As such, Detective Barbosa could not have recklessly omitted details from the affidavit about either Mr. Lucas and Ms. Medeiros' relationship or the latter's lack of reliability as the defendant suggests.

Nevertheless, the focus here must be on Mr. Lucas' intent in omitting this information that he likely knew should have been included in the affidavit, rather than Detective Barbosa's



intent in drafting the affidavit itself. From the totality of the evidence before the court, it is clear that Mr. Lucas intended to mislead Detective Barbosa, and eventually the magistrate, by omitting relevant details of the pair's history and Ms. Medeiros' ongoing tumultuous relationship with the defendant from his statements that Ms. Medeiros was credible and that she had provided reliable information in the past.

### III. Remedy

In concluding that omissions existed and Mr. Lucas' omissions are not shielded from a *Franks* inquiry, the last issue before the court is determining the remedy.

"Suppression is a remedy designed by the courts, as a matter of policy, to deter future police misconduct." *Amral*, 407 Mass. at 516. See *Franks*, 438 U.S. at 165–166; *United States v. Calandra*, 414 U.S. 338, 347–348 (1974). "[I]f a police affiant committed perjury on a matter that may have influenced the magistrate's finding of probable cause, arguably the warrant should be invalidated (and the fruits of the search excluded), even if the nonperjurious aspects of the warrant would have justified a finding of probable cause." *Nine Hundred and Ninety-Two Dollars*, 383 Mass. 764, 768 (1981). The defendant must show "that the inclusion of the omitted information would have negated the magistrate's probable cause finding." *Commonwealth v. Andre*, 484 Mass. 403, 408 (2020). See *United States v. Rigaud*, 684 F.3d 169, 173 n.5 (1st Cir. 2012) ("With an omission, the inquiry is whether its inclusion in an affidavit would have led to a *negative* finding by the magistrate on probable cause" [emphasis original, citation omitted]). See also *Commonwealth v. Corriveau*, 396 Mass. 319, 334–335 (1985) (affidavit "would have conveyed a significantly different message" regarding probable cause if the omitted material was included).

Illegal drug distribution is a serious health and safety concern in our communities. The government's interest in fully investigating and prosecuting those who harm and sometimes kill our citizens in pursuit of financial rewards is great. However, the secretive nature of the illegal drug business lends itself to difficulty in investigating and prosecuting offenders, and often the police must rely upon equally secretive investigative techniques. For that reason, our system permits the demonstration of probable cause based on information from unnamed informants because there is an assumption that police officers' representations in their affidavits are truthful. See *Commonwealth v. Lewin*, 405 Mass. 566, 585 (1989). However, the nature of drug investigations involving confidential informants hidden behind a lawful cloak of darkness, the informant privilege, creates an atmosphere ripe for abuse and misuse of police authority.

The legitimacy of the search warrant process depends on the belief in the integrity and good faith of police officers. "[J]udicial confidence is shaken" where a lack of integrity is shown by a police officer. *Lewin*, 405 Mass. at 585. "Where established police procedures [for utilizing] informants have been disregarded, judicial confidence is further shaken." *Id.* Suppression in such instances of police misconduct is appropriate both as a deterrent to future police misconduct of this nature and to protect the integrity of constitutional rights. *Id.* See *Commonwealth v. Fontaine*, 402 Mass. 491, 498 (1988) (suppression required where officer reviewed defendant's conversation with their attorney in violation of attorney-client privilege); *Commonwealth v. Pagan*, 73 Mass. App. Ct. 369, 373 (2008) (affirming suppression of fruits of search where officer testimony had inconsistencies and gaps such that judge could not confirm that informant existed).

Here, Mr. Lucas' misconduct and omission of his long-term sexual relationship with the informant as well as her ongoing hostile relationship with the target would have negated the

magistrate's probable cause finding. See *Commonwealth v. Andre*, 484 Mass. 403, 407-408 (2020). Mr. Lucas' intentional misconduct is precisely the kind that must be deterred. See *Lewin*, 405 Mass. at 585. His disregard for police department policy regarding informants lacked the very integrity required for the search warrant process to maintain legitimacy.

Mr. Lucas' misconduct and omissions taint Ms. Medeiros' tips by undermining her credibility and reliability. *United States v. Hohman*, D. Mass., No. CR 21-30007-MGM (Aug. 31, 2023) (Franks hearing required where affiant failed to disclose information directly or constructively known to him and other investigating law enforcement personnel regarding the informant's credibility). Controlled buys conducted by an individual as devoid of credibility and reliability as Ms. Medeiros cannot and will not be considered as a properly conducted controlled buy; simply put, the controlled buys, like Ms. Medeiros' tips, are tainted. Where the affidavit purports to establish probable cause based almost entirely on Ms. Medeiros' tips and two controlled buys, this taint is dispositive. The taint is not purged by other corroborating information in the affidavit, such as a detective's observation of two suspected narcotics transactions between the defendant, driving a Honda CRV, and "known individuals" who were later pulled over and found to be in possession of narcotics. While these observations could provide probable cause for the defendant's arrest, they are insufficient, without more, to establish probable cause to search the sites authorized by the warrants at issue here: the defendant's homes and the Jeep.<sup>11</sup> *Commonwealth v. Cinelli*, 389 Mass. 197, 213, cert. denied, 464 U.S. 860 (1983) ("Information establishing that a person is guilty of a crime does not necessarily constitute probable cause to search the person's residence").

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<sup>11</sup> The detective also observed the defendant coming and going to the home on 472 Cottage Street on two separate occasions, and a residence Ms. Medeiros asserted was the defendant's "stash house" had an electric bill three times higher than "normal." This is also insufficient to establish independent probable cause to search the homes and the Jeep.

In sum, this court concludes that the search warrant affidavit does not establish probable cause to search the two residences and the Jeep if Mr. Lucas' omissions about his relationship with Ms. Medeiros and her simultaneous relationship with the defendant are inserted into the affidavit as that information undermines her reliability and compromises the controlled buys. Accordingly, the defendant has met his burden that the magistrate's finding of probable cause would have been negated, and suppression is the appropriate remedy. See *Andre*, 484 Mass. at 408.

#### **IV. Additional Disclosure**

Having so concluded, the defendant's motion is properly addressed. However, further issues are implicated by the matters before this court. The extent of Mr. Lucas' misconduct and omissions is currently unknown. Ms. Medeiros allegedly served as a confidential informant in at least one other case. Based on the testimony and evidence before the court, any cases in which Ms. Medeiros served as an informant are in question. Disclosing to the court the cases in which Ms. Medeiros served as an informant is necessary to satisfy the Commonwealth's obligation under *Brady* to this defendant, as it may provide "material evidence needed . . . for a fair presentation of [his] case to the jury," as well as similar information for other affected defendants. *Commonwealth v. Lugo*, 406 Mass. 565, 574 (1990). This information is also potentially exculpatory evidence as it may tend to negate the guilt of criminal defendants in this and other cases. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 155 (1972); *Stricker v. Greene*, 527 U.S. 263, 280 (1999).

Accordingly, the Commonwealth shall, within 30 days of this order, disclose any and all cases Ms. Medeiros served as a confidential informant for the court to review in camera.

"[W]here it is not clear from the record that disclosure of an informant's identity would provide

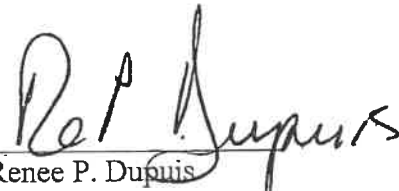
something material to the defense, a judge may hold an in-camera hearing to assist in making that determination.” *Commonwealth v. Dias*, 451 Mass. 463, 472 (2008). See *Amral*, 407 Mass. at 520 (“Use of an in-camera hearing [may be used] to reconcile the conflict between the government’s interest in protecting the informant and the defendant’s interest in proving that the affiant lied as to the existence or ‘reliability’ of an informant or as to statements attributed to an informant”).<sup>12</sup>

### ORDER

For the reasons set forth above, it is hereby ORDERED that the defendant’s motion to suppress is ALLOWED.

The court also ORDERS the Commonwealth to submit to the court the case names, docket numbers, police reports and search warrants of all cases in which Ms. Medeiros served as a confidential informant for the court to review in camera within 30 days of this order.

The court further ORDERS the clerk’s office to provide a copy of this decision to counsel of record, Kathryn Blythe, for the defendant in the criminal action associated with docket number 1873CR00446.

  
Renee P. Dupuis  
Justice of the Superior Court

DATE: May 21, 2024

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<sup>12</sup> To be clear, Ms. Medeiros has already publicly disclosed her identity in the newspaper and in open court. As such, this is not a typical informant disclosure order. Any concerns about her safety relating to other cases are mitigated by holding the hearing in camera. There is also no concern that disclosure of her identity may “destroy [her] future usefulness in criminal investigations” because she has demonstrated she is not a credible informant and maintains an animus towards police. *Commonwealth v. Lugo*, 23 Mass. App. Ct. 494, 498 (1987)

